LOK SABHA

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

(REPORT OF JOINT COMMITTEE)

[Presented on the 1st April, 1976]

LOK SABHA SECRETARIAT
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CORRIGENDA

to

The Report of the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974.

Page (xix), (i) line 14 from bottom, for 'according" read "accordingly"
(ii) line 5 from bottom, for "qustion" read "question"
(iii) line 3 from bottom, for "Cmmissioner" read "Commissioner"

Page(xx), line 22 from bottom, for "independant" read "independent"

Page (xxiv), line 6, for "rule 1" read "rule 11"

Page (xxv), (i) line 7, for "feed" read "fee"
(ii) line 18, for "reddress" read "redress"

Page (xxvi), line 9 from bottom, for "the suit" read "suit"

Page (xxix), line 3: for "reptition" read "repetition"

Page 8 , line 33, insert as marginal heading "23 of 1968"

Page 60, line 24, for "1972" read "1872"

Page 70, put thick rule against lines 20-23

Page 88, lines 26 & 28, for "section 8" read "section 7"

Page 92, line 2; for "para 3" read "para 2"

Page 96, serial No. 52, for "Shri Vishnu Kinkor" read "Shri Bishu Kinkor"

Page 141, line 18 from bottom, for "Twenty-third" read "Twenty-second"

Page 143, line 8 from bottom, for "was concluded" read "was not concluded"

Page 168, line 5 from bottom, for "Shrf" read "Shrimati"

Page 171, line 9 from bottom, for the existing line read "Shri S.K. Maitra, Joint Secretary and Legislative Counsel"

Page 179, line 7 from bottom, for "Legislature" read "State Legislature"

Page 184, line 3 from bottom, for "any" read "and"

Page 227, insert at the end , "16. Shri Mohammad Usman Arif"

CONTENTS

	PAGE
COMPOSITION OF THE JOINT COMMITTEE	iii
REPORT OF THE JOINT COMMITTEE	v
MINUTES OF DISSENT	xxvi
BILL AS REPORTED BY THE JOINT COMMITTEE	1
APPENDIX I :	
Motion in Lok Sabha for reference of the Bill to the Joint Committee	92
APPENDIX II :	
Motion in Rajya Sabha	94
APPENDIX III :	
List of Associations, Organisations, etc. from whom memoranda were received by the Joint Committee	95
APPENDIX IV :	
Questionnaire issued by the Joint Committee on the provisions of the Bill	98
APPENDIX V :	
List of Associations, Organisations, etc. from whom replies to the Questionnaire were received	99
APPENDIX VI:	
List of Associations, Organisations, etc. who gave evidence before the Joint Committee	101
APPENDIX VII:	
Minutes of sittings of the Joint Committee	109
APPENDIX VIII:	
Minutes of sittings of Sub-Committees of the Joint Committee	200

JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

COMPOSITION OF THE COMMITTEE

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri Chandrika Prasad
6. Shri A. M. Chellachami
7. Shri M. C. Daga
*8. Shri Tulsidas Dasappa
9. Sardar Mohinder Singh Gill
10. Shri H. R. Gokhale
11. Shri Dinesh Joarder
12. Shri B. R. Kavade
13. Shrimati T. Lakshmikanthamma
$14. Shri Madhu Limaye
15. Shri V. Mayavan
16. Shri Mohammad Tahir
17. Shri Surendra Mohanty
18. Shri Noorul Huda
19. Shri D. K. Panda
20. Shri K. Pradhani
21. Shri Rajdeo Singh
22. Shri M. Satyanarayan Rao
23. Shrimati Savitri Shyam
24. Shri R. N. Sharma
25. Shri Satyendra Narayan Sinha
26. Shri T. Sohan Lal
27. Shri Sidrameshwar Swamy
£28. Shri C. M. Stephan
29. Shri R. G. Tiwari
**30. Dr. (Smt.) Sarojini Mahishi

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*Appointed w.e.f. 2-12-74 *vice* Shri Prabhudas Patel resigned.

$Resigned his seat in Lok Sabha w.e.f. 22-3-76.

£Appointed w.e.f. 20-3-75 *vice* Shri Devendra Nath Mahata died.

**Appointed w.e.f. 19-12-74 *vice* Shri Nitiraj Singh Chaudhary resigned.

Rajya Sabha

31. Shri Sardar Amjad Ali
@32. Shri Mohammad Usman Arif
33. Shri Bir Chandra Deb Barman
34. Shri Krishnarao Narayan Dhulap
35. Shri Kanchi Kalyanasundaram
%36. Shri B. P. Nagaraja Murthy
37. Shri Syed Nizam-ud-din
38. Shri D. Y. Pawar
39. Shri V. C. Kesava Rao
40. Shri Virendra Kumar Sakhalecha
41. Shri Dwijendralal Sen Gupta
42. Shri M. P. Shukla
43. Shri Awadheshwar Prasad Sinha
44. Shri D. P. Singh
45. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

1. Shri P. K. Patnaik, *Additional Secretary.*
2. Shri Y. Sahai, *Chief Legislative Committee Officer.*

@Appointed w.e.f. 11-12-74 *vice* Shri Bipinpal Das resigned.
%Appointed w.e.f. 14-5-75 *vice* Shri Nawal Kishore died.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963 was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill, as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 8th April, 1974. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Nitiraj Singh Choudhary, the then Minister of State in the Ministry of Law, Justice & Company Affairs on the 2nd May, 1974 and was adopted (Appendix I).

3. Rajya Sabha concurred in the said motion on the 14th May, 1974 (Appendix II).

4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part II on the 15th May, 1974.

5. The Committee held 51 sittings in all.

6. The first sitting of the Committee was held on the 12th June, 1974 to draw up their programme of work. The Committee decided to invite written memorandum from the Registrars of Supreme Court/High Courts, Bar Council of India|State Bar Councils, Supreme Court Bar Association|High Court Bar Associations, other associations and organisations and everyone else interested in the subject matter of the Bill. The Committee also decided to issue a Press Communique in this behalf fixing 30th June, 1974 as the last date for receipt of memoranda. The Committee further decided that the Chief Secretaries of all State Governments/Union territories might be asked to bring to the notice of various Bar Councils and Bar Associations both at the State and District levels, the contents of the Press Communique.

The Committee also decided to hear oral evidence on the provisions of the Bill.

7. At their second sitting held on the 3rd July, 1974, the Committee decided to extend the time for submission of memoranda to the Committee upto the 31st July, 1974, and authorised the Lok Sabha Secretariat to issue a Press Communique in this behalf. The Press Communique was accordingly issued in this regard on the 4th July, 1974.

8. 77 memoranda on the Bill were received by the Committee from various Associations, Organisations, etc. (Appendix III).

9. At their third sitting held on the 4th July, 1974, the Committee decided that, for the purpose of preparing a questionnaire on the provisions of the Bill, members might send their comments/suggestions in

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 8th April, 1974.

the form of questions to the Lok Sabha Secretariat. The Committee, at their sitting held on the 30th August, 1974 approved the questionnaire (Appendix IV) on the provisions of the Bill.

Replies to the questionnaire were received by the Committee from 36 Associations, Organisations, Individuals, etc. (*Vide* list at Appendix V).

10. At their sitting held on the 2nd August, 1974, the Committee decided that while the whole Committee will take evidence of the representatives of various Associations, Organisations, etc. at the sittings to be held at New Delhi and, in the case of sittings to be held outside Delhi for the purpose of taking evidence, the Committee would divide themselves into three sub-Committees for this purpose. The sub-Committees held their sittings at different places as per details given below:—

(i) Sub-Committee 'A' at Madras from the 16th to 18th September and at Bangalore from the 19th to 21st September, 1974.

(ii) Sub-Committee 'B' at Ahmedabad from the 7th to 9th October and at Bombay from the 10th to 12th October, 1974.

(iii) Sub-Committee 'C' at Calcutta on the 30th and 31st December, 1974 and the 1st January, 1975 and at Bhubaneswar on the 2nd and 3rd January, 1975.

At their sitting held on the 22nd November, 1974, the Committee decided to divide themselves into two sub-Committees, instead of three sub-Committees, for the purpose of hearing oral evidence at the sittings to be held outside Delhi. The following two sub-Committees held their sittings at different places as per details given below:—

(i) Sub-Committee I at Gauhati on the 9th, 10th and 13th January, 1975 and at Shillong on the 11th January, 1975.

(ii) Sub-Committee II at Lucknow on the 17th and 18th January, 1975 and at Chandigarh on the 29th and 30th May, 1975.

11. The Committee also heard oral evidence tendered by the representatives of various Associations, Organisations, individuals, etc. at their sittings held at New Delhi on the 31st October, 1st and 2nd November, 1974, from the 27th to 29th January, 10th and 11th February and from the 16th to 18th June, 1975.

A list of Associations, Organisations, individuals, etc. who gave evidence before the Committee/sub-Committees is at Appendix VI.

12. The Committee held general discussion on the various points raised in the memoranda submitted to the Committee and also made during the course of evidence tendered before the Committee and sub-Committees *vis-a-vis* provisions of the Bill at their sittings held during the period from the 1st July to 21st November and also on the 16th December, 1975.

13. At their sitting held on the 2nd July, 1975, the Committee decided that (i) the evidence tendered before them might be laid on the Tables of both the Houses; and (ii) two copies each of the memoranda received by the Committee from various Associations, Organisations, etc. might be placed in the Parliament Library, after the Report is presented, for reference by the Member of Parliament.

14. The Report of the Committee was to be presented by the 20th December, 1974. The Committee were granted three extensions of time. The first extension was granted on the 11th December, 1974, upto the 25th July, 1975; and the second extension, on the 25th July, 1975, upto the 6th February, 1976, and the third extension, on the 28th January, 1976, upto the last day of the Budget Session, 1976.

15. The Committee considered the Bill clause-by-clause at their sittings held from the 2nd to 5th, 17th and 26th December, 1975 and from the 16th to 18th, 26th and 27th February and on the 1st and 2nd March, 1976.

16. The Committee considered and adopted the Report at their sitting held on the 25th March, 1976.

17. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.

18. *Clause* 2.—(i) The Committee feel that the scheduled areas comprising the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh, which have been excluded from the operation of the Code should also be brought within the purview of the Code. Clause (b) together with proviso of the proposed sub-section (3) has been omitted accordingly.

(ii) The Committee note that the Code does not extend to the tribal areas of Assam. But in the Explanation to clause (c) of the proposed sub-section (3), the expression "tribal areas" has been so defined as to exclude the areas within the local limits of the Municipality of Shillong. During the course of evidence, the Committee were informed that only three wards of the Shillong Municipality were outside the tribal areas and the rest were within the tribal areas. The Committee feel that, in the circumstances, the words "other than those within the local limits of the Municipality of Shillong" should be omitted, so that there may not be any distinction between the different areas within the Municipality of Shillong.

(iii) The Committee note that the Code extends to the Union territory of Lakshadweep subject to the Regulations in force in that area relating to the application of the Code. The Committee feel that the same provision should also be made applicable to the scheduled areas comprising East Godavari, West Godavari and Visakhapatnam Agencies to which the Code is being extended. A new sub-section (4) in place of clause (d) of the proposed sub-section (3) has been substituted accordingly.

19. *Clause* 3.—(i) The Committee note that according to the definition of the expression "decree", given in the Code, the determination of any question under section 47 amounts to a decree and, as such, an appeal and second appeal would lie against such determination. The Committee are of the view that this provision of the Code is mainly responsible for the delay in the execution of decrees. The Committee, therefore, feel that the definition of the term "decree" should be amended so that the determination of question under section 47 may not amount to a decree.

(ii) The Committee also feel that the amendment proposed in the definition of the expression "decree" with a view to removing the distinction between a preliminary decree and a final decree is not desirable.

The Committee, are, therefore, of the view that *status quo ante* should be maintained. Clause 3 of the Bill has been amended accordingly.

20. *Clause* 6.—The Committee feel that the words "so far as may be" used in the proposed new section 11A are likely to lead to a doubt as to the amplitude of the principles of *res judicata* which would be applicable to a proceeding in execution. The Committee were informed that it had already been held by the Privy Council as well as the Supreme Court that the principles of constructive *res judicata* apply to the proceedings in execution. The Committee, therefore, feel that, instead of inserting new section 11A, section 11 should be so amended as to ensure that the principles of *res judicata* may apply, in its full amplitude, to a proceeding in execution. A new explanation has, therefore, been inserted in section 11 of the Code.

The Committee also feel that clause (b) of new section 11A, which proposes to extend the principles of *res judicata* to every civil proceeding other than a suit, is too wide and may have the effect of extending the principles of *res judicata* to proceedings which are not judicial proceedings. Having regard to the amendment proposed by the Committee to section 11 of the Code and having regard to the difficulty which may arise if clause (b) of new section 11A is accepted, the Committee decided to omit new section 11A.

The Committee were informed that the Law Commission had made certain recommendations with a view to ensuring that the principles of *res judicata* might apply to cases which were triable by courts of limited jurisdiction. After careful consideration of the matter, the Committee are of the view that the decisions of the courts of limited jurisdiction should, in so far as such decisions are within the competence of the courts of limited jurisdiction, operate as *res judicata* in a subsequent suit although the court of limited jurisdiction may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. A new Explanation to section 11 of the Code has been inserted accordingly.

21. *Clause* 7.—(i) The Committee are of the opinion that a corporation, for the purpose of instituting a suit in respect of any cause of action arising at any place where it has a subordinate office, should be deemed to carry on business at such place also. The Committee, therefore, feel that the provision made in existing Explanation II of the Code is more appropriate than the provision made in the proposed Explanation I of this clause.

Explanation II, as it now exists in the Code has, therefore, been retained in place of the proposed Explanation I sought to be substituted by this clause.

(ii) The Committee note that the provision contained in Explanation II as proposed to be inserted by the Bill, contradicts the basic provision made in the section which provides that the suit should be instituted at the place where the defendant (and not the plaintiff) voluntarily resides or carries on business or personally works for gain. Besides, such a provision would, in the opinion of the Committee, put poor and indigent debtors to great difficulties. Proposed Explanation II as proposed to be inserted by this clause has, therefore, been omitted.

22. *Clause* 9.—The amendment made in this clause is of a drafting nature.

23. *Original clause* 11.—The Committee note that the proposed new section 24A provides for the transfer of a suit from a court of limited jurisdiction to a court of appropriate jurisdiction so that the decision in the suit may operate as *res judicata*. The Committee feel that in view of the amendment proposed by the Committee to section 11 of the Code, the provisions contained in this clause are not necessary. The clause has, therefore, been omitted.

24. *Clause* 12 (*Original clause* 13).—When a summons is sent out for service to a court outside the State, the record of service of the summons is usually in the court language of that State. If the language of the court by which such summons is served is not also the language of the court by which the summons was issued, it may be difficult for the court trying the suit to conclude whether the summons has or has not been duly served. In the circumstances, the Committee feel that it should also be made obligatory on the part of the court returning the summons to the court of issue to send the translation of the record of the proceedings relating to the service of the summons, in Hindi or English, where the language of such record of proceedings is other than Hindi or English. Clause (b) of proposed sub-section (3) of this clause has been amended accordingly.

25. *Clause* 13 (*Original clause* 14).—(i) The Committee note that the clause seeks to increase the post-decretal interest in relation to a liability arising out of a commercial transaction if the principal sum adjudged exceeds rupees ten thousand. The Committee feel that limiting the amount of principal sum for the purpose of increased rate of interest is not desirable as it is likely to cause hardship to decree-holders of lesser amounts under the same conditions. The proposed new proviso in this clause has, therefore, been amended accordingly.

(ii) The Committee also feel that the expression "commercial transaction" is likely to be interpreted differently and should, therefore, be defined to mean a transaction connected with the industry, trade or business of the party incurring the liability. A new Explanation has been added to the clause accordingly.

26. *Clause* 14 (*Original clause* 15).—The Committee feel that the ceiling of two thousand rupees provided for the payment of compensatory costs in respect of false or vexatious claims or defences is too low and that it should be increased to three thousand rupees. Sub-clause (ii) of this clause has, therefore, been amended accordingly.

27. *Clause* 15 (*Original clause* 16).—The Committee are of the opinion that in order to avoid delay in the disposal of suits, payment of compensatory costs for causing delay should be a condition precedent to the further prosecution of the suit or the defence by the plaintiff or defendant concerned. The clause has been amended accordingly.

28. *Clause* 21 (*Original clause* 22).—The Committee are of the view that the insertion of the expression "without lawful excuse" in clause (a) (i) and clause (b) of the proviso to section 51 of the Code will only tend to be a burden to the decree-holder and accentuate the delay without reduction in the costs involved. The Committee consider that the proposed amendments are not desirable.

The Committee, however, feel that the provision for the execution of decree by arrest and detention in prison, as is provided in clause (c) of section 51, should be harmonious with the provisions of section 58 of the Code. The clause has been amended accordingly.

29. *Clause* 22 (*Original clause* 23).—Section 58 of the Code, as it now stands, does not give the court any discretion as to the term for which a person may be detained in civil prison in execution of a decree for the payment of money. The Committee, therefore, feel that such discretion should be conferred on the court.

The section further provides for the detention in civil prison for a period of six months if the amount of the decree exceeds fifty rupees or for six weeks in any other case. The Committee feel that the monetary limit should be raised to one thousand rupees. Further, the maximum period of imprisonment should be reduced to three months where the amount of the decree exceeds one thousand rupees, and six weeks in any other case.

The Committee further feel that a man should not be detained in civil prison where the amount of the decree does not exceed five hundred rupees so that the poor debtors may not be harassed by their detention in civil prison.

The clause has been amended accordingly.

30. *Clause* 23 (*Original clause* 24).—(i) The Committee note that in view of the merger of dearness allowance with the pay, the attachable portion of the salary in execution of a decree has also increased. In view of the hardship which is likely to be caused by the increase in the attachable portion of the salary (a substantial part of which was not previously attachable), the Committee feel that the limit of exemption from attachment of a salary in execution of a decree should be raised to rupees four hundred and two-thirds of the remainder of the salary. Sub-clause (i) (c) (i) has been amended accordingly.

(ii) The amendment made in the proviso to sub-clause (i) (c) (ii) is of a clarificatory nature.

(iii) The Committee note that all deposits in any fund to which the Public Provident Fund Act, 1968, applies, are exempt from attachment under the provisions of the Code. The Committee, however, feel that it would be safer to provide in the Code itself that the deposit under the said Act are exempt from attachment so that the provisions of that Act may not be lost sight of.

A new clause (ka) to sub-clause (i) (e) of the clause has been added accordingly.

(iv) The Committee feel that in the definition of "labourer", unskilled labourer should also be included. Proposed Explanation IV to sub-clause (i) (i) has been amended accordingly.

(v) The Committee are of the view that an agriculturist, for the purpose of being granted exemption from attachment under the provisions of the Code, should mean a person, who cultivates land personally or through his labour or the labour of any member of his family or the servants or labourers on wages payable in cash or in kind, and who depends for his livelihood mainly on the income from agricultural land.

Proposed Explanation V of sub-clause (i) (i) of the clause has been amended accordingly. A new Explanation VI has also been inserted with a view to clarifying which agriculturist shall be deemed, for the purposes of Explanation V, to cultivate land personally.

31. *Clause* 26 (*Original clause* 27).—The Committee feel that the Court should also be authorised to issue commissions for technical and expert investigation.

The clause has been amended accordingly.

32. *Clause* 27 (*Original clause* 28).—The Committee feel that the omission of section 80 of the Code, as proposed in the Bill, will not be in the public interest. It might prompt people to file suits against the Government to prevent it from undertaking any measure for the benefit of society and this might also hinder the pace of developmental activities. The Committee are, therefore, of the view that provisions contained in section 80 of the Code should be retained subject to the modifications indicated hereafter.

The Committee, however, feel that some relaxation of the provisions of section 80 of the Code is necessary so that a person may not be deprived of the opportunity of obtaining an urgent or immediate relief, where such relief is essential. In the circumstances, the Committee feel that section 80 of the Code should provide for the institution of a suit for obtaining an urgent or immediate relief against the Government or any public officer in respect of any act purporting to have been done by such public officer in his official capacity without serving any notice under section 80; but, in such a case, the court should not grant any relief except after giving to the Government or the public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

The Committee also feel that with a view to seeing that the just claims of many persons are not defeated on technical grounds, the suit against the Government or a public officer should not be dismissed merely by reason of any technical defect or error in the notice or any irregularity in the service of the notice if the name, description and residence of the plaintiff has been so given in the notice as to enable the appropriate authority or public officer to identify the person serving the notices, and the notice had been delivered or left at the office of the appropriate authority, and the cause of action and the relief claimed have been substantially indicated in the notice. The clause has been amended accordingly.

33. *Clause* 28 (Original clause 29).—Section 82 of the Code as it now stands, provides that where a decree is passed against the Government or a public officer, a time shall be specified in the decree within which it shall be satisfied and if the decree is not satisfied within the time so specified or within three months from the date of the decree where no time is so specified, the court shall make a report of the case to the State Government and execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of such report. In the Bill, the necessity of making a report to the Government has been dispensed with. But it was proposed to empower the court to extend the period during which the decree shall not be executable. The Committee feel that such a power to extend the time during which the decree shall not be executable

should not be granted to the court, so that the decree-holder may not be deprived of the fruits of his decree for an indefinite period. The amendments proposed to sub-section (2) have been modified, and sub-section (4), as proposed to be inserted, has been omitted.

The Committee also feel that the provision for giving an intimation about the decree to the Government Pleader, who is expected to know about the decree, is not at all necessary. Accordingly, sub-section (5), as proposed to be inserted, has been omitted.

34. *Clause* 30 (*Original clause* 31).—The amendment made in this clause is of a drafting nature.

35. *Clause* 33 (*Original clause* 34).—The Committee feel that in view of the amendment made in Order XLI, rule 22, the Explanation proposed to be inserted in sub-section (1) of section 96 of the Code is not necessary. Sub-clause (i) of the clause has, therefore, been omitted.

36. *Original clause* 35.—The Committee feel that, in view of the amendments proposed in clause 3 of the Bill, amendment of section 97 of the Code proposed in this clause is not necessary. The clause has been omitted accordingly.

27. *Clause* 37 (*Original clause* 39).—The Bill seeks to substitute a new section for section 100 of the Code, so as to restrict the scope of second appeals.

The Committee have carefully considered the question whether section 100 of the Code should be retained in its present form or whether any modification therein is necessary. Having regard to the observations made by the Law Commission and the evidence tendered before it, the Committee feel that the scope of second appeals should be restricted so that litigations may not drag on for a long period. The Committee, therefore, feel that the amendment proposed in the Bill should be retained subject to certain modifications. As the amendment incorporated in the Bill stands, the court is required to certify that the case involves a substantial question of law; the Committee feel that it should be sufficient if the court is required to formulate the substantial question of law. The Committee also feel that the court should not be required to state the reasons for formulating any question of law.

The Committee also feel that the discretion of the court to hear the appeal on any other substantial question of law, not formulated by it, should not be taken away, so that justice may be done between the parties. The clause has been modified accordingly.

38. *Clause* 40 (*Original clause* 42).—The Committee feel that as the second appeal will be confined to substantial question of law, the words "of fact" are not necessary. The clause has been amended accordingly.

39. *Clause* 43 (*Original clause* 45).—By clause 45 of the Bill, section 115 of the Code was proposed to be omitted. The question whether it is at all necessary to retain section 115 was carefully considered by the Committee. The Law Commission has expressed the view that, in view of article 227 of the Constitution, section 115 of the Code is no longer necessary. The Committee however, feel that the remedy provided by article 227 of the Constitution is likely to cause more delay

and involve more expenditure. In remedy provided in section 115 is on the other hand, cheap and easy. The Committee, therefore, feel that section 115, which serves a useful purpose, need not be altogether omitted particularly on the ground that an alternative remedy is available under article 227 of the Constitution.

The Committee, however, feel that, in addition to the restrictions contained in section 115, an overall restriction on the scope of applications for revision against interlocutory orders should be imposed. Having regard to the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports, the Committee recommend that section 115 of the Code should be retained subject to the modification that no revision application shall lie against an interlocutory order unless either of the following conditions is satisfied, namely:—

(i) that if the orders were made in favour of the applicant, it would finally dispose of the suit or other proceeding; or

(ii) that the order, if allowed to stand, is likely to occasion a failure of justice or cause an irrepairable injury.

The Committee feel that the expression "case decided" should be defined so that the doubt as to whether section 115 applies to an interlocutory order may be set at rest. Accordingly, the Committee have added a proviso and an Explanation to Section 115.

40. *Original clause* 47.—The Committee are of the view that section 132 of the Code should be retained as the omission of this section would offend against the social custom and would also enable unscrupulous litigants to compel the personal appearance in court of innocent and ignorant ladies who are not used to appear in public. The clause has been omitted accordingly.

41. *Clause* 45 (*Original clause* 48).—The Committee were informed that in certain parts of the country, in view of the absence of specific mention in section 135A of the Code of the members of Parliament, the provisions of that section are not correctly interpreted and the members of Parliament do not get the exemption granted thereunder. The Committee feel that in order to avoid any ambiguity and to ensure that the members of all legislative bodies in the country are not prevented from discharging their duties, the provisions of the Code should be suitably amended. Sub-section (i) of section 135A has been amended accordingly.

42. *Clause* 49 (*Original clause* 52).—The amendment made in this clause is of a drafting nature.

43. *Clause* 50 (*Original clause* 53).—The Committee feel that where a caveat has been lodged under sub-section (1) of the proposed new section 148A, such caveat should not remain in force indefinetely and a time-limit of ninety days should be prescribed. The clause has been amended accordingly.

44. *Clause* 55 (*Original clause* 58).—(i) The question whether the proposed proviso to rule (1) of rule 1 of Order V should be retained in the Bill was considered by the Committee. The Committee feel that since the said proviso only seeks to give effect to the provisions of rule 1 of Order VIII, there is no need to omit the proviso. The Committee,

however, feel that the words "in appropriate cases", occurring in the said proviso, are superfluous and not necessary. Accordingly, the said words have been omitted.

(ii) The Committee are of the opinion that a summons may be served in the manner specified in rule 17 of Order V on a defendant who is absent from his residence and there is no likelihood of his being found at the residence within a reasonable time, if the serving officer, after using all due and reasonable diligence, cannot find the defendant. Sub-clause (iii) of this clause has been amended accordingly.

(iii) The Committee are of the view that in order to establish that the summons has been duly served on the defendant, the simultaneous issue of summons for service by post should be done by registered post acknowledgment due. Sub-rule (1) of proposed new rule 19A has been amended accordingly.

(iv) The Committee also feel that in the case of issue of summons for service by registered post, if the defendant refuses to take delivery of the summons, when tendered to him, or the fact that the acknowledgment has been lost or mislaid or has not been received back by the court for any other reason within thirty days from the date of issue of the summons, the court should be authorised to draw a presumption that the summons had been duly served on the defendant. Sub-rule (2) of proposed new rule 19A has been amended acordingly.

(v) The Committee note that there is a reference in rule 25 regarding service of summons to a defendant residing in Pakistan. The Committee feel that in view of the emergence of Bangladesh, the name of Bangladesh should also be included in the rule. A new sub-clause (iva) in this clause proposing necessary amendment to rule 25 has been inserted accordingly.

45. *Clause* 56 (*Original clause* 59).—(i) The Committee are of the opinion that in order to ensure that the parties to a suit do not at a later stage take the plea that wrong dates, sums or numbers had been mentioned in the pleading due to accidental, clerical or typographical error, the dates, sums and numbers in a pleading should also be expressed in words. Sub-rule (3) of proposed new rule 2 in Order VI has been amended accordingly.

(ii) The Committee feel that the proposed new sub-rule (2) in rule 17 of Order VI empowering the court to allow the plaint to be amended even in cases where the effect of amendment would be to take away the suit from the jurisdiction of the court, and to return the plaint for presentation to the proper court, is not desirable. Such a provision would enable certain litigants to drag on the proceedings indefinitely. All that he has to do it is to make an amendment which that particular court is not competent to try so that matter may go to another court Sub-clause (iv) of this clause has, therefore, been omitted.

46. *Clause* 57 (*Original clause* 60).—(i) The Committee note that rule 10 of Order VII provides for the return of plaint and the proposed new rule 10A lays down a certain procedure to be followed before the plaint is returned. The Committee feel that there should be a harmony between the provisions contained in rule 10 and those contained in new rule 10A. A new sub-clause (va) in this clause has been inserted for achieving the said object.

(ii) The Committee note that in the proposed new rule 10B in Order VII, reference to the transfer of the suit does not appear to be accurate because when a plaint is returned, there is no suit which can be transferred. Proposed new rule 10B has, therefore, been amended with a view to conform to the provisions with regard to the return of plaint.

47. *Clause* 58 (*Original clause* 61).—The amendments made in the proposed new rule 6E are clarificatory in nature.

48. *Clause* 59 (*Original clause* 62).—(i) The Bill provides that when the plaintiff appears and the defendant does not appear, the court may proceed *ex parte* if it is proved that the summons was duly served and may give a judgment on the basis that the facts stated in the plaint are true. The Committee feel that the court should not be empowered to pass an *ex parte* decree unless there was evidence before it to indicate that if such evidence were not controverted, the plaintiff would be entitled to a decree. In the circumstances, the Committee feel that the *status quo ante* should be maintained. Proposed clause (a) of sub-rule (1) of rule 6 has been amended accordingly.

(ii) The proposed Explanation to rule 13, as in the Bill, provides that where an appeal has been filed against a decree passed *ex parte* and the appeal has been disposed of, no application shall lie for setting aside the *ex parte* decree. The Committee feel that such a prohibition should not be made in a case where the appeal has been withdrawn. The scope of inquiry in an appeal against a decree passed *ex parte* being different from the scope of an application for setting aside a decree passed *ex parte*, the defendant should not be deprived of an opportunity of filing an application for setting aside the decree if he has withdrawn the appeal against the *ex parte* decree. The Committee does not, however, propose to extend the period of limitation so that the defendant, who may intend to file an application for setting aside the *ex parte* decree, should satisfy the requirements of the Limitation Act, 1963.

The Explanation, as proposed in the Bill has, therefore, been amended to achieve the said object.

49. *Clause* 62 (*Original clause* 65).—The Committee note that as there is no time-limit laid down for filing of documents in rule 2 of Order XII, it causes unnecessary delay in the disposal of suits. The Committee feel that in order to expedite disposal of suits, a time-limit of fifteen days for filing of documents might be fixed. Sub-clause (i) in this clause proposing amendment to rule 2 of Order XII has been inserted accordingly.

50. *Clause* 66 (*Original clause* 69).—Rule 1 (1) of Order XVI, as proposed to be substituted by the Bill, provides for the filing of list of witnesses within ten days after the date on which issues are settled. The Committee feel that the period of ten days for the filing of a list of witnesses by the parties whom they proposed to call either to give evidence or to produce documents is not sufficient and it may be raised to fifteen days. Sub-rule (1) of rule 1 of Order XVI has been amended accordingly.

51. *Clause* 69 (*Original clause* 72).—(i) The Bill provides for the recording of evidence in English if such evidence is given in English. The Committee note that there is no provision in the Code to the effect

that where evidence is given in any other language, it may be recorded in English. The Committee feel that since different languages are spoken in different parts of the country and in view of the rapid expansion of means of communications, there is possibility of a man from the North being sued in a court in the South and *vice versa*, a provision might be made in the Code to the effect that if both the parties agree, evidence may be taken down in English even though such evidence is given in any language other than English. Sub-rule (2) in rule 9 of Order XVIII has been inserted accordingly.

(ii) The Committee were informed that under rule 18 of Order XVIII, the court is empowered to make local inspection but there is no specific provision requiring the court to make a record of the result of inspection. There is a conflict of judicial decisions on the question whether failure to record the results of inspection by a judge vitiates the proceedings or not. The Committee feel that the conflict in the judicial decisions should be removed by making a specific provision requiring the judge making the local inspection to make a memorandum of any relevant facts observed by him at such inspection and to place such memorandum on the record. Sub-clause (ix) in this clause has been inserted accordingly.

52. *Clause* 70 (*Original clause* 73).—(i) During the evidence, several witnesses complained before the Committee that judgments are reserved after the conclusion of the hearing of cases and that thereafter delivery of judgments is inordinately delayed. There was a persistent demand all over India for imposing a time-limit for the delivery of judgment after the conclusion of the hearing of the case. Having regard to the evidence tendered before the Committee and having regard to the pressure of business before the courts of law, the Committee are of the opinion that a provision should be made in the Bill to the effect that on the conclusion of the hearing of a case, the judgment, if not delivered at once, should ordinarily be delivered within fifteen days from such conclusion of hearing and if it is not practicable to do so, then the judgment should be delivered within thirty days. If, however, it is not practicable to deliver the judgment even within thirty days, the court should be required to record the reasons for such delay and should fix a future date for the pronouncement of the judgment and the notice of the date so fixed should be given to the parties or their pleaders.

Two provisos to sub-rule (1) of rule 1 of Order XX have been inserted accordingly.

(ii) The Committee note that there is no provision in rule 1 of Order XX for the dictation of judgment in open court to a shorthand writer. The Committee are of the opinion that the judge might be authorised to pronounce a judgment by dictation to a shorthand writer in open court if he is empowered by the High Court to do so. Sub-rule (3) of rule 1 in Order XX has been inserted accordingly.

(iii) The Committee note that the new rule 5A proposed to be inserted in sub-clause (iii) of this clause requires the court to inform the parties present in the court, and not represented by lawyers, as to the court to which an appeal lies and the period of limitation for the filing of such appeal. The Committee feel that controversies might arise at a later stage as to the nature of information given by the court unless it was placed on record. The Committee are, therefore, of the view that in order to ensure that there is no dispute at a later date, the

judge should be required to place on record the precise nature of information given by him to the parties. Proposed new rule 5A in Order XX has been amended accordingly.

(iv) The Committee feel that it should be made obligatory on the part of the court to draw up the decree within fifteen days from the date on which the judgment is pronounced. In case it is not possible to draw up the decree within the period so fixed, the court, on a request by a party desirous of appealing against the decree, should be required to certify that the decree has not been drawn up and also to indicate in the certificate the reasons for the delay. As already proposed, an appeal might be preferred on filing a copy of the last paragraph of the judgment, but as soon as the decree is drawn up, the last paragraph of the judgment should cease to have the effect of a decree. Sub-rule (2) of proposed new rule 6A of Order XX has been amended accordingly.

(v) The Committee are of the view that the court, while passing a decree in a suit for the rent or mesne profits under clause (b) of sub-rule (1) of rule 12 of Order XX, should be required to take into consideration not only the rent or mesne profits which would have accrued on the property but also the rent or mesne profits which the decree holder would have, with due diligence, received from the property. Sub-rule (1) (b) of rule 12 of Order XX has been amended accordingly.

(vi) The Committee note that the new rule 12B proposed to be inserted in Order XX deals with the execution of a document or endorsement of a negotiable instrument in pursuance of a decree whereas Order XX deals with the contents of the judgment and the decree. The Committee, therefore, feel that the proper place for the proposed rule is in Order XXI, and not in Order XX. The Committee also note that the proposed rule 12B is almost a verbatim copy of rule 34 of Order XXI subject to certain modifications. The Committee, therefore, feel that the proposed rule 12B should be omitted from Order XX, and, instead of omitting rule 34, modifications, as suggested by the Law Commission, should be made therein. Proposed rule 12B has been omitted accordingly.

53. *Clause* 71 (*Original clause* 74).—The Committee note that under rule 2 of the proposed new Order XXA, a provision has been made that in calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader or a certificate in writing signed by him and stating the amount received by him has been filed in the court. The Committee feel that since pleader's fees are allowed in accordance with the scales fixed by the High Court no useful purpose would be served by such a provision. Besides, such a provision would not only lead to hardship but may also cause delays in the drawing up of decrees in the cases where the payment of pleader's fee is deferred, as it happens in the cases of fees payable by the Government or any public sector undertaking or a company. Rule 2 of proposed new Order XXA has been omitted accordingly.

54. *Clause* 72 (*Original clause* 75).—(i) The Committee note that there is no provision in the Code in relation to cessation of interest on the money paid under a decree out of court to a decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. The Committee are of the view that, in such

a case, the interest should cease to run from the date of such payment. In case the decree-holder refuses to accept the postal money order or payment through a bank, interest should cease to run from the date on which the money was tendered to him or would have been tendered to him in ordinary course of business of the postal authorities or the Bank. Sub-rule (5) in rule 1 of Order XXI has been inserted accordingly.

(ii) Amendment made in Sub-clause (xv) of this clause is consequent upon the omission of the proposed new rule 12B of Order XX.

(iii) The Committee note that under the proposed sub-rule (1) of rule 57 in sub-clause (xxiv) of this clause, the provision made does not indicate as to how long the attachment in execution of a decree, after the execution case is dismissed, shall continue. The Committee feel that it should be made obligatory on the part of the court to indicate the period up to which the attachment will continue or the day on which such attachment will cease. The Committee also feel that in case the court omits to indicate the period, the attachment, after the execution case is dismissed, should be deemed to have ceased. Sub-rules (1) and (2) of rule 57 of Order XXI have been amended accordingly.

(iv) The Committee feel that in certain cases, where a property is ordered to, be sold in execution of a decree under sub-rule (2) of rule 66 of Order XXI, it may not be necessary to sell the whole of the property indicated by the decree-holder. The Committee are, therefore, of the opinion that a power might be conferred on the court to the effect that in a case, where the court is satisfied that the sale of a part of the property would be sufficient to satisfy the decree, the court should specify in the proclamation of sale only such part of the property. Clause (a) of sub-rule (2) of rule 66 of Order XXI has been amended accordingly.

(v) The Committee note that the amendment proposed to be made in sub-rule (1) of rule 92 of Order XXI does not bring out clearly the intention of the Law Commission made in its Twenty-seventh Report to the effect that where a claim against an attachment in execution of a decree has been made but the property so attached has been auction-sold pending the determination of such claim, the sale should not be confirmed before the claim has been finally disposed of. Sub-clause (a) of clause (xxxii) of this clause has been amended with a view to bringing out the idea clearly.

(vi) The Committee note that the expression "order" occurs in the proposed new rule 104 of Order XXI but it does not occur in the proposed rules 98 and 100 of the same Order. Sub-rule (1) of rule 98 of Order XXI has been re-drafted accordingly.

(vii) The Committee note that the proposed sub-rule (2) of rule 98 of Order XXI covers obstruction by the judgment-debtor or by some other person at his instigation or on his behalf, but does not cover obstruction by any transferee *pendente lite*. Sub-rule (2) of rule 98 of Order XXI has been amended to remove this lacuna.

(viii) The amendment made in rule 100 of Order XXI is of a consequential nature.

(ix) The Committee note that the proposed rule 101 of Order XXI empowers the executing court to decide all questions including questions relating to right, title or interest in the property The Committee feel that the court executing the decree may not have jurisdiction, pecuniary or otherwise, to decide the question of right, title or interest in the property in question. Such an absence of jurisdiction may lead to delay in the disposal of the matter. The Committee are, therefore, of the opinion that the executing court should be clothed with jurisdiction to decide all such questions so that such questions may be heard and finally decided. Proposed rule 101 of Order XXI has been amended accordingly.

55. *Clause* 73 (*Original clause* 76).—(i) The Committee were informed during the course of evidence by various witnesses that delay in the substitution of the legal representatives of the deceased defendant was one of the causes of delay in the disposal of suits. The Committee were also informed that, as a remedial measure, the Calcutta, Madras, Karnataka and Orissa High Courts had inserted a new sub-rule in rule 4 of Order XXII to the effect that substitution of the legal representatives of a non-contesting defendant would not be necessary and the judgment delivered in the case would be as effective as it would have been if it had been passed when the defendant was alive.

The Committee are, therefore, of the view that in order to avoid delay in the substitution of the legal representatives of the deceased defendant and consequent delay in the disposal of suits, similar provision may be made in the Code itself. New sub-rule 3A in rule 4 of Order XXII has been inserted accordingly.

(ii) The Committee note that the Limitation Act, 1963, specifies the period of limitation. The Committee feel that the expression "prescribed period, as provided in the Limitation Act, 1963" used in clause (a) of the new proposed sub-rule (4) in rule 4 of Order XXII is not correct and has, therefore, been amended accordingly.

(iii) During the course of evidence, a point was raised that, on the death of the client, the contract with the pleader comes to an end and so the obligation of the pleader to act on behalf of his client ceases on the death of the client. The Committee, however, feel that it should be made obligatory on the part of the pleader to inform the court about the death of his client and for this purpose the contract between the pleader and the party should be deemed to subsist. Sub-rule (1) of new proposed rule 10A of Order XXII has been amended according.

(iv) The Committee feel that in view of the amendment made in sub-rule (1) of new proposed rule 10A, proposed sub-rule (2) in rule 10A is not necessary as the provision is likely to cause hardship to the pleader. Sub-rule (2) of new proposed rule 10A of Order XXII has been omitted accordingly.

56. *Clause* 75 (*Original clause* 78).—(i) Under the provisions of proposed new rule 16A of Order XXVI, the Commissioner has been authorised to take down the question, the answer and the objection etc. Occasions, may arise where the objection to the qustion put to the witness may be raised on the ground of privilege. If, in such a case, the Cmmissioner is required to take down the answer to the question, then, the privilege claimed would be lost. The Committee are, therefore, of the view that, in such a case the Commissioner should

not be allowed to take down the answer to a question but might be allowed to continue with the examination of the witness leaving the party to get the question of privilege decided by the court. A proviso to sub-rule (1) of the proposed new rule 16A of Order XXVI has been inserted accordingly.

(ii) The Committee are of the view that in order to avoid delay, the court issuing a Commission should fix a date by which the Commission should be returned to it after execution. New rule 18B in Order XXVI has been inserted accordingly.

(iii) Amendment made in sub-clause (viii) of this clause is consequent upon the insertion of new rule 18B in Order XXVI.

57. *Clause* 76 (*Original clause* 79).—The Committee note that in the case of a suit against the Government or a public officer, the maximum time which the court can grant for the filing of the defence is two months in the aggregate whereas there is no such restriction on the powers of the court to grant time to file written statement in the case of other defendants. The Committee feel that this may be regarded as discriminatory. The Committee are of the view that initially the court should have discretion to fix such time as it might think fit for filing of defence by the Government, but so far as the extension of the time is concerned, the period of such extension should not exceed two months in the aggregate. Sub-clause (i) of this clause has been amended accordingly.

58. *Clause* 79 (*Original clause* 82).—The Committee are of the view that in spite of an affidavit by a next friend or the guardian of a minor or the certificate by a pleader to the effect that the agreement or compromise is for the benefit of the minor in a case where an agreement or compromise is proposed to be filed in a suit in which a minor is a party, the powers of the court to make an independant examination as to whether the compromise or agreement is for the benefit of the minor should remain unaffected. A new proviso to proposed new sub-rule (1A) of rule 7 in Order XXXII has been inserted accordingly.

59. *Clause* 80 (*Original clause* 83).—(i) The Committee note that new Order XXXIIA makes provision for the procedure for suits relating to matters concerning the family. But clause (f) of sub-rule (2) of rule 1 enumerates a suit or proceeding relating to wills, intestacy and succession. The Committee feel that such suits or proceedings may or may not be instituted by a member of the family. The Committee are, therefore, of the opinion that the provisions of this clause should be restricted to a suit or proceedings instituted by a member of the family so that suits or proceedings filed by a third party might be governed by the ordinary procedure. Clause (f) of sub-rule (2) of rule 1 of the proposed new Order XXXIIA has been amended accordingly.

(ii) The Committee are aware that the connotation of "family", as given in rule 6, is for the purposes of Order XXXIIA, yet the Committee feel that it should be clarified that the definition of "family" in rule 6 is without prejudice to the connotation of that expression in any personal law or in any other law for the time being in force. An Explanation to rule 6 of new Order XXXIIA has been inserted accordingly.

60. *Clause* 81 (*Original clause* 84).—(i) The Committee note that rule 3 of Order XXXIII requires the application for permission to sue as an indigent person to be presented by the applicant in person. The Committee feel that where the number of plaintiffs is more than one, it should not be necessary for all the plaintiffs to present the application in person. In such a case, it should suffice if the application is presented in person by one of the plaintiffs. A proviso to rule 3 of Order XXXIII has been inserted accordingly.

(ii) The Committee note that in the first portion to the proposed new sub-rule (2) of rule 15 of Order XXXIII, it has been provided that in the case of a person whose application for permission to sue as an indigent person has been rejected, no suit by such person shall be entertained unless such person pays the costs, if any, incurred by the State Government and by the opposite party in opposing the application of such person for permission to sue as an indigent person. This portion, therefore, clearly prohibits the entertainment of the suit unless the costs are paid. But, in the second portion, it is provided that if the costs are not paid at the time of the institution of the suit or within such time as the court may allow, the plaint shall be rejected.

The Committee feel that the person whose application for permission to sue as an indigent person has been rejected and who seeks to file a suit, may not have the means to pay the costs in addition to the court fee payable by him at the time of the institution of the suit and a poor person, who has a genuine claim, may lose his claim if payment of the costs is made a condition precedent to the institution of the suit.

The Committee are, therefore, of the view that in such a case the plaint should be rejected if the costs are not paid either at the time of the institution of the suit or within such time thereafter as the court might allow. Sub-clause (x) of this clause has been amended accordingly.

61. *Clause* 82 (*Original clause* 85).—During the course of evidence before the Committee, various witnesses stated that the proposed removal of the provision for passing a preliminary and a final decree might not serve the objective of expediting matters as the proceedings might be delayed by preferring appeals against every order passed during the execution proceedings and the proposed amendment might give rise to more appeals than at present.

The Committee feel that since preliminary decrees and final decrees are not being abolished in relation to suits, other than mortgage suits, no useful purpose would be served by abolishing the preliminary decree in mortgage suits only. The clause has been amended accordingly.

62. *Clause* 84 (*Original clause* 87).—(i) The amendment made in the proviso to clause (b) of sub-rule (1) of proposed rule 1 in Order XXXVII is of a drafting nature.

(ii) The Committee note that in Order XXXVII, the sequence is that summons of the suit to the defendant is issued first and, when the defendant appears, the plaintiff is required to serve on the defendant a summons for judgment. When a summons for judgment is served, the defendant is required to obtain the leave of the court to defend the suit. But this sequence has been altered by the proposed sub-rule (3) of

rule 2 which requires the defendant to obtain the leave of the court to defend the suit at the stage when he enters appearance. Since this is not the intention, sub-rule (3) of rule 2 of Order XXXVII has been amended accordingly.

(iii) The Committee note that the Code does not give any guidance as to the grounds on which the petition for leave to defend the suit would be refused. The Committee feel that if such leave is refused, the defendant would be deprived of the opportunity of contesting the suit and consequently he would have to suffer the decree prayed for against him. The Committee have, therefore, provided that in case the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up is frivolous or vexatious, the leave to defend the suit should be refused.

The Committee are also of the view that if any amount is admitted by the defendant to be due from him, leave to defend should not be granted unless the admitted amount is deposited by him in the court. Two provisos to sub-rule (5) of rule 3 of Order XXXVII have been inserted accordingly.

63. *Clause* 85 (*Original clause* 88).—(i) In view of the amendments made by the Committee in section 58, sub-clause (i) of this clause has been omitted.

(ii) The Committee note that the proposed amendment made in new sub-rule (4) of rule 5 of Order XXXVIII provides that an attachment which is not made in the manner specified in rule 5 shall be void. But rule 5 does not specify any manner in which an attachment shall be made. Rule 5 only specifies the circumstances in which an attachment before judgment may be made. The Committee are of the view that it should be made clear that an attachment before judgment would be void if the provisions of sub-rule (1) of rule 5 had not been complied with. Proposed sub-rule (4) of rule 5 of Order XXXVIII has been amended accordingly.

64. *Clause* 86 (*Original clause* 89).—(i) During the course of evidence, it was stated that the proviso proposed to be inserted to rule 3 of Order XXXIX would, instead of serving the purpose, have the opposite effect. The Committee feel that in case a party praying for the injunction is required to deliver a copy of the application for injunction or other documents to the opposite party before the court grants an *ad interim* injunction, the defendant would come to know of the impending application for the temporary injunction and he would hasten the mischief which the proposed injunction was intended to prevent. The Committee are, therefore, of the opinion that rule 3 should be modified and it should be provided that copies of application, etc. should be sent or delivered to the defendant immediately after the injunction has been granted (and not before the order for injunction has been made) and an affidavit should be filed by the applicant for injunction stating that it has been so sent.

The Committee are further of the view that before granting *ad interim* injunction, it should be made obligatory on the part of the court to record reasons for its opinion that the object of granting the injunction would be defeated by delay. Proposed proviso to rule 3 of Order XXXIX has been amended accordingly.

(ii) The Committee were informed that once an order for a temporary injunction is obtained by a party, he does not show any anxiety to expedite the disposal of the suit and, consequently, the injunction continues for an inordinately long period. The continuance of the injunction for a long period may not only cause hardship to the litigants but may also have the effect of holding up many of the welfare projects undertaken by the Government. In the circumstances, it was provided in the Bill that a temporary injunction should not ordinarily remain in force for a period of more than thirty days, but the duration of the injunction could be extended to forty-five days with the consent of the opposite party, and that no extension beyond the period of forty-five days will be permissible. The Committee feel that it would be difficult to obtain the consent of the opposite party for the extension of the time limit. Accordingly, the provision for such extension of the time limit with the consent of the opposite party does not appear to be a practicable one. Further, the imposition of a rigid time limit may also lead to difficulties because occasions may arise when the court may not, for want of time, be able to dispose of the application for temporary injunction before the expiry of thirty days from the date on which the *ad interim* injunction was granted. The Committee, however, feel that, in order to avoid delay in the disposal of suits, it should be made obligatory on the part of the court to dispose of the application for injunction within thirty days from the date on which the *ad interim* injunction was granted by it; and where it is not practicable to do so, the court should be required to record its reasons for such inability. The proposed new rule 3A of Order XXXIX has been amended accordingly.

65. *Clause* 87 (*Original clause* 90).—(i) The Committee note that under the proposed new sub-rule (1A) of rule 3 in Order XLI, if the appellant fails either to deposit the amount disputed in the appeal or to furnish security for such amount, the memorandum of appeal shall be rejected. The Committee feel that such a provision will deprive a judgment-debtor having a good case, to pursue the appeal on account of his inability to deposit the disputed amount or to furnish security for such amount.

The Committee are, therefore, of the opinion that in order to see that justice is done to both the parties, the proposed sub-rule might be amended in such a way that neither the judgment-debtor is deprived of his right to pursue the appeal nor the decree-holder is deprived of his remedy. Proposed sub-rule 1A has been amended to provide that stay of execution of the decree will not be granted unless the deposit is made or security is furnished and has been transposed as sub-rule (5) of rule 5.

(ii) The Committee are of the view that the court should not be empowered to grant *ad interim* stay of execution of the decree unless the court has, after hearing under rule 11 of Order XLI, decided to hear the appeal. Sub-rule (3) in the proposed rule 3A of Order XLI has been inserted accordingly.

(iii) The Explanation to sub-rule (1) of rule 5 provides that an order made by an Appellate Court for the stay of execution of a decree shall be effective from the date of communication of the order to the court of first instance, but an affidavit sworn by a pleader, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court, shall be acted upon by the court

of first instance. The Committee feel that the pleader should not be required to file an affidavit for the purpose and it would be sufficient if the affidavit is sworn by the appellant. The Explanation has been amended accordingly.

(iv) Consequent upon the amendment made by the Committee to sub-section (2) of section 2 of the Code, sub-rule (4) of rule 1 of order XLI has been omitted.

(v) During the course of evidence, it was stated that the appeals remained pending for a long time and consequently justice was delayed. It was stressed that a statutory time-limit for the disposal of appeals should be fixed. The Committee feel that a statutory time-limit for the disposal of appeals is neither possible nor desirable.

The Committee are, however, of the view that a provision on the lines of the provisions made in the Representation of the People Act, 1951, with regard to the expeditious disposal of election cases, may have the effect of expediting, in most cases, the disposal of appeals. A new rule 11A in Order XLI has been inserted accordingly.

(vi) The Committee feel that the provisions made in the proposed new rule 12A empowering the court to admit an appeal in part or on specific grounds only are not desirable in the case of a first appeal but such a provision may be made in relation to a second appeal. Proposed new rule 12A in Order XLI has, therefore, been omitted and a consequential amendment has been made in Order XLII.

(vii) The amendments made in sub-clause (x) of this clause are of a clarificatory, drafting and consequential nature.

66. *Clause* 88 (*Original clause* 91).—The amendment made in this clause is consequent upon the amendments made in clauses 37 (original clause 39) and 87 (original clause 90) of the Bill.

67. *Clause* 89 (*Original clause* 92).—The Committee are of the view that the appellant should have the right to contest the decree not only on the ground that the compromise should not have been recorded but also on the ground that the compromise should have been recorded.

Sub-rule (2) of the proposed new rule 1A in Order XLIII has been amended accordingly.

68. *Original clause* 98.—The omission of this clause is consequential to the amendment made in Order XXXIV of the Code.

69. *Clause* 1 *and Enacting Formula.*—The amendments made are of formal nature.

70. The Joint Committee recommend that the Bill, as amended, be passed.

71. Since one of the main objects of the Bill is to bring about a reduction in the cost of litigation, the Committee feel that attention should be paid to the matter of court-fee although it is outside the scope of the Code. It has not been possible for the Committee to legislate with regard to court-fee because the Parliament's legislative competence with regard to court-fees is limited to Union territories as the subject (court-fee) falls in the State field (*vide* entry 3 of the State List). The Com-

mittee, however, feel that there should be a broad measure of equality in the scales of court-fee all over the country and the rates of court-fees should be very low, if not nominal, so that the less affluent sector of the community may not be deprived of equality before the laws. Further, even if court-fee is charged, the revenue derived from it should not exceed the cost of administration of civil justice. The Supreme Court has repeatedly pointed out that there is a distinction between a feed and a tax. Where a fee is charged, such fee must have a reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a *quid pro quo* for the services rendered [AIR (1971) SC 1182].

72. Having regard to the observations made by the Supreme Court and the necessity to reduce the cost of litigation so that justice may not be denied to the poor, the Committee feel that effective steps should be taken by the Central Government to ensure that there is a uniformity in the rates of court-fees all over the country and that the rates of court-fees are brought down to such a level as to enable a poor person get a reddress of his grievance from a court of law. The Central Government may further ensure that in case the amount received by the State Government by way of court-fees exceeds its expenditure on the administration of civil justice, such excess is spent for providing necessary amenities to the litigant public.

NEW DELHI;
April 1, 1976
Chaitra 12, 1898 (*Saka*).

L. D. KOTOKI,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

Clause 6

(*Section* 11 *of the Principal Act*)

The insertion of the explanation is superfluous. The doctrine of constructive *res-judicata* is already extended to the execution proceedings also by virtue of Supreme Court decisions. If the party has no right of appeal then that decision should not operate as *res-judicata* against him. Any provision to the contrary is basically wrong.

Clause 27

(*Section* 80 *of the Principal Act*)

In the original Bill, the Government wanted to delete the whole section. But the Committee thought it otherwise and retained it, but with modification. But I am sorry to state that the medicine is worst than disease which it wanted to cure. The amendment still insists on notice providing substantial cause of action. But on page 104 of the original Bill [Notes on clauses], it is stated "In a democratic country, there should be no distinction of the kind envisaged in section 80 between the citizen and the State. In those cases where a litigant rushes to the court without giving an opportunity to the other party to settle the claim, the general rules as to disallowance of costs should be adequate" and hence section 80 was omitted. But the Committee came to different conclusion. I do not agree with the conclusion of the Committee. Now-a-days, the Government are engaged in various industrial and commercial undertakings. The State by embarking upon the commercial undertakings enter in market conflicting with the private sector. Commercial undertakings are always involved in litigation. Section 80 gives a differential treatment for which there is no justification. I, therefore, opposed it and thereafter the Committee brought another (present) amendment. Even in the present amendment, there is no scope for the suit of injunction. I wanted that this section should be amended in this way—on page 10 of the Bill. line 6, *after* "the suit" *insert* "other than a suit for bare injunction". If this would have been done, then it would have served my purpose. Therefore, I oppose the present amendment in section 80.

Clause 37

(*Section* 100 *of the Principal Act*)

This is a provision for second appeal. In this section, it is provided "Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the

High Court from any decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law." The memorandum of appeal shall precisely state the substantial question of law involved in the Bill. On page 106 in 'Notes on clauses' of the Bill, it is stated that section 100 is, therefore, being amended to provide that the right of second appeal should be confined to cases where a question of law is involved and such question of law is a substantial one. But without defining or saying what is substantial. The present amendment will practically destroy the right of second appeal. The amendment is not based on realistic appraisal of the character of the judgment of the subordinate courts, it is based on only substantial question of law. There may be little or no case whatsoever for second appeal. The Supreme Court [in AIR 1962, Supreme Court Page 1340] interpreted substantial question of law and stated that it is highly complex on which there is conflict of judicial decisions. The proposed amendment will bar against error of law or procedure. Therefore, the *status quo* should be maintained. Therefore, I oppose the present amended section.

Clause 43

(*Section* 115 *of the Principal Act*)

Section 115 confers power of revision on the High Court in a case not subject to appeal thereto. It empowers the High Court to call for the records of a case decided by an inferior court and to interfere if the inferior court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity.

It is true that according to Law Commission, in the Constitution, there is one provision that under Article 227 errors of jurisdiction and errors apparent on the face of the record can be corrected. But the third clause under section 115 will not be covered by Article 227 *viz.* when court acts or exercises jurisdiction with material irregularity they may not be possibly covered by Article 227 and it is also costly for the poor litigants. Therefore, revision petition application would lie under old section 115 of the Code. Instead of amending this section in this way a provision may be made that a civil revision application should be disposed of within three months from the date when the application came for hearing. It is an every day experience that large number of mistakes in judgments or decisions by subordinate courts are being corrected and the courts below have been kept within their bounds by the High Court. Therefore, instead of amending this section 115 in this way, the revisional powers may be given to the District Judge instead of to the High Court. The new amendment suggested by the Committee does not serve the purpose of the original section 115 and new amended section does not cover all the points contained in the original section 115. Therefore, I strongly feel to keep intact section 115, which is in favour of the poor litigants.

NEW DELHI; R. V. BADE.

March 29, 1976.

II

The present bill for the amendment of the Code of Civil Procedure, 1908 has been brought forward, as stated in the Statement of Objects and Reasons of the original bill, keeping in view the following basic considerations—namely:—

"(i) that a litigant should get a fair deal in accordance with the accepted principle of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer section of the country, who do not have the means to engage a pleader to defend their cases."

In order to achieve these objectives, radical changes are necessary to be made in the Code in principle. The present Code, which is of Anglo-Saxon origin, is too technical to achieve that objective. Changes here and there, as is made in the present bill, is not sufficient for the purpose. In this respect, my suggestion is that we should try to revitalise the system of judiciary as envisaged in our Nyaya Panchayat system and try to make it up-to-date. We may take into account the system of judiciary as is prevalent in the socialist countries as well.

In this respect, I may quote, from the report of the expert Committee on the Legal Aid, headed by Justice Iyer:—

"111. One of the instruments of justice, which brings in the people not merely as consumers, but also as organisers in the Nyaya Panchayat. From the Shukra Niti to the Indian Constitution, Village Panchayats have been commended and if they are to be units of self-government, as directed in Article 40, justice at the lesser levels must be administered by the elected representatives of the people in the villages. Decentralisation of the justice administration and entrustment of judicial powers to popular elements may be resisted and elitist eye-brows raised. But as the famous fourteenth Report of the Law Commission and the Report of the study-team of Nyaya Panchayats both concluded, there is hardly any doubt that litigation will be reduced in volume, cost and time, if these little institutions come into existence all over the country" (page 39).

"113. The Justices of Peace in England, the people's Courts in Socialist Countries and the elected justices at the lowest rungs in many other countries, have worked successfully enough to induce our revival of the equivalent ancient Indian institutions, entrusted with wider powers, as part of the programme of local and low cost justice" (page 40).

Further the role of the judges, is in no way less important in reforming our judicial system. From my personal experience I can say—the more strict and competent the judges are, the more speedier the disposal of cases, and the more liberal and not upto the mark the judges are, the

more delay in deciding the cases, Law Commission in its fifty-fourth Report says—

> "53.3. Even at the cost of reptition, we wish to emphasise that the success of any system, and particularly the judicial system, depends on the men, who work the system. Judges play an important role in its working, and we must, therefore, make some recommendations for adequately preparing our junior judges for their task."

And for this purpose, they recommend a National Academy for judicial training.

Next the part played by lawyers in the judicial system is no less important than any other. Law Commission in its fifty-fourth Report says—

> "But the members of the Bar have also a vital contribution to make, and their willing and unstinted cooperation can contribute to the successful working of the system."

But I am afraid, that this willing and unstinted co-operation can hardly be obtained, because of the monopolistic tendency amongst our lawyers, which can only be uprooted by complete nationalisation of this profession.

The present amendments, as I have already stated are honest attempts to improve our judicial system, keeping the *status quo* of our present judicial system in tact. But there is hardly any possibility to do so, unless and until the system itself is changed.

So far as the present bill is concerned, I am submitting my dissenting note, which is as follows:—

Clause 27

In the original Bill, section 80 was omitted and this has been welcomed by almost all the Bar Associations of India. But I am sorry that the section has been reintroduced although in a modified form. In the Statement of Objects and Reasons of the original Bill, it has been stated—

> "Section 80 which provides for compulsory notice before the institution of the suit against the government or a public servant is being omitted, because it is felt that state or public officer should not have a privilege in the matter of litigation as against a citizen, and should not have a higher status than as ordinary litigant in this respect."

If this is the principle for omitting Section 80, I find no justification for reintroducing it.

Further Law Commission both in their 27th and 54th Reports concurrently recommend the deletion of this section.

Clause 28

As my view is that section 80 should be omitted, consistently section 82, which gives certain privileges to the Government in matters of execution of decree should be omitted.

Clause 37

Section 100 as in original Bill has been modified. But I think, section 100 of the principal Act needs no amendment. Further I think—every question of law is substantial. There cannot be any distinction between substantial question of law and unsubstantial question of law.

Clause 38

An appeal from the appellate decree from the single judge of High Court under Letters Patent, should be retained.

NEW DELHI; BIR CHANDRA DEB BARMAN.

March 29, 1976.

III

The Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974, has taken great pains and after concluding their deliberations submitted the Report on the Bill to the House. Although, the Ministry of Law, Justice and Company Affairs has also co-operated to a great extent, still I have some points to make.

Unless the Procedure is simple, expeditious and inexpensive, the subsequent laws, however, good are bound to fail in their purpose and object. Hence, I suggest for pre-trial conferences in the following terms:

"In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider—

(1) the simplification of the issues;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;

(4) the limitation of the number of expert witnesses;

(5) the advisability of a preliminary reference of the issues to a master for findings to be used in evidence when the trial is to be by jury;

(6) such other matters as may aid in the disposition of the action."

The pre-trial conferences have resulted in a great success in other countries of the world. If a proper use is made of these pre-trial conferences, the judge or the presiding officer, at an early stage of the suit, be in a position to sift the chaff from the grain, and to pinpoint his attention on the matters on which the parties are at variance. A complete grasp of the case at an early stage of the suit will enable the Judge, when the suit comes up for hearing, to dispose it of expeditiously. It will enable him to narrow down the issues between the parties, and eliminate the need for recording formal or irrelevant evidence.

Though this principle has been accepted in the present Bill in Order XXXIIA, I suggest that this should be applicable in all cases. And

besides this, endeavour should also be made by the Court, in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist the parties to arrive at a settlement in respect of the subject-matter of the suit.

The second thing that I suggest is that section 80 of the principal Act should be omitted. The present section 80 of the Code enacts that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months after a notice in writing has been given.

The object of the section is to give to the Government and the public officer an opportunity to examine the legal position and to settle the claim, if so advised, without litigation.

There is no parallel provision in any other country in which the Anglo-Saxon system of law prevails. I think, that in a democratic country like ours there should, ordinarily, be no distinction of the kind envisaged in section 80 between the citizen and the State.

I recommend the omission of the section.

NEW DELHI; M. C. DAGA.
March 30, 1976.

IV

I have gone through the Report of the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974 and consider that the same does not sufficiently plug the causes of cost and delay involved in litigations, to obviate which the Bill was intended. I am, therefore, constrained to submit this note of dissent being in disagreement with the majority Report particularly on Clauses 10, 11, 59 and 68, though in general agreement with the rest of the same. The matter was considered by the Committee with all earnestness at all stages and my note herein below instead of being called as a "dissent", it will be more appropriate to say it a rejoinder to the Report. Whatever that may be, before indicating my points, I should mention that after the Advocates Act, 1961 came into effect, there is neither *Mukhtiar* nor Pleader nor Barrister,—and all are 'Advocates'. Hence, the Report and the principal Act should be accordingly amended substituting "Advocate" for "Pleader' wherever it occurs.

Clauses 10 *and* 11.—Re-trial of a suit or proceeding after the order of transfer passed by either the District Court, High Court or the Supreme Court of India, often results in long delay in the disposal of such suit or proceeding besides causing heavy drain on the dwindling purse of the litigant public. If statistics are taken, it will definitely divulge that parties to a suit or proceeding are put to inconceivable sufferings because of re-trial of a suit or proceeding. In genuine cases, order for re-trial of a suit or proceeding are definitely justified. But if in each and every case, the option is given to the subordinate Courts either to re-try a suit or proceeding, or proceed from the point at which it was transferred or withdrawn, such Courts often feel inclined to rehear such cases. I am, therefore, of the view that the option for re-trial should not be left at the hands of the subordinate Courts but should be decided by the superior

Courts *viz.* District Court, High Court or Supreme Court, as the case may be, so that at the time of transferring a suit or proceeding from one Court to another, they may pay more attention to this aspect and incorporate their views in the special directions which they may choose to give to the subordinate transferee-Courts. I, therefore, oppose insertion of the words "either retry it or" as appearing in sub-section (2) of Section 24 of the Principal Act and insertion of such words in clause 11 under sub-Section (3) of Section 25 of the Bill as reported.

Clause 59 (*Original Clause* 62).—A plaintiff to a suit, who knows that his case is so weak that he will ultimately lose or, adopts since the filing of the suit, all sorts of *malafide* tactics of prolonging his case, and causes unnecessary harassment to the other side. Ultimately when the suit becomes ready for pre-emptory hearing, the plaintiff goes on committing the mischief on the defendant by allowing his suit to be dismissed for default on the one hand and by applying to the Court for restoration of the suit to its original file on the other. He goes on doing this trick as long as he can. Since the ruling of the Supreme Court and the different High Courts are that the Subordinate Courts should dispose of a suit on merit and that no party to a suit should be allowed to reap the benefit of a case decided on the ground of technical lapse on the part of one party to the suit, the Subordinate Courts go on liberally allowing such petitions of the plaintiffs for restoration of suit by awarding some nominal costs to the defendant.

Similarly, a defendant to a suit, who knows the feeble and weak nature of his defence and is sure to lose in the long run, adopts the same tactics by remaining absent on the day when the suit is called on for pre-emptory hearing thereby allowing, with ulterior motive, the plaintiff to obtain *ex parte* decree against him from the Court. Immediately after, on the same day or on the following day, the said defendant appears in Court in person, files a petition for setting aside the *ex parte* decree obtained by the plaintiff on ground of his ignorance of the date of such hearing, or such other plea. This goes on repeatedly and the defendant never minds paying the costs awarded by the Court for setting aside such *ex parte* decree particularly when he is rich and the adversary is poor or the cost awarded is nominal.

This is a major loophole in the Code of Civil Procedure and this must be plugged and the Courts should be given enough power to judge the *bonafide* nature of default arising out of deliberate non-attendance of either the plaintiff or the defendant and to dispose of such cases. Besides this, a limit should also be put on the number of times when the Courts can either restore a plaintiffs suit to file or set aside an *ex parte* decree. I am definitely of the opinion that this will go a long way in removing the bottleneck of early disposal of suits and proceedings.

Accordingly, I proposed that in original rule 9(1) in the First Schedule of Order IX, in line 5 thereof, after the words "for hearing", the words "and the Court is fully convinced about the *bonafide* of the applicant", be inserted;

In rule 9(1), in the first Schedule of Order IX, after line 7, I proposed the addition of the provision, "provided that the Court shall not make an order setting aside the order of dismissal in a case where the plaintiff's suit was dismissed for default twice previously and such dismissal order

was set aside by the Court on both such previous occasions, "I considered them essential and .naintain the same. Similarly, I feel that in original rule 13 in the First Schedule of Order IX, in line 5 thereof, after the words—"for hearing"—the words "and the Court is fully convinced about the *bonafide* of the applicant" can be inserted. This suggestion of mine was intended to arm the Court with a large amount of discretion against *malafide* strategy of designing litigants.

Finally, the following additional proviso should also be added to rule 13 after sub-clause (v) of clause 59 as reported—"(v) (a) provided further that the Court shall not make an order setting aside the *ex parte* decree in a case where decree was passed *ex parte* twice previously and that such *ex parte* decree was set aside by the Court on both such previous occasions."

Clause 68 (*Original Clause* 71).—Like-wise, parties to a suit or proceeding, who know in the heart of their hearts that they can never aspire to win a case in the long run in view of the weak and feeble grounds resorted to by them in their pleadings, often adopt the tactics of seeking adjournment after-adjournment just to prolong the case and to cause utter harassment to the other side. Amongst many flimsy grounds, these designing parties also put forward the ground of illness or inability of their Advocates to secure adjournments. Proviso (d) to sub-rule (2) of rule 1 of the First Schedule in Order XVII has been adopted by the Committee to stop all such unfair practice. But in my view still the *lacuna* is left and this proviso can be further improved, if the words "the party applying for adjournment could not have engaged another pleader in time" are substituted by the following words:—

> "the illness or inability of the Advocate of the party applying for adjournment is so sudden that the party could not have engaged another Advocate in time."

Besides this, I am strongly of the view that the Parliament should put a definite limit to such adjournments and for that purpose a further proviso *viz.* (dd) should be added under sub-rule (2) of rule 1 of First Schedule, Order XVII after proviso (d) on the following lines:—

> "(dd) adjournment shall not be granted to a party more than twice even in such exceptional cases."; as was earlier proposed by me by way of an amendment. This will serve more than one purpose. Concentration of too many cases in the hands of senior Advocates will be checked, young Advocates will get chances to come up and delay causing inconvenience to the litigant public and consequent loss of the time of the Court for frequent adjournment, will be very much controlled.

I may indicate also that the respondent opposite parties, often urge preliminary objections, knowing fully that they are of no substance. Their sole purpose is to cause delay at every stage. In all such cases, exemplary costs should be prescribed for being granted by the Court.

In a poor country like India and for the matter of that in every democracy, the public should be released of the fetters of procedural law as much as possible, so that they may defend their right without the assistance of lawyers. The rule should, therefore, be very simple. But

our Civil Procedure Code is so complicated that it is difficult even for the lawyers and Judges to appreciate and follow. I may particularly refer to the provisions in the orders and rules for inspection and production of documents. The different stages like discovery, interrogatories, filing applications supported by affidavit, counter-affidavit by the other side and then a hearing all together makes the remedy more complicated than the disease. All these procedures consume time and money both. What is worse, it makes a lawyers' assistance imperative. I think that the provisions could be more simplified in this regard.

With these words, I submit my note for consideration by the House.

NEW DELHI;
March 30, 1976.

DWIJENDRA LAL SEN GUPTA.

V

Simplification of the judicial process and the Court trial procedures, removing of the causes of delay in the administration of justice and the final disposal of the suits and cases, catering the justice cheap and prompt, setting right the anomalies and complications arising out of the frequent amendments and judicial pronouncements of different superior courts regarding the procedural laws, extending the trial facilities upto the village level, appointing judges through elective methods and rendering the judiciary responsible and responsive to the changing aspirations of the struggling people were very much necessary.

2. The Code of Civil Procedure (Amendment) Bill, 1974 and the report of the Joint Committee of the Houses on the amendments suggested in the Bill have failed to respond to the expectations of the people, even in the context of the limited purpose as outlined by the Ministry of Law, Justice and Company Affairs in the Statement of Objects and Reasons.

The basis and guidelines for bringing changes in the provisions of the Civil Procedure Code, have mainly, if not wholly been drawn from the recommendation made from time to time by the Law Commission as per requisition from the Government. But as the members of the Law Commission have their own limitations, the amending Bill has fallen much short of the minimum expectations as regards the problems faced by the millions of litigants mostly coming from the classes of people connected with productive activities most of whom are illiterate or half literate, innocent of the complex legal process and implications and have no means to bear the burden of frequent travelling to the distant seats of Courts considerably losing their productive energy, the enduring continuation and ever increasing complications of the Court proceedings, unlimited, unforeseen and ruinous expenses; mechanical and unconcerned attitude of the Bench and unsatisfied creditor's outlook of the Bar.

Many witnesses were examined, lots of amendments were proposed and discussed, various changes have been made in the amendments proposed in the Bill. Without undermining the effort and exercises done by the Joint Committee of the Houses, one is forced to say that the amending Bill has failed to bring about any remarkable change in the Code in

respect of the basic problems of the administration of justice and judicial process and therefore the *status-quo* has been well preserved.

The striking feature of certain amendments incorporated in the Bill purportedly with a view to minimise delay and costs, is that the litigants have been made responsible for vices of the judicial system of our country and many of their rights and scope of defences have been curtailed and pruned and heavier responsibility and burden have been placed on them, whether they remain capable to feed the hunger of the justice or quit the courts.

Instances of exceptions have become the cause of attack on important and vital fronts of the judicial remedies and ultimately the litigants in general have become victims of the proposed measures. The resourceful and capable speculator can still derive benefit by out-breathing the weak in the judicial contests.

In considering the causes of delay in disposal of suits the responsibility of the Government for not adequately increasing the number of courts, filling up the existing vacancies and also the responsibility of the courts and the lawyers and above all the lapses of the existing system of the judicial administration have not been properly fixed.

Even accepting the present set-up and the existing state of affairs for granted, a few instances of apprehensive consequences may be mentioned here.

Premium has been given by way of increasing the interest on the decreetal money to the decree holders who in many cases drag their opponents to the courts to grab the remnants the judgment debtors were holding (clause 13).

Any speculator once having succeeded in defeating his opponent having genuine claims in the original suit by winning or destroying his evidences, can acquire the rest of his belonging by invoking the provisions of the Bill (clause 14).

For minimising the delay in the disposal of the suits, which is inherent in the present system the burden has been shifted to the litigants (clauses 15 and 21).

In the original Bill (section 80) [two month's pre-filing notice where Government is to be made a party] was omitted, but the Government's policy in re-introducing the same pre-conditions for filing suit against it, was not only understandable, but surprising.

Restricting the scope of Appeals, whether first appeal or subsequent appeals as proposed in the new amendments is a matter of serious concern (clauses 33, 37 and 40).

In the matter of services of summons, the possibility of the ignorant, illiterate and indifferent tribal and aboriginal and similar classes of people becoming victims of the procedure has not been duly considered.

The scope of legal aid to the victims of the social oppressions and exploitations has not been adequately enlarged.

Free trial facilities for the indigent person has been restricted to the minimum.

While welcoming the last minute incorporation in the Bill of the directive guidelines to the States and the Union Territories on the move of the Ministry of Law, Justice and Company Affairs regarding introduction of a uniform and lower rate of court fees for the civil trials, I am constrained to say that the judicial Administration of our country still remains an institution of judicial trade.

DINESH JOARDER.

NEW DELHI;
March 31, 1976.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1976.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act or to the commencement of the Code of Civil Procedure (Amendment) Act, 1976, as the case may be, shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENT OF THE SECTIONS

Amendment of section 1.

2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), in section 1, for sub-section (*3*), the following sub-sections shall be substituted, namely:— 5 of 1908.

'(*3*) It extends to the whole of India except—

(*a*) the State of Jammu and Kashmir;

* * * * *

(*b*) the State of Nagaland and the tribal areas:

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation.—In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution. * * *

(*4*) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.'.

Amendment of section 2.

3. In section 2 of the principal Act,—

(*i*) in clause (*2*), the words and figures "section 47 or" shall be omitted;

(*ii*) in clause (*17*), in sub-clause (*b*), for the words "the Indian Civil Service", the words "an All-India Service" shall be substituted.

Amendment of section 8.

4. In section 8 of the principal Act, for the figures and words "77 and 155 to 158", the figures and word "77, 157 and 158" shall be substituted.

Amendment of section 9.

5. In section 9 of the principal Act, the *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.".

Amendment of section 11.

6. In section 11 of the principal Act, after *Explanation VI*, the following *Explanations* shall be inserted, namely:—

"*Explanation VII.*—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question

arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.".

* * * * *

Amendment of section 20.

7. In section 20 of the principal Act,—

(*i*) *Explanation I* shall be omitted, and

(*ii*) for the word and figures "*Explanation II*", the word "*Explanation*" shall be substituted.

Amendment of section 21.

8. Section 21 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(*3*) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.".

Insertion of new section 21A.

9. After section 21 of the principal Act, the following section shall be inserted, namely:—

Bar on suit to set aside decree on objection as to place of suing.

'21A. No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.—The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.'.

Amendment of section 24.

10. In section 24 of the principal Act,—

(*i*) in sub-section (*2*), for the words "thereafter tries such suit", the words "is thereafter to try or dispose of such suit or proceeding" shall be substituted;

(*ii*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

'(*3*) For the purposes of this section,—

(*a*) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(*b*) "proceeding" includes a proceeding for the execution of a decree or order.';

(*iii*) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.".

* * * * *

Substitution of new section for section 25.

11. For section 25 of the principal Act, the following section shall be substituted, namely:—

Power of Supreme Court to transfer suits, etc.

"25. (*1*) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(*2*) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(*3*) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(*4*) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand ~~rupees, as it considers~~ appropriate in the circumstances of the case.

(*5*) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.".

Amendment of section 28.

12. In section 28 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (*2*), a translation of the record,—

(*a*) in Hindi, where the language of the Court issuing the summons is Hindi, or

(*b*) in Hindi or English where the language of such record is other than Hindi or English,

shall also be sent together with the record sent under that sub-section.".

13. To sub-section (*1*) of section 34 of the principal Act, the following proviso and *Explanations* shall be added, namely:— Amendment of section 34.

'Provided that where * * * * * the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. 5 of 1970.

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.'.

14. In section 35A of the principal Act, Amendment of section 35A.

(*i*) in sub-section (*1*), for the words "excluding an appeal", the words "excluding an appeal or a revision" shall be substituted;

(*ii*) in sub-section (*2*), for the words "one thousand rupees", the words "three thousand rupees" shall be substituted.

15. After section 35A of the principal Act, the following section shall be inserted, namely:— Insertion of new section 35B. Costs for causing delay.

"35B. (*1*) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(*a*) fails to take the step which he was required by or under this Code to take on that date, or

(*b*) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(*a*) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(*b*) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.".

Substitution of new section for section 36.

16. For section 36 of the principal Act, the following section shall be substituted, namely:—

Application to orders.

"36. The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).".

Amendment of section 37.

17. In section 37 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.".

Amendment of section 39.

18. In section 39 of the principal Act,—

(*i*) in sub-section (*1*), after the words "to another Court", the words "of competent jurisdiction" shall be inserted;

(*ii*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.".

Amendment of section 42.

19. Section 42 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(*a*) power to send the decree for execution to another Court under section 39;

(*b*) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:—

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.".

Amendment of section 47.

20. In section 47 of the principal Act, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.".

Amendment of section 51.

21. In section 51 of the principal Act, in clause (c), the words and figures "for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section," shall be inserted at the end.

* * * *

Amendment of section 58.

22. In section 58 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (a), for the words "fifty rupees, for a period of six months, and,", the words "one thousand rupees, for a period not exceeding three months, and," shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:—

"(b) where the decree is for the payment of a sum of money exceeding five hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:";

(c) in the first proviso, for the words "said period of six months or six weeks, as the case may be,", the words "said period of detention" shall be substituted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed five hundred rupees.".

Amend-ment of Section 60.

23. In section 60 of the principal Act,—

(*i*) in the proviso to sub-section (*1*),—

(*a*) in clause (c), for the words "an agriculturist", the words "an agriculturist or a labourer or a domestic servant" shall be substituted;

(*b*) in clause (*g*), after the words "pensioners of the Government", the words "or of a local authority or of any other employer" shall be inserted;

(c) in clause (*i*),—

(*i*) for the words "two hundred rupees and one-half the remainder", the words "four hundred rupees and two-thirds of the remainder" shall be substituted;

(*ii*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.";

(*d*) for clause (*j*), the following clause shall be substituted, namely:—

"(*j*) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;"; 45 of 1950. 46 of 1950. 62 of 1957.

(*e*) after clause (*k*), the following clauses shall be inserted, namely:—

"(*ka*) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(*kb*) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(*kc*) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;";

(*f*) for *Explanation I*, the following *Explanation* shall be substituted, namely:—

"*Explanation* I.—The moneys payable in relation to the matters mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*l*) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.";

(*g*) in *Explanation 2*, for the words, figure, brackets and letters *"Explanation 2.*—In clauses (*h*) and (*i*)", the words, figures, brackets and letters, *"Explanation II.*—In clauses (*i*) and (*ia*)" shall be substituted;

(*h*) in *Explanation 3*, for the figure "3", the figures *"III"* shall be substituted;

(*i*) after *Explanation III* as so amended, the following *Explanations* shall be inserted, namely:—

'Explanation IV.—For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V.—For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI.—For the purposes of *Explanation V*, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(*a*) by his own labour, or

(*b*) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.';

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.".

Amendment of section 63.

24. In section 63 of the principal Act, after sub-section (*2*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (*2*), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.'.

Amendment of section 66.

25. In section 66 of the principal Act, in sub-section (*1*), the following shall be inserted at the end, namely:—

"and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchase was made on his behalf or on behalf of someone through whom the defendant claims.".

Amendment of section 75.

26. In section 75 of the principal Act, after clause (*d*), the following clauses shall be inserted, namely:—

"(*e*) to hold a scientific, technical, or expert investigation;

(*f*) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(*g*) to perform any ministerial act;".

Amendment of section 80.

27. Section 80 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and—

(*a*) in sub-section (*1*) as so re-numbered, for the words "No suit shall be instituted", the words, brackets and figure "Save as otherwise provided in sub-section (*2*), no suit shall be instituted" shall be substituted; and

(*b*) after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (*1*); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (*1*).

(*3*) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (*1*), if in such notice—

(*a*) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (*1*), and

(*b*) the cause of action and the relief claimed by the plaintiff had been substantially indicated.".

Amendment of section 82.

28. In section 82 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (*2*).";

(*ii*) in sub-section (*2*), for the words "such report", the words "such decree" shall be substituted.

* * * * * *

29. In section 86 of the principal Act,— **Amendment of section 86.**

(*i*) in sub-section (*1*),—

(*a*) the words "Ruler of a" shall be omitted;

(*b*) in the proviso, for the words "a Ruler", the words "a foreign State" shall be substituted;

(*ii*) in sub-section (*2*),—

(*a*) for the words "the Ruler", wherever they occur, the words "the foreign State" shall be substituted;

(*b*) in clause (*a*), for the word "him", the word "it" shall be substituted;

(*c*) in clause (*b*), for the word "himself", the word "itself" shall be substituted;

(*d*) in clause (*d*), for the word "him", the word "it" shall be substituted;

(*iii*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.";

(*iv*) in sub-section (*4*),—

(*a*) clause (*a*) shall be re-lettered as clause (*aa*), and before clause (*aa*) as so re-lettered, the following clause shall be inserted, namely:—

"(*a*) any Ruler of a foreign State;";

(*b*) in clause (*c*), for the words "or retinue of the Ruler, Ambassador", the words "of the foreign State or the staff or retinue of the Ambassador" shall be substituted;

(*c*) for the words "as they apply in relation to the Ruler of a foreign State", the words "as they apply in relation to a foreign State" shall be substituted;

(*v*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) The following persons shall not be arrested under this Code, namely:—

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(*d*) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(*6*) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (*1*), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.".

Amendment of section 91.

30. In section 91 of the principal Act,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC";

(*ii*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(*a*) by the Advocate-General, or

(*b*) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.".

Amendment of section 92.

31. In section 92 of the principal Act,—

(*i*) in sub-section (*1*), for the words "consent in writing of the Advocate-General,", the words "leave of the Court," shall be substituted;

(*ii*) after sub-section (2), the following sub-section shall be inserted, namely:—

"(*3*) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cy pres* in one or more of the following circumstances, namely:—

(*a*) where the original purposes of the trust, in whole or in part,—

(*i*) have been, as far as may be, fulfilled; or

(*ii*) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

(*i*) been adequately provided for by other means, or

(*ii*) ceased, as being useless or harmful to the community, or

(*iii*) ceased to be, in law, charitable, or

(*iv*) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.".

Amendment of section 95.

32. In section 95 of the principal Act, in sub-section (*1*), for the words "expense or injury caused to him", the words and brackets "expense or injury (including injury to reputation) caused to him" shall be substituted.

Amendment of section 96.

33. In section 96 of the principal Act, * * * after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.".

* * * * *

Amendment of section 98.

34. In section 98 of the principal Act, in sub-section (*2*), in the proviso, for the words "composed of two Judges belonging to a Court consisting of more than two Judges", the words "composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench" shall be substituted.

Amendment of section 99.

35. In section 99 of the principal Act,—

(*i*) after the words "any misjoinder", the words "or non-joinder" shall be inserted;

(*ii*) the following proviso shall be added at the end, namely:—

"Provided that nothing in this section shall apply to non-joinder of a necessary party.".

Insertion of new section 99A.

36. After section 99 of the principal Act, the following section shall be inserted, namely:—

No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.

"99A. Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.".

Substitution of new section for section 100.

37. For section 100 of the principal Act, the following section shall be substituted, namely:—

Second appeal.

"100. (*1*) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(*2*) An appeal may lie under this section from an appellate decree passed *ex parte*.

(*3*) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(*4*) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(*5*) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.".

Insertion of new section 100A.

38. After section 100 of the principal Act, the following section shall be inserted, namely:—

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal.". No further appeal in certain cases.

39. In section 102 of the principal Act, for the words "one thousand rupees", the words "three thousand rupees" shall be substituted. Amendment of section 102.

40. For section 103 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 103.

"103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue *** necessary for the disposal of the appeal,— Power of High Court to determine issue of fact.

(*a*) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(*b*) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.".

41. In section 104 of the principal Act, in sub-section (*1*), after clause (*ff*), the following clause shall be inserted, namely:— Amendment of section 104.

"(*ffa*) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;".

42. In section 105 of the principal Act, in sub-section (*2*), the words "made after the commencement of this Code" shall be omitted. Amendment of section 105.

43. Section 115 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and— Amendment of section 115.

(*a*) to sub-section (*1*) as so re-numbered, the following proviso shall be added, namely:—

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where—

(*a*) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(*b*) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section and *Explanation* shall be inserted, namely:—

"(*2*) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation.—In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.".

Amendment of section 123.

44. In section 123 of the principal Act,—

(*i*) in sub-sections (*3*), (*4*) and (*5*), for the words "Chief Justice or Chief Judge", wherever they occur, the words "High Court" shall, subject to such grammatical variations as may be necessary, be substituted;

(*ii*) in sub-section (*3*), the proviso shall be omitted.

* * * * *

Amendment of section 135A.

45. In section 135A of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) No person shall be liable to arrest or detention in prison under civil process—

(*a*) if he is a member of—

(*i*) either House of Parliament, or

(*ii*) the Legislative Assembly or Legislative Council of a State, or

(*iii*) a Legislative Assembly of a Union territory,

during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(*b*) if he is a member of any committee of—

(*i*) either House of Parliament, or

(*ii*) the Legislative Assembly of a State or Union territory, or

(*iii*) the Legislative Council of a State,

during the continuance of any meeting of such committee;

(*c*) if he is a member of—

(*i*) either House of Parliament, or

(*ii*) a Legislative Assembly or Legislative Council of a State having both such Houses,

during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the State Legislature, as the case may be;

and during the forty days before and after such meeting, sitting or conference.".

46. In section 139 of the principal Act, after clause (*a*), the following clause shall be inserted, namely:— Amendment of section 139.

53 of 1952. "(*aa*) any notary appointed under the Notaries Act, 1952; or".

47. In section 141 of the principal Act, the following *Explanation* shall be inserted, namely:— Amendment of section 141.

'*Explanation.*—In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.'.

48. In section 144 of the principal Act,— Amendment of section 144.

(*i*) in sub-section (*1*),—

(*a*) for the words "varied or reversed, the Court of first instance", the words "varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order" shall be substituted;

(*b*) for the words "such part thereof as has been varied or reversed", the words "such part thereof as has been varied, reversed, set aside or modified" shall be substituted;

(c) for the words "consequential on such variation or reversal", the words "consequential on such variation, reversal, setting aside or modification of the decree or order" shall be substituted;

(*ii*) in sub-section (*1*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,—

(*a*) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(*b*) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.'.

49. In section 145 of the principal Act,— Amendment of section 145.

(*i*) for the words "has become liable as surety", the words "has furnished security or given a guarantee" shall be substituted;

(*ii*) for the portion beginning with the words "the decree or order may be executed against him", and ending with the words and

figures "within the meaning of section 47:", the following shall be substituted, namely:—

"the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

(*i*) if he has rendered himself personally liable, against him to that extent;

(*ii*) if he has furnished any property as security, by sale of such property to the extent of the security;

(*iii*) if the case falls both under clauses (*i*) and (*ii*), then to the extent specified in those clauses,

and such person shall be deemed to be a party within the meaning of section 47:".

Insertion of new section 148A.

50. After section 148 of the principal Act, the following section shall be inserted, namely:—

Right to lodge a caveat.

"148A. (*1*) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(*2*) Where a caveat has been lodged under sub-section (*1*), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made, under sub-section (*1*).

(*3*) Where, after a caveat has been lodged under sub-section (*1*), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.

(*4*) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(*5*) Where a caveat has been lodged under sub-section (*1*), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (*1*) has been made before the expiry of the said period.".

Insertion of new sections 153A and 153B.

51. After section 153 of the principal Act, the following sections shall be inserted, namely:—

"153A. Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

Power to amend decree or order where appeal is summarily dismissed.

153B. The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Place of trial to be deemed to be open Court.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.".

CHAPTER III

AMENDMENT OF THE ORDERS

52. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order I,—

Amendment of Order I.

(*i*) for rule 1, the following rule shall be substituted, namely:—

"1. All persons may be joined in one suit as plaintiffs where—

Who may be joined as plaintiffs.

(*a*) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(*b*) if such persons brought separate suits, any common question of law or fact would arise.";

(*ii*) for rule 3, the following rule shall be substituted, namely:—

"3. All persons may be joined in one suit as defendants where—

Who may be joined as defendants.

(*a*) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(*b*) if separate suits were brought against such persons, any common question of law or fact would arise.";

(*iii*) after rule 3, the following rule shall be inserted, namely:—

"3A. Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.";

Power to order separate trials where joinder of defendants may embarrass or delay trial.

(*iv*) for rule 8, the following rule shall be substituted, namely:—

One person may sue or defend on behalf of all in same interest.

"8. (*1*) Where there are numerous persons having the same interest in one suit,—

(*a*) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(*b*) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(*2*) The Court shall, in every case where a permission or direction is given under sub-rule (*1*), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(*3*) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (*1*), may apply to the Court to be made a party to such suit.

(*4*) No part of the claim in any such suit shall be abandoned under sub-rule (*1*), and no such suit shall be withdrawn under sub-rule (*3*), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (*2*).

(*5*) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(*6*) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.—For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.";

(*v*) after rule 8, the following rule shall be inserted, namely:—

Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.

"8A. While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.";

(*vi*) to rule 9, the following proviso shall be added, namely:—

"Provided that nothing in this rule shall apply to non-joinder of a necessary party.";

(*vii*) after rule 10, the following rule shall be inserted, namely:—

"10A. The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader."; Power of Court to request any pleader to address it.

(*viii*) in rule 11, for the words "the suit", the words "a suit" shall be substituted.

53. In the First Schedule, in Order II, for rule 6, the following rule shall be substituted, namely:— Amendment of Order II.

"6. Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.". Power of Court to order separate trials.

54. In the First Schedule, in Order III,— Amendment of Order III.

(*i*) in rule 4,—

(*a*) in sub-rule (*2*),—

(*i*) for the words "filed in Court and shall be", the words, brackets and figure "filed in Court and shall, for the purposes of sub-rule (*1*), be" shall be substituted;

(*ii*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(*a*) an application for the review of decree or order in the suit,

(*b*) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(*c*) an appeal from any decree or order in the suit, and

(*d*) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.";

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Nothing in sub-rule (*2*) shall be construed—

(*a*) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(*b*) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (*1*).";

(*ii*) in rule 5, for the words "Any process served on the pleader of any party", the words "Any process served on the pleader who has been duly appointed to act in Court for any party" shall be substituted;

(*iii*) in rule 6, after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.".

Amendment of Order V.

55. In the First Schedule, in Order V,—

(*i*) in rule 1, in sub-rule (*1*), after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that where a summons has been issued, * * * the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.";

(*ii*) for rule 15, the following rule shall be substituted, namely:—

Where service may be on an adult member of defendant's family.

"15. Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.";

(*iii*) in rule 17, after the words "or where the serving officer, after using all due and reasonable diligence, cannot find the defendant", the words "who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time", shall be inserted;

(*iv*) after rule 19, the following rule shall be inserted, namely:—

"19A. (*1*) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgment due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain: Simultaneous issue of summons for service by post in addition to personal service.

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(*2*) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the summons.";

(*v*) in rule 20, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the Court acting under sub-rule (*1*) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.";

(*vi*) rule 20A shall be omitted;

(*vii*) in rule 25,—

(*a*) in the first proviso, for the words "resides in Pakistan,", the words "resides in Bangladesh or Pakistan," shall be substituted;

(*b*) in the second proviso, for the words and brackets "in Pakistan (not belonging to the Pakistan military, naval or air forces)", the words and brackets "in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)" shall be substituted,

(*viii*) for rule 26, the following rules shall be substituted, namely:—

Service in foreign territory through Political Agent or Court.

"26. Where—

(*a*) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(*b*) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Summonses to be sent to officers of foreign countries.

26A. Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.".

Amendment of Order VI.

56. In the First Schedule, in Order VI,—

(*i*) for rule 2, the following rule shall be substituted, namely:—

Pleading to state material facts and not evidence.

"2. (*1*) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(*2*) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(*3*) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.";

(*ii*) after rule 14, the following rule shall be inserted, namely:—

'14A. (*1*) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party. Address for service of notice.

(*2*) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(*3*) The address furnished in the statement made under sub-rule (*1*) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(*4*) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(*5*) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order—

(*a*) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(*b*) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(*6*) Where a suit is stayed or a defence is struck out under sub-rule (*5*), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(*7*) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(*8*) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.';

(*iii*) for rule 16, the following rule shall be substituted, namely:—

"16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading— Striking out pleadings.

(*a*) which may be unnecessary, scandalous, frivolous or vexatious, or

(*b*) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.".

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Amendment of Order VII.

57. In the First Schedule, in Order VII,—

(*i*) in rule 2, for the words "the plaint shall state approximately the amount sued for", the words "or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for" shall be substituted;

(*ii*) to rule 6, the following proviso shall be added, namely:—

"Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.";

(*iii*) in sub-rule (*1*) of rule 9, for the words "shall present as many copies", the words "shall present, within such time as may be fixed by the Court or extended by it from time to time, as many copies" shall be substituted;

(*iv*) after sub-rule (*1*) of rule 9, the following sub-rule shall be inserted, namely:—

"(*1A*) The plaintiff shall, within the time fixed by the Court or extended by it under sub-rule (*1*), pay the requisite fee for the service of summons on the defendants.";

(*v*) in sub-rule (*1*) of rule 10, the following *Explanation* shall be inserted at the end, namely: —

"*Explanation.*—For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.";

(*vi*) in rule 10, for the words "The plaint shall", the words, figures and letter "Subject to the provisions of rule 10A, the plaint shall" shall be substituted;

(*vii*) after rule 10, the following rules shall be inserted, namely:—

Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.

"10A. (*1*) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(*2*) Where an intimation is given to the plaintiff under sub-rule (*1*), the plaintiff may make an application to the Court—

(*a*) specifying the Court in which he proposes to present the plaint after its return,

(*b*) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

Power of appellate Court to transfer suit to the proper Court.

10B. (1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963, in the Court in which the suit should have been instituted (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

36 of 1963.

(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.";

(viii) to rule 11, the following proviso shall be added, namely:—

"Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.".

Amendment of Order VIII.

58. In the First Schedule, in Order VIII,—

(*i*) for the heading "WRITTEN STATEMENT AND SET-OFF", the heading "WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM" shall be substituted;

(ii) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, the words "may, and, if so required by the Court," shall be omitted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"*2*) Save as otherwise provided in rule 8A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter-claim, he shall enter such documents in a list, and shall,—

(*a*) if a written statement is presented, annex the list to the written statement:

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement;

(*b*) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(*3*) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(*4*) If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

(*5*) A document which ought to be entered in the list referred to in sub-rule (*2*), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(*6*) Nothing in sub-rule (*5*) shall apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(*7*) Where a Court grants leave under sub-rule (*5*), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (*2*).";

(*iii*) rule 5 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(*3*) In exercising its discretion under the proviso to sub-rule (*1*) or under sub-rule (*2*), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(*4*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.";

(*iv*) after rule 6, the following rules shall be inserted, namely:—

Counter-claim by defendant.

"6A. (*1*) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(*2*) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(*3*) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(*4*) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Counter-claim to be stated.

6B. Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Exclusion of counter-claim.

6C. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

Effect of discontinuance of suit.

6D. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Default of plaintiff to reply to counter-claim.

6E. If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

Relief to defendant where counter-claim succeeds.

6F. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

Rules relating to written statement to apply.

6G. The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.";

(*v*) in rule 7, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vi*) in rule 8, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vii*) after rule 8, the following rule shall be inserted, namely:—

Duty of defendant to produce documents upon which relief is claimed by him.

"8A. (*1*) Where a defendant bases his defence upon a document in his possession or power, he shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document or a copy thereof, to be filed with the written statement.

(*2*) A document which ought to be produced in Court by the defendant under this rule, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(*3*) Nothing in this rule shall apply to documents produced,—

(*a*) for the cross-examination of the plaintiff's witnesses, or

(*b*) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(*c*) handed over to a witness merely to refresh his memory.";

(*viii*) in rule 9, after the word "set-off", the words "or counter-claim" shall be inserted;

(*ix*) in rule 10,—

(*a*) for the words "is so required", the words and figures "is required under rule 1 or rule 9" shall be substituted;

(*b*) for the words "fixed by the Court, the Court may", the words "permitted or fixed by the Court, as the case may be, the Court shall" shall be substituted;

(c) the words "and on the pronouncement of such judgment, a decree shall be drawn up" shall be inserted at the end.

Amendment of Order IX.

59. In the First Schedule, in Order IX,—

(*i*) in rule 2,—

(*a*) after the words "chargeable for such service,", the words and figures "or to present copies of the plaint or concise statements, as required by rule 9 of Order VII," shall be inserted;

(*b*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that no such order shall be made, if, notwithstanding such failure, the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.";

(*ii*) in rule 4, for the words and brackets "his not paying the Court-fee and postal charges (if any) required within the time fixed before the issue of the summons" the words and figure "such failure as is referred to in rule 2" shall be substituted;

(*iii*) in rule 5, in sub-rule (*1*), for the words "three months", the words "one month" shall be substituted;

(*iv*) in rule 6, in sub-rule (*1*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) if it is proved that the summons was duly served, the Court may make an order that the suit be heard *ex parte*;*

* * * * *";

(*v*) to rule 13, after the proviso, the following further proviso shall be added, namely:—

"Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.";

(*vi*) in rule 13, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.".

Amendment of Order X.

60. In the First Schedule, in Order X, for rule 2, the following rule shall be substituted, namely:—

Oral examination of party, or companion of party.

"2. (*1*) At the first hearing of the suit, the Court—

(*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(*b*) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(*2*) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(*3*) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.".

Amendment of Order XI.

61. In the First Schedule, in Order XI,—

(*i*) in rule 6, for the words "or on any other ground", the words "or on the ground of privilege or any other ground" shall be substituted;

(*ii*) in rule 15, after the words "in whose pleadings or affidavits reference is made to any document,", the words "or who has entered any document in any list annexed to his pleadings," shall be inserted;

(*iii*) in rule 19, in sub-rule (*2*), the words "unless the document relates to matters of State" shall be inserted at the end;

(*iv*) rule 21 shall be re-numbered as sub-rule (*1*) of that rule, and,—

(*a*) in sub-rule (*1*) as so re-numbered, for the words "an order may be made accordingly", the words "an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard" shall be substituted;

(b) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where an order is made under sub-rule (*1*) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.".

62. In the First Schedule, in Order XII,— Amendment of Order XII.

(*i*) in rule 2, for the words "to admit any document", the words "to admit, within fifteen days from the date of service of the notice any document," shall be substituted;

(*ii*) after rule 2, the following rule shall be inserted, namely:—

"2A. (*1*) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability: Document to be deemed to be admitted if not denied after service of notice to admit documents.

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(*2*) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.";

(*iii*) for rule 6, the following rule shall be substituted, namely:—

"6. (*1*) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. Judgment on admissions.

(*2*) Whenever a judgment is pronounced under sub-rule (*1*), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.".

63. In the First Schedule, in Order XIII,— Amendment of Order XIII.

(*i*) in rule 1,—

(*a*) in the marginal heading, for the words "at first hearing", the words "at or before the settlement of issues" shall be substituted;

(*b*) in sub-rule (*1*), for the words "at the first hearing of the suit", the words "at or before the settlement of issues" shall be substituted;

(*ii*) rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Nothing in sub-rule (*1*) shall apply to documents,—

(*a*) produced for the cross-examination of the witnesses of the other party, or

(*b*) handed over to a witness merely to refresh his memory.";

(*iii*) in rule 9, in sub-rule (*1*), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(*a*) delivers to the proper officer for being substituted for the original,—

(*i*) in the case of a party to the suit, a certified copy, and

(*ii*) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (*2*) of rule 17 of Order VII, and

(*b*) undertakes to produce the original, if required to do so:".

Amendment of Order XIV.

64. In the First Schedule, in Order XIV,—

(*i*) in rule 1, in sub-rule (5), for the words "after such examination of the parties as may appear necessary", the words and figures "after examination under rule 2 of Order X and after hearing the parties or their pleaders" shall be substituted;

(*ii*) for rule 2, the following rule shall be substituted, namely:—

Court to pronounce judgment on all issues.

"2. (*1*) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (*2*), pronounce judgment on all issues.

(*2*) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(*a*) the jurisdiction of the Court, or

(*b*) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.".

Amendment of Order XV.

65. In the First Schedule, in Order XV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.".

66. In the First Schedule, in Order XVI,—

Amendment of Order XVI.

(*i*) for rule 1, the following rule shall be substituted, namely:—

List of witnesses and summons to witnesses.

"1. (*1*) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(*2*) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(*3*) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (*1*), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(*4*) Subject to the provisions of sub-rule (*2*), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.";

(*ii*) for rule 1A, the following rule shall be substituted, namely:—

Production of witnesses without summons.

"1A. Subject to the provisions of sub-rule (*3*) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.";

(*iii*) in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

Expenses to be dirctly paid to witnesses.

"(*4*) Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (*1*) shall be paid to the witness by the party or his agent.";

(*iv*) after rule 7, the following rule shall be inserted, namely:—

Summons given to party for service.

"7A. (*1*) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(*2*) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.";

(*v*) in rule 8, for the words, "under this Order," the words, figure and letter "under this Order, not being a summons delivered to a party for service under rule 7A," shall be substituted;

(*vi*) in rule 10, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) Where a person, to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(*a*) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(*b*) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.";

(*vii*) rule 12 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Notwithstanding that the Court has not issued a proclamation under sub-rule (*2*) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (*3*) of that rule, the Court may impose fine under sub-rule (*1*) of this rule after giving notice to such person to show cause why the fine should not be imposed.";

(*viii*) in rule 14, for the words "to examine any person other than a party to the suit", the words "to examine any person, including a party to the suit," shall be substituted;

(*ix*) in rule 19, in clause (*b*), for the word "fifty", the words "one hundred", and for the words "two hundred miles", the words "five hundred kilometres" shall be substituted;

(*x*) to rule 19, the following proviso shall be added, namely:—

"Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.".

Insertion of new Order XVIA.

67. In the First Schedule, after Order XVI, the following Order shall be inserted, namely:—

'ORDER XVIA

ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Definitions.

1. In this Order,—

(*a*) "detained" includes detained under any law providing for preventive detention;

(*b*) "prison" includes—

(*i*) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(*ii*) any reformatory, borstal institution or other institution of a like nature.

Power to require attendance of prisoners to give evidence.

2. Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometres, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

Expenses to be paid into Court.

3. (*1*) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(*2*) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made by the High Court in that behalf.

Power of State Government to exclude certain persons from the operation of rule 2.

4. (*1*) The State Government may, at any time, having regard to the matters specified in sub-rule (*2*), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(c) the public interest, generally.

Officer in charge of prison to abstain from carrying out order in certain cases.

5. Where the person in respect of whom an order is made under rule 2—

(a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under rule 4 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Prisoner to be brought to Court in custody.

6. In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Power to issue commission for examination of witness in prison.

7. (1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far as may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.'.

Amendment of Order XVII.

68. In the First Schedule, in Order XVII,—

(*i*) in rule 1, for the proviso to sub-rule (2), the following proviso shall be substituted, namely:—

"Provided that,—

(*a*) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(*b*) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(*c*) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(*d*) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(*e*) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.";

(*ii*) in rule 2, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.";

(*iii*) in rule 3, for the words "the Court may, notwithstanding such default, proceed to decide the suit forthwith.", the following shall be substituted, namely:—

"the Court may, notwithstanding such default,—

(*a*) if the parties are present, proceed to decide the suit forthwith; or

(*b*) if the parties are, or any of them is, absent, proceed under rule 2.".

69. In the First Schedule, in Order XVIII,—

(*i*) in rule 2, after sub-rule (3), the following sub-rule shall be inserted, namely:— Amendment of Order XVIII.

"(*4*) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.";

(*ii*) after rule 3, the following rule shall be inserted, namely:—

Party to appear before other witnesses.

"3A. Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

How evidence shall be taken in appealable cases.

"5. In cases in which an appeal is allowed, the evidence of each witness shall be,—

(*a*) taken down in the language of the Court,—

(*i*) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(*ii*) from the dictation of the Judge directly on a typewriter; or

(*b*) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.";

(*iv*) in rule 8, after the words "in writing by the Judge,", the words "or from his dictation in the open Court, or recorded mechanically in his presence," shall be inserted;

(*v*) for rule 9, the following rule shall be substituted, namely:—

When evidence may be taken in English.

"9. (*1*) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.";

(*vi*) for rule 13, the following rule shall be substituted, namely:—

Memorandum of evidence in unappealable cases.

"13. In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.";

(*vii*) rule 14 shall be omitted;

(*viii*) after rule 17, the following rule shall be inserted, namely:—

"17A. Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.";

Production of evidence not previously known or which could not be produced despite due diligence.

(*ix*) in rule 18, after the words "any question may arise", the words "and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit" shall be inserted.

70. In the First Schedule, in Order XX,—

Amendment of Order XX.

(*i*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and,—

(*a*) to sub-rule (*1*) as so re-numbered, the following provisos shall be added, namely:—

"Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders:

Provided further that, where a judgment is not pronounced within thirty days from the date on which the hearing of the case was concluded, the Court shall record the reasons for such delay and shall fix a future day on which the judgment will be pronounced and due notice of the day so fixed shall be given to the parties or their pleaders.";

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced.

(*3*) The judgment may be pronounced by dictation in open Court to a shorthand writer if the judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.";

(*ii*) in rule 2, for the words "A Judge may", the words "A Judge shall" shall be substituted;

(*iii*) after rule 5, the following rule shall be inserted, namely:—

Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.

"5A. Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.";

(*iv*) in rule 6, in sub-rule (*1*), for the words "names and descriptions of the parties", the words "names and descriptions of the parties, their registered addresses," shall be substituted;

(*v*) after rule 6, the following rules shall be inserted, namely:—

Last paragraph of judgment to indicate in precise terms the reliefs granted.

"6A. (*1*) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(*2*) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon—

(*a*) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of rule 1 of Order XLI, be treated as the decree; and

(*b*) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose:

Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit.

6B. Where the judgment is type-written, copies of the type-written judgment shall, where it is practicable so to do, be made available to the parties immediately after the pronouncement of the judgment on payment, by the party applying for such copy, of such charges as may be specified in the rules made by the High Court.";

Copies of type-written judgment; when to be made available.

(*vi*) in rule 11, in sub-rule (*1*), for the words "at the time of passing the decree order that", the words "incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that" shall be substituted;

(*vii*) in rule 12, in sub-rule (*1*), for clause (*b*), the following clauses shall be substituted, namely:—

"(*b*) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(*ba*) for the *mesne* profits or directing an inquiry as to such *mesne* profits;";

(*viii*) after rule 12, the following rule shall be inserted, namely:—

"12A. Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.";

Decree for specific performance of contract for the sale or lease of immovable property

* * * *

(*ix*) in rule 19, in sub-rules (*1*) and (*2*), after the word "set-off", wherever it occurs, the words "or counter-claim" shall be inserted.

71. In the First Schedule, after Order XX, the following Order shall be inserted, namely:—

Insertion of new Order XXA.

"ORDER XXA

COSTS

1. Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,—

Provisions relating to certain items.

(*a*) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(*b*) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(*c*) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(*d*) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(*e*) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(*f*) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

Costs to be awarded in accordance with the rules made by High Court.

2. The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.".

* * * *

Amendment of Order XXI.

72. In the First Schedule, in Order XXI,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Modes of paying money under decree.

"1. (*1*) All money, payable under a decree shall be paid as follows, namely:—

(*a*) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(*b*) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(*2*) Where any payment is made under clause (*a*) or clause (c) of sub-rule (*1*), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(*3*) Where money is paid by postal money order or through a bank under clause (*a*) or clause (*b*) of sub-rule (*1*), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(a) the number of the original suit;

(*b*) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(*e*) the name and address of the payer.

(*4*) On any amount paid under clause (*a*) or clause (c) of sub-rule (*1*), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (*2*).

(5) On any amount paid under clause (*b*) of sub-rule (*1*), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.";

(*ii*) in rule 2,—

(*a*) in sub-rule (*1*), for the words "or the decree is otherwise adjusted", the words "or a decree of any kind is otherwise adjusted" shall be substituted;

(*b*) in sub-rule (*2*), after the words "the judgment-debtor", the words "or any person who has become surety for the judgment-debtor" shall be inserted;

(c) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*2A*) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

(*a*) the payment is made in the manner, provided in rule 1; or

(*b*) the payment or adjustment is proved by documentary evidence; or

(*c*) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (*2*) of rule 1, or before the Court.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

"5. Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction."; **Mode of transfer.**

(*iv*) in rule 11, in sub-rule (*2*), in clause (*j*), for sub-clause (*ii*), the following sub-clause shall be substituted, namely:—

"(*ii*) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;";

(*v*) after rule 11, the following rule shall be inserted, namely:—

"11A. Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for."; **Application for arrest to state grounds.**

(*vi*) in rule 16, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property,

which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.";

(*vii*) in rule 17,—

(*a*) in sub-rule (*1*), for the words "the Court may reject the application, or may allow", the words "the Court shall allow" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (*g*) and (*h*) of sub-rule (*2*) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.";

(*viii*) in rule 22, in sub-rule (*1*),—

(*a*) for the words "one year", wherever they occur, the words "two years" shall be substituted;

(*b*) in clause (*b*), the word "or" shall be inserted at the end;

(*c*) after clause (*b*), the following clause shall be inserted, namely:—

"(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent.";

(*ix*) after rule 22, the following rule shall be inserted, namely:—

Sale not to be set aside on the death of the judgment debtor before the sale but after the service of the proclamation of sale.

"22A. Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.";

(*x*) in rule 24, for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.";

(*xi*) in rule 26, in sub-rule (*3*), for the words "the Court may require", the words "the Court shall require" shall be substituted;

(*xii*) in rule 29,—

(*a*) after the words "a decree of such Court", the words "or of a decree which is being executed by such Court" shall be inserted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.";

(*xiii*) in rule 31, in sub-rules (*2*) and (*3*), for the words "six months", wherever they occur, the words "three months" shall be substituted;

(*xiv*) in rule 32, in sub-rules (*3*) and (*4*), for the words "one year", wherever they occur, the words "six months" shall be substituted;

(*xv*) in rule 34, for sub-rule (*6*), the following sub-rule shall be substituted, namely:—

"(*6*) (*a*) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(*b*) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(*c*) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.";

(*xvi*) rule 41 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, in clause (*b*), for the words "in the case of a corporation", the words "where the judgment-debtor is a corporation" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (*1*), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(*3*) In case of disobedience of any order made under sub-rule (*2*), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.";

(*xvii*) after rule 43, the following rule shall be inserted, namely:—

Custody of movable property.

'43A. (*1*) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(*2*) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(*a*) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(*b*) such liability may be enforced—

(*i*) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(*ii*) at the instance of the judgment-debtor or such other person, on an application in execution; and

(*c*) any order determining such liability shall be appealable as a decree.';

(*xviii*) after rule 46, the following rules shall be inserted, namely:—

Notice to garnishee.

"46A. (*1*) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(*2*) An application under sub-rule (*1*) shall be made on affidavit verifying the facts alleged and stating that, in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(*3*) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution,

Order against garnishee.

46B. Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

Trial of disputed questions.

46C. Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Procedure where debt belongs to third person.

46D. Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Order as regards third person.

46E. After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Payment by garnishee to be valid discharge.

46F. Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

Costs.

46G. The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

Appeals.

46H. An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

Application to negotiable instruments.

46-I. The provisions of rules 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.";

(*xix*) in rule 48,—

(*a*) in sub-rule (*1*), after the words "local authority", the words and figures "or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956," shall be inserted; 1 of 1956.

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.";

(*c*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation*.—In this rule, "appropriate Government" means,—

(*i*) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(*ii*) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.';

(*xx*) after rule 48, the following rule shall be inserted, namely:—

Attachment of salary or allowances of private employees.

"48A. (*1*) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in

one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.";

(*xxi*) in rule 50,—

(*a*) in the proviso to sub-rule (*1*), for the words and figures "section 247 of the Indian Contract Act, 1872", the words and figures "section 30 of the Indian Partnership Act, 1932" shall be substituted;

9 of 1872.
9 of 1932.

(*b*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(5) Nothing in this rule shall apply to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX.";

(*xxii*) in rule 53,—

(*a*) in sub-rule (*1*), for sub-clause (*ii*) of clause (*b*), the following sub-clause shall be substituted, namely:—

"(*ii*) (*a*) the holder of the decree sought to be executed, or

(*b*) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.";

(*b*) in sub-rule (*6*), after the words "in contravention of such order", the words "with knowledge thereof or" shall be inserted;

(*xxiii*) in rule 54,—

(*a*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.";

(*b*) in sub-rule (*2*), the words "and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village," shall be added at the end;

(*xxiv*) for rule 57, the following rule shall be substituted, namely:—

Determination of attachment.

"57. (*1*) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(*2*) If the Court omits to give such direction, the attachment shall be deemed to have ceased.";

(*xxv*) for the sub-heading "*Investigation of claims and objections*" and for rules 58 to 63, the following sub-heading and rules shall be substituted, namely:—

"*Adjudication of claims and objections*

Adjudication of claims to, or objections to attachment of, property.

58. (*1*) Where any claim is preferred to, or any objection is made to, the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(*a*) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(*b*) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(*2*) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(*3*) Upon the determination of the questions referred to in sub-rule (*2*), the Court shall, in accordance with such determination,—

(*a*) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(*b*) disallow the claim or objection; or

(*c*) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(*d*) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (*1*), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Stay of sale.

59. Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(*a*) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(*b*) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.";

(*xxvi*) in rule 66,—

(*a*) in sub-rule (*2*), in clause (*a*), after the words "the property to be sold", the words "or, where a part of the property would be sufficient to satisfy the decree, such part" shall be inserted;

(*b*) to sub-rule (*2*), the following provisos shall be added, namely:—

"Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.";

(*xxvii*) in rule 68,—

(*a*) for the words "thirty days", the words "fifteen days" shall be substituted;

(*b*) for the words "fifteen days", the words "seven days" shall be substituted;

(*xxviii*) in rule 69, in sub-rule (*2*), for the word "seven", the word "thirty" shall be substituted;

(*xxix*) after rule 72, the following rule shall be inserted, namely:—

Mortgagee not to bid at sale without the leave of the Court.

"72A. (*1*) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(*2*) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be—

(*a*) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(*b*) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(*3*) In other respects, the provisions of sub-rules (*2*) and (*3*) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.";

(*xxx*) in rule 89, in sub-rule (*1*), for the words "any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale", the words "any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person," shall be substituted;

(*xxxi*) for rule 90, the following rule shall be substituted, namely:—

Application to set aside sale on ground of irregularity or fraud.

"90. (*1*) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(*2*) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(*3*) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.";

(*xxxii*) in rule 92,—

(*a*) to sub-rule (*1*), the following proviso shall be added, namely:—

"Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.";

(*b*) in sub-rule (*2*), for the words "the Court shall make an order setting aside the sale", the following shall be substituted, namely:—

"or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale";

(*c*) after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(*5*) If the suit referred to in sub-rule (*4*) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.";

(*xxxiii*) in rule 97, for sub-rule (*2*), the following sub-rule shall be substituted, namely:—

"(*2*) Where any application is made under sub-rule (*1*), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.";

(*xxxiv*) for rules 98 to 103, the following rules shall be substituted, namely:—

Orders after adjudication.

'98. (*1*) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (*2*),—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

(*2*) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at

his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Dispossession by decree-holder or purchaser.

99. (*1*) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(*2*) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order to be passed upon application Complaining of dispossession.

100. Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

Question to be determined.

101. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Rules not applicable to transferee *pendente lite*.

102. Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, "transfer" includes a transfer by operation of law.

Orders to be treated as decrees

103. Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.';

(*xxxv*) after rule 103, the following rules shall be inserted, namely:—

"104. Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property. Order under rule 101 or rule 103 to be subject to the result of pending suit.

105. (*1*) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application. Hearing of application.

(*2*) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(*3*) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (*1*) includes a claim or objection made under rule 58.

106. (*1*) The applicant, against whom an order is made under sub-rule (*2*) of rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (*3*) of that rule or under sub-rule (*1*) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application. Setting aside orders passed *ex parte*, etc.

(*2*) No order shall be made on an application under sub-rule (*1*) unless notice of the application has been served on the other party.

(*3*) An application under sub-rule (*1*) shall be made within thirty days from the date of the order, or where, in the case of an *ex parte* order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.".

73. In the First Schedule, in Order XXII,— Amendment of Order XXII.

(*i*) in rule 4, after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—

(*a*) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963, and the suit has, in consequence, abated, and

36 of 1963.

(*b*) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963, for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

36 of 1963.

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.";

(*ii*) after rule 4, the following rule shall be inserted, namely:—

Procedure where there is no legal representative.

"4A. (*1*) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(*2*) Before making an order under this rule, the Court—

(*a*) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(*b*) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.";

(*iii*) to rule 5, the following proviso shall be added, namely:—

"Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.";

(*iv*) in rule 9, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.";

(*v*) after rule 10, the following rule shall be inserted, namely:—

"10A. Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.". Duty of pleader to communicate to Court death of a party.

* * * * *

74. In the First Schedule, in Order XXIII,— Amendment of Order XXIII.

(*i*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Withdrawal of suit or abandonment of part of claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(*2*) An application for leave under the proviso to sub-rule (*1*) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(*3*) Where the Court is satisfied,—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(*4*) Where the plaintiff—

(*a*) abandons any suit or part of claim under sub-rule (*1*), or

(*b*) withdraws from a suit or part of a claim without the permission referred to in sub-rule (*3*),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(*5*) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (*1*), or to withdraw, under sub-rule (*3*), any suit or part of a claim, without the consent of the other plaintiffs.";

(ii) after rule 1, the following rule shall be inserted, namely:—

When transposition of defendants as plaintiffs may be permitted.

"1A. Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.";

(iii) in rule 3,—

(a) after the words "lawful agreement or compromise", the words "in writing and signed by the parties" shall be inserted;

(b) for the words "so far as it relates to the suit", the words "so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit" shall be substituted;

(iv) to rule 3, the following proviso shall be added, namely:—

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.";

(v) in rule 3, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1972, shall not be deemed to be lawful within the meaning of this rule."; 9 of 1872.

(vi) after rule 3, the following rules shall be inserted, namely:—

Bar to suit.

'3A. No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

No agreement or compromise to be entered in a representative suit without leave of Court.

3B. (*1*) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings: and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(*2*) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.—In this rule, "representative suit" means,—

(a) a suit under section 91 or section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.'.

Amendment of Order XXVI.

75. In the First Schedule, in Order XXVI,—

(i) to rule 1, the following proviso and *Explanation* shall be added, namely:—

"Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation.—The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.";

(ii) in rule 4,—

(a) in sub-rule (*1*), for the words "for the examination of", the words "for the examination on interrogatories or otherwise of—" shall be substituted;

(b) to sub-rule (*1*), the following provisos shall be added, namely:—

"Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.";

(iii) in rule 7, for the brackets and words "(subject to the provisions of the next following rule)", the brackets, words and figure "(subject to the provisions of rule 8)" shall be substituted;

(iv) after rule 10, the following heading and rules shall be inserted, namely:—

"Commissions for scientific investigation, performance of ministerial act and sale of movable property

Commission for scientific investigation.

10A. (*1*) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for performance of a ministerial act.

10B. (1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for the sale of movable property.

10C. (1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.";

(v) after rule 16, the following rule shall be inserted, namely:—

Questions objected to before the Commissioner.

"16A. (1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.";

(vi) to sub-rule (1) of rule 17, the following proviso shall be added, namely:—

"Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but

such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.";

(*vii*) after rule 18, the following rules shall be inserted, namely:—

"18A. The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order. Application of Order to execution proceedings.

18B. The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date."; Court to fix a time for return of commission.

(*viii*) in rule 22, for the figures and word "16, 17 and 18", the words, brackets, figures and letters "sub-rule (*1*) of rule 16A, 17, 18 and 18B" shall be substituted.

76. In the First Schedule, in Order XXVII,— Amendment of Order XXVII.

(*i*) in rule 5, the words "but the time * * * so extended shall not exceed two months in the aggregate" shall be inserted at the end:

(*ii*) after rule 5, the following rules shall be inserted, namely:—

"5A. Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit. Government to be joined as a party in a suit against a public officer.

5B. (*1*) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.

(*2*) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(*3*) The power conferred under sub-rule (*2*) is in addition to any other power of the Court to adjourn proceedings.".

Amendment of Order XXVIIA.

77. In the First Schedule, in Order XXVIIA,—

(*i*) in the heading, after the words "INTERPRETATION OF THE CONSTITUTION", the words "OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

Procedure in suits involving validity of any statutory instrument.

"1A. In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice—

(*a*) to the Government Pleader, if the question concerns the Government, or

(*b*) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.";

(*iii*) after rule 2, the following rule shall be inserted, namely:—

Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument.

"2A. The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government Pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.";

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Costs.

"3. Where, under rule 2 or rule 2A, the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.";

(*v*) after rule 4, the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this Order, "statutory instrument" means a rule, notification, bye-law, order, scheme or form made as specified under any enactment.'.

78. In the First Schedule, in Order XXX,— Amendment of Order XXX.

(*i*) in rule 2, for the proviso below sub-rule (*3*), the following proviso shall be substituted, namely:—

"Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (*1*) shall be entered in the decree.";

(*ii*) for rule 8, the following rule shall be substituted, namely:—

"8. (*1*) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time. Appearance under protest.

(*2*) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(*3*) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(*4*) If the Court, however, holds that such person was not a partner of the firm and was not liable as such, that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit: but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.";

(*iii*) for rule 10, the following rule shall be substituted, namely:—

"10. Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.". Suit against person carrying on business in name other than his own.

79. In the First Schedule, in Order XXXII,— Amendment of Order XXXII.

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875, where the suit relates to any of the matters mentioned in clauses (*a*) and (*b*) of section 2 of that Act or to any other matter.';

9 of 1875.

(ii) after rule 2, the following rule shall be inserted, namely:—

Security to be furnished by next friend when so ordered.

"2A. (1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.";

(iii) in rule 3,—

(a) in sub-rule (4),—

(i) the words "to the minor and" shall be omitted;

(ii) for the words "upon notice to the father or other natural guardian", the words "upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian" shall be substituted;

(iii) for the words "no father or other natural guardian", the words "no father, mother or other natural guardian" shall be substituted;

(b) after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.";

(iv) after rule 3, the following rule shall be inserted, namely:—

Decree against minor not to be set aside unless prejudice has been caused to his interests.

"3A. (1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.";

(v) in rule 4,—

(a) in sub-rule (3), after the word "consent", the words "in writing" shall be inserted;

(*b*) in sub-rule (4), after the words "any fund in Court in which the minor is interested", the words "or out of the property of the minor" shall be inserted;

(*vi*) in rule 6, to sub-rule (*2*), the following proviso shall be added, namely:—

"Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian—

(*a*) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(*b*) is the parent of the minor.";

(*vii*) in rule 7, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) An application for leave under sub-rule (*1*) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.";

(*viii*) for rule 15, the following rule shall be substituted, namely:—

"15. Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.";

Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.

(*ix*) for rule 16, the following rule shall be substituted, namely:—

"16. (*1*) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

Savings.

(*2*) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.".

Insertion of new Order XXXIIA.

80. In the First Schedule, after Order XXXII, the following Order shall be inserted, namely:—

'ORDER XXXIIA

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

Application of the Order.

1. (*1*) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(*2*) In particular, and without prejudice to the generality of the provisions of sub-rule (*1*), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:—

(*a*) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(*b*) a suit or proceeding for a declaration as to the legitimacy of any person;

(*c*) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(*d*) a suit or proceeding for maintenance;

(*e*) a suit or proceeding as to the validity or effect of an adoption;

(*f*) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(*g*) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(*3*) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Proceedings to be held *in camera*.

2. In every suit or proceeding to which this Order applies, the proceedings may be held *in camera* if the Court so desires and shall be so held if either party so desires.

Duty of Court to make efforts for settlement.

3. (*1*) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(*2*) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(*3*) The power conferred by sub-rule (*2*) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

4. In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 of this Order. Assistance of welfare expert.

5. In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant. Duty to inquire into facts.

6. For the purposes of this Order, each of the following shall be treated as constituting a family, namely:— "Family" —meaning of.

(*a*) (*i*) a man and his wife living together,

(*ii*) any child or children, being issue of theirs; or of such man or such wife,

(*iii*) any child or children being maintained by such man and wife;

(*b*) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(*c*) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(*d*) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(*e*) any combination of one or more of the groups specified in clause (*a*), clause (*b*), clause (*c*) or clause (*d*) of this rule.

Explanation.—For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.'.

81. In the First Schedule, in Order XXXIII,— Amendment of Order XXXIII.

(*i*) for the heading, the following shall be substituted, namely:—

"SUITS BY INDIGENT PERSONS";

(*ii*) in the Order, for the word "pauper", wherever it occurs, the words "indigent person", shall, with such grammatical variations or cognate expressions as may be necessary, be substituted;

(*iii*) in rule 1, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—A person is an indigent person,—

(*a*) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II—Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.—Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.";

(*iv*) after rule 1, the following rule shall be inserted, namely:—

Inquiry into the means of an indigent person.

"1A. Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.";

(*v*) to rule 3, the following proviso shall be added, namely:—

"Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.";

(*vi*) in rule 5,—

(*a*) to clause (*c*), the following proviso shall be added, namely:—

"Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.";

(*b*) in clause (*c*), the word "or" shall be inserted at the end;

(c) after clause (*e*), the following clauses shall be inserted, namely:—

"(*f*) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(*g*) where any other person has entered into an agreement with him to finance the litigation.";

(*vii*) in rule 7,—

(*a*) in sub-rule (*1*), for the words "a memorandum of the substance of their evidence", the words "a full record of their evidence" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The examination of the witnesses under sub-rule (*1*) shall be confined to the matters specified in clause (*b*),

clause (*c*) and clause (*e*) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.".

(c) in sub-rule (2), for the words "as herein provided", the words and figure "under rule 6 or under this rule" shall be substituted;

(*viii*) in rule 8, for the brackets and words "(other than fees payable for service of process)", the words "or fees payable for service of process" shall be substituted;

(*ix*) after rule 9, the following rule shall be inserted, namely:—

"9A. (*1*) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him. **Court to assign a pleader to an unrepresented indigent person.**

(*2*) The High Court may, with the previous approval of the State Government, make rules providing for—

(*a*) the mode of selecting pleaders to be assigned under sub-rule (*1*);

(*b*) the facilities to be provided to such pleaders by the Court;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (*1*).";

(*x*) in rule 11, in clause (*a*), after the words "such service", the words "or to present copies of the plaint or concise statement" shall be inserted;

(*xi*) in rule 15, for the words "provided that he first pays", the words "provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,";

(*xii*) after rule 15, the following rule shall be inserted, namely:—

"15A. Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in sub-rule (2) of rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented."; **Grant of time for payment of Court-fee.**

(*xiii*) after rule 16, the following rule shall be inserted, namely:—

"17. Any defendant, who desires to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.". **Defence by an indigent person.**

Amendment of Order XXXIV.

82. In the First Schedule, in Order XXXIV,—

* * * *

(*i*) in rule 6, for the words "the last preceding rule", the word and figure "rule 5" shall be substituted;

* * * *

(*ii*) in rule 8A,—

(*a*) for the words "the last preceding rule", the word and figure "rule 8" shall be substituted;

(*b*) for the words "on application by him", the words "on application by him in execution" shall be substituted;

* * * *

(*iii*) to rule 10, the following proviso shall be added, namely:—

"Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.";

(*iv*) after rule 10, the following rule shall be inserted, namely:—

Power of Court to direct mortgagee to pay mesne profits.

"10A. Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.";

(*v*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.".

Amendment of Order XXXVI.

83. In the First Schedule, in Order XXXVI,—

(*i*) in rule 3,—

(*a*) in sub-rule (*1*), after the words "may be filed", the words "with an application" shall be inserted;

(*b*) in sub-rule (*2*),—

(*i*) for the words "The agreement", the words "The application" shall be substituted;

(*ii*) for the words "it was presented", the words "the application was presented" shall be substituted;

(*ii*) after rule 5, the following rule shall be inserted, namely:—

"6. No appeal shall lie from a decree passed under rule 5.". No appeal from a decree passed under rule 5.

84. In the First Schedule, in Order XXXVII,— Amendment of Order XXXVII.

(*i*) in the heading, the words "ON NEGOTIABLE INSTRUMENTS" shall be omitted;

(*ii*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) This Order shall apply to the following Courts, namely:— Courts and classes of suits to which the Order is to apply.

(*a*) High Courts, City Civil Courts and Courts of Small Causes; and

(*b*) other Courts:

Provided that in respect of the * Courts referred to in clause (*b*), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(*2*) Subject to the provisions of sub-rule (*1*), the Order applies to the following classes of suits, namely:—

(*a*) suits upon bills of exchange, hundies and promissory notes;

(*b*) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(*i*) on a written contract; or

(*ii*) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(*iii*) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.";

(*iii*) for rule 2, the following rule shall be substituted, namely:—

'2. (*1*) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,— Institution of summary suits.

(*a*) a specific averment to the effect that the suit is filed under this Order;

(*b*) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(*c*) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

"(Under Order XXXVII of the Code of Civil Procedure, 1908).";

(*2*) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(*3*) The defendant shall not defend the suit referred to in sub-rule (*1*) unless he enters an appearance*** and in default of his entering an appearance*** the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.';

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Procedure for the appearance of defendant.

"3. (*1*) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(*2*) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(*3*) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(*4*) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(*5*) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him

unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Povided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.".

85. In the First Schedule, in Order XXXVIII,— Amendment of Order XXXVIII.

* * * *

(i) in rule 5, after sub-rule (3), the following sub-rule shall be inserted, namely:—

"(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.";

(ii) for rule 8, the following rule shall be substituted, namely:—

"8. Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money."; Adjudication of claim to property attached before judgment.

(iii) after rule 11, the following rule shall be inserted, namely:—

"11A. (1) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11. Provisions applicable to attachment.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by rea-

son of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.".

Amendment of Order XXXIX.

86. In the First Schedule, in Order XXXIX,—

(*i*) in rule 1,—

(*a*) in clause (*b*), for the word "defraud", the word "defrauding" shall be substituted;

(*b*) after clause (*b*), the following clause shall be inserted, namely:—

"(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,";

(*c*) after the words "sale, removal or disposition of the property", the words "or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit" shall be inserted;

(*ii*) in rule 2, sub-rules (*3*) and (*4*) shall be omitted;

(*iii*) after rule 2, the following rule shall be inserted, namely:—

Consequence of disobedience or breach of injunction.

"2A. (*1*) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(*2*) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.";

(*iv*) to rule 3, the following proviso shall be added, namely:—

"Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(*a*) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(*i*) a copy of the affidavit filed in support of the application;

(*ii*) a copy of the plaint; and

(*iii*) copies of documents on which the applicant relies, and

(*b*) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.";

(*v*) after rule 3, the following rule shall be inserted, namely:—

"3A. Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.";

Court to dispose of application for injunction within thirty days.

(*vi*) to rule 4, the following proviso shall be added, namely:—

"Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.";

(*vii*) in rule 8,—

(*a*) in sub-rule (*1*), the words "after notice to the defendant" shall be omitted;

(*b*) in sub-rule (*2*), the words "after notice to the plaintiff" shall be omitted;

(c) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.".

Amendment of Order XLI.

87. In the First Schedule, in Order XLI,—

(*i*) rule 1,—

(a) to sub-rule (*1*), the following proviso shall be added, namely:—

"Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any

decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.";

(*b*) after sub-rule (*2*), the following sub-rules shall be inserted, namely:—

"(*3*) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.".

(*ii*) after rule 3, the following rule shall be inserted, namely:—

Application for condonation of delay.

"3A. (*1*) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(*2*) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(*3*) Where an application has been made under sub-rule (*1*), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.";

(*iii*) in rule 5,—

(*a*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.";

(*b*) in sub-rule (*4*), for the words "Notwithstanding anything contained in sub-rule (*3*),", the words "Subject to the provision of sub-rule (*3*)," shall be substituted;

(*iv*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*5*) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish

the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.";

(*v*) in rule 11, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (*1*), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.";

(*va*) after rule 11, the following rule shall be inserted, namely:—

"11A. Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.";

Time within which hearing under rule 11 should be concluded.

* * * *

(*vi*) in rule 14, after sub-rule (*2*), the following sub-rules shall be inserted, namely:—

"(*3*) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(*4*) Notwithstanding anything to the contrary contained in sub-rule (*1*), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(*5*) Nothing in sub-rule (*4*) shall bar the respondent referred to in the appeal from defending it.";

(*vii*) in rule 17, in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.";

(*viii*) in rule 18, after the words "defray the cost of serving the notice", the words "or, if the notice is returned unserved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice," shall be inserted;

(*ix*) rule 20 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.";

(*x*) in rule 22,—

(*a*) in sub-rule (*1*), for the words "on any of the grounds decided against him in the Court below, but take any cross-objection", the words "but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection" shall be substituted;

(*b*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.";

(*xi*) after rule 23, the following rule shall be inserted, namely:—

Remand in other cases.

"23A. Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.";

(*xii*) in rule 25, after the words "and the reasons therefor", the words "within such time as may be fixed by the Appellate Court or extended by it from time to time" shall be inserted;

(*xiii*) after rule 26, the following rule shall be inserted, namely:—

Order of remand to mention date of next hearing.

"26A. Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.";

(*xiv*) in rule 27, in sub-rule (*1*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or";

(*xv*) rule 30 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.";

(*xvi*) in rule 33, after the words "may not have filed any appeal or objection", the words "and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees" shall be inserted.

Amendment of Order XLII.

88. In the First Schedule, in Order XLII, after rule 1, the following rule shall be inserted, namely:—

Power of Court to direct that the appeal be heard on the question formulated by it.

"2. At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

Application of rule 14 of Order XLI.

3. Reference in sub-rule (*4*) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.".

Amendment of Order XLIII.

89. In the First Schedule, in Order XLIII,—

(*i*) in rule 1,—

(*a*) in clause (*a*), the words, figures and letter "except where the procedure specified in rule 10A of Order VII has been followed" shall be inserted at the end;

(*b*) clauses (*b*), (*e*), (*g*), (*h*), (*m*), (*o*) and (*v*) shall be omitted;

(*c*) after clause (*j*), the following clause shall be inserted, namely:—

"(*ja*) an order rejecting an application made under sub-rule (*1*) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (*1*) of rule 105 of that Order is appealable.";

(d) after clause (*n*), the following clause shall be inserted, namely:—

"(*na*) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;";

(e) in clause (*r*), after the word and figure "rule 2", the word, figure and letter ", rule 2A" shall be inserted;

(f) in clause (*u*), after the figures "23", the words, figures and letter "or rule 23A" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

Right to challenge non-appealable orders in appeal against decrees.

"1A. (*1*) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(*2*) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.".

Amendment of Order XLIV.

90. In the First Schedule, in Order XLIV,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"APPEALS BY INDIGENT PERSONS";

(*ii*) in rule 1,—

(*a*) in the marginal heading, for the words "as pauper", the words "as an indigent person" shall be substituted;

(*b*) in sub-rule (*1*), for the word "pauper" or "paupers", the words "indigent person" or "indigent persons" shall, as the case may be, be substituted;

(*c*) sub-rule (*2*) shall be omitted;

(*iii*) for rule 2, the following rules shall be substituted, namely:—

Grant of time for payment of Court-fee.

"2. Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Inquiry as to whether applicant is an indigent person.

3. (1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the

decree appealed from; but if the Government Pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that Court.

(*2*) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.".

Amendment of Order XLV.

91. In the First Schedule, in Order XLV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*), as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Every petition under sub-rule (*1*) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (*1*).".

Amendment of Order XLVII.

92. In the First Schedule, in Order XLVII,—

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.";

(*ii*) in rule 7, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.".

CHAPTER IV

AMENDMENT OF THE FORMS

Amendment of Appendix A.

93. In the First Schedule, in Appendix A, under the heading "(3) PLAINTS",—

(*i*) in Form No. 37, for paragraph 2, the following paragraph shall be substituted, namely:—

"*2. The plaintiff has obtained the leave of the Court for the institution of this suit.

*Not applicable where suit is instituted by the Advocate-General.";

(ii) in Form No. 45, in sub-paragraph (2) of paragraph 6, for the words "a decree for the balance", the words "an order for the balance" shall be substituted;

(iii) in Form No. 46, in paragraph 6, the words "together with mesne profits" shall be added at the end.

Amendment of Appendix B.

94. In the First Schedule, in Appendix B,—

(i) in Form No. 2, for the words "and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence", the words "and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counter-claim, you shall enter such documents in a list to be annexed to the written statement" shall be substituted;

(ii) for Form No. 4, the following Form shall be substituted, namely:—

"No. 4

SUMMONS IN A SUMMARY SUIT

(Order XXXVII, rule 2)

(*Title*)

To

[*Name, description and place of residence*]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. and interest, you are hereby summoned to cause an appearance to be entered for you, within ten days from the service hereof, in default whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs for costs, together with such interest, if any, as the Court may order.

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.

Given under my hand and the seal of the Court, this day of 19 .

Judge".

(*iii*) after Form No. 4, the following Form shall be inserted, namely:—

"No. 4A

SUMMONS FOR JUDGMENT IN A SUMMARY SUIT

(Order XXXVII, rule 3)

(*Title*)

In the Court, at Suit No. of 19 .

X Y Z *Plaintiff.*

Versus

A B C *Defendant.*

Upon reading the affidavit of the plaintiff the Court makes the following order, namely:—

Let all parties concerned attend the Court or Judge, as the case may be, on the day of 19 , at o'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs. and for interest and costs.

Dated the day of 19 .".

* * * * *

95. In the First Schedule, in Appendix E,— Amendment of Appendix E.

(*i*) in Form No. 7, after the words "by assignment", the words "or without assignment" shall be inserted;

(*ii*) in Form No. 14, the word "annas" shall be omitted;

(*iii*) after Form No. 16, the following Form shall be inserted, namely:—

"No. 16A

AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGMENT-DEBTOR

[Order XXI, rule 41(2)]

In the Court of

A.B...... *Decree-holder,*

Vs.

C..... *Judgment-debtor*

I of

oath

state on——————as follows:—

solemn affirmation

1. My full name is————————

(Block capitals)

2. I live at

*3. I am married

single

widower (widow)

divorced

4. The following persons are dependent upon me:—

5. My employment, trade or profession is that of carried on by me at

I am a director of the following companies:—

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:—

(a) From my employment, trade or profession Rs.

(b) From other sources Rs.

*7. (a) I own the house in which I live; its value is Rs.

I pay as outgoings by way of rates, mortgage, interest etc., the annual sum of Rs.

(b) I pay as rent the annual sum of Rs.

8. I possess the following:—

(a) Banking accounts;
(b) Stocks and shares;
(c) Life and endowment policies;
(d) House property;
(e) Other property;
(f) Other securities;

} Give particulars.

9. The following debts are due to me:—

(give particulars)

(a) From of

Rs.

(b) From of

Rs. (etc.)

Sworn before me, etc.";

(*iv*) in Form No. 24, after the first paragraph, the following paragraph shall be inserted, namely:—

"It is also ordered that you should attend Court on the

day of 19 , to take notice of the date fixed for settling the terms of the proclamation of sale.";

*Strike off the words which are not applicable.

(*v*) in Form No. 29, in the Schedule of Property, after the existing columns, the following columns shall be added, namely:—

"The value of the property as stated by the decree-holder.	The value of the property as stated by the judgment-debtor.".

Amendment of Appendix H.

96. In the First Schedule, in Appendix H,—

(*i*) after Form No. 2, the following Form shall be inserted, namely:—

"No. 2A

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT

(Order XVI, rule 1)

Name of the party which proposes to call the witness	Name and address of the witness	Remarks";

(*ii*) for Form No. 11, the following Forms shall be substituted, namely:—

"No. 11

NOTICE TO CERTIFICATED, NATURAL, OR, *de facto* GUARDIAN

(Order XXXII, rule 3)

(*Title*)

To

(*Certificated/Natural/*de facto *Guardian*)

WHEREAS an application has been presented on the part of the plaintiff*/on behalf of the minor defendant* in the above suit for the appointment of a guardian for the suit for the minor defendant....., you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 11A

NOTICE TO MINOR DEFENDANT

(Order XXXII, rule 3)

(*Title*)

To

Minor Defendant.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of *as guardian for the

*Strike off the words which are not applicable.

suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the day of 19 , at o'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined *ex parte*.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

CHAPTER V

REPEAL AND SAVINGS

Repeal and savings.

97. (*1*) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(*2*) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (*1*) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,— 10 of 1897.

(a) the amendment made to clause (*2*) of section 2 of the principal Act by section 3 of this Act shall not affect any appeal against the determination of any such question as is referred to in section 47 and every such appeal shall be dealt with as if the said section 3 had not come into force;

(*b*) the provisions of section 20 of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section 7; and every such suit shall be tried as if the said section 8 had not come into force;

(c) the provisions of section 21 of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section 8; and every such suit shall be tried as if the said section 8 had not come into force;

(d) the provisions of section 25 of the principal Act, as substituted by section 12 of this Act, shall not apply to or affect any suit, appeal or other proceeding wherein any report has been made under the provisions of section 25 before the commencement of the said section 11; and every such suit, appeal or other proceeding shall be dealt with as if the said section 11 had not come into force;

(*e*) the provisions of section 34 of the principal Act, as amended by section 13 of this Act, shall not affect the rate at which interest may be allowed on a decree in any suit instituted before the commencement of the said section 13 and interest on a decree passed in such suit shall be ordered in accordance with the provisions of section 34 as they stood before the commencement of the said section 13 as if the said section 13 had not come into force;

(*f*) the provisions of section 35A of the principal Act, as amended by section 14 of this Act, shall not apply to or affect any proceedings for revision, pending immediately before the commencement of the said section 14 and every such proceeding shall be dealt with and disposed of as if the said section 14 had not come into force;

(*g*) the provisions of section 60 of the principal Act, as amended by section 23 of this Act, shall not apply to any attachment made before the commencement of the said section 23;

(*h*) the amendment of section 80 of the principal Act by section 27 of this Act shall not apply to or affect any suit instituted before the commencement of the said section 27; and every such suit shall be dealt with as if section 80 had not been amended by the said section 27;

(*i*) the provisions of section 82 of the principal Act, as amended by section 28 of this Act, shall not apply to or affect any decree passed against the Union of India or a State or, as the case may be, a public officer, before the commencement of the said section 28 or to the execution of any such decree; and every such decree or execution shall be dealt with as if the said section 28 had not come into force;

(*j*) the provisions of section 91 of the principal Act, as amended by section 30 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 30; and every such suit, appeal or proceeding shall be disposed of as if the said section 30 had not come into force;

(*k*) the provisions of section 92 of the principal Act, as amended by section 31 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 31; and every such suit, appeal or proceeding shall be disposed of as if the said section 31 had not come into force;

(*l*) the provisions of section 96 of the principal Act, as amended by section 33 of this Act, shall not apply to or affect any appeal against the decree passed in any suit instituted before the commencement of the said section 33; and every such appeal shall be dealt with as if the said section 33 had not come into force;

(*m*) the provisions of section 100 of the principal Act, as substituted by section 37 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of the said section 37, after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 37 had not come into force;

(*n*) section 100A, as inserted in the principal Act by section 38 of this Act, shall not apply to or affect any appeal against the decision of a single Judge of a High Court under any Letters Patent which had been admitted before the commencement of the said section 38; and every such admitted appeal shall be disposed of as if the said section 38 had not come into force;

(o) the amendment of section 115 of the principal Act by section 43 of this Act shall not apply to or affect any proceeding for revision which had been admitted, after preliminary hearing, before the commencement of the said section 43; and every such proceeding for revision shall be disposed of as if the said section 43 had not come into force;

(*p*) the provisions of section 141 of the principal Act, as amended by section 47 of this Act, shall not apply to or affect any proceeding which is pending immediately before the commencement of the said section 47; and every such proceeding shall be dealt with as if the said section 47 had not come into force:

(*q*) the provisions of rules 31, 32, 48A, 57 to 59, 90 and 97 to 103 of Order XXI of the First Schedule as amended or, as the case may be, substituted or inserted by section 72 of this Act shall not apply to or affect—

(*i*) any attachment subsisting immediately before the commencement of the said section 72, or

(*ii*) any suit instituted before such commencement under rule 63 aforesaid to establish right to attached property or under rule 103 aforesaid to establish possession, or

(*iii*) any proceeding to set aside the sale of any immovable property,

and every such attachment, suit or proceeding shall be continued as if the said section 72 had not come into force;

(*r*) the provisions of rule 4 of Order XXII of the First Schedule, as substituted by section 73 of this Act, shall not apply to any order of abatement made before the commencement of the said section 73;

(*s*) the amendment, as well as substitution, made in Order XXIII of the First Schedule by section 74 of this Act shall not apply to any suit or proceeding pending before the commencement of the said section 74;

(*t*) the provisions of rules 5A and 5B of Order XXVII, as inserted by section 76 of this Act, shall not apply to any suit, pending immediately before the commencement of the said section 76 against the Government or any public officer; and every such suit shall be dealt with as if the said section 76 had not come into force;

(*u*) the provisions of rules 1A, 2A and 3 of Order XXVIIA, as inserted or substituted, as the case may be, by section 77 of this Act shall not apply to or affect any suit which is pending before the commencement of the said section 77;

(*v*) rules 2A, 3A and 15 of Order XXXII of the First Schedule, as amended, or as the case may be, substituted by section 79 of this Act, shall not apply to a suit pending at the commencement of the said section 79; and every such suit shall be dealt with and disposed of as if the said section 79 had not come into force;

(*w*) the provisions of Order XXXIII of the First Schedule, as amended by section 81 of this Act, shall not apply to or affect any suit or proceeding pending before the commencement of the said section 81 for permission to sue as a pauper; and every such suit or proceeding shall be dealt with and disposed of as if the said section 81 had not come into force;

(*x*) the provisions of Order XXXVII of the First Schedule, as amended by section 84 of this Act, shall not apply to any suit pending before the commencement of the said section 84; and every such suit shall be dealt with and disposed of as if the said section 84 had not come into force;

(*y*) the provisions of Order XXXIX of the First Schedule, as amended by section 86 of this Act, shall not apply to or affect any injunction subsisting immediately before the commencement of the said section 86; and every such injunction and proceeding for disobedience of such injunction shall be dealt with as if the said section 86 had not come into force;

(*z*) the provisions of Order XLI of the First Schedule, as amended by section 87 of this Act, shall not apply to or affect any appeal pending immediately before the commencement of the said section 87; and every such appeal shall be disposed of as if the said section 87 had not come into force;

(*za*) the provisions of Order XLII of the First Schedule, as amended by section 88 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of the said section 88, after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 88 had not come into force;

(*zb*) the provisions of Order XLIII of the First Schedule, as amended by section 89 of this Act, shall not apply to any appeal against any order pending immediately before the commencement of the said section 89; and every such appeal shall be disposed of as if the said section 89 had not come into force.

CHAPTER VI

AMENDMENT OF THE LIMITATION ACT, 1963

98. In the Limitation Act, 1963, in the Schedule, in the entry in the second column, against article 127, for the words "Thirty days", the words "Sixty days" shall be substituted. Amendment of Schedule of Act 36 of 1963.

APPENDIX I

(*Vide* para 3 of the Report)

Motion in Lok Sabha for reference of the Bill to the Joint Committee

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

(1) Shri R. V. Bade
(2) Shri T. Balakrishniah
(3) Shri Narendra Singh Bisht
(4) Shri Chandrika Prasad
(5) Shri A. M. Chellachami
(6) Shri M. C. Daga
(7) Sardar Mohinder Singh Gill
(8) Shri H. R. Gokhale
(9) Shri Dinesh Joarder
(10) Shri B. R. Kavade
(11) Shri L. D. Kotoki
(12) Shrimati T. Lakshmikanthamma
(13) Shri Madhu Limaye
(14) Shri Debendra Nath Mahata
(15) Shri V. Mayavan
(16) Shri Mohammad Tahir
(17) Shri Surendra Mohanty
(18) Shri Noorul Huda
(19) Shri D. K. Panda
(20) Shri Prabhudas Patel
(21) Shri K. Pradhani
(22) Shri Rajdeo Singh
(23) Shri M. Satyanarayan Rao
(24) Shrimati Savitri Shyam
(25) Shri R. N. Sharma
(26) Shri Satyendra Narayan Sinha
(27) Shri T. Sohan Lal
(28) Shri Sidrameshwar Swamy
(29) Shri R. G. Tiwari
(30) Shri Niti Raj Singh Chaudhary

and 15 members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the Twelfth Session of Fifth Lok Sabha;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(*vide* para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, and resolves that the following 15 members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Sawaisingh Sisodia
2. Shri Sardar Amjad Ali
3. Shri Bipinpal Das
4. Shri D. P. Singh
5. Shri M. P. Shukla
6. Shri Awadheshwar Prasad Sinha
7. Shri Syed Nizam-ud-din
8. Shri V. C. Kesava Rao
9. Shri Nawal Kishore
10. Shri Virendra Kumar Sakhalecha
11. Shri Kanchi Kalyanasundaram
12. Shri Bir Chandra Deb Barman
13. Shri D. Y. Pawar
14. Shri Dwijendralal Sen Gupta
15. Shri Krishnarao Narayan Dhulap".

APPENDIX III

(*Vide* para 8 of the Report)

List of Associations, Organisations, etc. from whom memoranda were received by the Joint Committee

1. Shri K. Chandrasekharan, M.P.
2. Government of Orissa (Law Department), Bhubaneswar.
3. Anti-Lawyers' Association, Kanpur.
4. Shri L. L. Meghanee, Bhavnagar.
5. Shri R. L. Berry, Jullundur City.
6. Shri C. D. Jagadesan, Madras.
7. Chief Justice High Court of Karnataka, Bangalore.
8. High Court of Rajasthan, Jodhpur.
9. Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.
10. Government of Uttar Pradesh, Lucknow.
11. High Court of Judicature, Madras.
12. High Court of Orissa, Cuttack.
13. Shri M. S. Phirangi, Advocate, Dharwar.
14. Shri Gauri Shankar Agarwal, Kashipur (Nainital).
15. Central Government Employees working in Trichy (Railway Department).
16. Shri Ram Bilas Sharma, MLC, Patna.
17. Bar Council of Kerala, Ernakulam.
18. Shri Shambhu Nath Jha, MLC, Patna.
19. Shri R. Thiagarajan, Advocate, Supreme Court, Bangalore.
20. Shri Mr. Achar, Advocate, Bangalore.
21. Shri N. S. Das Bahl, Advocate, Supreme Court, Delhi.
22. Andhra Pradesh High Court Advocates' Association, Hyderabad.
23. Shri M. Prabha, Chairman, Official Language (Legislative) Commission, Kerala, Trivandrum.
24. Legislation and Law Reforms Committee of the Bar Council of Tamil Nadu, Madras.
25. Justice D .M. Chandrashekhar, High Court of Karnataka, Bangalore.
26. Shri K. M. Gnauasundram, Pudukottai H.P.O.
27. Sarvashri S. K. Singh and K. C. Joshi, Lecturers, Kurukshetra University, Kurukshetra (Haryana).
28. Shri K. Raman, Vice-President, Kerala Lawyer's Association, Ernakulam, Cochin.
29. Shri T. L. Viswanatha Iyer, Advocate, Ernakulam, Cochin.

30. Advocates' Association, Bangalore.

31. Shri O. P. Gupta, Advocate, Allahabad.

32. Government of Tamil Nadu, Madras.

33. Bihar State Bar Council, Patna.

34. Shri S. K. Krishnamoorthy, Nevyeli.

35. Shri A. K. Oza, Advocate, Ahmedabad.

36. Bar Council of Maharashtra, Bombay.

37. Goa, Daman, & Diu Advocates' Association, Panaji.

38. Report of the Committee appointed by High Court, Bombay for considering the provisions of the Code of Civil Procedure (Amendment) Bill, 1974.

39. Bezwada Bar Association, Vijayawada.

40. Shri T. S. Ramanathan, Advocate, Tenkasi.

41. Hon'ble Mr. Justice G. Viswanatha Iyer and the Hon'ble Mr. Justice K. K. Narendran, High Court of Kerala, Cochin.

42. Shri Sushil Kumar Roy, Calcutta.

43. Government of Meghalaya, Law Department, Shillong.

44. Shri Manohar Rao Jogirdar, Chairman, Bar Council, Karnataka. State, Bangalore.

45. Shri S. R. Yadav, Upper Division Clerk, Ministry of Finance, New Delhi.

46. Bar Council of Orissa, Cuttack.

47. Bombay Bar Association, Bombay.

48. Shri B. C. Dutt, Advocate, Calcutta.

49. Shri K. Subrahamanyam, Secretary, Popular Hospital Committee, Thiruvilwamala.

50. Shri Herandra Chunder Ghose, Advocate, Acting President, High Court Bar Association, Calcutta.

51. Shri Huska Sumi, Minister of State for Law & Parliamentary Affairs, Government of Nagaland, Kohima.

52. Shri Vishnu Kinkor Goswami, Advocate, Chairman, Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura.

53. Shri Md. Sadullah, Joint Secretary to the Government of Assam, Law Department, Gauhati.

54. High Court Bar Association, Calcutta.

55. Supreme Court Bar Association, New Delhi.

56. Shri Durjodhan Dash, Deputy Secretary, Government of Bihar, Law Department, Patna.

57. Government of Karnataka, Bangalore.

58. Gauhati Bar Association, Gauhati.

59. Shri Prayag Das, Advocate, Bulandshahr.

60. Shri Shatrughana Sharma, Selection Grade Auditor, Office of the A.G.C.R., New Delhi.

61. Shri B. K. Panda, Member, Bar Council of West Bengal, Culcutta.

62. High Court of Kerala, Cochin (views of Hon'ble Kumari Justice P. Janaka Amma).

63. Shri Hardeo Joshi, Chief Minister of Rajasthan, Jaipur.

64. Shri C. R. Dalvi, Advocate, High Court, Bombay.

65. Shri Pramotha Nath Mitra, Senior Advocate, High Court, Calcutta and Supreme Court.

66. Kr. Dharam Pal Nigam, Advocate, A.D.G.C., (Civil), Kanpur.

67. Shri Ranjit Kumar Banerjee, Advocate, Howrah.

68. Shri H. S. Narasiah, M.P.

69. Shri Jaslok Nath, Jullundur.

70. Chamber of Commerce, Sangli (Maharashtra).

71. All India Scheduled Castes|Scheduled Tribes Government Employees Coordination Council (Regd.), New Delhi.

72. Krishna District Bar Federation, Vijayawada.

73. Shri S. K. Jain, Advocate, Chandigarh.

74. Government of Punjab, Chandigarh.

75. Shri Jinendra Kumar, Advocate, Chandigarh.

76. Government of Tripura (Law Department), Agartala.

77. Views of the State Law Commission, West Bengal on the relevant clauses of the Code of Civil Procedure (Amendment) Bill, 1974.

APPENDIX IV

(*Vide* para 9 of the Report)

Questionnaire issued by the Joint Committee on the provisions of the Bill

1. What, according to you, are the causes of delay in civil litigation and what amendments do you suggest to eliminate such causes of delay?

2. Do you consider it desirable to permit the service of all processes on the pleader of a party after the defendant has appeared in the suit?

3. Do you think that a civil proceeding should also include proceedings relating to the preparation and publication of the record of rights?

4. What measure would you suggest to prevent landlords and other persons from instituting suits to defeat the distribution of lands to the landless peasants in pursuance of the land reforms, legislations or to evict landless peasants from the lands reclaimed by them,

5. What measures would you suggest to minimise the cost of litigation?

6. What classes of litigants should be given legal aid and what classes of litigants should be provided with all the expenses of the litigation?

7. Do you think that copies of documents and statements of witnesses should be furnished to the parties free of cost?

8. Do you think that preliminary objections should be heard along with the merits of the case?

9. Are the provisions of review necessary?

10. Is section 115 necessary or can it be deleted in view of the fact that a remedy is available under article 227 of the Constitution?

11. Are the provisions of Order XI necessary?

12. Do you think that greater use may be made of Order XXXVII, so that larger number of suits may be tried under the summary procedure?

13. Do you favour any limitation being imposed on the power of the courts to issue temporary injunctions? In particular, do you favour an amendment to the effect that an *ex-parte* interim injunction should not be granted same in exceptional cases and for reasons to be recorded?

14. What changes would you suggest in the existing procedure relating to the execution of money decrees with a view to avoiding delay and simplifying the procedure?

APPENDIX V

(*Vide* para 9 of the Report)

List of Associations, Organisations, Individuals etc. from whom replies to the questionnaire received

1. Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.
2. Shri R. Thiagarajan, Advocate, Supreme Court, Bangalore.
3. Bar Council of West Bengal, Calcutta.
4. Anti-Lawyers' Association, Kanpur.
5. Shri S. S. Sachan, Advocate, Kanpur.
6. Shri Hukam Chand Goyal, Advocate, Muzaffarnager.
7. Shri R. L. Berry. Jullundur.
8. Shri K. M. Gnanasundram, Pudukottai.
9. Government of Orissa, Bhubaneswar.
10. Shri K. Chandrasekharan, M.P.
11. Shri L. L. Meghanee, Bhavnager.
12. Shri B. Jayacharya, Advocate, Yagir and Member, Karnataka State Bar Council, Bangalore.
13. Shri C. D. Jagadesan, Madras.
14. Shri M. Prabha, Chairman, Official Language (Legislative) Commission, Trivandrum.
15. Shri K. Subrahmanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.
16. Shri M .S. Phirangi, Prof. Karnataka University College of Law, Dharwar.
17. Shri K. Ramakrishna, Advocate, Putter (S. Kanara).
18. Shri T. L. Viswanatha Iyer, Advocate, Ernakulam, Cochin.
19. Shri Ram Bilas Sharma, Member, Bihar Legislative Council, Patna.
20. Bar Council of Orissa, Cuttack.
21. Bar Council of Maharashtra, Bombay.
22. Bombay Bar Association, Bombay.
23. High Court of Orissa, Cuttack.
24. Bar Association, Nowgong (Assam).

25. Shri N. S. Das Bahl, Advocate, Supreme Court, Delhi.

26. Government of Bihar (Law Department), Patna.

27. Shri Ranjit Kumar Banerjee, Senior Advocate, Howrah.

28. Hon'ble Justices of Bombay High Court (Appellate side), Bombay.

29. Shri H. C. Nath, Advocate-General, Tripura.

30. Hon'ble Justices of Andhra High Court, Hyderabad.

31. Shri O. P. Gupta, Advocate, High Court and Supreme Court, Allahabad.

32. High Court of Judicature, Madras.

33. Hon'ble Justices H. L. Agarwal, Madan Mohan Prasad and S. P. Singh of Patna High Court.

34. Shri Atma Ram, Advocate, Chandigarh.

35. Shri S. K. Jain, Advocate, Chandigarh.

36. Supreme Court Bar Association.

APPENDIX VI

(*Vide* para 11 of the Report)

List of Associations, Organisations, etc. who gave evidence befor the Joint Committee

S. No.	Name of Associations/organisations, etc.	Date on which evidence was taken
1	2	3
1	Bar Council of Tamil Nadu, Madras	16-9-1974
	Spokesmen:	
	1. Shri R. G. Rajan—Vice-Chairman	
	2. Shri N. Ramanatha Iyer—Member	
2	Shri C. D. Jagadesan, Kaladipet, Madras	16-9-1974
3	Government of Tamil Nadu (Law Department)	17-9-1974
	Spokesmen:	
	1. Shri T. A. Nellaiyappar, Deputy Secretary.	
	2. Shri T. Prabhakaran John, Assistant Secretary	
4	Shri K. Parasakan, Senior Advocate, Central Government Senior Standing Council, Madras	18-9-1974
5	Shri P. Ramachandra Reddi, Advocate-General, Government of Andhra Pradesh, Hyderabad	18-9-1974
6	Shri G. K. Govinda Bhat, Chief Justice, High Court of Karnataka, Bangalore	19-9-1974
7	Shri M. S. Phirangi, Advocate, Dharwar	19-9-1974
8	Shri M. R. Achar, Advocate, Bangalore	19-9-1974
9	Government of Karnataka, Department of Law & Parliamentary Affairs, Bangalore	20-9-1974
	Spokesmen:	
	1. Shri N. D. Venkatash—Secretary	
	2. Shri T. Venkataswamy—Addl. Secretary	
	3. Shri M. L. Ramaswami—Draftsman.	
	4. Shri B. C. Srinivasan—Joint Law Secretary.	

1	2	3
10	Advocates' Association, Bangalore	21-9-1974
	Spokesmen:	
	1. Shri B. T. Parthasarathy	
	2. Shri S. K. Venkatarangalengar	
	3. Shri G. Dayananda	
	4. Shri R. N. Narasimhamurthy	
	5. Shri S. Udayashankar.	
11	Karnataka State Bar Council, Bangalore	21-9-1974
	Spokesmen:	
	1. Shri Manohar Rao Jagirdar, Chairman	
	2. Shri B. Jayachariya	
	3. Shri B. G. Naik, Member, All India Bar Council	
	4. Shri B. M. Natarajan, Secretary.	
12	Shri L. L. Meghanee, Bhavnagar	7-10-1974
13	Government of Gujarat (Legal Department), Gandhinagar	7-10-1974
	Spokesmen:	
	1. Shri A. M. Ahmadi, Secretary	
	2. Shri D. S. Majumdar, Deputy Secretary	
	3. Shri I. V. Shelat, Deputy Secretary.	
14	Bar Council of Gujarat, Ahmedabad	8-10-1974
	Spokesmen:	
	1. Shri Vasant Jhaverilal Desai, Advocate	
	2. Shri Ranjit Motilal Vin, Advocate	
	3. Shri Ajitrary K. Oza, Advocate.	
15	Gujarat High Court Advocate Association, Ahmedabad	9.10.1974
	Spokesmen:	
	1. Shri Bhalchandra B. Shah	
	2. Shri Pradyumna V. Hathi	
	3. Shri Mayoor D. Pandya.	
16	Shri K. N. Mankad, Advocate, Ahmedabad	9.10-1974

(1)	(2)	(3)
17	Government of Maharashtra, Law and Judiciary Department, Bombay	10-10-1974
	Spokesmen:	
	1. Shri A. A. Ginwala, Additional Secretary	
	2. Shri B. B. Tambe, Joint Secretary.	
18	Bar Council of Maharashtra, Bombay	11-10-1974
	Spokesmen:	
	1. Shri S. J. Deshpande, Advocate	
	2. Shri P. V. Holay, Advocate	
	3. Shri D. R. Dhanuka, Advocate	
	4. Shri P. R. Mundargi, Advocate.	
19	Bombay City Civil Sessions Court Bar Association, Bombay	11-10-1974
	Spokesmen:	
	1. Shri M. N. Kothari, Advocate	
	2. Shri P. K. Pandit, Advocate	
	3. Shri K. R. Dhanuka, Advocate	
	4. Shri S. R. Rajguru, Advocate	
	5. Miss Sheela P. Baxi, Advocate.	
20	Shri Ramrao Adik, Advocate-General, Maharashtra, Bombay	11-10-1974
21	Shri C. R. Dalvi, Advocate, Bombay	11-10-1974
22	Shri D. M. Rane, Advocate, Bombay	11-10-1974
23	Bombay Incorporated Law Society	12-10-1974
	Spokesmen:	
	1. Shri P. M. Dandekar	
	2. Shri P. P. Hariani	
	3. Shri D. B. Engineer	
	4. Shri D. M. Popat	
24	Bombay Bar Association, Bombay	12-10-1974
	Spokesmen:	
	1. Shri Hemendra Shah	
	2. Shri Mahendra Shah	
	3. Shrimati Sujata Manohar	

(1)	(2)	(3)
	4. Shri P. K. Thakor	
	5. Shri Ashok N. Vyas—Hony. Secretary.	
25	Shri M. V. Paranjape, Advocate, Bombay . . .	12-10-1974
26	Shri Porus A. Mehta, Advocate, Bombay . . .	12-10-1974
27	Shri V. C. Kotwal, Advocate, Bombay	12-10-1974
28	Shri D. S. Parikh, Advocate, Bombay	12-10-1974
29	Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur	31-10-1974
30	High Court Bar Association, Delhi	31-10-1974
	Spokesman:	
	Shri P. N. Lekhi	
31	Bar Association of Supreme Court of India, New Delhi .	1-11-1974
	Spokesman:	
	Shri B. D. Bal.	
32	Bar Council of Delhi; Delhi	2-11-1974
	Spokesman:	
	Shri Radhe Mohan Lal	
33	Government of West Bengal (Judicial Department), Calcutta.	30-12-1974
	Spokesman:	
	Shri P.K. Banerji—Joint Secretary	
34	High Court Bar Association, Calcutta..	30-12-1974
	Spokesman:	
1	Shri Hirendra Chander Ghose—Acting President	
2	Shri S.C. Mittra, Member	
3	Shri Binode Bhusan Ray, Advocate, High Court, Calcutta.	
35	Shri P.K. Sen Gupta, Government Pleader, West Bengal Government, Calcutta.	30-12-1974
36	Bar Council of West Bengal, Calcutta.	31-12-1974
	Spokesman:	
	Shri Basanta Kumar Panda—Chairman of Enrolment Committee of Bar Council.	
37	Shri Prithwis Bagchi, Advocate, Calcutta High Court, Calcutta.	31-12-1974

1	2	3
38	Shri Ranjit Kumar Banerjee, Senior Advocate, Calcutta High Court, Calcutta.	31-12-1974
39	Shri Pramatha Nath Mitra, Advocate, Calcutta. . .	1-1-1975
40	Shri B.C. Dutt, Advocate, Calcutta.	1-1-1975
41	1. Shri Shankar Das Banerji, Advocate, Calcutta . .	1-1-1975
	2. Shri Dipankar Prasad Gupta Do. .	
42	Government of Orissa (Law Department), Bhubaneswar. .	2-1-1975
	Spokesman:	
	Shri K. M. Misra, Legal Remembrancer.	
43	Orissa State Bar Council, Cuttack. .	2-1-1975
	Spokesman:	
	Shri S. Mohanty, Chairman.	
44	Government of Assam, Gauhati.	9-1-1975
	Spokesmen:	
	1. Shri D. Das, Chief Secretary.	
	2. Shri U.G. Tehbildar, Secretary, Law Department.	
	3. Shri M.D. Saadullah, Joint Secretary, Law Department.	
45	Shri Bishu Kinkor Goswami, Advocate, Chairman, Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, Gauhati.	9-1-1975
46	Bar Assocation, Nowgong (Assam).	10-1-1975
	Spokesmen:	
	1. Shri Kusha Dev Goswami, President.	
	2. Shri Surat Chandra Goswami, Secretary.	
	3. Shri Jogesh Chandra Sarmah, Advocate.	
	4. Shri Debabrata Sarmah, Advocate.	
47	Government of Tripura, Agartala.	10-1-1975
	Spokesmen:	
	1. Shri Henchandra Nath, Advocate-General.	
	2. Shri Sukumar Chakravarty, Secretary (Law)	
48	Government of Nagaland, Kohima.	10-1-1975
	Spokesmen:	
	1. Shri R.H. Macdonald D' Silva, Principal A.T.I., Kohima.	

1	2	3
	2. Shri M.H. Khan, Secretary, Law and Parliamentary Affairs.	
	3. Shri Darshan Singh, Deputy Secretary, Law & Parliamentary Affairs.	
49	Shri B.B.Lyngdoh, Minister of Law, Government of Meghalaya, Shillong.	11-1-1975
50	Gauhati High Court Bar Association, Gauhati. . .	11-1-1975
	Spokesmen:	
	1. Shri Tarun Chander Das, Advocate.	
	2. Shri Kanak Sarma, Advocate.	
	3. Shri Pulakananda Das, Advocate.	
51	Shillong Bar Association, Shillong.	11-1-1975
	Spokesmen:	
	1. Shri A.S. Khongphai, President.	
	2. Shri B.P. Datta, Secretary.	
	3. Shri U.C. Roy, Member.	
52	Government of Meghalaya, Shillong.	11-1-1975
	Spokesmen:	
	1. Shri N.M. Lahiri, Advocate-General.	
	2. Shri S.N. Phunkan, Legal Remembrancer.	
	3. Shri D.R. Rymmal, Law Officer.	
53	Shri A.R. Barthakur, Advocate, Gauhati. .	13-1-1975
54	Government of Uttar Pradesh (Judicial & Legislative Department), Lucknow.	17-1-1975
	Spokesmen:	
	1. Shri K.N. Goyal, Secretary.	
	2. Shri B.D. Agarwal, Deputy Legal Remembrancer.	
	3. Shri S.N. Sahai, Deputy Legal Remembrancer.	
55	Government of Bihar (Law Department)	17-1-1975 and 10-2-1975
	Spokesman:	
	Shri Durjodhan Dash, Deputy Secretary.	

1	2	3
56	Civil Court Bar Association, Jaunpur.	17-1-1975
	Spokesman:	
	Shri Rudra Pratap Rai, Advocate, Joint Secretary.	
57	Shri K.B. Sinha, District Government Counsel (Civil), Lucknow.	18-1-1975
58	Bihar State Bar Council, Patna	18-1-1975
	Spokesmen:	
	1. Shri Satyendra Sahay Varma	
	2. Shri Mahendra Nath Saran	
	3. Shri Uma Prasad Singh	
59	High Court Bar Association, Allahabad.	18-1-1975
	Spokesmen:	
	1. Shri K.B.L. Gour, Advocate.	
	2. Shri S.P. Gupta, Advocate.	
	3. Dr. R. Dwivedi, Advocate.	
60	Shri O.P. Gupta, Advocate, Allahabad.	18-1-1975
61	Shri Manohar Sinai Usgaocar, President, Goa, Daman & Diu Advocates' Association, Panaji (*Goa*)	27-1-1975
62	Shri S. Ramachandran, Advocate, Supreme Court, New Delhi.	27-1-1975
63	Bar Council of India, New Delhi.	28-1-1975
	Spokesmen:	
	1. Shri H.D. Srivastava, Member.	
	2. Shri A.N. Veeraraghavan, Secretary.	
64	Shri S.N. Chowdhury, Advocate, Supreme Court, New Delhi.	28-1-1975
65	Shri N.S. Das Bahl, Advocate, Supreme Court, Delhi.	29-1-1975
66	Shri K. Subrahmanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.	29-1-1975
67	Shri Moti Lal Khattri, District Government Counsel, Varanasi	11-2-1975
68	Shri Jinendra Kumar, Advocate, Chandigarh.	29-5-1975 17-6-1975 & 18-6-1975
69	Shri Atma Ram, Advocate, Chandigarh.	29-5-1975

1	2	3
70	Government of Punjab, Chandigarh, ...	30-5-1975
	Spokesmen:	
	1. Shri S.S. Sodhi, Secretary.	
	2 .Shri R.K. Battas, Joint Secretary.	
71	Shri Shri Chand Goyal, Ex-M.P.	30-5-1975
72	Shri Harbhagwan Singh, Advocate, Chandigarh. . .	30-5-1975
73	Shri C.L. Lakhanpal, Senior Advocate, Chandigarh . .	30-5-1975
74	Shri S.K. Jain, Advocate, Chandigarh. . . .	30-5-1975 17-6-1975
75	Shri K.C. Joshi, Lecturer in Law, Kurukshetra University, Kurukshetra.	16-6-1975

APPENDIX VII

MINUTES OF SITTINGS OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

I

First Sitting

The Committee sat on Wednesday, the 12th June, 1974 from 15.00 to 16.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Shri H. R. Gokhale
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Madhu Limaye
10. Shri Mohammad Tahir
11. Shri D. K. Panda
12. Shri Prabhudas Patel
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri R. N. Sharma
17. Shri Satyendra Narayan Sinha
18. Shri T. Sohan Lal
19. Shri Nitiraj Singh Chaudhary

Rajya Sabha

20. Shri Sradar Amjad Ali
21. Shri Bipinpal Das
22. Shri Krishnarao Narayan Dhulap
23. Shri Kamchi Kalyanasundaram
24. Shri Nawal Kishore
25. Shri Syed Nizam-ud-din
26. Shri D. Y. Pawar
27. Shri V. C. Kesava Rao
28. Shri Virendra Kumar Sakhalecha
29. Shri Awadheshwar Prasad Sinha
30. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department).*

2. Shri P. B. Venkatasubramanian, *Joint Secretary and Legal Adviser (Department of Legal Affairs).*

3. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department).*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. At the outset, the Chairman welcomed the members of the Committee.

3. The Committee decided that a Press Communique be issued inviting comments from the Registrars of the Supreme Court/High Courts, Bar Council of India/State Bar Councils, Supreme Court Bar Association/ High Court Bar Associations, other associations and organisations and everyone else interested in the subject matter of the Bill by the end of June, 1974. The Committee also decided that the Chief Secretaries to all State Governments/Union Territories might be asked to bring the contents of the Press Communique to the notice of various Bar Councils and Bar Associations both at the State and District levels.

4. The Committee further decided that in addition to the Press Communique, an advertisement might also be given in the newspapers having all India circulation.

5. The Chairman then informed the Committee that the following material relating to the Bill has already been circulated to all members of the Committee:

(1) The Code of Civil Procedure (Amendment) Bill, 1974 (as introduced in Lok Sabha).

(2) Extracts from Lok Sabha Debates (Part II) dated the 2nd May, 1974.

(3) Extracts from Rajya Sabha Debates (Part II) dated the 14th May, 1974.

(4) Synopsis of Rajya Sabha Debates (Supplement) dated the 14th May, 1974.

(5) Background note on the Code of Civil Procedure (Amendment) Bill, 1974.

(6) The Code of Civil Procedure, 1908, as amended uptodate.

(7) 27th, 40th, 54th and 55th Reports of Law Commission.

6. The Committee decided that the Report of the Joint Committee of Rajya Sabha on the Code of Civil Procedure (Amendment) Bill, 1968 and the evidence tendered before them might also be circulated to the members of the Joint Committee, if sufficient number of copies thereof were available.

7. The Committee then decided to hold their sittings at New Delhi on the 3rd and 4th July, 1974 to take up general discussion on the various

points raised in the memoranda that might be submitted to the Committee.

8. The Committee then adjourned.

II

Second Sitting

The Committee sat on Wednesday, the 3rd July, 1974 from 11.00 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri M. C. Daga
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Madhu Limaye
10. Shri Debendra Nath Mahata
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Surendra Mohanty
14. Shri D. K. Panda
15. Shri K. Pradhani
16. Shri Rajdeo Singh
17. Shrimati Savitri Shyam
18. Shri R. N. Sharma
19. Shri T. Sohan Lal
20. Shri Nitiraj Singh Chaudhary

Rajya Sabha

21. Shri Sradar Amjad Ali
22. Shri Bir Chandra Deb Barman
23. Shri Bipinpal Das
24. Shri Krishnarao Narayan Dhulap
25. Shri Kanchi Kalyanasundaram
26. Shri Nawal Kishore
27. Shri Syed Nizam-ud-din
28. Shri D. Y. Pawar
29. Shri V. C. Kesava Rao
30. Shri Virendra Kumar Sakhalecha
31. Shri Dwijendralal Sen Gupta
32. Shri Awadheshwar Prasad Sinha

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department).*

2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department)*.

3. Shri M. L. Malik, *Assistant Legislative Counsel (Legislative Department)*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. At the outset, the Chairman informed the Committee that requests for extension of time for submission of memoranda on the Bill have been received from various associations, organisations, etc. After some discussion, the Committee decided that the time for submission of memoranda might be extended upto Wednesday, the 31st July, 1974. The Committee also directed the Lok Sabha Secretariat to issue a Press Communique accordingly.

The Committee also decided that in addition to the press Communique, an advertisement might also be given in the newspapers having all India circulation.

3. The Committee further decided that before starting the preliminary discussion on the provisions of the Bill, arrangements might be made to keep verbatim records of proceedings of all sittings of the Committee.

4. The Committee then held a preliminary discussion on the provisions of the Bill *vis-a-vis* the background material furnished by the Ministry of Law, Justice and Company Affairs. The preliminary discussion was not concluded.

5. The Committee then adjourned to meet again at 11.00 hours on Thursday, the 4th July, 1974.

III

Third Sitting

The Committee sat on Thursday, the 4th July, 1974 from 11.00 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri Chandrika Prasad
6. Shri M. C. Daga
7. Shri Dinesh Joarder

8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri Debendra Nath Mahata
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Surendra Mohanty
14. Shri Noorul Huda
15. Shri D. K. Panda
16. Shri K. Pradhani
17. Shri Rajdeo Singh
18. Shri M. Satyanarayan Rao
19. Shrimati Savitri Shyam
20. Shri R. N. Sharma
21. Shri Satyendra Narayan Sinha
22. Shri T. Sohan Lal
23. Shri R. G. Tiwari
24. Shri Nitiraj Singh Chaudhary

Rajya Sabha

25. Shri Sradar Amjad Ali
26. Shri Bir Chandra Deb Barman
27. Shri Bipinpal Das
28. Shri Krishnarao Narayan Dhulap
29. Shri Kanchi Kalyanasundaram
30. Shri Nawal Kishore
31. Shri Syed Nizam-ud-din
32. Shri D. Y. Pawar
33. Shri V. C. Kesava Rao
34. Shri Awadheshwar Prasad Sinha

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*.
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department)*.
3. Shri M. L. Malik, *Assistant Legislative Counsel (Legislative Department)*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee concluded preliminary discussion on the provisions of the Bill *vis-a-vis* the background material furnished by the Ministry of Law, Justice and Company Affairs.

3. The Committee then decided that for the purpose of preparing a questionnaire on the provisions of the Bill, members might send their comments/suggestions in the form of questions to the Lok Sabha Secretariat by Saturday, the 20th July, 1974. The consolidated questionnaire would then be considered at a sitting to be held sometime during the next session.

4. The Committee desired that the Ministry of Law, Justice and Company Affairs might prepare a note indicating the clauses of the Bill which give effect to the objectives of the Bill specified in the background note furnished by the Ministry of Law, Justice and Company Affairs.

5. The Committee then decided that, for the purpose of hearing evidence from the interested parties, they might hold their sittings at New Delhi and or outside Delhi after the ensuing session is over as under:—

(i) Second or third week of September, 1974.

(ii) Second or third week of October, 1974.

(iii) First or second week of November, 1974.

The Committee authorised the Chairman to fix the places of sittings and the dates of sittings for the purpose.

6. A verbatim record of the proceedings was kept.

7. The Committee then adjourned.

IV

Fourth Sitting

The Committee sat on Friday, the 2nd August, 1974 from 15.00 to 15.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri B. R. Kavade
4. Shrimati T. Lakshmikanthamma
5. Shri Rajdeo Singh
6. Shri Satyendra Narayan Sinha
7. Shri T. Sohan Lal
8. Shri Nitiraj Singh Chaudhary

Rajya Sabha

9. Shri Bir Chandra Deb Barman
10. Shri Bipinpal Das
11. Shri Krishnarao Narayan Dhulap
12. Shri Nawal Kishore
13. Shri V. C. Kesava Rao
14. Shri M. P. Shukla
15. Shri Awadheshwar Prasad Sinha
16. Shri D. P. Singh
17. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*

2. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

3. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department)*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. At the outset, the Committee reconsidered their future programme of work and decided that—

I. The Committee might be divided into three Sub-Committees and hold their sittings outside Delhi for the purpose of hearing evidence from interested parties as per programme given below:—

(i) *Sub-Committee 'A'*—to hold sittings at Madras and Bangalore from Monday, the 16th to Saturday, the 21st September, 1974.

(ii) *Sub-Committee 'B'*—to hold sittings at Ahmedabad and Bombay from Monday, the 7th to Saturday, the 12th October, 1974.

(iii) *Sub-Committee 'C'*—to hold sittings at Bhubaneswar and Calcutta from Wednesday, the 6th to Saturday, the 9th November, 1974.

II. Each Sub-Committee might consist of fourteen members authorising the Chairman and the Minister and the Minister of State in the Ministry of Law, Justice and Company Affairs to join all the three Sub-Committees.

III. To hold sittings of the whole Committee at New Delhi from Thursday, the 31st October to Saturday, the 2nd November, 1974 for the purpose of hearing evidence of the representatives of various associations, organisations, etc.

3. The Committee further decided that the members might be given an option to join one of the three Sub-Committees.

4. The Committee then authorised the Chairman to finalise the Composition of each of the three Sub-Committees and also to select parties to be invited for evidence at the respective places.

5. The Committee then adjourned.

V

Fifth Sitting

The Committee sat on Friday, the 30th August, 1974 from 15.00 to 16.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Debendra Nath Mahata
5. Shri V. Mayavan
6. Shri Mohammad Tahir
7. Shri Surendra Mohanty
8. Shrimati Savitri Shyam
9. Shri R. N. Sharma
10. Shri Nitiraj Singh Chaudhary

Rajya Sabha

11. Shri Sardar Amjad Ali
12. Shri Bir Chandra Deb Barman
13. Shri Nawal Kishore
14. Shri Syed Nizam-ud-din
15. Shri V. C. Kesava Rao
16. Shri M. P. Shukla
17. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department)*
3. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered and approved the draft questionnaire on the provisions of the Bill.

3. On the suggestion of some members, the Committee decided that the members, who are desirous of submitting additional suggestions/ comments for inclusion in the questionnaire, might send their comments/

suggestions in the form of questions to the Lok Sabha Secretariat by Tuesday, the 3rd September, 1974.

4. The Committee then authorised the Chairman to finalise the questionnaire.

5. The Committee then adjourned.

VI

Sixth Sitting

The Committee sat on Thursday, the 31st October, 1974 from 10.00 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Sardar Mohinder Singh Gill
4. Shri Dinesh Joarder
5. Shrimati T. Lakshmikanthamma
6. Shri Debendra Nath Mahata
7. Shri Mohammad Tahir
8. Shri Surendra Mohanty
9. Shri Noorul Huda
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal

Rajya Sabha

16. Shri Bir Chandra Deb Barman
17. Shri Krishnarao Narayan Dhulap
18. Shri Kanchi Kalyanasundaram
19. Shri Nawal Kishore
20. Shri Syed Nizam-ud-din
21. Shri D. Y. Pawar
22. Shri V. C. Kesava Rao
23. Shri Virendra Kumar Sakhalecha
24. Shri Dwijendralal Sen Gupta
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

2. At the outside, the Chairman and Members of the Committee welcomed the new Minister of State in the Ministry of Law, Justice and Company Affairs [Dr. (Shrimati) Sarojini Mahishi].

3. Dr. (Smt.) Sarojini Mahishi, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

4. Before the Committee proceeded to hear evidence of the following individual/representatives of the Bar Association, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

I. Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.

[10.00 to 10.55 hrs.]

II. *High Court Bar Association, Delhi.*

Spokesman:

Shri P. N. Lekhi

[11.45 to 12.45 hrs.]

5. A verbatim record of evidence was kept.

6. The Committee considered the programme of sittings of Sub-Committee 'C' to be held at Bhubaneshwar and Calcutta from the 5th to 9th November, 1974 and decided that in view of the proximity of the Winter Session from the 11th November, 1974, the proposed sittings to be postponed.

The Committee further, decided that the Sub-Committee 'C' might hold their sittings at Bhubaneshwar on the 30th and 31st December, 1974 and at Calcutta from the 1st to 3rd January, 1975.

7. The Committee felt that since they had still to hear oral evidence of large number of witnesses on the provisions of the Bill and had also to complete other stages of the Bill, it would not be possible for them to present their Report by the stipulated date i.e. 20th December, 1974. The Committee, therefore, decided to seek an extension of time for presentation of their Report upto the last day of the first week of the next Monsoon Session (1975).

The Committee authorised the Chairman to nominate an alternate member for moving the motion in this behalf in the House.

8. The Committee then adjourned.

VII

Seventh Sitting

The Committee sat on Friday, the 1st November, 1974 from 10.00 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri Chandrika Prasad
4. Shri A. M. Chellachami
5. Sardar Mohinder Singh Gill
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Madhu Limaye
10. Shri Debendra Nath Mahata
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Surendra Mohanty
14. Shri Noorul Huda
15. Shri K. Pradhani
16. Shri Rajdeo Singh
17. Shri M. Satyanarayan Rao
18. Shrimati Savitri Shyam
19. Shri Satyendra Narayan Sinha
20. Shri T. Sohan Lal

Rajya Sabha

21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri Nawal Kishore
25. Shri Syed Nizam-ud-din
26. Shri D. Y. Pawar
27. Shri V. C. Kesava Rao
28. Shri Virendra Kumar Sakhalecha
29. Shri Dwijendralal Sen Gupta
30. Shri M. P. Shukla
31. Shri Awadheshwar Prasad Sinha
32. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

2. Dr. (Smt.) Sarojini Mahishi, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman Under Rule 299 of the Rules of Procedure.

3. Before Shri B. D. Bal, representative of the Bar Association of Supreme Court of India, New Delhi proceeded to give evidence, the Chairman drew his attention to Direction 58 of the Directions by the Speaker.

4. The evidence lasted till 12.00 hours.

5. A verbatim record of evidence was kept.

6. The Committee then adjourned to meet again at 10.00 hours on Saturday, the 2nd November, 1974.

VIII

Eighth Sitting

The Committee sat on Saturday, the 2nd November, 1974 from 10.00 to 12.10 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri T. Balakrishniah
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Sardar Mohinder Singh Gill
8. Shri Dinesh Joarder
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri Debendra Nath Mahata
12. Shri Mohammad Tahir
13. Shri Noorul Huda
14. Shri K. Pradhani
15. Shri Rajdeo Singh
16. Shri M. Satyanarayan Rao
17. Shrimati Savitri Shyam
18. Shri Satyendra Narayan Sinha
19. Shri T. Sohan Lal

Rajya Sabha

20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Nawal Kishore
24. Shri Syed Nizam-ud-din
25. Shri D. Y. Pawar
26. Shri V. C. Kesava Rao
27. Shri Virendra Kumar Sakhalecha
28. Shri Dwijendralal Sen Gupta
29. Shri M. P. Shukla
30. Shri Awadheshwar Prasad Sinha
31. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. Before Shri Radhe Mohan Lal, representative of the Bar Council of Delhi, Delhi proceeded to give evidence, the Chairman drew his attention to Direction 58 of the Directions by the Speaker.

4. The evidence lasted till 11.45 hours.

5. A verbatim record of evidence was kept.

6. The Committee then considered their future programme of work. After some discussion, the Committee decided that the whole Committee, instead of Sub-Committees, should hold sittings outside Delhi for the purpose of taking evidence on the provisions of the Bill and desired that the Chairman might take up this matter with the Speaker for his reconsideration. In case, the Speaker was not inclined for the whole Committee to hold sittings outside Delhi, the Committee might be divided into two Sub-Committees, instead of three Sub-Committees, as done earlier, for the purpose.

7. The Committee authorised the Chairman to select the places and finalise the programme of sittings for evidence which might be circulated to the members of the Committee in due course.

8. The Committee, further decided that the sittings of the Committee might be held at New Delhi from the 27th to 29th January, 1975 to take further evidence and also to have a general discussion on the various points raised during the course of evidence and also in the memoranda submitted to the Committee.

9. The Committee then adjourned.

Ninth Sitting

The Committee sat on Monday, the 27th January, 1975 from 10.00 to 13.10 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri T. Balakrishniah
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Sardar Mohinder Singh Gill
8. Shri B. R. Kavade
9. Shri Madhu Limaye
10. Shri Mohammad Tahir
11. Shri Noorul Huda
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri R. N. Sharma
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Mohammad Usman Arif
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Nawal Kishore
24. Shri Syed Nizam-ud-din
25. Shri D. Y. Pawar
26. Shri V. C. Kesava Rao
27. Shri Virendra Kumar Sakhalecha
28. Shri Dwijendralal Sen Gupta
29. Shri M. P. Shukla
30. Shri Awadheshwar Prasad Sinha
31. Shri D. P. Singh
32. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*

2. Shri V. V. Vaze, *Joint Secretary and Legal Adviser, (Department of Legal Affairs)*.

SECRETARIAT

Shri M. G. Paranjpe, *Chief Financial Committee Officer.*

2. At the outset, the Committee mourned the death of Shri Partap Singh, M.P. and passed the following condolence resolution:—

"The Committee place on record their profound sense of sorrow over the demise of their most esteemed colleague, Shri Partap Singh, a Member of Lok Sabha, on the 24th January, 1975 and send their heart felt condolences to the members of the bereaved family."

Thereafter the members stood in silence for a while as a mark of respect to the memory of the deceased.

3. The Committee then heard evidence of the following:—

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker].

I. *Goa, Daman and Diu Advocates' Association, Panaji (Goa).*

Spokesman:

Shri Manohar Sinai Usgaocar—*President.*

[10.00 to 11.35 hours]

II. Shri S. Ramachandran,

Advocate, Supreme Court,

New Delhi.

[11.35 to 13.00 hours]

4. A verbatim record of evidence was kept.

5. The Chairman informed the Committee that the sittings of Sub-Committee scheduled to be held at Chandigarh on the 20th and 21st January, 1975 had to be cancelled on account of non-availability of accommodation there. After some discussion, the Committee decided that the Sub-Committee might hold their sittings at Chandigarh sometime during the ensuing Budget Session. The Committee authorised the Chairman to fix the dates of the sittings of the Sub-Committee at Chandigarh in consultation with the authorities concerned.

6. The Committee decided to hold their sittings on the 10th and 11th February, 1975 to hear further oral evidence and also to hold general discussion on the various points made in the memoranda submitted to them and the points arising out of the oral evidence tendered before the Committee.

7. At the end, the Committee decided that the Ministry of Law, Justice & Company Affairs might furnish a note on the various points raised during the course of evidence tendered before them together with Government comments thereon for their consideration.

X

Tenth Sitting

The Committee sat on Tuesday, the 28th January, 1975 from 10.00 to 13.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Chandrika Prasad
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri Madhu Limaye
9. Shri V. Mayavan
10. Shri Mohammad Tahir
11. Shri Noorul Huda
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Mohammad Usman Arif
21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri Nawal Kishore
25. Shri Syed Nizam-ud-din
26. Shri V. C. Kesava Rao
27. Shri Virendra Kumar Sakhalecha
28. Shri Dwijendralal Sen Gupta
29. Shri M. P. Shukla
30. Shri Awadheshwar Prasad Sinha
31. Shri D. P. Singh
32. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department).*

2. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs).*

SECRETARIAT

Shri H. G. Paranjpe, *Chief Financial Committee Officer.*

2. Before the Committee proceeded to hear evidence of the representatives of the following associations, organisations, etc., the Chairman drew their attention to the provisions of Direction 58 of Directions by the Speaker:—

I. *Bar Council of India, New Delhi.*

Spokesmen:

1. Shri H. D. Srivastava—*Member.*

2. Shri A. N. Veeraraghavan—*Secretary.*

[10.00 to 11.45 hours]

II. Shri S. N. Chowdhury,

Advocate, Supreme Court of India,

New Delhi.

[11.45 to 13.15 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 29th January, 1975.

XI

Eleventh Sitting

The Committee sat on Wednesday, the 29th January, 1975 from 10.00 to 12.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri A. M. Chellachami
5. Shri Tulsidas Dasappa

6. Sardar Mohinder Singh Gill
7. Shri P. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shrimati Savitri Shyam
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

17. Shri Sardar Amjad Ali
18. Shri Mohammad Usman Arif
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri Nawal Kishore
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Virendra Kumar Sakhalecha
27. Shri Dwijendralal Sen Gupta
28. Shri M. P. Shukla
29. Shri Awadheshwar Prasad Sinha
30. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*.
2. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe, *Chief Financial Committee Officer*.

2. Before the Committee proceeded to hear evidence of the representatives of the following organisations, etc., the Chairman drew their attention to the provisions of Direction 58 of the Directions by the Speaker:—

I. Shri N. S. Das Bahl,

Advocate, Supreme Court of India,

Delhi.

[10.00 to 11.35 hours]

11. Shri K. Subrahmanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.

[11.35 to 12.15 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned.

XII

Twelfth Sitting

The Committee sat on Monday, the 10th February, 1975 from 15.00 to 16.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

Members

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Sardar Mohinder Singh Gill
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri T. Sohan Lal
16. Shri R. G. Tiwari
17. Dr. (Shrimati) Sarojini Mahishi

18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri Kanchi Kalyanasundaram
21. Shri Nawal Kishore
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri Virendra Kumar Sakhalecha
26. Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha
28. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel (Legislative Department)*.
2. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe, *Chief Financial Committee Officer.*

2. The Committee heard further evidence of Shri Durjodhan Dash, Deputy Secretary, Law Department, Government of Bihar, Patna.

3. The evidence concluded at 16.30 hours.

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again on Tuesday, the 11th February, 1975 at 14.30 hours.

XIII

Thirteenth Sitting

The Committee sat on Tuesday, the 11th February, 1975 from 14.30 to 17.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Sardar Mohinder Singh Gill
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan

11. Shri Mohammad Tahir
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri Satyendra Narayan Sinha
17. Shri T. Sohan Lal
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Mohammad Usman Arif
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri M. P. Shukla
27. Shri D. P. Singh
28. Shri Sawaisingh Sisodia
29. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe, *Chief Financial Committee Officer.*

2. Before the Committee proceeded to hear the evidence of Shri Moti Lal Khattri, District Government Council (Civil), Varanasi, the Chairman drew his attention to Direction 58 of the Directions by the Speaker.

3. The evidence lasted till 16.45 hours.

4. A verbatim record of evidence was kept.

5. At the end, the Committee considered their future programmes of work. After some discussion, the Committee authorised the Chairman to finalise their future programme of work including—

(i) Fixation of date for receipt of Government amendments;

(ii) Fixation of date for receipt of amendments from members; and

(iii) Clause-by-clause consideration of the Bill.

6. The Committee then adjourned.

XIV

Fourteenth Sitting

The Committee sat on Monday, the 16th June, 1975 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri Noorul Huda
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri R. N. Sharma
17. Shri Satyendra Narayan Sinha
18. Shri C. M. Stephen
19. Shri T. Sohan Lal
20. Shri Sidrameshwar Swamy
21. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

22. Shri Sardar Amjad Ali
23. Shri Mohammad Usman Arif
24. Shri Bir Chandra Deb Barman
25. Shri Krishnarao Narayan Dhulap
26. Shri Kanchi Kalyanasundaram
27. Shri B. P. Nagaraja Murthy
28. Shri Syed Nizam-ud-din
29. Shri D. Y. Pawar
30. Shri V. C. Kesava Rao
31. Shri Dwijendralal Sen Gupta
32. Shri M. P. Shukla
33. Shri D. P. Singh
34. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. Before the Committee proceeded to hear the evidence of Shri K. C. Joshi, Lecturer in Law, Kurukshetra University, the Chairman drew his attention to the provisions of Direction 58 of the Directions by the Speaker.

The evidence lasted till 12.00 hours.

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again on Tuesday, the 17th June, 1975 at 10.30 hours.

XV

Fifteenth Sitting

The Committee sat on Tuesday, the 17th June, 1975 from 10.30 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Shri Tulsidas Dasappa
8. Sardar Mohinder Singh Gill
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Noorul Huda
14. Shri K. Pradhani
15. Shri Rajdeo Singh
16. Shrimati Savitri Shyam
17. Shri R. N. Sharma
18. Shri Satyendra Narayan Sinha
19. Shri C. M. Stephen
20. Shri T. Sohan Lal
21. Shri Sidrameshwar Swamy
22. Shri R. G. Tiwari
23. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

24. Shri Sardar Amjad Ali
25. Shri Bir Chandra Deb Barman
26. Shri Krishnarao Narayan Dhulap
27. Shri Kanchi Kalyanasundaram
28. Shri B. P. Nagaraja Murthy
29. Shri Syed Nizam-ud-din
30. Shri D. Y. Pawar
31. Shri V. C. Kesava Rao
32. Shri Virendra Kumar Sakhalecha
33. Shri Dwijendralal Sen Gupta
34. Shri M. P. Shukla
35. Shri D. P. Singh
36. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee heard further evidence of the following:—

I. Shri S. K. Jain, Advocate, Chandigarh.
[10.30 to 12.15 hours]

II. Shri Jinendra Kumar, Advocate, Chandigarh.
[12.15 to 13.00 hours]

3. The evidence of Shri Jinendra Kumar was not concluded.

4. A verbatim record of evidence was kept.

5. At the end, the Committee decided that Sarvashri S. K. Joshi, S. K. Jain and Jinendra Kumar, who had appeared before the Committee, might be treated as Grade I witnesses and paid TA/DA for the purpose as admissible under the rules.

6. The Committee then adjourned to meet again on Wednesday, the 18th June, 1975 at 10.30 hours.

XVI

Sixteenth Sitting

The Committee sat on Wednesday, the 18th June, 1975 from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri C. M. Stephen

16. Shri T. Sohan Lal

17. Shri Sidrameshwar Swamy

18. Shri R. G. Tiwari

19. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

20. Shri Sardar Amjad Ali

21. Shri Bir Chandra Deb Barman

22. Shri Krishnarao Narayan Dhulap

23. Shri Kanchi Kalyanasundaram

24. Shri B. P. Nagaraja Murthy

25. Shri Syed Nizam-ud-din

26. Shri D. Y. Pawar

27. Shri V. C. Kesava Rao

28. Shri Virendra Kumar Sakhalecha

29. Shri Dwijendralal Sen Gupta

30. Shri M. P. Shukla

31. Shri Awadheshwar Prasad Sinha

32. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. The Committee heard further evidence of Shri Jinendra Kumar, Advocate, Chandigarh. The evidence concluded at 12.30 hours.

3. A verbatim record of evidence was kept.

4. The Committee then considered their future programme of work. After some discussion, the Committee decided as follows:—

(1)	General discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence tendered before the Committee.	1-7-1975 & 2-7-1975
(2)	Clause-by-clause consideration of the Bill. . .	15-7-1975 to 18-7-1975

5. The Committee then adjourned.

XVII

Seventeenth Sitting

The Committee sat on Tuesday, the 1st July, 1975 from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri Tulsidas Dasappa
6. Sardar Mohinder Singh Gill
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri Surendra Mohanty
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri M. P. Shukla
28. Shri Awadheshwar Prasad Sinha

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice & Company Affairs, who is not a member of the Committee,, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee held general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

4. The Committee then adjourned to meet again on Wednesday, the 2nd July, 1975 at 10.30 hours.

XVIII

Eighteenth Sitting

The Committee sat on Wednesday, the 2nd July, 1975 from 10.30 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C Daga.
6. Shri Tulsidas Dasappa
7. Sardar Mohinder Singh Gill.
8. Shri Dinesh Joarder
9. Shri B. R. Kavade
10. Shri V. Mayavan.
11. Shri Mohammad Tahir
12. Shri Surendra Mohanty
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri C. M. Stephen
16. Shri T. Sohan Lal
17. Shri Sidrameshwar Swamy
18. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Mohammad Usman Arif
21. Shri Bir Chandra Deb Barman

22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri B. P. Nagaraja Murthy
25. Shri Syed Nizam-ud-din
26. Shri D. Y. Pawar
27. Shri V. C. Kesava Rao
28. Shri Dwijendralal Sen Gupta.
29. Shri M. P. Shukla.
30. Snri Awadheshwar Prasad Sinha
31. Shri D. P. Singh

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

4. The Committee then approved the following revised programme of work:—

(i)	Further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence ; and also clause-by-clause consideration of the Bill.	15-7-1975 to 18-7-1975
(ii)	Clause-by-clause consideration of the Bill. .	29-7-1975 to 2-8-1975
(iii)	Last date for receipt of Government amendments. .	15-7-1975
(iv)	Last date for receipt of amendments from members. .	22-7-1975

The Committee also decided to sit on Saturday, the 19th July, 1975, if necessary.

5. The Committee also decided that—

(i) evidence tendered before the Committee be laid on the Table of both Houses; and

(ii) two copies of the memoranda received by the Committee from various Associations, Organisations, etc. be placed in the Parlia-

ment Library for reference by the Members of Parliament after the Report of the Committee had been presented.

6. The Committee then adjourned.

XIX

Nineteenth Sitting

The Committee sat on Tuesday, the 15th July, 1975 from 10-30 to 12-00 hrs.

PRESENT

Shri L. D. Kotoki—*Chairman*

Members

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri A. M. Chellachami
4. Shri M. C. Daga
5. Shri Tulsidas Dasappa
6. Sardar Mohinder Singh Gill
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri Surendra Mohanty.
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri Sidrameshwar Swamy.
18. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy.
23. Shri Syed Nizam-ud-din
24. Shri Dwijendralal Sen Gupta
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. At the outset the Chairman informed the Committee that as they had yet to take up clause-by-clause consideration of the Bill and had also to complete other stages of the Bill, it would not be possible for them to present their Report by the stipulated date i.e. the 25th July, 1975. The Committee, therefore decided to seek another extension of time for presentation of their Report upto the last day of the next Session.

3. The Committee authorised the Chairman, and in his absence, Shri Rajdeo Singh to move the necessary motion in the House.

4. In view of the forthcoming session of Parliament commencing from the 21st July, 1975, the Committee also decided that the sittings of the Committee fixed from the 17th to 19th July and from the 29th July to 2nd August, 1975 might be cancelled.

5. The Committee also approved the following revised programme of work:—

(1)	Further general discussion on the various points raised in the memo. submitted to the Committee and also during the course of evidence.	12-8-1975 to 14-8-1975
(2)	Last date for receipt of amendments from members .	6-8-1975
(3)	Last date for receipt of amendments from Government	11-8-1975

6. The Committee then resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

7. The Committee then adjourned to meet again at 10.30 hours on Wednesday, the 16th July, 1975.

XX

Twentieth Sitting

The Committee sat on Wednesday, the 16th July, 1975 from 10.30 to 12.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri M. C. Daga
4. Shri Tulsidas Dasappa

5. Shri Dinesh Joarder
6. Shrimati T. Lakshmikanthamma
7. Shri V. Mayavan
8. Shri Mohammad Tahir
9. Shri Rajdeo Singh
10. Shri M. Satyanarayan Rao
11. Shrimati Savitri Shyam
12. Shri Satyendra Narayan Sinha
13. Shri C. M. Stephen
14. Shri T. Sohan Lal
15. Shri Sidrameshwar Swamy
16. Shri R. G. Tiwari
17. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

18. Shri Mohammed Usman Arif
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha
28. Shri D. P. Singh.

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

3. The Committee decided that notices of amendments, which were not admissible under this Rule of Procedure, might also be circulated in the form of "General Suggestions" for the information of the Members of the Committee.

4. The Committee then adjourned.

XXI

Twenty-First Sitting

The Committee sat on Tuesday, the 9th September, 1975 from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Sardar Mohinder Singh Gill
8. Shri Dinesh Joarder
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri Mohammad Tahir
12. Shri Surendra Mohanty
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri R. N. Sharma
16. Shri Sidrameshwar Swamy
17. Shri R. G. Tiwari
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Mohammad Usman Arif
21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri B. P. Nagaraja Murthy
24. Shri Syed Nizam-ud-din
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri Awadeshwar Prasad Sinha
28. Shri D. P. Singh

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

3. Shri V. V. Vaze, *Joint Secretary and Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. At the outset, the Chairman informed the Committee that the Government had asked for some more time for submission of their notices of amendments on the Bill. After some discussion, the Committee decided to take up clause-by-clause consideration of the Bill on the following dates:—

(i) *September*, 1975—24th, 25th and 26th.

(ii) *October*, 1975.—24th, 25th, 27th and 28th.

(iii) *November*, 1975.—6th and 7th.

3. The Minister of State in the Ministry of Law, Justice and Company Affairs assured the Committee that the notices of Government amendments would be supplied to the Members of the Committee well in advance of the contemplated sittings of the Committee.

4. The Committee then resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

5. The Committee then adjourned to meet again at 10.30 hours on Wednesday, the 10th September, 1975.

XXII

Twenty-Third Sitting

The Committee sat on Wednesday, the 10th September, 1975 from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shri V. Mayavan
9. Shri Mohammad Tahir
10. Shri Surendra Mohanty
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao

13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri Satyendra Narayan Sinha
16. Shri Sidrameshwar Swamy
17. Shri R. G. Tiwari

Rajya Sabha

18. Shri Sardar Amjad Ali
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri V. C. Kesava Rao
25. Shri Dwijendralal Sen Gupta
26. Shri M. P. Shukla
27. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was not concluded.

3. The Committee then adjourned to meet again at 10.30 hours on Thursday, the 11th September, 1973.

XXIII

Twenty-Third Sitting

The Committee sat on Thursday, the 11th September, 1975 from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill

7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri Surendra Mohanty
11. Shri D. K. Panda
12. Shri Rajdeo Singh
13. Shri M. Satyanarayan Rao
14. Shrimati Savitri Shyam
15. Shri R. N. Sharma
16. Shri Satyendra Narayan Sinha
17. Shri Sidrameshwar Swamy
18. Shri R. G. Tiwari

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri B. P. Nagaraja Murthy
24. Shri Syed Nizam-ud-din
25. Shri D. Y. Pawar
26. Shri V. C. Kesava Rao
27. Shri M. P. Shukla
28. Shri Awadeshwar Prasad Sinha
29. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed further general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of evidence *vis-a-vis* provisions of the Bill. The discussion was concluded.

3. The Committee then adjourned.

XXIV

Twenty-Fourth Sitting

Th Committee sat on Wednesday, the 24th September, 1975 from 11.00 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri B. R. Kavade
7. Shrimati T. Lakshmikanathamma
8. Shri V. Mayavan
9. Shri Mohammad Tahir
10. Shri Surendra Mohanty
11. Shri K. Pradhani
12. Shri Rajdeo Singh
13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri Satyendra Narayan Singh
16. Shri T. Sohan Lal
17. Shri Sidrameshwar Swamy
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Mohammad Usman Arif
21. Shri Bir Chandra Deb Barman
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri M. P. Shukla
28. Shri Awadeshwar Prasad Sinha
29. Shri D. P. Singh
30. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee re-considered their future programme of work and decided to hold their sittings on the 17th, 18th, 20th, 21st

October *instead* of 24th, 25th, 27th and 28th October and on 10th and 11th November *instead* of 6th and 7th November, 1975.

3. The Chairman then informed the Committee that the Government had asked for more time for giving their notices of amendments on the Bill. After some discussion, the Committee decided that the Government might be asked to send their notices of amendments by the 10th October 1975 at the latest. In case, it was not possible for the Government to finalise all their notices of amendments, they might send them in instalments for consideration by the Committee.

4. The Committee then took up general discussion on the notices of amendments in relation to clauses 3, 4, proposed new clause 4A and clause 6 of the Bill. The discussion on amendment to clause 6 was not concluded.

5. The Committee then adjourned to meet again on the 25th September, 1975 at 10.30 hours.

XXV

Twenty-Fifth Sitting

The Committee sat on Thursday, the 25th September, 1975 from 10.30 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri Mohammad Tahir
7. Shri D. K. Panda
8. Shri K. Pradhani
9. Shri Rajdeo Singh
10. Shrimati Savitri Shyam
11. Shri Satyendra Narayan Sinha
12. Shri T. Sohan Lal
13. Shri Sidrameshwar Swamy
14. Shri R. G. Tiwari
15. Dr. Shrimati Sarojini Mahishi

Rajya Sabha

16. Shri Sardar Amjad Ali
17. Shri Mohammad Usman Arif
18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap

20. Shri Kanchi Kalyanasundaram
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri D. P. Singh
28. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

2. The Committee resumed general discussion on the amendments proposed with regard to clauses 6, 7, 9, 11, 13; 14 and 16 of the Bill.

3. The Committee then adjourned to meet again on the 26th September, 1975 at 10.30 hours.

XXVI

Twenty-Sixth Sitting

The Committee sat on Friday, the 26th September, 1975 from 10.30 to 12.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri Dinesh Joarder
6. Shri B. R. Kavade
7. Shrimati T. Lakshmikanthamma
8. Shri Mohammad Tahir
9. Shri Surendra Mohanty
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shri Satyendra Narayan Sinha
13. Shri T. Sohan Lal

14. Shri Sidrameshwar Swamy
15. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

16. Shri Sardar Amjad Ali
17. Shri Mohammad Usman Arif
18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri B. P. Nagaraja Murthy
21. Shri Syed Nizam-ud-in
22. Shri D. Y. Pawar
23. Shri V. C. Kesava Rao
24. Shri M. P. Shukla
25. Shri Awadheshwar Prasad Sinha
26. Shri D. P. Singh

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

2. The Committee held general discussion on the amendments proposed with regard to clauses 17, 22, 23 and 24 of the Bill.

3. The Committee then adjourned.

XXVII

Twenty-Seventh Sitting

The Committee sat on Friday, the 17th October, 1975 from 11.00 to 12.40 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri T. Balakrishniah
3. Shri Chandrika Prasad
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri H. R. Gokhale
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri C. M. Stephen

10. Shri Mohammad Tahir
11. Shri Surendra Mohanty
12. Shri D. K. Panda
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari
18. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

19. Shri Mohammad Usman Arif
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri B. P. Nagaraja Murthy
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri M. P. Shukla
28. Shri Awadheshwar Prasad Sinha
29. Shri D. P. Singh
30. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs explained his tentative reactions to the amendments on clauses 2, 3, 6, 7, 9, 14, 15 and 16 of the Bill.

The discussion on clause 16 of the Bill was not concluded.

3. The Committee then adjourned to meet again on Saturday, the 18th October, 1975, at 10.30 hours.

XXVIII

Twenty-Eighth Sitting

The Committee sat on Saturday, the 18th October, 1975, from 10.30 to 12.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri H. R. Gokhale
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shri Satyendra Narayan Sinha
13. Shri T. Sohan Lal

Rajya Sabha

14. Shri Sardar Amjad Ali
15. Shri Mohammad Usman Arif
16. Shri Bir Chandra Deb Barman
17. Shri Krishnarao Narayan Dhulap
18. Shri B. P. Nagaraja Murthy
19. Shri Syed Nizam-ud-din
20. Shri D. Y. Pawar
21. Shri Dwijendralal Sen Gupta
22. Shri M. P. Shukla
23. Shri Awadheshwar Prasad Sinha
24. Shri D. P. Singh
25. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee concluded discussion on the amendments proposed to clause 16 of the Bill.

3. The Committee then adjourned to meet again on Monday, the 20th October, 1975 at 10.30 hours.

XXIX

Twenty-Ninth Sitting

The Committee sat on Monday, the 20th October, 1975 from 10.30 to 12.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri M. C. Daga
4. Shri Mohammad Tahir
5. Shri Surendra Mohanty
6. Shri K. Pradhani
7. Shri Rajdeo Singh
8. Shrimati Savitri Shyam
9. Shri Satyendra Narayan Sinha
10. Shri T. Sohan Lal
11. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

12. Shri Mohammad Usman Arif
13. Shri Bir Chandra Deb Barman
14. Shri B. P. Nagaraja Murthy
15. Shri Syed Nizam-ud-din
16. Shri Dwijendralal Sen Gupta
17. Shri M. P. Shukla
18. Shri Awadheshwar Prasad Sinha
19. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Dr. (Shrimati) Sarojini Mahishi, Minister of State in the Ministry of Law, Justice and Company Affairs explained the implications of Government amendments proposed to clauses 22 and 24 of the Bill.

3. The Committee then adjourned to meet again on the 21st October, 1975 at 10.30 hours.

XXX

Thirtieth Sitting

The Committee sat on Tuesday, the 21st October, 1975 from 10.30 to 12.20 hours.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri H. R. Gokhale
7. Shrimati T. Lakshmikanthamma
8. Shri Mohammad Tahir
9. Shri K. Pradhani
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shrimati Savitri Shyam
13. Shri Satyendra Narayan Sinha
14. Shri T. Sohan Lal
15. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

16. Shri Sardar Amjad Ali
17. Shri Mohammad Usman Arif
18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri Kanchi Kalyanasundaram
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri V. C. Kesava Rao
24. Shri M. P. Shukla
25. Shri Awadheshwar Prasad Sinha
26. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs explained the implications of Government amendments proposed to clauses 11, 27, 28, 29, 34; 35; 39 and 47 of the Bill.

3. At the end, the Committee decided to hold their sittings daily from 10.30 to 13.00 hours on the 10th, 11th and from the 19th to 22nd November, 1975 to take up clause-by-clause consideration of the Bill.

4. The Committee then adjourned.

XXXI

Thirty-First Sitting

The Committee sat on Monday, the 10th November, 1975 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri M. C. Daga
4. Shri B. R. Kavade
5. Shrimati T. Lakshmikanthamma
6. Shri Mohammad Tahir
7. Shri Rajdeo Singh
8. Shrimati Savitri Shyam
9. Shri T. Sohan Lal
10. Shri Sidrameshwar Swamy
11. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

12. Shri Mohammad Usman Arif
13. Shri Bir Chandra Deb Barman
14. Shri B. P. Nagaraja Murthy
15. Shri Syed Nizam-ud-din
16. Shri D. Y. Pawar
17. Shri V. C. Kesava Rao
18. Shri Dwijendralal Sen Gupta
19. Shri M. P. Shukla
20. Shri Awadheshwar Prasad Sinha
21. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. At the outset, the Committee re-considered their future programme of work and decided to cancel their sittings fixed for Wednesday, the 19th and Saturday, the 22nd November, 1975.

3. The Committee then took up further general discussion on the notices of Government amendments in relation to clauses 34, 35, 39 and 42 of the Bill.

4. The Committee then adjourned to meet again on the 11th November, 1975 at 10.30 hours.

XXXII

Thirty-Second Sitting

The Committee sat on Tuesday, the 11th November, 1975 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri M. C. Daga
4. Shrimati T. Lakshmikanthamma
5. Shri V. Mayavan
6. Shri Mohammad Tahir
7. Shri D. K. Panda
8. Shri K. Pradhani
9. Shri Rajdeo Singh
10. Shrimati Savitri Shyam
11. Shri R. N. Sharma
12. Shri Satyendra Narayan Sinha
13. Shri C. M. Stephen
14. Shri T. Sohan Lal
15. Shri Sidrameshwar Swamy
16. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

17. Shri Bir Chandra Deb Barman
18. Shri Kanchi Kalyanasundaram
19. Shri B. P. Nagaraja Murthy
20. Shri Syed Nizam-ud-din
21. Shri D. Y. Pawar
22. Shri V. C. Kesava Rao
23. Shri M. P. Shukla
24. Shri Awadheshwar Prasad Sinha
25. Shri D. P. Singh
26. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee held general discussion on the amendments proposed with regard to clause 53, new clause 53A and clauses 58 to 60 of the Bill.

3. The Committee then adjourned.

XXXIII

Thirty-Third Sitting

The Committee sat on Thursday, the 20th November, 1975 from 10-30 to 12.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri C. M. Stephen
9. Shri V. Mayavan
10. Shri Mohammad Tahir
11. Shri Rajdeo Singh
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Shri Sidrameshwar Swamy
17. Shri R. G. Tiwari

Rajya Sabha

18. Shri Mohammad Usman Arif
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Syed Nizam-ud-din
22. Shri D. Y. Pawar
23. Shri V. C. Kesava Rao
24. Shri Dwijendralal Sen Gupta
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. At the outset, the Chairman informed the Committee that Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs would not be able to attend the current series of sittings of the Committee as he had not been keeping well and admitted to the All India Institute of Medical Sciences.

4. The Committee then considered their future programme of work. After some discussion, the Committee decided tentatively to take up clause-by-clause consideration of the Bill on the following dates:—

2-12-1975 (Tuesday)	15.00 to 17.00 hours.
3-12-1975 (Wednesday) to 5-12-1975 (Friday)	10.30 to 13.00 hours and 15.00 to 17.00 hours (if necessary)
16-12-1975 (Tuesday)	15.00 to 17.00 hours.
17-12-1975 (Wednesday)	10.30 to 13.00 hours.
26-12-1975 (Friday) and 27-12-1975 (Saturday)	10.30 to 13.00 hours

5. Thereafter, the Committee took up general discussion on the notices of amendments received from the Members of the Committee in relation to clauses 61 and 62 of the Bill. The discussion on amendments to clause 62 was not concluded.

6. The Committee then adjourned to meet again on Friday, the 21st November, 1975 at 10.30 hours.

XXXIV

Thirty-fourth Sitting

The Committee sat on Friday, the 21st November, 1975 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—Chairman

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah

4. Shri Narendra Singh Bisht
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri Mohammad Tahir
9. Shri K. Pradhani
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Shri Sidrameshwar Swamy
17. Shri R. G. Tiwari

Rajya Sabha

18. Shri Sardar Amjad Ali
19. Shri Mohammad Usman Arif
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri M. P. Shukla
28. Shri Awadheshwar Prasad Sinha
29. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. The Committee concluded discussion on the amendments proposed to clause 62 of the Bill.

The Committee then took up further general discussion on the notices of amendments received from the Members of the Committee in relation to clauses 63, 64, 65, 67 and 69 of the Bill.

4. The Committee then adjourned.

XXXV

Thirty-Fifth Sitting

The Committee sat on Tuesday, the 2nd December, 1975, from 15.00 to 17.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shri H. R. Gokhale
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri Mohammad Tahir
11. Shri K. Pradhani
12. Shri Rajdeo Singh
13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri Satyendra Narayan Sinha
16. Shri Sidrameshwar Swamy
17. Shri T. Sohan Lal

Rajya Sabha

18. Shri Sardar Amjad Ali
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri D. P. Singh
28. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee took up clause-by-clause consideration of the Bill.

3. *Clause* 2.—The following amendments were accepted:—

(i) Page 1, lines 16-17, *for* "sub-section" *substitute* "sub-sections".

(ii) Page 2, *omit* lines 1—7.

(iii) Page 2, lines 18-19, *omit*

"other than those within the local limits of the Municipality of Shillong".

(iv) Page 2, *for* lines 20—23, *substitute*

"(4) In relation to the scheduled areas comprising East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation, for the time being in force in such Agencies or such Union territory, as the case may be, relating to the application of this Code."

The clause, as amended, was adopted.

4. *Clause* 3.—The following amendment was accepted:

Page 2, *for* lines 25—28, *substitute*

"(i) in clause (2), the words 'section 47 or' shall be omitted;"

The clause, as amended, was adopted.

5. *Clause* 4.—Consideration of this clause was held over.

6. *Clause* 5.—The clause was adopted without any amendment.

7. *Clause* 6.—The following amendment was accepted:

Page 2, *for* lines 40—45, *substitute*

6. In section 11 of the principal Act, after Explanation VI, the following Explanations shall be inserted, namely:— Amendment of Section 11.

"*Explanation* VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as *res judicate* in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

The clause, as amended, was adopted.

8. *Clause* 7.—The discussion on this clause was not concluded.

9. The Committee then adjourned to meet again at 11.00 hours instead of at 10.30 hours on Wednesday, the 3rd December, 1975.

XXXVI

Thirty-Sixth Sitting

The Committee sat on Wednesday, the 3rd December, 1975 from 11.00 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shri H. R. Gokhale
8. Shri Mohammad Tahir
9. Shri K. Pradhani
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Shri Sidrameshwar Swamy

Rajya Sabha

17. Shri Sardar Amjad Ali
18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri Kanchi Kalyanasundaram
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 7.—(*vide* para 8 of the Minutes dated the 2nd December, 1975). Further consideration of the clause was held over.

4. *Clause* 8.—The clause was adopted without any amendment.

5. *Clause* 9.—The following amendment was accepted:—

Page 3, line 27, *for* "No party to a suit shall be allowed to question" *substitute* "No suit shall lie challenging".

The clause, as amended, was adopted.

6. *Clause* 10.—The clause was adopted without any amendment.

7. *Clause* 11.—The Committee felt that, in view of the amendment proposed to clause 6 of the Bill, the provisions contained in this clause were not necessary.

The clause was omitted accordingly.

8. *Clauses* 12, 13 *and* 14.—Consideration of these clauses was held over.

9. The Committee then adjourned to meet at 16.00 hours *instead of* 10.30 hours on Thursday, the 4th December, 1975.

XXXVII

Thirty-Seventh Sitting

The Committee sat on Thursday, the 4th December, 1975 from 16.00 to 17.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri H. R. Gokhale
7. Shrimati T. Lakhmikanthamma
8. Shri V. Mayavan
9. Shri Mohammad Tahir
10. Shri K. Pradhani

11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri T. Sohan Lal
16. Shri Sidrameshwar Swamy

Rajya Sabha

17. Shri Bir Chandra Deb Barman
18. Shri Krishnarao Narayan Dhulap
19. Shri Kanchi Kalyanasundaram
20. Shri B. P. Nagaraja Murthy
21. Shri Syed Nizam-ud-din
22. Shri V. C. Kesava Rao
23. Shri Dwijendralal Sen Gupta
24. Shri M. P. Shukla
25. Shri Awadheshwar Prasad Sinha
26. Shri D. P. Singh
27. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clauses* 15 *and* 16.—Consideration of these clauses was held over.

4. *Clauses* 17 *to* 21.—These clauses were adopted without any amendment.

5. *Clauses* 22 *and* 23.—Consideration of these clauses was held over.

6. The Committee then adjourned to meet at 10.30 hours on Friday, the 5th December, 1975.

XXXVIII

Thirty-Eighth Sitting

The Committee sat on Friday, the 5th December, 1975 from 10.30 to 12.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht

4. Shri M. C. Daga
5. Shri H. R. Gokhale
6. Shri B. R. Kavade
7. Shrimati T. Lakshmikanthamma
8. Shri C. M. Stephen
9. Shri Mohammad Tahir
10. Shri Surendra Mohanty
11. Shri K. Pradhani
12. Shri Rajdeo Singh
13. Shri M. Satyanarayan Rao
14. Shrimati Savitri Shyam
15. Shri R. N. Sharma
16. Shri Satyendra Narayan Sinha
17. Shri T. Sohan Lal
18. Shri Sidrameshwar Swamy

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Dwijendralal Sen Gupta
27. Shri M. P. Shukla
28. Shri Awadheshwar Prasad Sinha
29. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. Clause 4.—[*vide* para 5 of the Minutes dated the 2nd December, 1975].—The clause was adopted without any amendment.

4. *Clause* 7.—[*vide* para 3 of the Minutes dated the 3rd December, 1975].—The following amendment was accepted:—

Page 3, *for* lines 1—10, *substitute*

"7. In section 20 of the principal Act,—

(i) Explanation I shall be omitted, and

(ii) for the word and figures
'Explanation II,', the word

'Explanation' shall be substituted."

The clause, as amended, was adopted.

5. *Clause* 12.—[*vide* para 8 of the Minutes dated the 3rd December, 1975].—The clause was adopted without any amendment.

6. *Clause* 13.—[*vide* para 8 of the Minutes dated the 3rd December, 1975].—The following amendment was accepted:

Page 5, *for* lines 20-21, *substitute*

"(b) in Hindi or English where the language of such record is other than Hindi or English."

The clause, as amended, was adopted.

7. *Clause* 14.—[*vide* para 8 of the Minutes dated the 3rd December, 1975].—The following amendment was accepted:—

Page 5, lines 26-27,

omit "the principal sum adjudged exceeds rupees ten thousand and"

Further consideration of the clause was held over.

8. *Clause* 15.—[*vide* para 3 of the Minutes dated the 4th December, 1975].—The following amendment was accepted:—

Page 5, line 40, *for* "two" *substitute* "three"

The clause, as amended, was adopted.

9. *Clause* 16.—[*vide* para 3 of the Minutes dated the 4th December, 1975].—Further consideration of the clause was held over.

10. The Committee decided to hold their next round of sittings to take up further clause-by-clause consideration of the Bill as per programme given below:—

16-12-1975 (Tuesday)	16.00 to 18.00 hours.
17-12-1975 (Wednesday)	10.30 to 13.00 hours and 16.00 to 18.00 hours.
26-12-1975 (Friday)	—Do.—
27-12-1975 (Saturday)	10.30 to 13.00 hours.

10. The Committee then adjourned.

XXXIX

Thirty-Ninth Sitting

The Committee sat on Tuesday, the 16th December, 1975 from 16.00 to 17.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri A. M. Chellachami
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri B. R. Kavade
7. Shrimati T. Lakshmikanthamma
8. Shri V. Mayavan
9. Shri Surendra Mohanty
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Shri Sidrameshwar Swamy
17. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri Kanchi Kalyanasundaram
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri V. C. Kesava Rao
24. Shri Dwijendralal Sen Gupta
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri D. P. Singh
28. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee took up general discussion on the amendments proposed with regard to Clause 72 of the Bill. In view of the unavoidable absence of the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale), further clause-by-clause consideration of the Bill was postponed to the 17th December, 1975.

3. The Committee then adjourned to meet again at 10.30 hours on Wednesday, the 17th December, 1975.

XL

Fortieth Sitting

The Committee sat on Wednesday, the 17th December, 1975 from 10.30 to 13.00 hours and again from 16.00 to 17.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendera Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shri H. R. Gokhale
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri Surendra Mohanty
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri R. N. Sharma
17. Shri Satyendra Narayan Sinha
18. Shri T. Sohan Lal
19. Shri Sidrameshwar Swamy
20. Shri R. G. Tiwari

Rajya Sabha

21. Shri Sardar Amjad Ali
22. Shri Bir Chandra Deb Barman
23. Shri B. P. Nagaraja Murthy
24. Shri Syed Nizam-ud-din
25. Shri D. Y. Pawar
26. Shri V. C. Kesava Rao
27. Shri Dwijendralal Sen Gupta
28. Shri M. P. Shukla
29. Shri Awadheshwar Prasad Sinha
30. Shri D. P. Singh
31. Shri Sawaisingh Sisodia.

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 14.—[*vide* para 7 of the Minutes dated the 5th December, 1975].—The following amendments were accepted:—

(i) Page 5, line 33, *for* "Explanation",

substitute "Explanation I.—"

(ii) Page 5, *after* line 35, *insert*

"*Explanation II.*—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability."

The clause, as further amended, was adopted.

4. *Clause* 16.—[*vide* para 9 of the Minutes dated the 5th December, 1975].—The following amendment was accepted:—

Pages 5 and 6 *for* lines 43—46, and 1—4 respectively, *substitute*

"Costs for causing delay.

35B. (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(a) the suit by the plaintiff, where the defendant was ordered to pay such costs, or

(b) the defence by the defendant where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons."

The clause, as amended, was adopted.

5. *Clause* 22.—[*vide* para 5 of the Minutes dated the 4th December, 1975].—The following amendment was accepted:—

Page 7, *for* lines 1—26, *substitute*—

"Amendment of Section 51. 22. In section 51 of the principal Act, in clause (c), after the words 'detention in prison', the words 'if, and to the extent, permissible under section 58;' shall be inserted.".

The clause, as amended, was adopted.

6. *Clause* 23.—[*vide* para 5 of the Minutes dated the 4th December, 1975].—The following amendments were accepted:—

(i) Page 7, line 31, *for* "six months,"
substitute "three months,".

(ii) Page 7, line 35, for "two hundred rupees"
substitute "five hundred rupees".

(iii) Page 7, line 44, *for* "two hundred rupees"
substitute "five hundred rupees".

The clause, as amended, was adopted.

7. The Committee rose at 13.00 hours and re-assembled at 16.00 hours.

8. *Clause* 24.—The following amendments were accepted:—

(i) Page 8, line 11, *for* "two hundred and fifty", *substitute* "four hundred."

(ii) Page 8, line 22, *for* "shall be finally exempt", *substitute* "shall, after the attachment has continued for a total period of twenty-four months, be finally exempt."

(iii) Page 8, *after* line 30, *insert*

"(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;" 23 of 1968.

(iv) Page 8, line 31, *for* "(ka)" *substitute* "(kb).

(v) Page 9, line 4, *after* "skilled", *insert* "unskilled".

(vi) Page 9, *for* lines 6—10, *substitute*

"*Explanation V.*—For the purposes of this proviso, the expression 'agriculturist' means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI.—For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both."

The clause, as amended, was adopted.

9. *Clauses* 25 *and* 26.—The clauses were adopted without any amendment.

10. *Clause* 27.—The following amendment was accepted:—

Page 9, line 31, *for* "scientific investigation" *substitute* "scientific, technical or expert investigation."

The clause, as amended, was adopted.

11. *Clause* 28.—Consideration of this clause was held over.

12. *Clause* 29.—The following amendments were accepted:—

(i) Page 10, *for* lines 4-5, *substitute*

" 'such decree' shall be substituted;"

(ii) Page 10, *omit* lines 6—17.

The clause, as amended, was adopted.

13. *Clause* 30.—The clause was adopted without any amendment.

14. The Committee then adjourned.

XLI

Forty-First Sitting

The Committee sat on Friday, the 26th December, 1975 from 10.30 to 11.45 hours and again from 16.30 to 18.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendera Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri H. R. Gokhale
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shri T. Lakshmikanthamma
10. Shri Mohammad Tahir
11. Shri K. Pradhani
12. Shri Rajdeo Singh
13. Shrimati Savitri Shyam

14. Shri R. N. Sharma
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari

Rajya Sabha

18. Shri Sardar Amjad Ali
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri B. P. Nagaraja Murthy
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri Dwijendralal Sen Gupta
26 Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha
28. Shri D. P. Singh
29. Shri Sawais ngh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. In view of the inability of the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale) to attend the fore-noon sitting of the Committee on account of his other pressing engagements, the Committee, after some discussion, decided to meet again at 16.30 hours to take-up further clause-by-clause consideration of the Bill.

3. The Committee re-assembled at 16.30 hours and resumed clause-by-clause consideration of the Bill.

4. *Clause* 31.—The following amendment was accepted subject to drafting changes:—

> Page 11, line 29, *for* "affecting the public" *substitute* "or likely to affect the public".

The clause, as amended, was adopted.

5. *Clause* 32.—Consideration of this clause was held over.

6. *Clause* 33.—The clause was adopted without any amendment.

7. *Clause* 34.—Consideration of this clause was held over.

8. *Clause* 35.—Consequent upon the changes made in clause 3 of the Bill, the Committee felt that this clause was not necessary and might be omitted.

9. *Clauses* 36 to 38.—These clauses were adopted without any amendment.

10. The Committee then adjourned to meet again at 11.00 hours *instead of* 10.30 hours on Saturday, the 27th December, 1975 to take up further clause-by-clause consideration of the Bill.

XLII

Forty-second Sitting

The Committee sat on Saturday, the 27th December, 1975 from 11.00 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri A. M. Chellachami
4. Shri M. C. Daga
5. Shri Tulsidas Dasappa
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal

Rajya Sabha

16. Shri Sardar Amjad Ali
17. Shri Bir Chandra Deb Barman
18. Shri Krishnarao Narayan Dhulap
19. Shri B. P. Nagaraja Murthy
20. Shri Syed Nizam-ud-din
21. Shri D. Y. Pawar
22. Shri V. C. Kesava Rao
23. Shri M. P. Shukla
24. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. The Committee considered their future programme of work and decided to hold their next round of sittings at 17.30 hours daily from the 5th to 8th and on the 12th, 13th and 15th January, 1976.

3. The Committee then adjourned.

XLIII

Forty-third Sitting

The Committee sat on Tuesday, the 6th January, 1976 from 17.30 to 18.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri H. R. Gokhale
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri Rajdeo Singh
11. Shrimati Savitri Shyam
12. Shri Satyendra Narayan Sinha
13. Shri R. G. Tiwari

Rajya Sabha

14. Shri Bir Chandra Deb Barman
15. Shri B. P. Nagaraja Murthy
16. Shri Syed Uizam-ud-din
17. Shri M. P. Shukla
18. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(LEGISLATIVE DEPARTMENT)

Shri Y. Sahai,—*Chief Legislative Committee Officer.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhammad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. As some members felt that it would not be possible for them to sit late during the days when Parliament was in session, the Committee,

after some discussion, decided that the sittings of the Committee fixed for the 7th, 8th, 12th, 13th and 15th January, 1976 might be cancelled.

4. The Committee authorised the Chairman to fix the date for the next sitting of the Committee.

5. The Committee then adjourned.

XLIV

Forty-fourth Sitting

The Committee sat on Thursday the 22nd January, 1976 from 10.00 to 10.50 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri Tulsidas Dasappa
6. Shri H. R. Gokhale
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shri Mohammad Tahir
10. Shri Rajdeo Singh
11. Shrimati Savitri Shyam

Rajya Sabha

12. Shri Bir Chandra Deb Barman
13. Shri Krishnarao Narayan Dhulap
14. Shri Syed Nizam-ud-din
15. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhammad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. At the outset, the Chairman informed the Committee that as they had yet to complete clause-by-clause consideration and also other stages

of the Bill, it would not be possible for the Committee to present their Report by the stipulated date *i.e.* the last day of the current session of Lok Sabha. It was, therefore, necessary for the Committee to seek further extension of time for presentation of their Report. The Committee, accordingly, decided to seek further extension of time for presentation of their Report by the last day of the next session of Lok Sabha.

4. The Committee authorised the Chairman, and in his absence another member of the Committee to be nominated by the Chairman, to move the necessary motion in the House on Wednesday, the 28th January, 1976.

5. The Committee also authorised the Chairman to fix the dates for the next series of sittings of the Committee.

6. The Committee then adjourned.

XLV

Forty-fifth Sitting

The Committee sat on Monday, the 16th February, 1976 from 10.30 to 12.35 hours and again from 16.00 to 17.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri Chandrika Prasad
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri H. R. Gokhale
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri V. Mayavan
10. Shri Mohammad Tahir
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shri Satyendra Narayan Sinha
14. Shri T. Sohan Lal

Rajya Sabha

15. Shri Sardar Amjad Ali
16. Shri Mohammad Usman Arif
17. Shri Bir Chandra Deb Barman
18. Shri Krishnarao Narayan Dhulap
19. Shri B. P. Nagaraja Murthy
20. Shri Syed Nizam-ud-din
21. Shri D. Y. Pawar

22. Shri V. C. Kesava Rao

23. Shri M. P. Shukla

24. Shri Awadheshwar Prasad Sinha

25. Shri D. P. Singh

26. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai,—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 34.—(*vide* para 7 of the Minutes dated the 26th December, 1975).—The following amendment was accepted:—

Page 12, *omit* lines 33—40.

The clause, as amended, was adopted.

4. *Clause* 39.—The following amendment was accepted:—

Page 13, *for* lines 22—39, *substitute*

"Second appeal. 100. (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it if it is satisfied that the case involves such question."

The clause, as amended, was adopted.

5. *Clauses* 40 *and* 41.—These clauses were adopted without any amendment.

6. *Clause* 42.—The following amendment was accepted:—

Page 14, line 15, *omit* "of fact",

The clause, as amended, was adopted.

7. *Clauses* 43 *and* 44.—These clauses were adopted without any amendment.

8. *Clause* 45.—Further consideration of this clause was held over.

9. *Clause* 46.—The clause was adopted without any amendment.

10. *Clause* 47.—The Committee were of the view that Section 132 of the Code should be retained as the omission of this section would offend against the social custom and would also enable unscrupulous litigants to compel the personal appearance in court of innocent and ignorant ladies who are not used to appear in public. The Committee, therefore, decided to omit this clause of the Bill.

11. The Committee rose at 12.35 hours and re-assembled at 16.00 hours.

12. *Clause* 48.—Further consideration of this clause was held over.

13. *Clauses* 49, 50 and 51.—These clauses were adopted without any amendment.

14. *Clause* 52.—The following amendment was adopted:—

Page 15, line 41, *after* "furnished security"

insert "or given a guarantee"

The clause, as amended, was adopted.

15. *Clause* 53.—The following amendment was accepted:—

Page 16, *after* line 25, *insert*

"(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period."

The clause, as amended, was adopted.

16. *Clause* 54.—The clause was adopted without any amendment.

17. At the end, the Committee decided to cancel their sitting fixed for Tuesday, the 17th February, 1976 from 10.30 to 13.00 hours. The Committee would, however, hold their sitting fixed for that date from 16.00 hours.

18. The Committee then adjourned.

XLVI

Forty-sixth Sitting

The Committee sat on Tuesday, the 17th February, 1976 from 16.00 to 17.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri H. R. Gokhale
6. Shri B. R. Kavade
7. Shrimati T. Lakshmikanthamma
8. Shri Mohammad Tahir
9. Shri Rajdeo Singh
10. Shrimati Savitri Shyam

Rajya Sabha

11. Shri Sardar Amjad Ali
12. Shri Mohammad Usman Arif
13. Shri Bir Chandra Deb Barman
14. Shri Krishnarao Narayan Dhulap
15. Shri B. P. Nagaraja Murthy
16. Shri Syed Nizam-ud-din
17. Shri D. Y. Pawar
18. Shri V. C. Kesava Rao
19. Shri Dwijendralal Sen Gupta
20. Shri M. P. Shukla
21. Shri Awadheshwar Prasad Sinha
22. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai, *Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the B.II.

3. *Clause* 28 [*vide* para 3 of the Minutes dated the 17th February, 1975).—Further consideration of the clause was held over.

4. The Committee then adjourned to meet again at 10.30 hours on Wednesday, the 18th February, 1976.

XLVII

Forty-seventh Sitting

The Committee sat on Wednesday, the 18th February, 1976 from 10.30 hours to 11.45 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri H. R. Gokhale
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri Rajdeo Singh
11. Shri M. Satyanarayan Rao
12. Shri R. G. Tiwari

Rajya Sabha

13. Shri Mohammad Usman Arif
14. Shri Bir Chandra Deb Barman
15. Shri Krishnarao Narayan Dhulap
16. Shri Kanchi Kalyanasundaram
17. Shri B. P. Nagaraja Murthy
18. Shri Syed Nizam-ud-din
19. Shri D. Y. Pawar
20. Shri V. C. Kesava Rao
21. Shri Dwijendralal Sen Gupta
22. Shri M. P. Shukla
23. Shri Awadheshwar Prasad Sinha
24. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 28 [*vide* para 3 of the Minutes dated the 17th February, 1976].—The following amendment was accepted:—

Page 9, *for* line 36, *substitute*—

'Amendment of Section 80.

28. Section 80 shall be re-numbered as sub-section (1) thereof, and,—

(a) in sub-section (1) as so re-numbered, for the words "no suit shall be instituted," the words "Save as otherwise provided in sub-section (2), no suit shall be instituted" shall be substituted; and

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer, in respect

of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as required by sub-section (1), but the court shall not grant any relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the court shall, if it is satisfied after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."'.

The clause, as amended, was adopted.

4. *Clause* 32 [*vide* para 5 of the Minutes dated the 26th December, 1975].—The clause was adopted without any amendment.

5. *Clause* 45 [*vide* para 8 of the Minutes dated the 16th February, 1976].—The following amendment was accepted:—

Page 14, *for* line 30, *substitute*

45. Section 115 of the principal Act shall be re-numbered as sub-section (1) thereof, and— 'Amendment of section 115.

(a) to sub-section (1) as so re-numbered, the following proviso shall be added, namely:—

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where—

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.";

(b) after sub-section (1) as so re-numbered, the following sub-section and Explanation shall be inserted, namely:—

"(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

Explanation.—In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.".'

The clause, as amended, was adopted.

6. *Clause* 48 [*vide* para 12 of the Minutes dated the 16th February, 1976].—The following amendment was accepted:—

Page 14, *for* lines 38-39, *substitute*—

"Amendment of section 135A. 48. In section 135A of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) No person shall be liable to arrest or detention in prison under civil process—

(a) if he is a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State or of a Legislative Assembly of a Union territory, during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any Committee of either House of Parliament or of the Legislative Assembly of a State or Union Territory or of the Legislative Council of a State, during the continuance of any meeting of such Committee;

(c) if he is a member of either House of Parliament, or of a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the Legislature;

and during the forty days before and after such meeting, sitting or conference".'.

The clause, as amended, was adopted.

7. The Committee then adjourned to meet again at 10.30 hours on Friday, the 27th February, 1976 in Committee Room 'B', Parliament House Annexe, New Delhi.

XLVIII

Forty-eighth Sitting

The Committee sat on Friday, the 27th February, 1976 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri H. R. Gokhale
7. Shrimati T. Lakshmikanthamma
8. Shri V. Mayavan
9. Shri Mohammad Tahir
10. Shri Surendra Mohanty
11. Shri Rajdeo Singh
12. Shrimati Savitri Shyam
13. Shri T. Sohan Lal
14. Shri R. N. Sharma

Rajya Sabha

15. Shri Mohammad Usman Arif
16. Shri Krishnarao Narayan Dhulap
17. Shri B. P. Nagaraja Murthy
18. Shri V. C. Kesava Rao
19. Shri M. P. Shukla
20. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra,—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai,—*Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhammad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. The Committee resumed clause-by-clause consideration of the Bill.

4. *Clause* 55.—The notice of amendment which was considered and not accepted by the Committee is given in the Annexure.

The clause was adopted without any amendment.

5. *Clauses* 56 *and* 57.—These clauses were adopted without any amendment.

6. *Clause* 58.—Further consideration of the clause was held over.

7. At the end, the Committee decided to cancel their sittings fixed for Friday, the 27th February, 1976, at 16.00 hours and Saturday, the 28th February, 1976.

8. The Committee then adjourned to meet again at 10.30 hours on Monday, the 1st March, 1976.

ANNEXURE

LIST OF NOTICE OF AMENDMENT CONSIDERED AND NOT ACCEPTED AT THE SITTING OF THE JOINT COMMITTEE HELD ON THE 27TH FEBRUARY, 1976

Name of Member and text of amendment
Clause 55
SHRI M. C. DAGA:
Page 19, line 2, *after* "any pleader"
insert "or a public servant or an expert who can plead about public cause in question".

XLIX

FORTY-NINTH SITTING

The Committee sat on Monday, the 1st March, 1976, from 10.30 to 13.00 hours and again from 16.00 to 18.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade

3. Shri Narendra Singh Bisht

4. Shri M. C. Daga
5. Shri Tulsidas Dasappa
6. Shri H. R. Gokhale
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri Mohammad Tahir
11. Shri K. Pradhani
12. Shri Rajdeo Singh
13. Shri M. Satyanarayan Rao
14. Shrimati Savitri Shyam
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri Sidrameshwar Swamy
18. Shri R. G. Tiwari

Rajya Sabha

19. Shri Bir Chandra Deb Barman
20. Shri Krisnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri B. P. Nagaraja Murthy
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha
28. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai,—*Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhammad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. The Committee resumed clause-by-clause consideration of the Bill.

4. *Clause* 58.—(*vide* para 6 of the Minutes dated the 27th February, 1976).—I. The following amendments were accepted:—

(i) Page 20, line 26, *omit*

"in appropriate cases"

(ii) Page 21, line 10, *after* "registered post"

insert ", acknowledgment due,"

(iii) Page 21, *for* lines 23-24, *substitute*—

'the summons, when tendered to him, the court issuing the summon shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the presumption referred to in this sub-rule shall be drawn notwithstanding the fact that the acknowledgment has been lost or mislaid or has not been received by the court for any other reason within thirty days from the date of the issue of the summons.;'.

(iv) Page 21, *after* line 32, *insert*—

'(via) in rule 25,—

(a) in the first proviso, for the words "resides in Pakistan,", the words "resides in Bangladesh or Pakistan," shall be substituted,

(b) in the second proviso, for the words and brackets "in Pakistan (not belonging to the Pakistan military, naval or air forces)", the words and brackets "in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces" shall be substituted;'.

II. The following amendment was accepted subject to drafting changes:—

Pages 20-21, *for* lines 41-42 and 1—4 respectively—

substitute "(iii) In rule 17, after the words 'or where the serving officer after using all due and reasonable diligence, cannot find the defendant' the words 'or where the defendant is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time' shall be added".

III. The notice of amendment which was considered and not accepted by the Committee is given in the Annexure.

The clause, as amended, was adopted.

5. *Clause* 59.—The following amendments were accepted:—

(i) Page 22, line 37, *after* "figures", *insert*

"as well as in words".

(ii) Pages 23-24, *omit* lines 42—46 and 1—6 respectively.

The clause, as amended, was adopted.

6. *Clause* 60.—The following amendments were accepted:—

(i) Page 24, *after* line 32, *insert*—

'(va) in rule 10, for the words "The plaint shall", the words "subject to the provisions of rule 10A, the plaint shall" shall be substituted;'

(ii) Page 25, line 22, *after* "10B", *insert* "(1)"

(iii) Page 25, lines 25-26,

for "direct the transfer of the suit to the court",
substitute "direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963, in the court".

(iv) Page 25, line 29, *for* "court to which the suit is transferred", *substitute* "court in which the plaint is directed to be filed".

(v) Page 25, line 31, *for* "to which the suit is transferred", *substitute* "in which the plaint is filed"

(vi) Page 25, *after* line 33, *insert*—

"(2) The direction made by the court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the court in which the plaint is filed."

The clause, as amended, was adopted.

7. *Clause* 61.—The following amendments were accepted:—

(i) Page 27, lines 35-36,

for "If the defendant to the counter-claim makes default in putting in a reply to the counter-claim",

substitute "If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant"

(ii) Page 27, line 37, *for* "against him", *substitute* "against the plaintiff".

The clause, as amended, was adopted.

8. *Clause* 62.—The following amendments were accepted:—

(i) Page 29, lines 2—4, *omit* "any may, if it thinks fit, give a judgement on the basis that the facts stated in the plaint are true".

(ii) Page 29, line 16, *after* "disposed of,", *insert*

"on any ground other than the ground that the appellant has withdrawn the appeal,"

The clause, as amended, was adopted.

9. The Committee rose at 13.00 hours and re-assembled at 16.00 hours.

10. *Clause* 63.—Further consideration of the clause was held over.

11. *Clause* 64.—The clause was adopted without any amendment.

12. *Clause* 65.—The following amendments were accepted:—

(i) Page 30, *after* line 4, *insert*—

'(i) in rule 2, for the words "to admit any document", the words "to admit, within fifteen days from the date of service of the notice any document" shall be substituted;'

(ii) Page 30, line 5, *for* "(i)", *substitute* "(ia)".

The clause, as amended, was adopted.

13. *Clauses* 66 *to* 68.—These clauses were adopted without any amendment.

14. *Clause* 69.—The following amendment was accepted:—

Page 32, line 4, *for* "ten" *substitute* "fifteen"

The clause, as amended, was adopted.

15. *Clause* 70.—The clause was adopted without any amendment.

16. *Clause* 71.—Further consideration of the clause was held over.

17. *Clause* 72.—The following amendments were accepted:—

(i) Page 37, line 16, *for* "9", *substitute* "9(1)".

(ii) Page 37, *after* line 20, *insert*—

"(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to have such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English."

(iii) Page 37, *after* line 38, *insert*—

'(ix) in rule 18, after the words "any question arise", the words "and where the court inspects any property or thing it shall, as soon as may be possible, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.'.

The clause, as amended, was adopted.

18. *Clause* 73.—Further consideration of the clause was held over.

19. The Committee then adjourned to meet again at 10.30 hours on Tuesday, the 2nd March, 1976.

ANNEXURE

LIST OF NOTICE OF AMENDMENT CONSIDERED AND NOT ACCEPTED AT THE SITTING OF THE JOINT COMMITTEE HELD ON THE 1ST MARCH, 1976.

Name of Member and text of amendment

CLAUSE 58

SHRI M. C. DAGA:

Page 20, *omit* lines 24—29.

L

FIFTIETH SITTING

The Committee sat on Tuesday, the 2nd March, 1976 from 10.30 to 13.00 hours and again from 16.00 hours to 19.30 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri Chandrika Prasad
6. Shri M. C. Daga
7. Shri H. R. Gokhale
8. Shri Dinesh Joarder
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri Satyendra Narayan Sinha
17. Shri T. Sohan Lal
18. Shri Sidrameshwar Swamy

Rajya Sabha

19. Shri Mohammad Usman Arif

20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Syed Nizam-ud-din
24. Shri V. C. Kesava Rao
25. Shri Dwijendralal Sen Gupta
26. Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra,—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhommad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. The Committee resumed clause-by-clause consideration of the Bill.

4. *Clause* 63.—(*vide* para 10 of the Minutes dated the 1st Mach, 1976).—The clause was adopted without any amendment.

5. *Clause* 71—(*vide* para 16 of the Minutes dated the 1st March, 1976.—The clause was adopted without any amendment.

6. *Clause* 73.—(*vide* para 18 of the Minutes dated the 1st March, 1976).—The following amendments were accepted:—

(i) Page 37, *for* lines 40—42, *substitute*—

'(i) rule 1 shall be re-numbered as sub-rule (1) of that rule, and,—

(a) to sub-rule (1) as so re-numbered, the following provisos shall be added, namely:—

"Provided that every endeavour shall be made to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders:

Provided further that, where a judgment is not pronounced within thirty days from the date on which the hearing of the case was concluded, the court shall record the reasons for such delay and shall fix a future day on which the judgment will be pronounced and due notice of the day so fixed shall be given to the parties or their pleaders.";

(b) after sub-rule (1) as so re-numbered, the following sub-rule shall be inserted, namely:—'.

(ii) Page 38, *after* line 7, *insert*—

"(3) The judgment may be pronounced by dictation in open court to a shorthand writer if the judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge and shall bear the date on which it was pronounced and shall form a part of the record.".

(iii) Page 38, line 15, *after* "the filing of such appeal", *insert* "and place on record the information so given to the parties."

(iv) Page 38, *for* lines 23-34, *substitute*—

"(2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced. but where the decree is not drawn up within the time aforesaid, the court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon—

(a) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of rule 1 of Order XLI, be treated as the decree; and

(b) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose;"

(v) Page 38, *after* line 34, insert—

"Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit."

(vi) Page 39-40, *omit* lines 12 to 39 and 1 to 11 respectively.

II. The following amendment was accepted subject to drafting changes:—

In sub-rule (1) (b) of rule 12, Order XX, first schedule, for the words—

"which have accrued on the Property", the words "which the decree holder would have received from the property" shall be *substituted*.

The clause, as amended, was adopted.

7. *Clause* 74.—I. The following amendment was accepted:—

Page 40, *omit* lines 37—40.

II. The notices of amendments which were considered and not accepted by the Committee are given in the Annexure.

The clause, as amended, was adopted.

8. *Clause* 75.—The following amendments were accepted:—

(i) Page 41, *after line* 33, *insert*—

"(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be."

(ii) Page 43, *for* line 43, *substitute*—

'(xv) in rule 34, for sub-rule (6), the following sub-rule shall be substituted, namely:—

"(6) (a) where the registration of the document is required under any law for the time being in force, the court, or such officer of the court as may be authorised in this behalf by the court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desired it to be registered, the court may make such order as it thinks fit.

(c) Where the court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration."

(iii) Page 48, line 29, *after* "shall continue or cease", *insert* "and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease."

(iv) Page 48, line 31, *for* "shall be deemed to continue", *substitute* "shall be deemed to have ceased"

(v) Page 50, *for* line 1, *substitute*—

'(xxvi) in rule 66,—

(a) in sub-rule (2), in clause (a), after the words "the property to be sold", the words "or, where a part of the property would be sufficient to satisfy the decree, such part;" shall be inserted;

(b) to sub-rule (2), the following provisos shall"

(vi) Page 51, *for lines* 21—23, *substitute*

'(a) to sub-rule (1), the following proviso shall be added, namely:—

"Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the court shall not confirm such sale until the final disposal of such claim objection." '

(vii) Page 52, *for lines* 11—15, *substitute*

"(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit."

(viii) Page 52, line 19, *after* "instigation or on his behalf", *insert* "or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding."

(ix) Page 52, *for* lines 38—42, *substitute*—

"(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit."

(x) Page 52, line 48, *after* "separate suit" *add*

"and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

The clause, as amended, was adopted.

9. The Committee rose at 13.00 hours and re-assembled at 16.00 hours.

10. *Clause* 76.—The following amendments were accepted:—

(i) Page 54, *after* line 3, *insert*—

"(3A) The court, whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

(ii) Page 54, line 8, *for* "prescribed period as provided", *substitute* "period specified".

(iii) Page 55, *omit* lines 12—15.

(iv) Page 55, line 11, *after* "other party", *insert* ", and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist."

The clause, as amended, was adopted.

11. *Clause* 77.—The clause was adopted without any amendment.

12. *Clause* 78.—The following amendments were accepted:—

(i) Page 58, *after* line 30, *insert*—

"Provided that the commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the court. and, where the court decides that there is no question of privilege, the witness may be recalled by the commissioner and examined by him or the witness may be examined by the court with regard to the question which was objected to on the ground of privilege."

(ii) Page 58, line 39, *for* "rule", *substitute* "rules".

(iii) Page 58, *after* line 42, *insert*—

"Court to fix a time for return of Commission.

18B. The Court issuing a Commission shall fix a date on or before which the Commission shall be returned to it after execution, and the date so fixed shall not be extended except where the court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.".

(iv) Page 58, *for* lines 43-44, *substitute*—

'(viii) in rule 22, for the figures and word "16, 17 and 18", the words, brackets, figures and letters "sub-rule (1) of rule 16A, 17, 18 and 18B' shall be substituted.'.

The clause, as amended, was adopted.

13. *Clause* 79.—The following amendment was accepted:—

Page 59, line 2, *omit* "so allowed and the time".

The clause, as amended, was adopted.

14. *Clauses* 80 *and* 81.—These clauses were adopted without any amendment.

15. *Clause* 82.—The following amendment was accepted:—

Page 62, *after* line 45, *insert*—

"Provided that the opinion so expressed, whether in the affidavit or in the certificate, shall not preclude the court from examining whether the agreement or compromise proposed is for the benefit of the minor."

The clause, as amended, was adopted.

16. *Clause* 83.—I. The following amendment was accepted:—

Page 63, line 39, *after* "a suit or proceeding". *insert* ", instituted by a member of the family,".

II. The Committee also decided that the definition of "family" in this rule should not affect any personal law or any other law for the time being in force and an Explanation to that effect might be added in this clause of the Bill.

The clause was adopted subject to the above modifications.

17. *Clause* 84.—The following amenlments were accepted:—

(i) Page 65, *after* line 32, *insert*—

'(iva) to rule 3, the following proviso shall be added namely:—

"Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs."'

(ii) Pages 66-67, *for* lines 34 to 45, and 1 to 5 respectively *substitute*—

'(x) in rule 15, for the words "provided that he first pays", the words "provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the court may allow,"'

The clause, as amended, was adopted.

18. *Clause* 85.—The following amendments were accepted:—

(i) Page 67, *omit* lines 23—44.

(ii) Page 68, *omit lines* 1—23.

(iii) Pages 68-69, *omit* lines 27—47 and 1—14 respectively.

(iv) Page 69, *omit* lines 20—26.

The clause, as amended, was adopted.

19. *Clause* 86.—The clause was adopted without any amendment.

20. *Clause* 87.—The following amendments were accepted:—

(i) Page 70, line 37, *omit* "other".

(ii) Page 71, lines 37-38, *omit*

"and obtains the leave of the court or Judge to defend the suit".

(iii) Page 71, lines 39-40, *omit*—

"and of his obtaining such leave to defend,"

(iv) Page 72, *after* line 32, *insert*—

"Provided that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

The clause, as amended, was adopted.

21. *Clause* 88.—The following amendments were accepted:—

(i) Page 73, *omit* lines 2—7.

(ii) Page 73, *for* lines 10 and 11, *sustitute*—

"(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void."

The clause, as amended, was adopted.

22. *Clause* 89.—The following amendments were accepted:—

(i) Page 74, *for* lines 13—21, *substitute*—

"Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent."

(ii) Page 74, *for* lines 23—36, *substitute*—

"Disposal of applications for temporary injunction to be expedited in certain cases.	3A. Where an injunction has been granted without giving notice to the opposite party, the court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability."

The clause, as amended, was adopted.

23. *Clause* 90.—The following amendments were accepted:—

(i) Page 75, line 37, *for* "shall reject the memorandum of appeal.", *substitute* "shall not make an order staying the execution of the decree."

(ii) Page 76, *after* line 5, *insert*—

"(3) Where an application has been made under sub-rule (1), the court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the court does not, after hearing under rule 11, decided to hear the appeal."

(iii) Page 76, line 12, *for* "by a Pleader" *substitute* "by the appellant".

(iv) Page 76, lines 23-24, *omit* "is admitted under this rule".

(v) Page 76, line 26, *for* "the admission of the appeal", *substitute* "is not dismissed under this rule, the hearing of the appeal".

(vi) Page 76, lines 30-31, *for* "the appeal shall be dismissed.", *substitute* "no order shall be made staying the execution of the decree in relation to which such determination was made."

(vii) Page 76, *after* line 35, *insert*—

'(va) after rule 11, the following rule shall be inserted, namely:—

"Time within which hearing under rule 11 should be concluded.	11A. Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.'

(viii) Page 76, *omit* lines 36—43.

(ix) Page 77, line 29, *for* "by stating", *substitue* "but may also state".

(x) Page 77, line 31, *for* "been decided in his favour, but", *substitute* "been in his favour; and may".

(xi) Page 77, lines 35-36, *for* "finding of a court which is incorporated in a decree", *substitute* "finding of the court in the judgment on which the decree appealed against is based".

(xii) Page 77, line 38, *for* "it relates to that finding", *substitute* "it is based on that finding,".

The clause, as amended, was adopted.

24. *Clause* 91.—The following amendment was accepted subject to drafting and consequential changes:—

Page 78, *omit* lines 37—40.

The clause, as amended, was adopted.

25. *Clause* 92.—The following amendment was accepted:—

Page 79, line 32, *for* "the compromise ought not to have been recorded.", *substitute* "the compromise should, or should not, have been recorded."

The clause, as amended, was adopted.

26. *Clauses* 93 *to* 97.—These clauses were adopted without any amendment.

27. *Clause* 98.—The Committee felt that in view of the amendments made in Order XXXIV of the Code, the changes proposed in this clause were not necessary and, therefore, decided to *omit* this clause.

28. *Clauses* 99 *to* 102.—These clauses were adoped without any amendment.

29. *Clause* 1.—The following amendments were accepted:—

(i) Page 1, line 6, *for* "1974", *substitute* "1976".

(ii) Page 1, line 11, *for* "1974" *substitute* "1976".

The clause, as amended, was adopted.

30. *Enacting formula.*—The following amendment was accepted:—

Page 1, line 1, *for* "Twenty-fifth" *substitute* "Twenty-seventh".

The Enacting formula, as amended, was adopted.

31. *Long Title.*—The Long Title was adopted without any amendment.

32. The Committee authorised the Legislative Counsel to correct patent errors and carry out amendments of verbal and consequential nature in the Bill.

33. The Chairman then drew the attention of the Members of the Committee to the provisions of Direction 87 of the Directions by the Speaker relating to Minutes of Dissent.

34. The Committee decided to sit on Thursday, the 25th March. 1976 at 16.00 hours for consideration and adoption of their draft Report.

35. The Committee then adjourned.

ANNEXURE

LIST OF NOTICES OF AMENDMENTS CONSIDERED AND NOT ACCEPTED AT THE SITTING OF THE JOINT COMMITTEE HELD ON THE 2ND MARCH, 1976

S. No.	Name of member and text of amendments

Clause 74

SHRI M. C. DAGA:

1. Page 40, line 38, *after* "pleader" *insert* "and countersigned by the client".

2. Page 40, line 39, *after* "by him" *insert* "and countersigned by the client."

LI

Fifty-First Sitting

The Committee sat on Thursday, the 25th March, 1976 from 16.00 to 16.50 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri H. R. Gokhale
6. Shrimati T. Lakshmikanthamma
7. Shri V. Mayavan
8. Shrimati Savitri Shyam
9. Shri R. N. Sharma
10. Shri Satyendra Narayan Sinha
11. Shri R. G. Tiwari

Rajya Sabha

12. Shri Bir Chandra Deb Barman
13. Shri Syed Nizam-ud-din
14. Shri V. C. Kesava Rao
15. Shri M. P. Shukla
16. Shri Awadheshwar Prasad Sinha
17. Shri D. P. Singh

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. Dr. V. A. Seyid Muhammad, Minister of State in the Ministry of Law, Justice and Company Affairs, who is not a member of the Com-

mittee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. The Committee considered and adopted the Bill as amended.

4. The Committee also considered and adopted the draft Report.

5. The Committee then considered and approved the following two paragraphs regarding uniformity in the rates of Court-fees for inclusion at the end of the Report:—

"Since one of the main objects of the Bill is to bring about a reduction in the cost of litigation, the Committee feel that attention should be paid to the matter of court-fee although it is outside the scope of the Code. It has not been possible for the Committee to legislate with regard to court-fee because the Parliament's legislative competence with regard to court-fees is limited to Union territories as the subject (court-fee) falls in the State field (*vide* entry 3 of State List). The Committee, however feel that there should be broad measure of equality in the scales of court-fee all over the country and the rates of court-fees should be very low, if not nominal, so that the less affluent sector of the community may not be deprived of equality before the laws. Further, even if court-fees is charged, the revenue derived from it should not exceed the cost of administration of civil justice. The Supreme Court has repeatedly pointed out that there is a distinction between a fee and a tax. Where a fee is charged, such fee must have a reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a *quid pro quo* for the services rendered [AIR (1971) SC 1182].

Having regard to the observations made by the Supreme Court and the necessity to reduce the cost of litigation so that justice may not be denied to the poor, the Committee feel that effective steps should be taken by the Central Government to ensure that there is a uniformity in the rates of court-fees all over the country and that the rates of court-fees are brought down to such a level as to enable a poor person get a redress of his grievance from a court of law. The Central Government may further ensure that in case the amount received by the State Government by way of court-fees exceeds its expenditure on the administration of civil justice, such excess is spent for providing necessary amenities to the litigant public."

6. The Chairman announced that the Minutes of Dissent, if any, might be sent to the Lok Sabha Secretariat by 15.00 hours on Tuesday, the 30th March, 1976.

7. The Committee authorised the Chairman and, in his absence, Shri Rajdeo Singh to present the Report and lay the record of evidence on the Table of the House on Thursday, the 1st April, 1976.

8. The Committee also authorised Shri M. P. Shukla and, in his absence, Shri Syed Nizam-ud-din to lay the Report and the record of evidence on the Table of Rajya Sabha on the 1st April, 1976.

9. The Committee placed on record their appreciation for the assistance rendered by the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale), Dr. V. A. Seyid Muhammad, Minister of State and Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs during the course of their deliberations.

The Committee also placed on record their appreciation for the assistance rendered by the former Ministers of State [Shri Niti Raj Singh Chaudhary and Dr. (Shrimati) Sarojini Mahishi] in the Ministry of Law, Justice and Company Affairs during the course of their deliberations.

10. The Committee also placed on record their appreciation for the cooperation and assistance rendered by the Legislative Counsel. The Committee also placed on record their thanks for all the arrangements, diligent help and valuable assistance rendered to the Committee in all matters by the officers and staff of the Lok Sabha Secretariat.

11. The Chairman, while associating himself in thanking abovementioned officers, thanked members of the Committee also for extending their full cooperation to him in conducting the proceedings of the Committee in most congenial atmosphere.

12. The members of the Committee also placed on record their thanks to the Chairman (Shri L. D. Kotoki) for ably conducting the proceedings of the Committee and guiding their deliberations at various stages of the Bill.

13. The Committee then adjourned.

APPENDIX VIII

MINUTES OF THE SITTINGS OF SUB-COMMITTEES OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

SUB-COMMITTEE—A

I

First Sitting

The Sub-Committee sat on Monday, the 16th September, 1974 from 10.00 to 13.45 hours in Committee Room, Old Legislators' Hostel Madras.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri M. C. Daga
4. Sardar Mohinder Singh Gill
5. Shrimati T. Lakshmikanthamma
6. Shri Debendra Nath Mahata
7. Shri M. Satyanarayan Rao
8. Shri Nitiraj Singh Chaudhary

Rajya Sabha

9. Shri Sardar Amjad Ali
10. Shri Virendra Kumar Sakhalecha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker.]

1. *Bar Council of Tamil Nadu, Madras.*

Spokesmen:

1. Shri R. G. Rajan, *Vice-Chairman.*

2. Shri N. Ramanatha Iyer, *Member.*

(10.00 to 13.30 hours)

H. Shri C. D. Jagadesan, Kaladipet, Madras.

(13.30 to 13.45 hours)

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Tuesday, the 17th September, 1974, in Committee Room, Old Legislators' Hostel, Madras.

II

Second Sitting

The Sub-Committee sat on Tuesday, the 17th September, 1974 from 10.00 to 12.15 hours in Committee Room, Old, Legislators' Hostel, Madras.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri Debendra Nath Mahata
9. Shri M. Satyanarayan Rao
10. Shri R. N. Sharma
11. Shri Nitiraj Singh Chaudhary

Rajya Sabha

12. Shri Nawal Kishore
13. Shri Dwijendralal Sen Gupta
14. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra,—*Joint Secretary and Legislative Counsel.*

Shri K. K. Saxena—*Under Secretary.*

2. Before the Committee proceeded to hear evidence of the following representatives of the Government of Tamil Nadu, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

1. Shri T. A. Nellayappan, *Deputy Secertary to the Government of Tamil Nadu, Law Department.*

2. Shri T. Prabhakaran John, *Assistant Secretary to the Government of Tamil Nadu, Law Department.*

The evidence lasted till 12.10 hours.

3. A verbatim record of evidence was kept.

4. The Sub-Committee decided that a circular letter might be issued to the Central and State Governments asking them to furnish the following information in respect of notices under section 80 of the Civil Procedure Code during the last 3 years for the information of the Committee:—

(1) No. of notices under Section 80 of Civil Procedure Code received by the Central and State Governments;

(2) No. of cases settled amicably during the period provided under this Section of the Code.

(3) No. of cases filed; and

(4) No. of cases which were decided against the State and time taken for settlement of these cases.

5. The Committee further decided that a circulation letter might be issued to the Central and State Governments asking them to furnish the following information in respect of settlement of decrees under Section 82 of the Code of Civil Procedure during the last 3 years for the information of the Committee:—

(1) No. of cases in which the decree was complied with by Government within the period provided under Section 82(1);

(2) No. of cases in which the decree was complied with within the time under Section 82(2); and

(3) No. of cases in which execution proceedings had to be instituted.

6. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 18th September, 1974, in Committee Room, Old Legislators' Hostel, Madras.

III

Third Sitting

The Sub-Committee sat on Wednesday, the 18th September, 1974 from 10.00 to 13.00 hours in Committee Room, Old Legislators' Hostel, Madras.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri Debendra Nath Mahata
7. Shri R. N. Sharma
8. Shri Nitiraj Singh Chaudhary

Rajya Sabha

9. Shri Nawal Kishore
10. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra,—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. The Sub-Committee heard evidence of the representatives of the Government of Andhra Pradesh and individuals mentioned below:—

[In the beginning, the Chairman drew the attention of the representative to the provisions of Direction 58 of the Directions by the Speaker].

I. Shri K. Parasakan, Senior Advocate, Central Govt. Senior Standing Counsel, Madras.

[10.00 to 11.35 hours].

II. *Government of Andhra Pradesh, Hyderabad.*

Spokesman:

Shri P. Ramachandra Reddi, Advocate-General.

[11.35 to 12.45 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Tamil Nadu Legislative Assembly, their Reporters and other members of the staff in holding their sittings in Old Legislators' Hostel, Madras.

5. The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of Tamil Nadu and officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

6. The Sub-Committee then adjourned to meet again at 15.00 hours on Thursday, the 19th September, 1974 at Bangalore.

IV

Fourth Sitting

The Sub-Committee sat on Thursday, the 19th September, 1974 from 15.00 to 18.40 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri B. R. Kavade
7. Shri Debendra Nath Mahata
8. Shri M. Satyanarayan Rao
9. Shri R. N. Sharma
10. Shri Nitiraj Singh Chaudhary

Rajya Sabha

11. Shri Nawal Kishore
12. Shri Dwijendralal Sen Gupta
13. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPAY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra,—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. Before the Sub-Committee proceeded to hear the evidence of the Chief Justice of Karnataka High Court and the following Advocates, the Chairman drew their attention to the provisions of Direction 58 of Directions by the Speaker:—

I. Shri G. K. Govinda Bhat, Chief Justice, High Court of Karnataka, Bangalore.

[15.00 to 16.20 hours]

II. Shri M. S. Phirangi, Advocate, Dharwar.

[16.25 to 17.50 hours]

III. Shri M. R. Achar, Advocate, Bangalore.

[17.50 to 18.40 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee then adjourned to meet again at 10.00 hours on Friday, the 20th September, 1974 in Eastern Lobby Legislative Assembly Building, Vidhana Soudha, Bangalore.

Fifth Sitting

The Sub-Committee sat on Friday, the 20th September, 1974 from 10.00 to 11.15 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri Debendra Nath Mahata
7. Shri M. Satyanarayan Rao
8. Shri R. N. Sharma
9. Shri Nitiraj Singh Chaudhary

Rajya Sabha

10. Shri Nawal Kishore
11. Shri Dwijendralal Sen Gupta
12. Shri M. R. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. Before the Sub-Committee proceeded to hear the evidence of the following representatives of the Government of Karnataka, Department of Law and Parliamentary Affairs, Bangalore, the Chairman drew their attention to the provisions of Direction 58 of the Directions by the Speaker:—

1. Shri N. D. Venkatesh, *Secretary.*
2. Shri T. Venkataswamy, *Additional Secretary.*
3. Shri M. L. Ramaswami, *Draftsman.*
4. Shri B. C. Srinivasan, *Joint Law Secretary.*

3. The evidence lasted till 11.15 hours.

4. A verbatim record of evidence was kept.

5. The Sub-Committee then adjourned to meet again at 10.00 hours on Saturday, the 21st September, 1974 in Eastern Lobby, Legislative Assembly Biulding, Vidhana Soudha, Bangalore.

VI

Sixth Sitting

The Sub-Committee sat on Saturday, the 21st September, 1974 from 10.00 to 13.05 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Shri B. R. Kavade
7. Shri Debendra Nath Mahata
8. Shri M. Satyanarayan Rao
9. Shri R. N. Sharma
10. Shri Nitiraj Singh Chaudhary

Rajya Sabha

11. Shri Nawal Kishore
12. Shri Virendra Kumar Sakhalecha
13. Shri Dwijendralal Sen Gupta
14. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPAY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. Before the Sub-Committee proceeded to hear the evidence of the representative of the following associations, organisation etc., the Chairman drew their attention to the provisions of Direction 58 of Directions by the Speaker:—

I. *Advocates' Association, Bangalore.*

Spokesmen:

1. Shri B. T. Parthasarathy
2. Shri S. K. Venkatarangaiengar
3. Shri G. Dayananda
4. Shri R. N. Narasimhamurthy
5. Shri S. Udayashankar

[10.00 to 12.10 hours]

II. *Karnataka State Bar Council, Bangalore.*

Spokesmen:

1. Shri Manohar Rao Jagirdar, Chairman.

2. Shri B. Jayachariya.

3. Shri B. G. Naik, Member, All India Bar Council.

4. Shri B. M. Natarajan, Secretary.

[12.10 to 13.00 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Karnataka Legislature, their Reporters and other members of the staff in holding their sittings in Assembly Building, Bangalore.

5. The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of Karnataka and officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

6. The Sub-Committee then adjourned.

SUB-COMMITTEE 'B'

I

First Sitting

The Sub-Committee sat on Monday, the 7th October, 1974 from 11.00 to 13.30 hours in Committee Room, Gujarat Vidhan Sabha, Griha, Gandhinagar.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rajdeo Singh

3. Shri T. Sohan Lal

4. Shri Nitiraj Singh Chaudhary

Rajya Sabha

5. Shri Bipinpal Das

6. Shri Syed Nizam-ud-din

7. Shri V. C. Kesava Rao

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPAY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Sub-Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives , to the provisions of Direction 58 of the Directions by the Speaker.]

I. Shri L. L. Meghanee, Bhavnagar.

[11.00 to 12.00 hours]

II. *Government of Gujarat, Gandhinagar.*

Spokesmen:

1. Shri A. M. Ahmadi, *Secretary, Legal Department.*
2. Shri D. S. Majumdar, *Deputy Secretary, Legal Department.*
3. Shri I. V. Shelat, *Deputy Secretary.*

[12.10 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Tuesday, the 8th October, 1974.

II

Second Sitting

The Sub-Committee sat on Tuesday, the 8th October, 1974 from 10.00 to 13.00 hours in Committee Room, Gujarat Vidhan Sabha Griha, Gandhinagar.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri V. Mayavan
3. Shri Rajdeo Singh
4. Shri T. Sohan Lal
5. Shri Nitiraj Singh Chaudhary

Rajya Sabha

6. Shri Bipinpal Das
7. Shri Syed Nizam-ud-din
8. Shri V. C. Kesava Rao
9. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPAY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Before the Sub-Committee proceeded to hear evidence of the following representatives of the Bar Council of Gujarat, Ahmedabad, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

1. Shri Vasant Jhaverilal Desai, Advocate.
2. Shri Ranjit Motilal Vin, Advocate.
3. Shri Ajitray K. Oza, Advocate.

3. The evidence lasted till 13.00 hours.

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 9th October, 1974.

III

Third Sitting

The Sub-Committee sat on Wednesday, the 9th October, 1974 from 10.00 to 13.35 hours, in Committee Room, Gujarat Vidhan Sabha Griha, Gandhinagar.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

2. Shri Dinesh Joarder
3. Shri V. Mayavan
4. Shri Rajdeo Singh
5. Shri T. Sohan Lal

Rajya Sabha

6. Shri Bipinpal Das
7. Shri Syed Nizam-ud-din
8. Shri V. C. Kesava Rao
9. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Sub-Committee heard the evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives, to the provisions of Direction 58 of the Directions by the Speaker.]

I. *The Gujarat High Court Advocates Association, Ahmedabad.*

Spokesmen:

1. Shri Bhalchandra R. Shah
2. Shri Pradyumna V. Hathi
3. Shri Mayoor D. Pandya.

[10.00 to 13.00 hours]

II. Shri K. N. Mankad, Advocate, Ahmedabad.

[13.00 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Gujarat Legislative Assembly, their Reporters and other members of the staff in holding their sittings in Committee Room, Assembly Building, Gandhinagar.

The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of Gujarat, officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

5. The Committee then adjourned to meet again at Bombay on the 10th October, 1974 at 15.00 hours.

IV

FOURTH SITTING

The Sub-Committee sat on Thursday, the 10th October, 1974 from 15.00 to 14.45 hours in Congress Party Hall, Council Hall, Bombay.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri V. Mayavan
4. Shri K. Pradhani
5. Shri Rajdeo Singh
6. Shri Satyendra Narayan Sinha
7. Shri T. Sohan Lal
8. Shri Nitiraj Singh Chaudhary

Rajya Sabha

9. Shri Bipinpal Das
10. Shri Syed Nizam-ud-din
11. Shri V. C. Kesava Rao
12. Shri Awadeshwar Prasad Sinha
13. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Before the Sub-Committee proceeded to hear evidence of the following representatives of the Law and Judiciary Department, Government of Maharashtra, Bombay, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

(1) Shri A. A. Ginwala, *Additional Secretary.*

(2) Shri B. B. Tambe, *Joint Secretary.*

3. The evidence lasted till 15.45 hours.

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again on Friday, the 11th October, 1974 at 10.00 hours.

V

FIFTH SITTING

The Sub-Committee sat on Friday, the 11th October, 1974 from 10.00 to 14.10 and again from 15.00 to 18.00 hours in Congress Party Hall, Council Hall, Bombay.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri K. Pradhani
4. Shri Rajdeo Singh
5. Shri Satyendra Narayan Sinha
6. Shri T. Sohan Lal
7. Shri Nitiraj Singh Chaudhary

Rajya Sabha

8. Shri Syed Nizam-ud-din
9. Shri V. C. Kesava Rao
10. Shri Awadeshwar Prasad Sinha
11. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker]

I. *Bar Council of Maharashtra, Bombay.*

Spokesmen:

1. Shri S. J. Deshpande, Advocate

2. Shri P. V. Holay, Advocate

3. Shri D. R. Dhanuka, Advocate

4. Shri P. R. Mundargi, Advocate.

[10.00 to 11.45 hours]

II. **Bombay City Civil and Sessions Court Bar Association, Bombay.**

Spokesmen:

1. Shri M. N. Kothari, Advocate

2. Shri P. K. Pandit, Advocate.

3. Shri K. R. Dhanuka, Advocate.

4. Shri S. R. Rajguru, Advocate.

5. Miss Sheela P. Baxi, Advocate.

(11.45 to 14.10 hours)

[The Sub-Committee rose at 14.10 hours and re-assembled at 15.00 hours.]

III. Shri Ramrao Adik, Advocate-General, Maharashtra.

[15.00 to 15.45 hours]

IV. Shri C. R. Dalvi, Advocate, Bombay.

[15.45 to 17.00 hours]

V. Shri D. M. Rane, Advocate, Bombay.

[17.00 to 18.00 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again on 12th October, 1974 at 10.00 hours.

VI

SIXTH SITTING

The Sub-Committee sat on Saturday, the 12th October, 1974 from 10.00 to 13.45 hours and again from 15.00 to 17.20 hours in Congress Party Hall, Council Hall, Bombay.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder

3. Shri V. Mayavan

4. Shri D. K. Panda

5. Shri K. Pradhani

6. Shri Rajdeo Singh

7. Shri T. Sohan Lal

8. Shri Nitiraj Singh Chaudhary.

9. Shri Syed Nizam-ud-din
10. Shri V. C. Kesava Rao
11. Shri Awadheswar Prasad Sinha
12. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Sub-Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker]

I. *Bombay Incorporated Law Society*

Spokesmen:

1. Shri P. M. Dandekar
2. Shri P. P. Hariani
3. Shri D. B. Engineer
4. Shri D. M. Popat.

[10.00 to 11.45 hours]

II. *Bombay Bar Association, Bombay*

Spokesmen:

1. Shri Hemendra Shah
2. Shri Mahendra Shah
3. Shrimati Sujata Manohar
4. Shri P. K. Thakor
5. Shri Ashok N. Vyas, Hon. Sec.

[11.45 to 13.20 hours]

III. Shri M. V. Paranjpe, Advocate.

[13.20 to 13.45 hours]

[The Sub-Committee rose at 13.45 hours and re-assembled at 15.00 hours]

IV. Shri Porus A. Mehta, Advocate, High Court, Bombay.

[15.00 to 15.45 hours]

V. Shri V. C. Kotwal, Advocate, High Court, Bombay.

[15.45 to 16.35 hours]

VI. Shri D. S. Parikh, Advocate, High Court, Bombay.

[16.35 to 17.15 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee placed on record their warm appreciation of the valuable assistance rendered, to them by the Secretary, Maharashtra Legislature and other members of the staff in holding their sittings in Council Hall, Bombay.

The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of Maharashtra, officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

5. The Committee then adjourned.

SUB-COMMITTEE—C

I

FIRST SITTING

The Sub-Committee sat on Monday, the 30th December, 1974 from 14.30 to 17.40 hours in Council Chamber West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Mohammad Tahir
3. Shri Noorul Huda
4. Shrimati Savitri Shyam
5. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

6. Shri Bir Chandra Deb Barman
7. Shri Krishnarao Narayan Dhulap
8. Shri Kanchi Kalyanasundaram
9. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

2. The Sub-Committee heard evidence of the representatives of the associations, organisations, etc. mentioned below:—

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker]

I. *Government of West Bengal, Judicial Department.*

Shri P. K. Banerji—*Joint Secretary.*

[14.30 to 15.00 hours]

*II. *High Court Bar Association, Calcutta.*

1. Shri Hirendra Chander Ghose—*Acting President.*
2. Shri S. C. Mittra—*Member.*
3. Shri Binode Bhusan Ray—*Advocate, High Court*

*III. Shri P. K. Sen Gupta—*Government Pleader, Calcutta.*

[15.00 to 17.40 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Tuesday, the 31st December, 1974 in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

II

SECOND SITTING

The Sub-Committee sat on Tuesday, the 31st December, 1974 from 10.00 to 13.30 hours in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami
3. Shri Mohammad Tahir
4. Shri Noorul Huda
5. Shrimati Savitri Shyam
6. Shri R. G. Tiwari
7. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

8. Shri Bir Chandra Deb Barman
9. Shri Krishnarao Narayan Dhulap
10. Shri Kanchi Kalyanasundaram
11. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

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*Appeared jointly.

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

2. The Sub-Committee heard evidenec of the representatives of the associations, organisations, etc. mentioned below:—

[In the begining, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker].

I. *Bar Council of West Bengal, Calcutta.*

Shri Basanta Kumar Panda—*Chairman of Enrolment Committee of Bar Council.*

[10.00 to 12.00 hours]

II. 1. Shri Prithwis Bagchi, Advocate, Calcuuta High Court.

2. Shri Ranjit Kumar Banerjee, Senior Advocate Calcutta High Court.

[12.00 to 13.00 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 1st January, 1975 in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

III

THIRD SITTING

The Sub-Committee sat on Wednesday, the 1st January, 1975 from 10.00 to 13.20 hours in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami
3. Shri Mohammad Tahir
4. Shri Noorul Huda
5. Shrimati Savitri Shyam
6. Shri R. G. Tiwari
7. Dr. (Shrimati) Sarojini Mahishi

Rajya Sabha

8. Shri Bir Chandra Deb Barman
9. Shri Krishnarao Narayan Dhulap
10. Shri Kanchi Kalyanasundaram
11. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPAY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

2. The Sub-Committee heard evidence of the advocates mentioned below:—

[In the beginning, the Chairman drew the attention of the advocates to the provisions of Direction 58 of the Directions by the Speaker].

I. Shri Pramatha Nath Mitra

[10.00 to 11.00 hours]

II. Shri B. C. Dutt

[11.00 to 11.45 hours]

III. 1. Shri Shankar Das Banerjee

2. Shri Dipankar Prasad Gupta

[11.45 to 13.20 hours]

3. A verbatim record of evidence was kept.

4. The Sub-Committee placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, West Bengal Legisaltive Assembly, their Reporters and other membrs of the staff in holding their sittings in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of West Bengal and officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

5. The Sub-Committee then adjourned to meet again at 15.00 hours on Thursday, the 2nd January, 1975 in Committee Room, Orissa Legislative Assembly Building, Bhubaneshwar.

IV

FOURTH SITTING

The Sub-Committee sat on Thursday, the 2nd January, 1975 from 15.00 to 17.00 hours in Committee Room, Orissa Legislative Assembly Building Bhubaneswar.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami

3. Shri Mohammad Tahir

4. Shrimati Savitri Shyam

Rajya Sabha

5. Shri Bir Chandra Deb Barman
6. Shri Krishnarao Narayan Dhulap
7. Shri Kanchi Kalyanasundaram
8. Shri D. Y. Pawar.

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra, *Senior Table Officer.*

2. The Sub-Committee heard evidence of the representatives of the organisations, associations, etc. mentioned below:—

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker].

I. *Government of Orissa (Law Department)*

Shri K. M. Misra, *Legal Remembrancer.*

[15.00 to 15.45 hours]

II. *Orissa State Bar Council, Cuttack*

Shri S. Mohanty—*Chairman*

[15.45 to 17.00 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 15.00 hours on Friday, the 3rd January, 1975 in Committee Room, Orissa Legislative Assembly Building, Bhubaneswar.

V

FIFTH SITTING

The Sub-Committee sat on Friday, the 3rd January, 1975 from 15.00 to 15.30 hours in Committee Room, Orissa Legislative Assembly Building, Bhubaneswar.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami
3. Shri Mohammad Tahir
4. Shrimati Savitri Shyam

Rajya Sabha

5. Shri Bir Chandra Deb Barman
6. Shri Krishnarao Narayan Dhulap
7. Shri Kanchi Kalyanasundaram
8. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra, *Senior Table Officer.*

2. At the outset, the Chairman informed the Sub-Committee of the sad demise of Shri Lalit Narayan Mishra, Union Minister of Railways earlier during the day. The Sub Committee adopted the following condolence resolution:—

> "The Sub-Committee of the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974 place on record their profound sense of sorrow and grief occasioned by the sad and sudden demise under tragic circumstances of their most esteemed colleague, Shri Lalit Narayan Mishra, Minister of Railways and convey their heartfelt condolences to the members of the bereaved family."

The members then stood in silence for a shortwhile to express their sorrow.

3. The Sub-Committee held informal discussion on the provisions of the Bill.

4. The Sub-Committee placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Orissa Legislative Assembly, their Reporters and other members of the staff in holding their sittings in Orissa Legislative Assembly Building, Bhubaneswar.

The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the Government of Orissa and officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

The Sub-Committee then adjourned.

SUB-COMMITTEE I

I

FIRST SITTING

The Sub-Committee sat on Thursday, the 9th January, 1975 from 14.30 to 17.15 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati).

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri B. R. Kavade

4. Shri Debendra Nath Mahata
5. Shri V. Mayavan
6. Shrimati Savitri Shyam
7. Shri R. N. Sharma
8. Shri T. Sohan Lal

Rajya Sabha

9. Shri Sardar Amjad Ali
10. Shri Bir Chandra Deb Barman
11. Shri Nawal Kishore
12. Shri Syed Nizam-ud-din
13. Shri D. Y. Pawar
14. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Shri Bedabrate Barua, Deputy Minister in the Ministry of Law, Justice & Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. Before the Sub-Committee proceeded to hear evidence of the following representatives of the Government of Assam/individual, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

I. *Government of Assam, Gauhati.*

Spokesmen:

1. Shri D. Das, Chief Secretary.
2. Shri U. G. Tehbildar, Secretary, Law Department.
3. Shri M. D. Saadullah, Joint Secretary, Law Department.

(14.40 to 16.00 hours)

II. Shri Bishnu Kinkor Goswami,
Advocate,
Chairman, Bar Council of Assam,
Nagaland, Meghalaya, Manipur & Tripura,
Gauhati.

(16.00 to 17.15 hours)

4. A verbatim record of evidence was kept.
5. The Sub-Committee then adjourned.

SECOND SITTING

The Sub-Committee sat on Friday, the 10th January, 1975 from 10.30 to 14.00 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati).

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri B. R. Kavade
4. Shri Debendra Nath Mahata
5. Shri V. Mayavan
6. Shrimati Savitri Shyam
7. Shri R. N. Sharma
8. Shri T. Sohan Lal

Rajya Sabha

9. Shri Sardar Amjad Ali
10. Shri Bir Chandra Deb Barman
11. Shri Nawal Kishore
12. Shri Syed Nizam-ud-din
13. Shri D. Y. Pawar
14. Shri Virendra Kumar Sakhalecha
15. Shri Diwjendralal Sen Gupta
16. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice & Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. Before the Sub-Committee proceeded to hear evidence of the following representatives of the Bar Association/Governments of Tripura and Nagaland, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

I. *Bar Association, Nowgong (Assam)*

Spokesmen:

1. Shri Kusha Dev Goswami—*President.*
2. Shri Sarat Chandra Goswami—*Secretary.*
3. Shri Jogesh Chandra Sarmah—*Advocate.*
4. Shri Debabrata Sarmah, *Advocate.*

[10.30 to 12.30 hours]

II. *Government of Tripura, Agartala*

Spokesmen:

1. Shri Henchandra Nath, *Advocate General.*
2. Shri Sukumar Chakravarty, *Secretary (Law).*

(12.30 to 13.30 hours)

III. *Government of Nagaland, Kohima*

Spokesmen

1. Shri R. H. Macdonald D'Silva, *IAS, Principal A.T.I. Kohima.*
2. Shri M. H. Khan, *Secretary, Law & Parliamentary Affairs.*
3. Shri Darshan Singh, *Deputy Secretary, Law & Parliamentary Affairs.*

(13.30 to 14.00 hours)

4. A verbatim record of evidence was kept.
5. The Sub-Committee then adjourned.

III

THIRD SITTING

The Sub-Committee sat on Saturday, the 11th January, 1975 from 15.00 to 17.30 hours in Committee Room, Meghalaya Legislative Assembly Building, Shillong.

PRESENT

Shri R. N. Sharma—*in the Chair.*

MEMBERS

Lok Sabha

2. Shri Debendra Nath Mahata
3. Shri V. Mayavan
4. Shrimati Savitri Shyam
5. Shri T. Sohan Lal

Rajya Sabha

6. Shri Sardar Amjad Ali
7. Shri Bir Chandra Deb Barman
8. Shri Nawal Kishore
9. Shri Syed Nizam-ud-din
10. Shri D. Y. Pawar
11. Shri Virendra Kumar Sakhalecha
12. Shri Dwijendralal Sen Gupta
13. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. Before the Sub-Committee proceeded to hear the evidence of the following representatives of the Bar Associations/Government of Meghalaya/individual, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

I. Shri B. B. Lyngdoh,
Minister of Law,
Government of Meghalaya, Shillong.

(15.00 to 15.40 hours)

II. *Gauhati High Court Bar Association, Gauhati*

Spokesmen:

1. Shri Tarun Chander Das, Advocate.
2. Shri Kanak Sarma, Advocate
3. Shri Pulakananda Das, Advocate.

(15.40 to 16.15 hours)

III. *Shillong Bar Association, Shillong*

Spokesmen:

1. Shri A. S. Khongphai, *President.*
2. Shri B. P. Datta, *Secretary.*
3. Shri U. C. Roy, *Member.*

(16.15 to 16.40 hours)

IV. *Government of Meghalaya, Shillong*

Spokesmen:

1. Shri N. M. Lahiri, *Advocate-General.*
2. Shri S. N. Phunkan, *Legal Remembrancer.*
3. Shri D. R. Rymmai, *Law Officer.*

(16.40 to 17.30 hours)

4. A verbatim record of evidence was kept.
5. The Sub-Committee then adjourned.

IV
FOURTH SITTING

The Sub-Committee sat on Monday, the 13th January, 1975 from 10.00 to 11.40 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati) .

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Debendra Nath Mahata
3. Shri V. Mayavan

4. Shri R. N. Sharma

5. Shri T. Sohan Lal

Rajya Sabha

6. Shri Sardar Amjad Ali

7. Shri Bir Chandra Deb Barman

8. Shri Nawal Kishore

9. Shri Syed Nizam-ud-din

10. Shri Dwijendralal Sen Gupta

11. Shri M. P. Shukla

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice & Company Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure.

3. Before the Sub-Committee proceeded to hear evidence of Shri A. R. Barthakur, Advocate, Gauhati, the Chairman drew his attention to Direction 58 of the Directions by the Speaker:

4. The evidence lasted till 11.30 hours.

5. A verbatim record of evidence was kept.

6. The Sub-Committee then placed on record their warm appreciation of the assistance rendered to them by the Secretaries of Assam and Meghalaya Legislative Assemblies and other members of the staff in holding their sittings at Dispur (Gauhati) and Shillong.

The Sub-Committee also placed on record their appreciation of the assistance rendered to them by the State Government of Assam and Meghalaya, officers of the Ministry of Law, Justice and Company Affairs in holding the sittings at these places.

7. The Sub-Committee then adjourned.

SUB-COMMITTEE II

I

FIRST SITTING

The Sub-Committee sat on Friday, the 17th January, 1975 from 10.00 to 14.00 hours in Tilak Hall, Council House, Lucknow.

PRESENT

Shri Rajdeo Singh—*In the chair*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad

3. Shri M. C. Daga

4. Shri Mohammad Tahir

5. Shri Satyendra Narayan Sinha

Rajya Sabha

6. Shri Krishnarao Narayan Dhulap

7. Shri Kanchi Kalyanasundram

8. Shri V. C. Kesava Rao

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. D. Chatterjee, *Chief Examiner of Questions.*

2. In the absence of the Chairman, Shri Rajdeo Singh was elected as the Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

4. The Sub-Committee heard evidence of the representatives of the associations, organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker].

I. *Government of Uttar Pradesh (Judicial and Legislative Department)*

Spokesmen:

1. Shri N. Goyal—*Secretary.*

2. Shri B. D. Agarwal—*Deputy Legal Remembrancer.*

3. Shri S. N. Sahai—*Deputy Legal Remembrancer.*

(10.00 to 12.20 hours)

II. *Government of Bihar (Law Department)*

Spokesman:

Shri Durjodhan Dash—*Deputy Secretary.*

(12.25 to 12.55 hours)

III. Shri Rudra Pratap Rai,
Advocate,
Joint Secretary, Civil Court Bar Association,
Jaunpur.

(13.00 to 14.00 hours)

5. A verbatim record of evidence was kept.

6. The Committee then adjourned to meet again at 10.00 hours on Saturday the 18th January, 1975.

SECOND SITTING

The Sub-Committee sat on Saturday, the 18th January, 1975 from 10.00 to 14.00 hours in Tilak Hall, Council House, Lucknow.

PRESENT

Shri Rajdeo Singh—*In the Chair*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri M. C. Daga
4. Shrimati T. Lakshmikanthamma
5. Shri Mohammad Tahir
6. Shri Satyendra Narayan Sinha

Rajya Sabha

7. Shri Krishnarao Narayan Dhulap
8. Shri Kanchi Kalyanasundram
9. Shri V. C. Kesava Rao

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. D. Chatterjee—*Chief Examiner of Questions.*

2. In the absence of the Chairman Shri Rajdeo Singh was elected as the Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice & Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

4. The Sub-Committee heard evidence of the representatives of the associations, organisations, etc. mentiond below:

[In the beginning, the Chairman drew the attention of the representatives to the provisions of Direction 58 of the Directions by the Speaker]

I. Shri K. B. Sinha,
District Government Counsel (Civil),
Lucknow.

(10.00 to 11.40 hours)

II. *Bihar State Bar Council, Patna.*

Spokesmen:

1. Shri Satyendra Sahay Varma
2. Shri Mahendra Nath Saran
3. Shri Uma Prasad Singh

(11.40 to 12.45 hours)

III. *High Court Bar Association, Allahabad*

Spokesmen:

1. Shri K. B. L. Gour,
   Advocate.
2. Shri S. P. Gupta,
   Advocate.
3. Dr. R. Dwivedi,
   Advocate.

(13.00 to 13.25 hours)

IV. Shri O. P. Gupta,

Advocate, Allahabad.

(13.35 to 13.55 hours)

5. A verbatim record of evidence was kept.

6. The Sub-Committee placed on record their warm appreciation of the valuable assistance rendered to them by the Judicial Secretary and other officers and members of staff of the Law Department of the Government of Uttar Pradesh and the Reporters in holding their sittings in Council House, Lucknow.

The Sub-Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the officers of the Ministry of Law, Justice and Company Affairs in holding the sittings.

7. The Sub-Committee then adjourned.

III

THIRD SITTING

The Sub-Committee sat on Thursday, the 29th May, 1975 from 10.00 to 13.00 hours in Committee Room A, Punjab Vidhan Sabha, Chandigarh.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri M. C. Daga
3. Shri Dinesh Joarder
4. Shrimati T. Lakshmikanthamma
5. Shri K. Pradhani
6. Shri Rajdeo Singh
7. Shri M. Satyanarayan Rao
8. Shri Sidrameshwar Swamy
9. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

10. Shri Krishnarao Narayan Dhulap
11. Shri Kanchi Kalyanasundram
12. Shri V. C. Kesava Rao
13. Shri Awadheshwar Prasad Sinha
14. Shri Mohammad Usman Arif

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Before the Sub-Committee proceeded to hear evidence of the following Advocates the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

I. Shri Jinendra Kumar, Advocate.

(10.00 to 12.05 hours)

The evidence was not concluded. He was requested to appear again at Delhi on the 17th June, 1975.

II. Shri Atma Ram, Advocate.

(12.05 to 13.00 hours)

3. A verbatim record of evidence was kept.

4. The Sub-Committee then adjourned to meet at 10.00 hours on Friday, the 30th May, 1975.

IV

FOURTH SITTING

The Sub-Committee sat on Friday, the 30th May, 1975 from 10.00 to 13.45 hours in Committee Room A, Punjab Vidhan Sabha, Chandigarh.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri M. C. Daga
4. Shri Dinesh Joarder
5. Shrimati T. Lakshmikanthamma
6. Shri K. Pradhani
7. Shri Rajdeo Singh
8. Shri M. Satyanaryan Rao
9. Shri Madhu Limaye
10. Shri Sidrameshwar Swamy
11. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

12. Shri Krishnarao Narayan Dhulap
13. Shri Kanchi Kalyanasundram
14. Shri V. C. Kesava Rao
15. Shri Awadheshwar Prasad Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

2. Before the Sub-Committee proceeded to hear evidence of the following representatives, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

I. *Government of Punjab, Chandigarh*

Spokesmen:

1. Shri S. S. Sodhi—*Secretary.*
2. Shri R. K. Battas—*Joint Secretary.*

(10.00 to 11.00 hours)

II. Shri Shri Chand Goyal, *ex*-M.P.

(11.00 to 11.40 hours)

III. Shri Harbhagwan Singh, Advocate.

(11.40 to 11.55 hours)

IV. Shri C. L. Lakhanpal, Senior Advocate.

(11.55 to 13.15 hours)

The evidence was not concluded. He was requested to appeal again at Delhi on the 16th June, 1975.

V. Shri S. K. Jain—*Advocate.*

The evidence was not concluded. He was requested to appeal again at Delhi on the 17th June, 1975.

3. A verbatim record of evidence was kept.

4. At the end, the Sub-Committee placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary Punjab Vidhan Sabha and other members of the staff in holding their sittings at Chandigarh.

The Sub-Committee also placed on record their warm appreciation of the assistance rendered to them by the State Governments of Punjab and Haryana and Officers of the Ministry of Law, Justice and Company Affairs in holding their sittings at this place.

5. The Sub-Committee then adjourned.

GMGIPMRND—LSI—2920 LS—1-5-76—1200.

C. B. II No. 306 (I)

LOK SABHA

JOINT COMMITTEE

ON

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

EVIDENCE

(Volume I)

LOK SABHA SECRETARIAT
NEW DELHI

October, 1975/Kartika, 1897 (Saka)

Price : *Rs. 10.00*

LOK SABHA SECRETARIAT

Corrigenda

to

the record of Evidence (Vol. I) tendered before the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974.

Page (iii), S.No.4, line 3, for "legislators" read "legislations"
Page 4, col. 1, line 22 from bottom, for "musut" read "must"
Page 5, col. 2, line 18, for "rtaed" read "ted"
Page 7, col. 1,
(i) line 17, for "them" read "their"
(ii) line 17 from bottom, for "longold" read "age-old"
Page 9, col. 1,
(i) line 23, for "Supposting" read "Supposing"
(ii) line 12 from bottom, for "inreased" read "increased"
Page 10, col. 2,
(i) line 2, for "It" read "If"
(ii) line 5, for "iliganrs" read "litigants"
Page 13, col. 1, line 14, for "partites" read "parties"
Pages 29-31, for "Shri D.C. SEN GUPTA" read "Shri D.L. SEN GUPTA" wherever occurs.
Page 33, col. 1, line 8, for "enquires" read "enquiries"
Page 35, line 1, for "COMMUNITY" read "COMMITTEE"
Page 37, col. 2, line 18, for "apepal" read "appeal"
Page 41, col. 1, lines 2 to 5 from bottom, delete "105 takes care of these matters and that there will also be saving of time? Taking this argument further, could it not be"
Page 50, col. 2
(i) line 13, for "low" read "law"
(ii) line 15 from bottom, for "is" read "us"
(iii) last line, for "way" read "away"
Page 53, col. 2, line 3, for "unless" read "useless"
Page 71, col. 2, line 23, for "trained" read "tained"
Page 77, col. 1, line 8, for "we" read "they"
Page 89, col. 2, line 21 from bottom, for "In both Sections 100 and" read "The scope is entirely"
Page 102, col. 1,
(i) after line 26, insert "of supervising and overseeing of the"
(ii) delete line 28.
Page 110, col. 2, for line 12 read "ple. In the very preamble of our"
Page 120, col. 1, line 22, for "section 10" read "section 100"
Page 125, col. 1, for line 7 from bottom read "there is a specific direction in law
Page 132, col. 1, line 23, for "suto" read "suo"
Page 133, col. 1, line 11, for "is" read "has"

Page 144, col. 1, line 7 from bottom, delete "he"
Page 146, col. 1, line 23, for "Sir, by that" read "Then the case"
Page 159, col. 1, line 6 from bottom: for "adidng" read "adding"
Page 165,
(i) col. 1, line 24, for "Ored X clear" read "Order X clearly"
(ii) col. 2, line 8, for "clause (a)" read "clause (d)"
Page 168, col. 2,
(i) after line 12, add "records that it is lawful it cannot be"
(ii) delete line 14.
Page 172, col. 2,
(i) line 9, for "adva-" read "advo-"
(ii) line 10 for "cmharging" read "charging"
Page 173, col. 1, line 17 from bottom, after "do" add "not"
Page 183, col. 2, line 23, for "ndgation" read "litigation"
Page 191, col. 2,
(i) line 8 from bottom, for "prescrible rule" read "prescribe rules" and for "folles" read "follo-"
(ii) line 9 from bottom, for "stral-" read "straight"
Page 192, col. 1, line 15 for "lawer" read "lawyer"
Page 195, col. 1, line 22 from bottom, for "subsantial logieo" read "substantial logic"
Page 215, col. 1, line 15 from bottom, for "decreases" read "decrees"
Page 220, col. 2, line 18, for "not" read "no"
Page 225, col. 1, line 18 from bottom for "trail" read "trial"
Page 228, col. 2, line 19, for "dispend" read "dispensed"
Page 259, col. 2, line 9 from bottom for "10" read "104"
Page 262, col. 2, line 5, after "will" insert "be"
Page 265, col. 1, line 4, for "pirit" read "spirit"
Page 276,
(i) line 6, for "Council" read "Counsel"
(ii) line 11, for "Shri D.B. Bal" read "Shri B.D. Bal"
(iii) col. 1, line 3 from bottom, for "natudal" read "natural"
(iv) col. 2, line 3, for "pdocedure" read "procedure"
Page 277, col. 2,
(i) lines 11 and 17 for "mortgager" read "mortgagor"
(ii) line 16, for "mortgager" read "mortgagee"
Page 291, col. 1, line 25, for "fell" read "feel"
Page 292, col. 1, line 7, for "thedein" read "thereon"
Page 306, col. 1, line 23 from bottom, for "unread" read "unreal"
Page 307, col. 1, line 10, for "grat" read "grant"
Page 315, col. 2, line 11, from bottom, for "from" read "form"
Page 318, col. 1, line 21 from bottom, for "out" read "our"
Page 322, col. 1,
(i) line 8, for "dealy" read "delay"
(ii) line 12, for "suggesetions" read "suggestions"

Page 324, col. 1, line 3, for "Emolument" read "Enrolment"

Page 328, col. 1, line 19, for "be" read "we"
Page 330, col. 2, line 17, for "few" read "fee"
Page 335, col. 1, line 11 from bottom, for "elient" read "client"
Page 352, col. 1,

(i) line 22, after "That" insert "I"
(ii) line 23, after "we" insert "will try to see"

Page 353,

(i) col. 1, line 2, for "it" read "is"
(ii) col. 2, line 5, for "to" read "for"

Page 356, col. 2, line 12 from bottom, for "of" read "if"
Page 358, col. 1, line 22 from bottom, for "of" read "or"
Page 379,

(i) col. 1, line 22, for "appal" read "appeal"
(ii) col. 2, line 6 from bottom, for "99" read "90"

Page 384, line 7, for "Shri L.D. Kotok" read "Shri L.D. Kotoki"
Page 385, col. 1, line 19 from bottom, for "Councills" read "Councils"
Page 386, col. 1, line 24, for "them" read "then"
Page 399, col. 1, line 5 from bottom, for "application" read "applicant"
Page 400, col. 2, line 14 from bottom, for "and" read "aid"
Page 430, col. 1, line 11 for "appreciation" read "application"
Page 441, col. 1, line 4 from bottom, for "evidenct" read "evidence"
Page 444, Col. 2, line 25 from bottom, for "plant" read "plaint"
Page 447 col. 2, line 4, for "put" read "but"
Page 448, col. 2., line 2, for "incressing" read "increasing"
Page 465, col. 1, line 22 from bottom, for "count" read "court"
Page 469, col. 1, line 12, for "may" read "my"
Page 482, col. 2, line 17 from bottom, after "Order" insert "7"
Page 484, col. 1,

(i) line 19 from bottom, for "that point" read "to point out"
(ii) line 20 from bottom, for "Counsel" read "Council"

Page 492, col. 1,

(i) line 30, for "bur" read "our"
(ii) last line, for "clairnmed" read "claimed"

JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

COMPOSITION OF THE COMMITTEE

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri Chandrika Prasad
6. Shri A. M. Chellachami
7. Shri M. C. Daga
*8. Shri Tulsidas Dasappa
9. Sardar Mohinder Singh Gill
10. Shri H. R. Gokhale
11. Shri Dinesh Joarder
12. Shri B. R. Kavade
13. Shrimati T. Lakshmikanthamma
14. Shri Madhu Limaye
**15. Shri C. M. Stephen
16. Shri V. Mayavan
17. Shri Mohammad Tahir
18. Shri Surendra Mohanty
19. Shri Noorul Huda
20. Shri D. K. Panda
21. Shri K. Pradhani
22. Shri Rajdeo Singh
23. Shri M. Satyanarayan Rao
24. Shrimati Savitri Shyam
25. Shri R. N. Sharma
26. Shri Satyendra Narayan Sinha
27. Shri T. Sohan Lal
28. Shri Sidrameshwar Swamy
29. Shri R. G. Tiwari
***30. Dr. (Shrimati) Sarojini Mahishi

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*Appointed w.e.f. 2-12-74 *vice* Shri Prabhudas Patel resigned.
**Appointed w.e.f. 20-3-75 *vice* Shri Debendra Nath Mahata died.
***Appointed w.e.f. 19-12-74 *vice* Shri Niti Raj Singh Chaudhary resigned.

Rajya Sabha

31. Shri Sardar Amjad Ali
@32. Shri Mohammad Usman Arif
33. Shri Bir Chandra Deb Barman
34. Shri Krishnarao Narayan Dhulap
35. Shri Kanchi Kalyanasundaram
@@36. Shri B. P. Nagaraja Murthy
37. Shri Syed Nizam-ud-din
38. Shri D. Y. Pawar
39. Shri V. C. Kesava Rao
40. Shri Virendra Kumar Sakhalecha
41. Shri Dwijendralal Sen Gupta
42. Shri M. P. Shukla
43. Shri Awadheshwar Prasad Sinha
44. Shri D. P. Singh
45. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary & Legislative Counsel (Legislative Department)*.
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel (Legislative Department)*.
3. Shri V. V. Vaze, *Joint Secretary & Legal Adviser, (Department of Legal Affairs)*.

SECRETARIAT

Shri P. K. Patnaik—*Additional Secretary.*
Shri H. G. Paranjpe—*Chief Financial Committee Officer.*
Shri Y. Sahai—*Chief Legislative Committee Officer.*

@Appointed w.e.f. 11-12-74 *vice* Shri Bipinpal Das resigned.
@@Appointed w.e.f. 14-5-75 *vice* Shri Nawal Kishore died.

Questionnaire

1. What, acording to you, are the causes of delay in civil litigation and what amendments do you suggest to eliminate such causes of delay?

2. Do you consider it desirable to permit the service of all processes on the pleader of a party after the defendant has appeared in the suit?

3. Do you think that a civil proceeding should also include proceedings relating to the preparation and publication of the record of rights?

4. What measure would you suggest to prevent landlords and other persons from instituting suits to defeat the distribution of land to the landless peasants in pursuance of the land reforms legislators or to evict landless peasants from the lands reclaimed by them?

5. What measures would you suggest to minimise the cost of litigation?

6. What classes of litigants should be given legal aid and what classes of litigants should be provided with all the expenses of the litigation?

7. Do you think that copies of documents and statements of witnesses should be furnished to the parties free of cost?

8. Do you think that preliminary objections should be heard along with the merits of the case?

9 Are the provisions of review necessary?

10. Is section 115 necessary or can it be deleted in view of the fact that a remedy is available under article 227 of the Constitution?

11. Are the provisions of Order XI necessary?

12. Do you think that greater use may be made of Order XXXVII, so that larger number of suits may be tried under the summary procedure?

13. Do you favour any limitation being imposed on the power of the courts to issue temporary injunctions? In particular, do you favour an amendment to the effect that an *ex-parte* interim injunction should not be granted save in exceptional cases and for reasons to be recorded?

14. What changes would you suggest in the existing procedure relating to the execution of money decrees with a view to avoiding delay and simplifying the procedure?

WITNESSES EXAMINED

S. No.	Name of witness	Date of hearing	Page
1	2	3	4
1.	Bar Council of Tamil Nadu, Madras.	16-9-74	2
	Spokesmen:		
	1. Shri R. G. Rajan—Vice-Chairman.		
	2. Shri N. Ramanatha Iyer—Member.		
2.	Shri C. D. Jagadesan, Kaladipet, Madras	16-9-1974	18
3.	Government of Tamil Nadu (Law Department)	17-9-1974	21
	Spokesmen:		
	1. Shri T. A. Nellayappan, Deputy Secretary.		
	2. Shri T. Prabhakaran John, Assistant Secretary.		
4.	Shri K. Parasakan, Senior Advocate, Central Government Senior Standing Counsel, Madras.	18-9-1974	35
5.	Shdi P. Ramachandra Reddi, Advocate-General, Government of Andhra Praedsh, Hyderabad.	18-9-1974	45
6.	Shri G. K. Govinda Bhat, Chief Justice, High Court of Karnataka, Bangalore.	19-9-1974	53
7.	Shri M. S. Phirangi, Advocate, Dharwar	19-9-1974	58
8.	Shri M. R. Achar, Advocate, Bangalore.	19-9-1974	64
9.	Government of Karnataka, Department of Law & Parliamentary Affairs, Bangalore.	20-9-1974	70
	Spokesmen:		
	1. Shri N. D. Venkatesh—Secretary.		
	2. Shri T. Venkataswamy—Addl. Secretary.		
	3. Shri M. L. Ramaswami—Draftsman.		
	4. Shri B. C. Srinivasan—Joint Law Secretary.		
10.	Advocates' Association, Bangalore.	21-9-1974	79
	Spokesmen:		
	1. Shri B. T. Parthasarathy.		

1	2	3	4
	2. Shri S. K. Venkatarangaiengar. 3. Shri G. Dayananda. 4. Shri R. N. Narasimhamurthy. 5. Shri S. Udayashankar.		
11.	Karnataka State Bar Council, Bangalore. *Spokesmen*: 1. Shri Manohar Rao Jagirdar, Chairman. 2. Shri B. Jayachariya. 3. Shri B. G. Naik, Member, All India Bar Council. 4. Shri B. M. Natarajan, Secretary.	21-9-1974	91
12.	Shri L. L. Meghanee, Bhavnagar.	7-10-1974	98
13.	Government of Gujarat (Legal Department), Gandhinagar. *Spokesmen*: 1. Shri A. M. Ahmadi, Secretary. 2. Shri D. S. Majumdar, Deputy Secretary. 3. Shri I. V. Shelat, Deputy Secretary.	7-10-1974	110
14.	Bar Council of Gujarat, Ahmedabad. *Spokesmen*: 1. Shri Vasant Jhaverilal Desai, Advocate. 2. Shri Ranjit Motilal Vin, Advocate. 3. Shri Ajitray K. Oza, Advocate.	8-10-1974	123
15.	Gujarat High Court Advocate Association, Ahmedabad *Spokesmen*: 1. Shri Bhalchandra R. Shah 2. Shri Pradyumna V. Hathi. 3. Shri Mayoor D. Pandya.	9-10-1974	150
16.	Shri K. N. Mankad, Advocate, Ahmedabad.	9-10-1974	171
17.	Government of Maharashtra, Law and Judiciary Department, Bombay. *Spokesmen*: 1. Shri A. A. Ginwala, Additional Secretary. 2 Shri B. B. Tambe, Joint Secretary.	10-10-1974	176

1	2	3	4
18.	Bar Council of Maharashtra, Bombay. *Spokesmen*: 1. Shri S. J. Deshpande, Advocate. 2. Shri P. V. Holay, Advocate. 3. Shri D. R. Dhanuka, Advocate. 4. Shri P. R. Mundargi, Advocate.	11-10-1974	181
19.	Bombay City Civil and Sessions Court Bar Association, Bombay. *Spokesmen*: 1. Shri M. N. Kothari, Advocate. 2. Shri P. K. Pandit, Advocate. 3. Shri K. R. Dhanuka, Advocate. 4. Shri S. R. Rajguru, Advocate. 5. Miss Sheela P. Baxi, Advocate.	11-10-1974	194
20.	Shri Ramrao Adik, Advocate-General, Maharashtra, Bombay.	11-10-1974	207
21.	Shri C. R. Dalvi, Advocate, Bombay.	11-10-1974	210
22.	Shri D. M. Rane, Advocate, Bombay.	11-10-1974	217
23.	Bombay Incorporated Law Society. *Spokesmen*: 1. Shri P. M. Dandekar. 2. Shri P. P. Hariani. 3. Shri D. B. Engineer. 4. Shri D. M. Popat.	12-10-1974	224
24.	Bombay Bar Association, Bombay. *Spokesmen*: 1. Shri Hemendra Shah. 2. Shri Mahendra Shah. 3. Shrimati Sujata Manohar. 4. Shri P. K. Thakor. 5. Shri Ashok N. Vyas—Hony. Secretary.	12-10-1974	235
25.	Shri M. V. Paranjape, Advocate.	12-10-1974	246
26.	Shri Porus A. Mehta, Advocate.	12-10-1974	249
27.	Shri V. C. Kotwal, Advocate.	12-10-1974	251
28.	Shri D. S. Parikh.	12-10-1974	256

1	2	3	4
29.	Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.	31-10-1974	262
30.	High Court Bar Association, Delhi.	31-10-1974	267
	Spokesman: Shri P. N. Lekhi.		
31.	Bar Association of Supreme Court of India, New Delhi	1-11-1974	276
	Spokesman: Shri B. D. Bal.		
32.	Bar Council of Delhi, Delhi.	2-11-1974	294
	Spokesman: Shri Radhe Mohan Lal.		
33.	Government of West Bengal (Judicial Department), Calcutta.	30-12-1974	301
	Spokesman: Shri P. K. Banerji—Joint Secretary.		
34.	High Court Bar Association, Calcutta.	30-12-1974	304
	Spokesmen: 1. Shri Hirendra Chunder Ghose, Acting President. 2. Shri S. C. Mittra, Member. 3. Shri Binode Bhusan Roy, Advocate, High Coure Calcutta.		
35.	Shri P. K. Sen Gupta, Government Pleader, West Bengal Government, Calcutta.	30-12-1974	304
36.	Bar Council of West Bengal, Calcutta.	31-12-1974	324
	Spokesman: Shri Basanta Kumar Panda—Chairman of Enrolment. Committee of Bar Council.		
37.	Shri Prithwis Bagchi, Advocate, Calcutta High Court, Calcutta.	31-12-1974	336
38.	Shri Ranjit Kumar Banerjee, Senior Advocate, Calcutta High Court, Clacutta.	31-12-1974	336
39.	Shri Pramatha Nath Mitra, Advocate, Calcutta.	1-1-1974	346
40.	Shri B. C. Dutt, Advocate, Calcutta.	1-1-1974	352
41.	1. Shri Shankar Das Banerji. 2. Shri Dipankar Prasad Gupta.	1-1-1974	358
42.	Government of Orissa (Law Department), Bhubaneswar.	2-1-1974	369
	Spokesman: Shri K. M. Misra, Legal Remembrancer.		

1	2	3	4
43.	Orissa State Bar Council, Cuttack.	2-1-1975	373
	Spokesman:		
	Shri S. Mohanty, Chairman.		
44.	Government of Assam, Gauhati.	9-1-1975	385
	Spokesmen:		
	1. Shri D. Das, Chief Secretary.		
	2. Shri U. G. Tehbildar, Secretary, Law Department.		
	3. Shri M. D. Saadullah, Joint Secretary, Law Department.		
45.	Shri Bishu Kinkor Goswami, Advocate, Chairman, Bar Council of Assam. Nagaland, Meghalaya, Manipur and Tripura, Gauhati.	9-1-1975	393
46.	Bar Association, Nowgong (Assam).	10-1-1975	404
	Spokesmen:		
	1. Shri Kusha Dev Goswami, President.		
	2. Shri Surat Chandra Goswami, Secretary.		
	3. Shri Jogesh Chandra Sarmah, Advocate.		
	4. Shri Debabrata Sarmah, Advocate.		
47.	Government of Tripura, Agartala.	10-1-1975	415
	Spokesmen:		
	1. Shri Henchandra Nath, Advocate-General.		
	2. Shri Sukumar Chakravarty, Secretary (Law).		
48.	Government of Nagaland, Kohima.	10-1-1975	422
	Spokesmen:		
	1. Shri R. H. Macdonald D'Sliva, Principal A.T.I., Kohima.		
	2. Shri M. H. Khan, Secretary, Law and Parliamentary Affairs.		
	3. Shri Darshan Singh, Deputy Secretary, Law & Parliamentary Affairs.		
49.	Shri B. B. Lyngdoh, Minister of Law, Government of Meghalaya, Shillong.	11-1-1975	425
50.	Gauhati High Court Bar Association, Gauhati.	11-1-1975	429
	Spokesmen:		
	1. Shri Tarun Chander Das, Advocate.		
	2. Shri Kanak Sarma, Advocate.		
	3. Shri Pulakananda Das, Advocate.		
51.	Shillong Bar Association, Shillong.	11-1-1975	432
	Spokesmen:		
	1. Shri A. A. Khongphai, President.		
	2. Shri B. P. Datta, Secretary.		
	3. Shri U. C. Roy, Member.		

1	2	3	4
52.	Government of Meghalaya, Shillong.	11-1-1975	434
	Spokesmen: 1. Shri N. M. Lahiri, Advocate-General. 2. Shri S. N. Phunkan, Legal Remembrancer. 3. Shri D. R. Rymmai, Law Officer.		
53.	Shri A. R. Barthakur, Advocate, Gauhati.	13-1-1975	441
54.	Government of Uttar Pradesh (Judicial & Legislative Department), Lucknow.	17-1-1975	453
	Spokesmen: 1. Shri K. N. Goyal, Secretary. 2. Shri B. D. Agarwal, Deputy Legal Remembrancer. 3. Shri S. N. Sahai, Deputy Legal Remembrancer.		
55.	Government of Bihar (Law Department).	17-1-1975 and *10-2-1975	467
	Spokesman: Shri Durjodhan Dash, Deputy Secretary.		
56.	Civil Court Bar Association, Jaunpur.	17-1-1975	469
	Spokesman: Shri Rudra Pratap Rai, Advocate, Joint Secretary.		
57.	Shri K. B. Sinha, District Government Counsel (Civil), Lucknow.	18-1-1975	476
58.	Bihar State Bar Council, Patna.	18-1-1975	484
	Spokesmen: 1. Shri Satyendra Sahay Varma. 2. Shri Mahendra Nath Saran. 3. Shri Uma Prasad Singh.		
59.	High Court Bar Association, Allahabad.	18-1-1975	489
	Spokesmen: 1. Shri K. B. L. Gour, Advocate. 2. Shri S. I. Gupta, Advocate. 3. Dr. R. Dwivedi, Advocate.		
60.	Shri O. P. Gupta, Advocate, Allahabad.	18-1-1975	492

*See Volume II.

I. Bar Council of Tamil Nadu, Madras

Spokesmen :

1. Shri R. G. Rajan—*Vice-Chairman.*
2. Shri N. Ramanatha Iyer, *Member.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: For your benefit, I would like to draw your attention to Direction 58 of the Directions by the Speaker which read as follows:—

> "Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You have already submitted your memorandum. Now, you may explain or elucidate any point raised in your Memorandum.

SHRI R. G. RAJAN: As far as the Bar Council is concerned, the memorandum was prepared after a Special Committee constituted for the purpose went into the provisions of the Bill and made their suggestions and those suggestions will speak for themselves. But one or two matters require a little elucidation. The two matters which require consideration relate to sections 100 and 115 of the Code of Civil Procedure. So far as section 100 is concerned, it provides for a second appeal and it is maintainable only in respect of three matters which have been specifically mentioned in clauses (a) to (c). As far as the second appeal is concerned, the aggrieved litigant wants to have the satisfaction of being scrutinised by the highest court that justice is done in accordance with the law. The provision of second appeal which becomes final as far as the State level is concerned. The bounds upon which interference is made and called or are clearly provided in Section 100 which has stood the test for a very long time. It is true that the effect of these three clauses in Section 100 has been repeatedly reinforced by the various decisions of the High Courts the Supreme Court recently. Now we have understood to what extent the High Court will interfere. But in the Bill a departure is sought to be made in a very significant and far-reaching manner. In Clause 39 of the Bill it is stated—

> 'Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court certifies that the case involves a substantial question of law....'

What is the substantial questions of law, is not defined anywhere. I do not see why the three clauses will not comprehend the substantial question of law. If that is so, why not those three clauses be retained. It will be interesting to note the broad headlines in which the High Court or the Supreme Court has considered the question of law. For instance, I can give illustrations like 'decisions not based on legal advice'. It is a fundamental jurisprudence that the decision should be based on legal advice.

I was giving illustrations. In some cases issues might have been wrongly framed or no issue would have been framed; there might have been misconception of issues the subordinate

courts might have tried and decided some matters not strictly coming under their jurisdiction. In all these cases the question of 'interference' comes in. There might have been omission to consider facts, evidence or proof. The findings might have been based on inadmissible evidences, misinterpretation of evidences etc. There might have been omission to try issues, legal facts and documentary evidence, misconstruction of documents of title, misconstruction of character of property—all these matters have been the subject matter for decision as question of law by the High Court in second appeal. I have given the illustrations wherein the High Court had to decide the question of law on appeal. That is why I say it is vague to have the term "substantial questions of law". The question of 'law' is itself vague. 'Substantial' is still vague. So I submit to hon. Members that clauses (a) to (c) of Section 100, which are already there, must be retained. Hon. Members may also be aware that when you say substantial questions of law' there is bound to be difference of opinion. With the present diversity in our country and with the numerous High Courts we are having, considering the complexities of questions coming before them, it will be better to confine existing questions of law comprising Section 100. Of course Article 133 concerns itself with grant of special leave for determining substantial questions of law. That is with reference to Supreme Court. Even after 26 years of independence, we are yet to have correct definition by Supreme Court of what are 'substantial questions of law". Since such matters of 'substantial questions of law' may not be much so far as Supreme Court is concerned, that provision may be there. But so far as matters coming in second appeal to the High Courts are concerned, it is better to retain the present Section 100.

So far as second appeal is concerned. it becomes before a single judge. Practically each judge is allotted a district. Appeals coming from a particular district may go to a particular judge. So that Judge is able to have superintendence over the issues involved in the case from that district. If Section 100 is attracted, the case is admitted. But if on the other hand, a certificate is insisted upon, problems will arise and the whole thing right from the plaint in the first court, the framing of issues. oral and written and all other statements and evidences, oral and documentary the judgements—the whole lot have to be gone through for establishing of a case for second appeal. That will be a waste of time and wholly unnecessary. What has been going on all these years has worked well and may be retained. A certificate is not necessary. For efficient functioning of judiciary and for proper administration of justice and to infuse confidence in the public, the present provisions for coming in appeal to the High Court may be retained. Section 100 as it is may be retained. The present questions of law under the existing Section 100 are enough and may be retained. The anology of Article 133 for appeal to Supreme Court is not proper here. The Supreme Court is there to decide "substantial questions of law" for the whole country. That cannot be compared to trial of ordinary civil disputes between parties, between one party and another and whch may come to High Court. Insistence of certificate for coming in appeal to High Court is not necessary since it would lead to complications. It will not be conducive to smooth functioning also. Superintendence by High Court by way of appellate jurisdiction is very important. It tones up the subordinate judiciary. Without meaning any disrespect for subordinate judiciary, which is functioning well at present, wherein we want quick action, where in we have matters coming under Sec. 100, where it is apparent that possible injustice has been done by subordinate courts, the litigant should have the right to come to High Court in appeal. Insistence of certificate is quite unnecessay. The present *status quo* may remain. It has worked well all along. Otherwise the whole record

right from the first plaint to arguments, recording of evidences (oral and documentary), judgements of subordinate courts—all these will have to be reviewed again before certificate is issued. That is not at all necessary. To find out whether the lower court has taken into consideration all relevant matters, whether there had been admission of inadmissible evidences etc.—all these would take a long time for the judge to decide before giving a certificate for appeal. Sometimes urgent action may be required for possession of property and High Court may have to be moved quickly. Here if we insist on issue of certificate, it will only complicate matters and we will have to work backwards considering all previous evidence etc. Section 100 A is not necessary. The existing provison may stand as it is. The modification suggested to Section 103 is also not necessary. The old Section 103 may be restored. Now the jurisdiction of first appellate authority is Rs. 10,000. I am saying about practice in Tamil Nadu. Our court fee is 7½ per cent of the value of money suit. That itself is rather high for the litigant. If the litigant feels that appropriate judgment has not been given, if he has grounds to appeal under Section 100, he musut be given opportunity to come in second appeal, on decisions in regard to quuestions of law. The property rights of an individual is rapidly changing. So, Rs. 10,000 worth of property is substantial property for any person to possess today as an individual. Litigations regarding Corporations, firms, associations or companies who possess larger properties are different aspects. Because in their cases the first appeal itself will lie to the High Court and they get the advantage of a higher judiciary to have a scrutiny of their cases. But in respect of poor. lower middle class, middle class litigents they must be given an opportunity to go to the High Court within the bounds of Section 100 as it stands.

With a certain amount of experience and as a fact I may tell the hon. Members that all second appeals are not admitted by the High Court. They know what are the cases that should be admitted without a certificate even in the present context. A substantial percentage of cases will be rejected even at the first stage, so that there will not be any kind of apprehension that this provision will only make the gates open and multiply the number of litigations or increase the arrears. I am not speaking about other States. As regards disputes between the parties there will be a substantial reduction in the first stage itself. That is also a fact to be considered in the background of the property value of each individual's holding.

SHRI NITI RAJ SINGH CHAUDHARY: You said that the percentage of cases admitted is very limited. In this context can you tell us, out of the appeals that are admitted, what percentage of them are allowed and what percentage of them are rejected.

SHRI R. G. RAJAN: I am an advocate of 22 years' standing in the High Court Bar. I have not brought the data with me. When a second appeal litigant comes to the High Court for engaging a lawyer. I advise him not to file a case, if I find there is no case for filing a second appeal. So, even at my stage that stops. Of course, the suitor does not stop there and he may consult another lawyer. But by and large as we grow in the Bar with experience and create a status or stature of standing then we reduce the number of filing of second appeals asking the parties not to file. But it is possible that junior members of the Bar, perhaps members of the Bar of the 10 years group may go on filing more number of second appeals. But then more number of second appeals are dismissed at the admission stage itself. If possible, I will collect the data before the hon. Members come to Court. If possible, I will collect total number of second appeals posted for admission and total number dismissed for three years. At least one-third is dismissed at the admission stage. That is my impression.

SHRI M. SATYANARAYAN RAO: After admission how many were allowed.

SHRI R. G. RAJAN: Perhaps it will be another one-third. It has to be selected at the final stage. There are different approaches. There are border cases. One Judge may take it as a question of law calling for interference by the High Court. There may also be decided or clear cases of law. But in some matters there may be difference of opinion. It also depends upon the nature of the judge who disposes of them. Quite a number of cases are sent back to the lower Court for reconsideration. That gives a very good remedy. My learned friend has collected some data for one year and I will request my friend to give it.

SHRI N. RAMANATHA IYER: In the year 1970, 1396 second appeals were confirmed and 780 were reversed. In the year 1971, 1979 second appeals were confirmed, that is the lower court's judgments were confirmed and the appeals were dismissed. In 1277 second appeals, the lower court's judgments were reversed, that is the second appeals were successful. That is the ratio will be 2:1. The number of appeals in which the decisions of the lower courts are reversed, that is, being successful are increasing year after year for the past 10 years. It is very difficult to get figures now-a-days from the High Court. It is not for me to criticise the High Court. The Law Commission speaks of three ways of assessing a Judge's work. One is monthly or periodical reports, the second is local inspection by the district judge or the High Court Judge and the third is judical review of his judgment. That will happen only if there is a second appeal.

There is a growing demand in the profession for having automatically second appeals, at least in cases of reversing judgments, that is, the original court decreeing the suit and the first appellate court dismissing the same or *vice versa*. In such a case there must be automatic admission of second appeal and there must be a review by a third court. We do not want him to appeal, but if he has got a grievance, if there is an urge in him to get justice, that urge must not be stifled. A provision has to be in the Bill to that effect.

SHRI NITI RAJ SINGH CHAUDHARY: There are certain matters dealt with by the constitution and a particular pharaseology has been used. Would you like the same phraseology to be used in the C.P.C. For instance Article 133 of the Constitution uses a specific phraseology and would you like the same phraseology, so far as appeals are concerned, to be incorpora rtaed in the C.P.C., or would you like to use a different pharseology, though it may be in conflict with the Constitution.

SHRI N. RAMANATHA IYER: The C.P.C. phraseology is enough.

SHRI NITI RAJ SINGH CHAUDHARY: The phraseology of the Constitution may be given a go-by and the C.P.C. phraseology may remain.

SHRI N. RAMANATHA IYER: I do not study that problem in that particular aspect. In the case of L.P. appeals already there is a provision. Unless the single judge gives a certificate for leave to appeal, no L.P. appeal lies. Therefore, there is a control by the Judge over the admission of second appeals. So, Section 100-A is not necessary.

SHRI R. G. RAJAN: There are cases of reversing judgments, that is the two lower courts taking a different view. Essentially it is a matter for the third Court, the highest Court to review the matter. So, in the case of reversing judgment, it requires a further review by a third court and so, the second appeal is essential. If it is possible, Section 100 can be modified as in Kerala. The subject being in the concurrent list, the Kerala State has amended Section 100. They have incorporated more in

the nature of reversing judgments. In the case of reversing judgments, the Committee may consider the question of incorporating a new clause to have right of appeal.

MR. CHAIRMAN: It is not clear to me. In your Memoranda, you have stated that it may be retained and no amendment is called for as proposed. Now you are citing the Kerala amendment and want that it may be modified and say that you are in agreement with the Kerala amendment. Would you kindly enlighten us on this point?

SHRI R. G. RAJAN: In accordance with Section 100 what happens is this. In one case, the single judge may not give permission but another judge may be able to decide in a different manner. Therefore, they should give a certificate of permission to prefer an appeal. Of course, there may be a few cases. It may be only 5 per cent. The decision of the single judge is not sufficient.

SHRI M. SATYANARAYAN RAO: Suppose the single judge does not give the permission. What will happen?

SHRI R. G. RAJAN: Under clause 15 of letters Patent, unless leave is granted the judgement in second appeal shall be final. It has not struck me earlier. So I have not incorporated this in our memorandum. I shall read the Kerala amendment. The wording is not proper.

MR. CHAIRMAN: Kindly reexamine the additinal sub-clause(d) to Section 100 according to the amendment of the Kerala Government. If you agree with the Kerala amendment, kindly send your amendment to the note, because now you want that Section 100 should be modified on the lines of the Kerala Government. We will welcome your suggestions as to how you want the amendment to be incorporated. Now I request the hon. Members to clarify their doubts with regard to Section 100, 100-A and 100-B.

SHRI R. G. RAJAN: Yes.

SHRI M. C. DAGA: If you go clause-by-clause, it will take an hour for each clause and it may not be possible to cover all the clauses.

MR. CHAIRMAN: I am only making a suggestion. You need not bother about the time. I am seeking the advice of the hon. members.

SHRI M. C. DAGA: He was mentioning about Section 100 and clause 39. Now he wants to mention about Section 115. First we can have his views and then we can put supplementaries.

MR. CHAIRMAN: Mr. Daga, I am only asking the procedure to be followed.

SHRIMATI T. LAKSHMIKANTHAMMA: Whatever evidence they want to give, let them finish. Then we can put questions.

SHRI R. G. RAJAN: Now I shall come to Section 115. We have stated in our memorndum that Section 115 of C.P.C. should be retained in order to see efficient functioning of the subordinate courts. Now under Section 115, the High Court can call for records on any case which has been decided by any court to examine, whether it comes within the jurisdiction of the courts and whether their powers have been properly exercised. The High Court may pass orders as it may deem fit. Section 115 is a pivot Section. The power of superintendence should be vested with the Highest Court on land. The High Court should have the powers to supervise the work of the subordinate courts and officers. That is why it has been couched in such a language. The word used is "case. A case can be withdrawn by exercising the revisional powers of the High courts. The power under Section 115 is not given at the instance of the party alone, it can be exercised *suo motu*.

Even according to the Constitution, the High Court is empowered with much powers of superintendence of the subordinate Courts. It is very essential when we formulate the Code of Procedure, The Code should contain important provisions for controlling or supervising the work of the subordinate courts. The hierarchy of courts, their jurisdiction and powers should be decided by the High Court and the powers and jurisdiction conferred upon them under various Acts have to be determined by the High Court. The subordinate courts may not exactly know them administrative or judicial limits. That is why Section 115 has been provided. It gives an idea as to how the suits have to be prepared and the manner in which they have to be dealt with etc. These have been specifically mentioned under this section. To review the work of the lower courts by the High Court provision has been made. To review the work of the subordinate courts, the power of superintendence is necessary. Then only it will know whether the subordinate courts have xeceeded their jurisdiction or acted within their powers. The bounds of the authority has to be checked and this is checked by Section 115. Even in the case of Second Appeals, they are allowed only if the High Court is satisfied with regard to its jurisdiction and regularity. Such a power is absolutely necessary for proper working of the subordinate courts. Without this longold provision, the Code will be imperfect, and incomplete. In view of the growing legislations regarding Tenure of lands, Land Ceiling Act and Rent Control laws and various such other enactments and inasmuch as they are being disposed of by Tribunals, which are held by unqualified persons, the powers to supervise their work by the High Court should be there in those enactments. The High Court has got powers to supervise and check their work under Section 115. That is why it has been provided for in the Code.

Therefore, taking all these things into consideration, Section 115 should necessarily be continued. There is no question of loading the court with more work. A very large number of civil cases are dismissed at the admission stage itself and only a very few cases are admitted and the revision cases are also disposed of within three months. We find that only in a very few cases they are able to interfere and set aside the orders and ask the court to take a correct position. If Section 115 is taken away, the problem will arise in that there would not be any check over the subordinate courts. The other question is whether in view of Article 227 of the Constitution, Section 115 should be continued. This provision is not something new to the Constitution and it was copied from the Government of India Act of 1935. As regards Article 227, two important things cannot be forgotten. It is an extraordinary constitutional remedy and alslo it is wide enough and there is no doubt about it. But for a civil suitor to come to the High Court and ask for interference in respect of the civil case pending there, whether Article 227 or Section 115 of the Code should be invoked. Section 115 is only with regard to the jurisdictional aspect and this section is there for a very long time. But Article 227 is yeth to be developed. Also Section 115 is understood by the High Court and Subordinate Courts. So my submission is that the extraordinary remedy provided for in Article 227 need not be resorted to as it is wide and we are yet to depend upon the future interpretation of Article 227 and the precedents of courts. I ask in all sincerity and earnestness, what is wrong in retaining Section 115?

SHRI M. SATYANARAYAN RAO: There is so much delay.

SHRI R. G. RAJAN: I will come to that point later.

With regard to the extraordinary constitutional remedy, the court fees would be higher than those fixed in regard to Section 100. As I have stated earlier, section 100 will solve

the problem. A large number of cases are rejected at the admission stage itself and only a few cases are allowed. The High Court is taking special care to see that revisions are disposed of quickly so that the trial of a suit is not obstructed. After all justice has to be done and reasonable delay must be expected..

SHRI M. SATYANARAYAN RAO: Poor litigants are suffering..

SHRI R. G. RAJAN: As regards delay, it is the administration or the Parliament or the Court which must give consideration to it and provide more courts or judges or time for disposal. After all there are two parties to the litigation and the public is interested only in proper, efficient and fair administration of justice and not about the delay in the disposal of a particular suit. It is not as if every suit is taken to the High Court in revision and the total number of revisions are comparatively few. Also if a small mistake is committed in the lower court. the case is taken to the High Court and this can be done with the existing provision of Section 115 and there is no need for a provision like Article 227 which is wider in scope. Section 115 must form an integral part of the Code and it does not run counter to the Constitution. As its scope is limited in scope, it can be easily worked and delays can be easily avoided. So Section 115 which is intended for a limited purpose, must be continued.

SHRI M. SATYANARAYAN RAO: If anybody comes for revision, notice will be given to other party. Is it not?

SHRI R. G. RAJAN: Only if it is admitted, notice will be given to the other party.

SHRI M. C. DAGA: The litigant has to part with the money.

SHRI N. RAMANATHA IYER: If he comes in appeal, he has to pay court fee. In 1970, 1436 revision petitions were confirmed and 766 were reversed or modified. I may also say that in 1971, 2338 revision petitions were confirmed and in 954 cases the judgments of lower courts had been revised. So the number of reverses are increasing. The Law Commission has also stated in its 14th report that right of revision is a valuable one and should not be abolished. They also say that revisionary power under Article 227 should be left untouched. Both the powers are necessary in the interest of the litigant public. Whether scope of Article 227 is higher than what is contained in Section 115. on that point, there are differences of opinion. But the High Court Arrears Committee has pointed out that jurisdiction exercisable under Article 227 is more restricted than what is contained in Section 115.

In Order 3, Rule 1, 'recognised agent' may be abolished. It only encourages the activities of outs, debarred advocates and clerks also who practice as recognised agents. The sections may be suitably amended without reference to 'recognised agents'.

So far as Clause 6 is concerned, I want that after Section 11, an additional explanation as Explanation VII may be added. We have given the wording of the Explanation in our memorandum. The observations of Mr. G. Spencer Bower in his Book "The Doctrine of Resjudicata" published in 1924 at page 126, in regard to principle of 'Res Judicata' and principle of 'collateral estoppel' in Page 590 of American Civil Procedure Code may also be looked into.

With regard to Section 60, many amendments have been suggested in the Bill. What we want to say is this. It is not as if that a person who gets a money decree in his favour is a rich person and the one against whom a decree is passed is a poor person. Professional Money-llenders have their own methods of collecting usurious interest from their debtors. Co-operative societies and banks

have been excluded from the scope. I might say that a labourer in B&C Mill is getting more and is better fed than many of our lawyers. So what I say is that in the present socio-economic conditions, the terms 'agriculturist, labourer and domestic servant' need not be included in the exemption clause of 6(c) of Section 60(i)(c).

Section 82 should be so modified so that there is no distinction between the citizen and the State.

SHRI M. C. DAGA: What are your arguments for excluding domestic servants.

SHRI N. RAMANATHA IYER: The man who gets a decree cannot always be called rich. Moneylenders have their own methods of collecting interest. I am talking of the ordinary lower middle class litigant.

MR. CHAIRMAN: Supposting such a category of person, domestic servant, labourer or agriculturist becomes a judgment-debtor. He has only dwelling house. Do you say that could be attached?

SHRI N. RAMANATHA IYER: If the judgment-debtor is a labourer or villager or agriculturist,, his homestead is exempted. But if he is a middle class white-collared employee in urban area, his homestead can be attached. Why that class of people alone must be given that protection, although, according to us, they are economically better off.

You want to have inreased exemption of the attachable salary. You want exemption to be given to a higher figure. That will cause hardship to the decreeholder who is also equally poor and who cannot afford to lose the money. That must be omitted.

We entirely agree with the provisions in the draft Bill as regards omission of Section 80. As regards. Section 82, we have stated that the time should not exceed six months. The poor citizen whose property is taken away by the Government under Land Acquistion Act, he has to wait for 7 or 8 years even after obtaining a decree to get his decree amount. The State Government is not having a bottom-less purse and they have got legal officers and army of servants to carry on the work, whereas the poor litigant comes and goes, gathers the facts, gathers the funds, and is placed at a different level.

As regards Clause 41, you have put Rs. 3,000 and we have recommended Rs. 2,000. Rs. 2,000 is the figure arrived at by the Law Commission.

Then I turn to Clause 58 directing the defendant to file a written statement on the first day itself. That will cause considerable hardship to the defendant. On the day of appearance he must search for the vakil, he may not have sufficient funds, he must gather materials, gather records which will take some time. Asking him to file a statement of his defence even on the first day itself, it will work hardship on him.

As regards Clause 71—the profession is against that amendment. You have put down there that the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment. I oppose that. How can we carry on our profession, if it is put in a statutory form so as to give a handle to the judicial officers to shut us down. That will be a hardship. Sub-clause (i) (d) shall be omitted and substitute the following "Where the illness of the pleader or his inability to conduct the case for any reason is represented as a ground for adjournment, the court shall grant the adjournment for such period as the court feels justified in the circumstances." The Court shall grant an adjournment for any personal grounds of the Advocate for such period as the Court may deem fit. The Advocate has no casual leave or sick leave

as the officers are enjoying. The judicial officers are enjoying leave, if they are indisposed. What about us? We are also an important part of the machinery. It must be left to the discretion of the Presiding Officer concerned. No Court suffers for want of work even as per the list system.

SHRI R. G. RAJAN: Regarding Clause 71, may I add a few words? As regards sub-clause (i)(c) and (d), these matters should be left to the discretion of the Court and there should not be a mandatory rule in this regard. That will not be proper. The Advocate has also got a right to carry on his learned profession. You have said 'unless it is satisfied'. The Court can only satisfy after enquiry. That will be derogatory to the dignity of the profession itself. Therefore clauses (c) and (d) should be omitted. The Court can decide whether the Advocate can appear or his junior can appear from the nature of the work and from the stature of the particular individual in the Bar. It is only a matter of adjustment between the Presiding Officers and the Lawyers and there should not be any statutory rule for this purpose. That will have a serious repurcussion on the dignity of the profession.

MR. CHAIRMAN: I am referring to Clause 71. I think you agree with clause 71(1).

SHRI R. G. RAJAN: We oppose sub-clause (i)(c) and (i)(d) and we are in agreement with other provisions.

SHRI N. RAMANATHA IYER: Before the close of trial, the parties should be given an opportunity to peruse the records. At present certain documents are not made available to them. But the discretionary power is given to the judicial authorities to deliver their judgements. It is not a good provision. After all, it may be due to some circumstances beyond his control, the party may not be in a position to be present or to produce the document. It this is done it will be a judgement on insufficient materials, which is not proper and helpful for the iligants.

I am referring to sub-Clause of Clause 72. In the mofussil courts, the depositions are not given to the parties. The depositions are not typed and supplied to the witnesses. Without giving a copy of the deposition to the witness, their signature is obtained by a Peon or by somebody. This is a bonafide difficulty for the witnesses in the mofussils. They are not conforming to the Order 18 in rule 16 of sub-clause (3) of the Code. If a copy of the deposition is given to the witnesses, they will be able to know the mistakes and rectify them then and there. Due. to the non-supply of depositions in time to the witnesses, many mistakes arise. The correction of the mistakes will not take much time. We have also passed a Resolution to the effect that it shall be the duty of the Court to strictly conform to order 18 in rule 16 of sub-clause (3) of the Code. Most of the Courts did not observe that Rule. Because they think that it is a waste of time. It is not at all a waste of time. By reading it again, he will be able to find out the mistakes grammatically or otherwise and correct it then and there. The matter will be fresh in his memory and he will be able to correct them then and there. Another point is this. The copyists themselves are not able to decipher their handwriting. Therefore, it is necessary that they should be typed immediately, verified, checked and signed by the judge. It must be put as a part of the record. Therefore, we feel that the rules must be observed strictly and the subordinate officers must read the depositions so as to enable the illiterate litigants and witnesses to make his corrections. Therefore, we stress this point.

Then I would like to refer to the pronouncements of the judgments. Generally the judgments are written

in the 'A' diaries. The whole judgement is not read out and the judgment copy is not made available to the party concerned. They say that it has gone for the perusal of the Judge and that it is not available. The Counsel is not able to know what is contained in the judgment and they are not able to know what has to be done further and how it should be done. Therefore, we feel that a copy of the judgment should be made available then and there. Therefore, we have suggested that 'Provided however no judgment shall be pronounced unless and until the same had been completed, compared, persued and finalised by the court concerned.'

So far as the Claim petitions are concerned, there has been unnecessary delays in the Courts. There is a delay of 3 to 4 months even after the judgment. It is a welcome provision. That kind of disposal must be left to the Officer concerned.

SHRI R. G. RAJAN: By mistake we have stated in our memorandum that Clause 76 Passed. It is not possible for the Pleader to know the deaths of parties and to inform the same to the Court. I think this idea has been taken from the High Court Committee's Report.

MR. CHAIRMAN: You want that Clause 76-10-A(2) should be omitted.

SHRI N. RAMANATHA IYER: Yes. Otherwise it will rouse a revolt in us. It is a onerous duty cast upon the profession.

Then I would like to refer to Clause 77 on page 10. Sub-clause (iv) (3A) must be omitted because the withdrawal is one form for the plaintiffs and defendants. We want an explanation to be added to Clause 78. It is a good thing so far as medical certificate by a qualified doctor is concerned. There may be ertain cases in which the facts of the medical certificate may not be proved. So it would be better if the matter is left to the discretion of the Court to say whether it is *prima facie* correct or not. Therefore, we have suggested an explanation in our memorandum.

I shall rush through. Under Clause 89 on page 10, it is not understandable how an investigation of an claim could be made even without notice to the defendant. Therefore, we have suggested that the words indicated may be omitted.

Under Clause 90, provision for an affidavit from the Advocate is too much. A mere statement in writing itself will do. The Court can act on the basis of the statement furnished by the Advocate. If the statement furnished by an Advocate is false, action can be taken against him.

On the same page under clause 90, a provision has been made under rule 12A. It is unnecessary and dangerous. Because at the stage of appeal, it may not be possible to know or for the Court to decide whether all the points arising in the appeals are relevant or irrelevant without hearing the points in full as at the time of the disposal of the appeal. Suppose there are 10 or 12 points, the Court will limit its consideration to say 6 or 7 or 5 or 6. Only on these points alone, the appeals will be admitted. It is dangerous to restrict the points. Therefore, we feel that Rule 12A is unnecessary.

Order 43 is exhaustive and it can be retained and that is also the recommendation of the Law Commission.

Order 44, Rule 2 proviso, can be omitted. Appeals by paupers must stand on the same footing as appeals by the rich people.

SHRI M. C. DAGA: In your memorandum, you have stated—

"Our *prima facie* impression is that the present Bill has enlarged and has resulted in the bulk of the

present amendments by nearly 60 per cent....'

On what grounds, you justify this statement.

SHRI N. RAMANATHA IYER: Excuse me if it offends you. Draftsmen can reduce it still further and make it clear and crisp...

SHRI NITI RAJ SINGH CHAUDHARY: In the same paragraph (lines 2 and 3) it is stated....

'Any amendment of the Code of Civil Procedure must be such as to make the existing Code shorter and more brief....'

You have not given any suggestion for reducing the bulk of the present amendments.

SHRI N. RAMANATHA IYER: It is not intended for reduction. We want that it should be shorter.

MR. CHAIRMAN: Your impression is that instead of shortening the volume, we have increased it.

SHRI N. RAMANATHA IYER: Yes, that is our impression.

MR. CHAIRMAN: Have you got any concrete suggestion or eliminating some of the provisions of the Code including procedures, orders and rules?

SHRI M. C. DAGA: Also have you got any concrete suggestion to make it effective, speedy, inexpensive and simple?

SHRI N. RAMANATHA IYER: My submission is that the judicial procedure is a long drawn one. .....

MR. CHAIRMAN: The point is that if you have got any concrete suggestion to reduce its size, you can send it later.

SHRI N. RAMANATHA IYER: We have not got time at our disposal to do it now but we will send it later.

SHRI M. C. DAGA: What about Order 32(A)

SHRI N. RAMANATHA IYER: It is successfully done in America but I do not know how far it will work in the conditions obtaining in our country. But it is a good provision.

SHRI M. C. DAGA: Do you approve of the provision relating to compromise arrived at between the parties concerned as a result of the efforts of the court?

SHRI N. RAMANATHA IYER: Yes.

SHRI M. C. DAGA: Why it should not be applied to other litigants?

SHRI N. RAMANATHA IYER: It is a delicate matter. It can be done in camera but it is not possible in ordinary trials. The adoption of it will take a lot of time.

SHRI M. C. DAGA: Do you approve of the suggestion that in the case of appeals, the fee levied should be half the amount fixed in the trial court.

SHRI N. RAMANATHA IYER: very good suggestion.

SHRI M. C. DAGA: In the 54th Report of the Law Commission, it is stated that the principal expenses are court fees, counsel's fees, expenses on witnesses, expenses on obtaining copies of document, the cost to be paid to the opposite party etc. So, can we fix the counsel's fee or not?

SHRI N. RAMANATHA IYER: It should be viewed in the context of 'need based wage'.

SHRI M. C. DAGA: Do you know some advocates of Supreme Court are charging Rs. 1500 per day.

SHRI R. G. RAJAN: What I say is, the fees for Counsel are fixed by Legal Practitioners Rules. There may be cases wherein the litigant pays more but that is a national problem. We are not concerned with it. Regarding court fees the Government fixes

it. If that could be reduced, we can to a certain extent reduce the cost of litigation. Now in small areas also, courts have been set up and the litigant has got a forum to represent his grievance. What I find now, is that there is a tendency among our people to fight. That is again a national problem. The evolution of man's emotion is concerned with contemporary environment. More number of people are coming to courts now a days .But the number of pauper suits is on the decrease. Only aggrieved partites come in appeal.

MR. CHAIRMAN: There is the fee for Counsel, the court fee, the cost for bringing in witnesses, cost for obtaining copies of documents, depositions etc. Leaving other things apart, I want to know to what extent the fee for Counsel, forms part of the whole cost of litigation?

SHRI R. G. RAJAN: 7½ per cent of the value of suit is court fee. The fee for Counsel is what is precribed under the rules.

SHRI M. C. DAGA: The Law Commission in its 27th and 54th report has stated that the cause of delay in trial suits is mostly because of interlocutary petitions. Presented under Sec. 115.

SHRI NITI RAJ SINGH CHAUDHARY: You referred to Law Commission's 14th report dealing with judicial administration in the country and they have made a passing reference there about revisionary powers etc. But the 27th and 54th report deal exhaustively with the Civil Procedure Code. What have you to say regarding their observation in regard to Sec. 115?

SHRI N. RAMANATHA IYER: I wanted the copies of both those reports to be sent to me but they were not made available to me. But personally I want to say this. I join issue with the findings of Law Commission on this matter.

SHRI M. C. DAGA: You wanted domestic servants, labourers and agriculturists not to be exempted. Domestic servant may be getting only Rs. 100 p.m. Suppose we fix a limit of Rs. 500/p. m. for these people, will you agree?

SHRI N. RAMANATHA IYER: The basic question is what I had stated before. It is not as if the money-decree holder is always a rich man. I am taking of the average of lower middle-class litigant.

SHRI M. C. DAGA: What about the privilege given for MLAs and MPs. Do you agree it is a privilege?

SHRI N. RAMANATHA IYER: No. Personally speaking, 'No, Sir'.

SHRI M. SATYANARAYAN RAO: Do you think copies of documents should be furnished free of cost?

SHRI R. G. RAJAN: In Madras it is done, but it is not so in mofussil.

SHRI NITI RAJ SINGH CHAUDHARY: What about deposition?

SHRI R. G. RAJAN: In original suits in High Court, the stenographer of a higher status takes down the evidence. The copies are supplied to plaintiff and defendant on payment of cost. One copy goes to judge. A what cost it should be supplied and whether it should be done free is a matter for administration.

SHRI N. RAMANATHA IYER: The District Judge can dictate the depositions to typists in sessions cases. I asked for copies of the same. But the High Court had refused.

SHRI NIRENDRA SINGH BISHT: What changes would you suggest in the existing procedure relating to the execution of money decrees with a view to avoiding delay and simplifying the procedure?

MR. CHAIRMAN: I am sorry we were not able to send you the questionnaire earlier to enable you to

study the same. My hon. friend here wants to put one or two questions and you will reply to them off-hand. But I request you to study the questionnaire and send our views on them in due course.

You please tell us if you have any concrete suggestion whereby this delay can be minimised.

SHRI N. RAMANATHA IYER: At the trial stage, along with the plaint affidavit of the plaintiff proving the claim due to him may be taken as evidence, if the defendant is absent, the Court may automatically pass a decree in the terms of the affidavit, rather than wait for his examination.

SHRI NITI RAJ SINGH CHAUDHARY: The question is very wide and you cannot answer it in a sentence or two. You have to apply your mind and send our considered opinion to us.

SHRI R. G. RAJAN: It again reflects upon the average national character. Under a money decree, there are a number of ways of recovering the amount like execution by arrest, restraint of articles, bringing the property to sale. Certain comprehensive rules are necessary to provide safeguards for the judgment debtor. At the same time also you will have to see that the decree-holder does not commit fraud and bring the property for sale. Of course, the procedure is complicated, but it can not be avoided. The only thing is, how to minimise the delay.

MR. CHAIRMAN: You kindly apply your mind and if you have any concrete suggestion, you kindly pass it on to us.

SHRI NARENDRA SINGH BISHT: Are the provisions of review necessary?

SHRI N. RAMANATHA IYER: Yes, necesary. In the case of ordinary litigant who is an illiterate, he does not come with the document before hand. As we proceed with the trial we come to know of the document. Due to lack of education and lack of perspective on the part of the illiterate litigant, he does not supply us all the materials at that time. Some times he forgets and some times he discovers it only later. So, this provision is necessary. After all review applications are few and far between.

SHRI R. G. RAJAN: All review applications are not automatically admitted. Unless a Judge has retired or is transferred, the same judge entertains the review applications and he knows whether the matter deserves to be reviewed or not. Only if he is satisfied, he gives notice. There is a limitation also as to which cases can be reviewed. There are sufficient safeguards. It is not a dispute between two parties. It is a dispute between the Court and the party who wants the case to be reviewed. It is only an enabling provision for the Court to review its own judgment. My submission is, provisions of review are necessary.

SHRI V. K. SAKHALECHA: As regards Clause 41, you have stated in your memorandum that "instead of Rs. 3000/- introduce Rs. 2000/-". What is the reason behind it. Either you should not change from Rs. 1,000 to Rs. 3,000/- or you must change. What is the reason behind making it Rs. 2,000/-.

SHRI N. RAMANATHA IYER: That too is a big sum.

SHRI V. K. SAKHALECHA: Even Rs. 1,000/- is also a big amount for a poor woman.

SHRI N. RAMANATHA IYER: I agree. But having regard to the facts, it is done in a spirit of give and take.

SHRI V. K. SAKHALECHA: As regards Clause 72, do you approve the idea of the Magistrate or Judge preparing a memorandum of evidence or whether he should record full deposition even in cases where there can be no appeal.

SHRI N. RAMANATHA IYER: The High Court has issued a circular that in appealable cases at least they must record the full deposition. But I want the thing to be done in every case.

SHRI V. K. SAKHALECHA: What is your experience? When a memorandum of evidence is recorded you feel that proper record is not made and hence you want the whole deposition to be recorded.

SHRI N. RAMANATHA IYER: My experience is, it is not correctly recorded. In many cases what is spoken to by the witness or what is happening in the trial is not correctly recorded. Partly it is a *bona fide* mistake. In the High Court the Judge sits at a higher level and the witness stands far away from him 10 or 15 feet away. But in the mofussil courts the Judge is very near the witness. One Counsel or another may intervene. In between the judge's mind is disturbed and he is not able to hear.

SHRI V. K. SAKHALECHA: What is your view in respect of Clause 45?

MR. CHAIRMAN: They want it to be retained. They do not want to exclude the powers of superintendence and control by the High Court.

SHRI V. K. SAKHALECHA: As for temporary injunctions, you want to omit the existing proviso and substitute it with your's. Would you not agree that it will reduce temporary injunctions being issued without proper ground?

SHRI N. RAMANATHA IYER: Taking the Bill as a whole we want to meet some of these provisions half way. Temporary injunctions are not passed as a matter of course. Unless the matter is urgent temporary injunctions are not granted. For example, preventive injunctions from cutting trees, removing crops or disposing of the property are only granted. They do not grant mandatory injunctions. They do not automatically grant preventive injunctions against the sale of property.

SHRI V. K. SAKHALECHA: You have stated that the Court shall order the notice on the opposite side returnable within a period not exceeding two weeks. *Ex parte* injunctions are there for months. To reduce this disease it has been laid down that within 30 days if it is not confined, it should be vacated. Are you opposed to this idea?

SHRI N. RAMANATHA IYER: I am opposed to that idea. Once an order of *Ad interim* injunction is passed as well as notice given to the other side, the other side files a counter and it is then for the Court to decide. It is a tortuous procedure and a time consuming procedure. They adjourn it. That is not a proper method of disposal of injunction petitions. Courts do not take it as part of their work. It is the fault of the Court and not the litigant.

SHRI V. K. SAKHALECHA: You have said that the Advocate need not file an affidavit regarding any stay granted by the higher Court. I am referring to Clause 19. But it may lead to some defects. The Advocate may inform the Court wrongly. He must take the responsibility.

SHRI N. RAMANATHA IYER: Even if he has not filed an affidavit he can be hauled up. Even for making a statement without an affidavit he can be hauled up. For misleading the Court, he can be hauled up and the Court can take disciplinary proceedings against him. We are more strict than the Courts to some extent in furnishing information.

SHRI SARDAR AMJAD ALI: For the serving of notice, would it serve any useful purpose if a time limit is prescribed?

SHRI N. RAMANATHA IYER: The department does not care for it. The department sleeps over it. No useful purpose would be served. They do not even acknowledge the receipt of the notice. Formerly, they were telling that the matter is receiving the

attention. Now they are not taking any action on them. Therefore, the notice is useles.

MR. CHAIRMAN: We will consider all your aspects that you have presented. In paragraph 5 of the first page of your memorandum, you have suggested that recognised agents may be abolished. The reason given is that it will encourage the activities of the touts, debarred advocates and clerks. Can you suggest any other proposition for that?

SHRI N. RAMANATHA IYER: If there is already an agent looking after the properties, then this question will not arise. In some cases, the power of Attorney is given only for the purpose of suing, in such cases, the question of touts come into the picture. The owner of the property may be a poor man or woman.

MR. CHAIRMAN: There is provision in the 'Touts Act' to safeguard this.

SHRI N. RAMANATHA IYER: With great respect to the Committee, I would like to submit that it is not so. With great difficulty, we are able to catch these touts. There is no provision in the law to prohibit them if the power of attorney is given. Because they are within the law. Within the law they can commit so much of mischiefs.

SHRI SARDAR AMJAD ALI: In the lower Courts, that is in the originating Courts, several procedures are followed with regard to a case. First suit is filed and notice is served on the defendant and then written statement is filed. All these processes are there. In that case, along with the written statements, necessary documents will have to be filed. For filing the documents, the parties may also take sometime. Then the question of framing the issues arise. Do you think that the existing procedures that is being followed for the final disoposal of the suit in the originating court is also the reason for the delay in the disposal of cases.

SHRI N. RAMANATHA IYER: Yes, no doubt. In the counter-arguments we have to put questions. Without the documents it is not possible. In order to get the truth, we have to cross-examine them. Sometimes, we have to put questions. Especially in the case of illiterate litigants, it would be very difficult to get the facts. It is the national characther.

SHRI SARDAR AMJAD ALI: Do you think that the provisions for filing of written statements along with the documents should be much more rigid and stringent?

SHRI N. RAMANATHA IYER: But it should not cause hardship to the poor litigants. If it is rigid, it will cause considerable hardship to them. But in Western countries, even for promissory notes for 10 pounds, he goes to the Solicitor. But it is not so here. He contacts the local karnams and then gets into all kinds of difficulties. After getting into the troubles they come to us. Even then he is not able to explain what had happened at the time of negotiation or even at certain specific stages. That is a matter of intelligence and national character of our masters-the masses.

SHRI SARDAR AMJAD ALI: Would you kindly say whether the early fixing of the disposal of the cases would help the litigants and also the courts?

SHRI N. RAMANATHA IYER: In Madras, the High Court has adopted the 'List system'. It is a better and good system also. Under this system, the Advocates in the Bar are also consulted in advance. On the 10th of every month, preliminary list is prepared. If the witnesses would not be ready, then we make our submissions On the 15th of every month, the list if finalised. That is a good method and it was commended to the other States. In certain other southern states, this system is followed. Shri P. T. Raman Nair has introduced this system in Kerala but got into trou-

bles. He has introduced it in Madras, when he was a District Judge. It is working well here.

SHRI NITI RAJ SINGH CHAUDHARY: While making your statement, Mr. Rajan, you have referred to the phraseology used in the Constitution under Article 133 of the Constitution and said that the C.P.C. phraseology may be retained. But in the case of cases referred to Supreme Court you have said that the substantive question of law is not defined. Could you elucidate that point?

SHRI R. G. RAJAN: The Supreme Court is ceased of jurisdiction of limited nature. As far as the High Court is concerned, it has got wide types of suits. The Supreme Court deals only with extraordinary matters where the question of law involved and it has to be certified by the High Court Bench and leave should be given to refer the matter to Supreme Court. Even small types of cases relating to monetary and pecuniary nature are referred to the High Court. That is why we said that the superintendence should be given to the High Court and that Section 100 should be there. It is suggested that the highest court in the land must be able to decide and scrutinise the decisions of the subordinates which involves substantial value of Rs. 10,000/-. We do not want the appeal to be disposed at the district level. I have said provision of the Kerala Government namely sub-clause (d) should also be included in order to give an opportunity for second appeal. It will also help in the efficient discharge of functions of the subordinate judiciary.

SHRI NITI RAJ SINGH CHAUDHARY: While referring to Article 227, you have used the phraseology 'the long rope of Section 115 etc.'. I would like to know whether that rope should be curtailed or continued. You have also said that the long rope has been misused against poor man and he goes to the Court.

SHRI R. G. RAJAN: Referring to Section 115, I said only for the purpose of jurisdictional issue that comes to the court. Few cases are taken on file and the notices are not even sent to the Counsel appearing for the suit. The time factor is limited.

MR. CHAIRMAN: Under clause 24, you have not opposed (h). But you have opposed the inclusion of agriculturists and homestead. We have only included that the agriculturists and labourer and domestic servants should be exempted. Can you explain?

SHRI R. G. RAJAN: In the present socio economic conditions the terms 'Agriculturist, Labourer and domestic servant' need not be included in the exemption clause.

SHRI NITI RAJ SINGH CHAUDHARY: That is the argument of the Bar Council.

SHRI R. G. RAJAN: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: It has been stated that one of the causes for the delay in the disposal of cases is the adjournment taken by the counsel. Do you oppose it?

SHRI N. RAMANATHA IYER: Not at all. But it must be left to the presiding judge to decide whether a case should be adjourned or not. At the same time, when we ask for adjournment that adjournment must be granted. There are so many difficulties with regard to choosing of the courts and the advocate must be allowed to choose it. He may choose the highest court and not the lower court.

SHRI NITI RAJ SINGH CHAUDHARY: As regards Order 31, Rule 10 provides that if the counsel appearing for a party comes to know that his party is dead, he should inform the court about it. You have opposed this provision.

SHRI N. RAMANATHA IYER: Yes, It is not a duty cast upon him.

SHRI NITI RAJ SINGH CHAUDHARY: When the Counsel knows positively that his client is dead, he can go to the court and say that his client is dead and so he is not appearing...

SHRI N. RAMANATHA IYER: That alone he can do and not more than that. The sting is on tail. You want to punish him. Even then, who is to decide that he knows it.

MR. CHAIRMAN: We have discussed about the elimination of delay in regard to civil suits. From your experience do you feel that the delay takes place due to inadequate strength of the courts to cope up with the number of suits that they have to deal with.

SHRI N. RAMANATHA IYER: And also the mental calibre of the judges is such that they are not able to cope up with the work.

MR. CHAIRMAN: As the courts are over burdened with suits, they themselves have to grant adjournments. Also adjournments are granted by the courts for want of time.

SHRI N. RAMANATHA IYER: Yes.

MR. CHAIRMAN: Sometimes they adjourn the cases for two months and not 10 days?

SHRI N. RAMANATHA IYER: They can dispose of only two or three cases in a day.

SHRI M. C. DAGA: It also depends upon the skills and abilities of the judicial officers.

SHRI N. RAMANATHA IYER: Yes.

SHRI D. N. MAHATA: Is it your experience that only cases involving poor people are adjourned several times and they are never taken up by the court. What is the remedy you suggest to overcome it?

SHRI N. RAMANATHA IYER: Nobody has got the guts to question it.

MR. CHAIRMAN: On behalf of myself and my colleagues we express our thanks to you for cooperations with us and giving very valuable suggestions. I assure you that we will give our earnest consideration to your suggestions. Now the questionnaire is before you and we request you to go through it and send your replies in writing.

I thank you again.

[*The witnesses then withdrew.*]

II. Shri Jagadesan Kaladipet, Madras

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: I may draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

You may explain or elucidate any point raised in the memorandum.

SHRI JAGADESAN: In respect of amendment 5A, it has been stated that the State should be impleaded in every case where its public officer is impleaded. That is the proposed amendment. Public officers of the State are different legal persons with

varying degrees of duties and responsibilities etc. Acts done in official capacity are essentially delegatory by nature. The limitation of delegation as between the State and Public officers are as follows:—

(i) While the State cannot abdicate legislative functions, subordinate authority cannot become a parallel legislature; that is excessive delegation.

(ii) While there is scope of having bias, by the public officers, an Act of State is free from the 'Doctrine of bias'. The kinds of bias may be (i) bias on the subject-matter (ii) pecuniary interest and (iii) personal bias. As such liabilities of State and Public officers vary.

Administrative orders, acts and rules which violate Article 14 are void. It applies to public officers, while only legislative acts which do not have constitutional propriety can be attributed to the State.

Besides, in cases of malicious prosecutions against public officers, where there is no contractual relationship, between the Government and the public, it does not seem correct that Government should also be impleaded.

The State cannot have criminal liability. For that two things should be specified, *viz.* (i) physical condition of existence of an unlawful act and the second is formal condition *mens rea or guilty mind.* Unless both these conditions are concurrently present, criminal liability cannot arise.

As far as contractual liability is concerned, it comes under Article 299 and Article 300.

Tortuous liability of the State is limited. A tortuous liability of today may become criminal liability of tomorrow. If tortuous liabilities are converted into crimes, tortuous liability of the State becomes limited. To that extent, liability of the State should be restricted. So proposed amendment 5A requires modification.

Regarding delegation of powers, Justice Kania has said that it must be a delegation in respect of a subject matter which is within the scope of legislative power of the body making the legislation. The object of Article 31A(b) is to create public trusts and not private trusts. In Banarasi Das vs. State of Madhya Pradesh, the Supreme Court has decided that the power to modify the provisions of the Act by the executive under cover of delegation must be clearly expressed in the parent Act and must not go beyond the permitted limit of the parent Act or run counter to it or change the form or identity or policy of the parent Act. The parent Act is the Constitution of India. Appointment of individual persons as receivers when tested on the above principle does not have constitutional propriety. Only State and not individuals can be custodians of property.

All legislative power of a Government is vested in the legislature under Constitution and it is not open to Legislature to surrender or abdicate that power or delegate it to another authority whether it is executive government or some other body. A legislature is authorised to delegate a power which is non-legislative in character. As the appointment of individual persons as 'receivers' affects the right of third parties and the determination of 'rights' is essentially 'legislative' in character, the delegation of this power is not correct. It tantamounts to delegating essential legislative functions.

Conditions for validity of subordinate legislation is laid down in State of Assam vs. Kidwai. 1957 Supreme Court. It has been stated thus: Besides the condition that subordinate legislation should be made public, subordinate legislation to be effective should satisfy the following ingredients: (i) when rule making power is conferred by the Statute in general

thus 'for the purpose of carrying out the provisions of this Act', the purposes of the Act must be determined with respect to all the provisions of the Act read together before holding any particular rule to be *ultra Vires*. 'The provisions of the Act' can similarly be substituted by 'provisions of the Constitution where the rights accrue from the Constitution'. The 'void' in Section 52 of the Transfer of Property Act and the 'voidable' dangers specified in Order XL, Rule 2 sub-rule (b) for wilful default or gross negligence of the Receiver or for Criminal liability of the Receiver specified in sub-rule 8 therein, can be directly traced to the position specified regarding the taking over of the management of any property by the State for a limited period either in public interest or in order to secure the proper management of the property under Article 31A(b). The subordinate legislation should be corrected to that extent to keep in with the 'purpose of the provisions of the Constitution' as mentioned above as the duty imposed on the State is obligatory and not optional or discretionary, both in public interest and for proper management of property. The word 'shall' occurring in Article 31A(b) makes it an obligatory duty on the State itself. The present order XL is therefore against the policy laid down by Article 31A(b) of the Constitution.

I also want to add one more point. The liability for torts can be further limited by bringing in recognised torts under the purview of 'crimes'. Under torts, the claims would be for 'unliquidated damages' while under 'contractual liability' the claims by parties would be specific or liquidated damages only.

Public Officers and the State are distinct legal persons with varying degrees of rights, duties and obligations and therefore in their capacity, and consequently, their powers. The position between the public officers and the Government is one of master and servant and also of an employer and employee. If both the conditions remain, the liability of the State for tortuous cases will become too much and the damages also will be much. If the position is re-examined and if the public officer is treated as an employee of the Government. the liability of the State would be only contractual.

If the public Officers are called to the Court, the principle *'Ignorantia juris non excusat'* applies *i.e.* ignorance of law is no excuse. That is not followed in principle actually. They are actually punished only when the fact has taken place. When it becomes a fact they are called to the Courts to answer to the points of law, whereas they are not initially provided with enough legal advice in their administrative decisions, orders and acts.

MR. CHAIRMAN: We have got your memorandum. You have further elucidated your points. I assure you once again that the Committee will give its utmost consideration to the points you have made. I thank you for coming and giving evidence before us.

(*The Committee then adjourned*).

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE 'A' OF JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Tuesday, the 17th September, 1974 from 10.00 to 12.15 hours in Committee Room, Old Legislators' Hostel, Madras

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri Debendra Nath Mahata
9. Shri M. Satyanarayan Rao
10. Shri R. N. Sharma
11. Shri Niti Raj Singh Chaudhary

Rajya Sabha

12. Shri Nawal Kishore
13. Shri Dwijendralal Sen Gupta
14. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

1. Shri T. A. Nellayappan, *Deputy Secretary to the Government of Tamil Nadu, Law Department.*
2. Shri T. Prabhakaran John, *Assistant Secretary to the Government of Tamil Nadu, Law Department.*

[*The witnesses were called in and they took their seats.*]

MR. CHAIRMAN: I may draw your attention to Direction 58 of the Direction by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any

part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Before we proceed with the work, I would like to have a clarification from you. We have already sent a questionnaire also. You can throw light on them in addition to the memorandum already submitted. I can assure you that the Committee will be glad to consider them with due respect and earnestness.

Here along with your memorandum you have referred to Repeal amendment Bill that has been introduced in the State Legislature. What is the stage of that Bill?

SHRI T. A. NELLAYAPPAN: The Bill has been introduced. It is just there. It is pending before the Legislature.

The view of the Tamil Nadu Government is that there should be no execution by way of arrest and detention of any person for non-payment of money. The Law Commission also considered this aspect and they have also suggested a similar amendment. The view of the Government is that the amendment suggested by the Law Commission is not sufficient because it still provides for detention of a person under certain circumstances. The Tamil Nadu Government view is that under no circumstances, any person should be arrested or kept under detention for non-payment of money. For that purpose, a Bill has been introduced. The Statement of Objects and Reasons of the Bill explains clearly the reasons for introducing this Bill. The amendments proposed in the code of Civil Procedure (Amendment) Bill, 1974 are not sufficient. But still the amendments ensures certain safeguards to see that the persons are detained only for wilful violation or cheating. Despite the amendment, the Government feel that there would be harassment on the poor and they would not be in a position to justify their nonpayment of money. The Tamil Nadu Government consider that the practice of executing a money degree by arrest and detention of a judgement debtor in civil prison, is somewhat antiquated. Therefore, the Government feel that there should not be resort to arrest in such cases for non-payment of money. The Government suggested that their view may be accepted and the Bill modified suitably.

Regarding other provisions, my friend will explain.

SHRI T. PRABHAKARAN JOHN: In our memorandum, it has been suggested that amendment to Section 80 of C.P.C. be omitted. On this point, our Government wants to take a different stand. As it is, Section 80 gives an opportunity to the Government to consider the claims made before any action is taken against the Government. This unique privilege conferred on the Government should be there. It has been in the statute book for quite a long time. There is also purpose behind that provision. Before coming to other points, I would like to submit that the views of this Government have been dealt with in the note submitted to the Committee. The reasoning given by the Law Commission to omit section 80 is that section 80 was originally enacted when India was under foreign rule, when the main function of the government was to maintain law and order. Now India is a free country and a welfare State and engages itself in trade and business like any other individual. When India was under foreign rule, they were very keen on maintaining law and order in the country. This was then considered a necessity. But I wish to say that even though our country is a free country and a welfare state, still the maintenance of law and order is a very important function of the State now. This reason itself will justify that there is no need for omitting Section 80. Yet another reason is this. The Government is given this privilege of taking two

months time before giving a reply to a suit notice. We find that this element of time factor is denied to other individuals. The present amending bill contemplates that there should be no distinction between a citizen and a State. There our Government take a different view. It is not as if the State is the same as a citizen. It is different in certain respects. Because the Constitution itself has made this classification. The State is different from an individual and the time factor is also there. The time taken by the Government is not the same as that taken by an individual in responding to suit notices. The Government are a complex machinery where a decision has to be taken by a hierarchy of officers at a very high level. So it takes time. The reason behind this is the time factor. The time taken by the Government is not the same as that taken by an individual. The Government cannot be treated on a par with the individuals. It will cause hardship to the Government. If the Section is omitted, cases against the Government are likely to increase and it is quite possible the Government will be placed in an embarrassing position. There will be too many cases against the Government. There is justification for the two months time. That is what our Government feel.

Besides that there is distinction between an individual and a State. It has been brought out in a very lucid manner by no less an authority than Shri H. M. Seervai, in his commentary on the Constitution. I would like to Place it before the Committee. The passage is taken from pages 201 and 202. He says ....

"The question whether the State can be treated as a class by itself has been considered in several cases and the overwhelming weight of authority supports the conclusion that for most, if not for all purposes, the State is in a class by itself. This position of the State was recognised in Indian Law long before the Constitution came into force and continues to be recognised under our Constitution. At one time, it was possible to distinguish between the governmental and the trading activities of government, but that distinction has lost much of its force because the State is now engaged in activities which at one time were not considered as the essential activities of the State but are so considered now. The main ground for distinguishing between the State and individual persons or bodies is that all activities of the State are public in the sense that they are either undertaken on behalf of the public or the loss or gain arising from them falls upon the public. It is on this ground that a special machinery has been devised for recovering public demands, and longer periods of time has been prescribed for the enforcement of demands by government. Also in the administration of Criminal law all prosecutions are by the State and this is so even where prosecution arises from a private complaint. Again in matters of Civil Procedure, the law takes into account the fact that the constitutional requirements imposed upon Government involve delay. For when any claim is made against government, the claim has to be considered by several departments, official sanction to resist the claim has to be obtained and these requirements necessarily take time..." So it is after all the time factor that is behind Section 80 and it is not any sort of invidious discrimination between the citizen and the State. So, this Government is of the view that Section 80 should be retained. Also the object of this Section has been given in several decisions. In the decision relating to a Calcutta case it is stated that the object of allowing time and opportunity to the State or the Public Officer is to satisfy the decree amicably before the execution proceedings are started against them. So it is only time that is actually required by the Government. This Government's view is that no distinction is sought to be made between the State and the citizen.

With regard to Section 82, we have a similar view more or less. The Section gives a time of six months for the Government to execute the decree of a court. The proposed amendment seeks to do away with the time given and that is sought to be conferred on the court. The object appears to cut short the delay but taking away this privilege of the Government and conferring it on the court, may not ensure that the delay would be reduced. It is quite possible that the court may give more than six months' time, say one or two years. According to the present Section, it is three months for the implementation of the orders of the court and then the report should be sent to the Government within three months. Now the proposed amendment seeks to reduce it to three months which may not be in the interest of the Government. Naturally it would have repercussions, handicaps, difficulties and hardships. So, our Government are of the view that Section 82 may be retained as it is without the amendment proposed.

MR. CHAIRMAN: So you are opposed to the omission of Section 80. But you will notice that in that Section apart from the Government, they made a distinction with regard to a public officer in respect of any act purporting to be done by him in his official capacity. Do you want the State or the Central Government to be covered by Section 80 or do you want to include the public officer also?

SHRI T. A. NELLAYAPPAN: The public officer also represents the State Government and he is discharging his duty in his official capacity. So the public officer also should be included.

SHRI M. C. DAGA: How many notices under Section 80 have been received by the Chief Secretary of the Tamil Nadu Government during 1972, 1973 and 1974?

SHRI T. A. NELLAYAPPAN: We have no statistics.

SHRI M. C. DAGA: How many notices were received from your side?

SHRI T. A. NELLAYAPPAN: Several of them.

SHRI M. C. DAGA: What is the number of notices for which you have given the reply.

SHRI T. A. NELLAYAPPAN: The actual number cannot be given.

SHRI M. C. DAGA: How many cases have been settled during 1973?

SHRI T. A. NELLAYAPPAN: We are not ready with the answer.

SHRI M. C. DAGA: Have you got a copy of the reply sent to the notice under Section 80?

SHRI T. A. NELLAYAPPAN: I have not got a copy of it.

SHRI M. C. DAGA: Have you given replies to any notice under Section 80?

SHRI T. PRABHAKARAN JOHN: Yes, several times.

SHRI M. C. DAGA: In many cases you raise technical objections. You say that the notice is not in accordance with the provisions of that Section.

SHRI T. PRABHAKARAN JOHN: It may not have been served to the proper person.

SHRI M. C. DAGA: The object of Section 80 is to give to the Government or Public officer an opportunity to examine the legal position and to settle the claim. But all the objections that you raise are on technical grounds.

SHRI T. A. NELLAYAPPAN: If the Government have failed to discharge their duty in that respect it is for the court to pull up the Government. The court does pull up the Government in certain cases. When any party to a suit makes default, the court pulls up that party.

SHRI M. C. DAGA: In your memorandum you started on progressive

lines but you want the distinction between the State and the citizen to be there. Suppose without any notice a case has been filled. What about the cost?

SHRI T. PRABHAKARAN JOHN: It is not as if the delay is intentional.

SHRI M. C. DAGA: In 99 per cent of the cases there is delay. Please correct yourself, young gentlemen. There will be no distinction between State and citizen.

SHRI T. A. NELLAYAPPAN: We are representing the views of Tamil Nadu Government. It should not be mistaken as though we are giving our personal views here.

MR. CHAIRMAN: In the course of his questions, Mr. Daga mentioned that this is the Bill of the Committee. It is not so. It is a bill formulated by Government of India and on behalf of Parliament, as Select Committee we are considering the Bill. We are hearing your evidence etc. Our mind is absolutely open. By way of clarification I am saying this. On behalf of Parliament we are scrutinising this Bill. That is all.

You have said that it is the view of Government of Tamil Nadu. That is enough. What we want to know is this. The Law Commission, after its study of this problem, after taking evidence from several persons etc. have come to the conclusion, as Mr. Daga has read out, that Sec. 80 need not be retained. You have set out your views, What Mr. Daga wanted is statistics to support your claim for retention of Sec. 80.

SHRI M. P. SHUKLA: You can give us statistics relating to the past three years as to how many had been received, how many were amicably settled and how many went to court and what were the decisions of the Courts on the same. If statistics are given in regard to that, it will be helpful to the Committee. You can send the same to Lok Sabha Secretariat.

SHRI T. A. NELLAYAPPAN: We will send the statistics to them.

SHRI T. PRABHAKARAN JOHN: I would like to know whether there would be any specific advantage in deleting Sec. 80.

SHRI M. C. DAGA: Is it Cabinet decision you are putting forth when you plead for retention of Sec. 80.

MR. CHAIRMAN: They have said it is the view of Tamil Nadu Government. That is enough.

SHRI M. C. DAGA: The municipality wants to demolish my house, Against that I give notice to Government. I give a time-limit of two months. They must answer before that time-limit. Otherwise what is the remedy left to me. There should be no distinction between State and citizen. That is the object. In 99 per cent of the cases the privilege given to Government has not been properly used.

SHRI M. P. SHUKLA: I shall explain. The Law Commission report has pointed out that this section has been used by Government to defeat the cause of justice and to delay justice. In 99 per cent of the cases, it is delayed. In 50 per cent of the cases, no notice is issued. This is putting the public to difficulties. Sometimes the matter drag not to two or three years but even to 10 years. Some bills of military contractors remain unpaid for several years. What we say is that Government also should have the power which a citizen has and nothing more. The object is justice should not be delayed. It has been misused in several departments of Government to delay justice.

SHRI T. PRABHAKARAN JOHN: I am afraid the view taken that this section is used by Government to

delay justice, is wrong. It is not as if one person represents the view of Government. So many officers' views are put on the file and naturally it takes time to gather the relevant particulars. If this is deleted, it will work as a disadvantage to Government. Of course we understand the noble purpose behind this amendment.

SHRI M. P. SHUKLA: The object is by this amendment, the State and citizen are put on a par. If this amendment is there, then it will put the Government on the alert. They will not delay matters as at present.

MR. CHAIRMAN: You claim that these privileges should be there because of the complexity of the machinery. But the Law Commission's successive reports and also the experience of the members who practice in Courts on civil side is otherwise. The Government of Tamil Nadu through the memorandum and your evidence is of the view that this should be retained. Therefore, the onus seems to be put on the Tamil Nadu Government to substantiate this claim. You are triyng to impress upon the Committee that there is still justification for retention of this section. Therefore, the onus is on the Tamil Nadu Government to satisfy this Committee. If you want to add other arguments to make out a case for the retention of this Section, you may please do so.

SHRI M. C. DAGA: Will you be in a position to give the number of cases in which you have settled the amount after the decrees were passed. In 1974 how many months you have taken for paying the amount? Like that in 1973 what was the period?

SHRI T. PRABHAKARAN JOHN: The purpose behind the amendments it to cut short the time, that is to reduce the delay. You seek to take away the power of the Government and confer it on the Court with the result that you confer the discretion on the Court which may indefinitely grant time for any justifiable reason.

SHRI M. C. DAGA: Three months are already allowed to the Government and thereafter the Court will come in. You kindly go through the wordings of the sub-section at pp. 9 & 10 of the Bill.

SHRI NITI RAJ SINGH CHAUDHARY: The Schedule provides 90 days and thereafter you want extension.

SHRI T. PRABHAKARAN JOHN: It is not as if you are going to reduce the delay. Anyway you are conferring discretion upon the Court.

SHRI M. C. DAGA: 90 days are there in the Bill itself.

SHRI NITI RAJ SINGH CHAUDHARY: 90 days are given to the Government to satisfy the decree. Thereafter if the Government wants time and if it satisfies the conscience of Court, the Court may grant further time. That is the purpose of the Bill.

SHRI M. P. SHUKLA: Giving discretion to the Court may not be conducive to finish the proceedings earlier than six months. It may still be prolonged. That is what he thinks.

SHRI T. PRABHAKARAN JOHN: He has correctly understood.

SHRI NITI RAJ SINGH CHAUDHARY: If you want that 90 days are enough for the Government and the Court should not have any discretion to grant further time, you may kindly say so. That will help us.

SHRI T. A. NELLAYAPPAN: In the existing provision a report is sent to the Government. It will help the Government to make arrangements for satisfying the decree quickly.

SHRI NITI RAJ SINGH CHAUDHARY: Can you tell us why a notice should be necessary to the Government after a decree is passed.

SHRI T. A. NELLAYAPPAN: It is a machinery which lacks immediate control over things. It takes time to know through the various Officers.

SHRI NITI RAJ SINGH CHAUDHARY: There is a period of three months after the date of the decree within which you can wake up and take action.

SHRI T. A. NELLAYAPPAN: The existing provision will be sufficient.

SHRI NITI RAJ SINGH CHAUDHARY: The main purpose of the Bill is to cut short the period of litigation. The existing provision takes you to six months as a matter of course and here the Bill seeks to cut it down to three months and if necessary if you saitisfy the conscience of the Court, the Court can grant further time.

SHRI T. PRABHAKARAN JOHN: So, the time limit is not fixed. It is left to the discretion of the Court.

SHRI NITI RAJ SINGH CHAUDHARY: Three months time limit is fixed. Thereafter, it is discretion of the Court.

MR. CHAIRMAN: Section 82 is almost analogous to Section 80. Section 82 deals with the execution of the decrees and here also you want time. You agreed to substantiate this claim by the Tamil Nadu Government by giving data as to in how many cases of execution against the Government you have settled within the three months' period. That will enable us to examine your claim. Kindly take the trouble of substantiating your claim that this time was actually necessary so that within that time you satisfy the decrees without further execution proceedings. Execution proceedings are as prolonged as the original suits. So, you take larger time there also in the matter of execution. So, kindly help this committee with those figures to strengthen your claim.

SHRI M. P. SHUKLA: The experience of lawyers practising in Courts and the Law Commission has been otherwise. Change of law is always envisaged to help people. Every Act, every Government Order is meant to serve people more efficiently, more amicably and more expeditiously. The provision of two months' before the institution of the suit and 3 months' after the passing of the decree has been meant to bring out facilities to both the parties. But the experience has been that it has been more misused rather than used to the purpose for which it was intended. With the change of times we must take decisions quickly. But still if you think that the retention of this provision is helpful, kindly justify your case with the necessary data that we are in need of in respect of Sections 80 and 82. I request the Chairman to put this question to the other States also and to collect that data which Shri Daga wanted.

SHRI M. SATYANARAYAN RAO: Have you gone through this Bill? Are you in a position to make any comments on the various provisions of this Bill?

SHRI T. A. NELLAYAPPAN: We are not in a position to make any other comments.

SHRI D. L. SEN GUPTA: In your representation you have particularly referred to Clauses 22 and 75 as antiquated. Have you checked up whether these clause are as old as the Code of Civil Procedure itself, 1908?

SHRI T. PRABHAKARAN JOHN: Do you mean to say that it was introduced subsequently?

SHRI D. L. SEN GUPTA: You have characterised Clauses 22 and 75 as antiquated.

SHRI T. PRABHAKARAN JOHN: That is the Law Commission's view.

SHRI D. L. SEN GUPTA: You have simply quoted the Law Commission. Have you checked up in which year they came into force. Are they as

old as 1908? Or, you have not applied your mind and you have just quoted the Law Commission.

SHRI T. A. NELLAYAPPAN: In 1936 there was an amendment. We have taken note of that.

SHRI D. L. SEN GUPTA: Were those provisions found in the 1908 Act itself or they were enacted thereafter?

SHRI T. A. NELLAYAPPAN: As amended by the 1936 Act.

SHRI D. L. SEN GUPTA: It was a new conception in 1936. These sections came into being only after the 1936 amendment.

SHRI T. A. NELLAYAPPAN: Certain amendments were made in 1936.

SHRI D. L. SEN GUPTA: You agree with me that Clauses 22 and 75 are not as antiquated as Clauses 80 and 82.

SHRI T. PRABHAKARAN JOHN: Not the Sections, but the mode of recovery.

SHRI D. L. SEN GUPTA: If you want to delete Clauses 22 and 75 on the ground that they were antiquated, Clauses 28 and 29 are much more antiquated. Will you agree?

SHRI T. A. NELLAYAPPAN: We have introduced a Bill in the Assembly seeking to do away with the practice. It suggests another clause in the place of Clause 22.

SHRI D. L. SEN GUPTA: You are opposed to Clauses 22 and 75. Am I correct?

SHRI T. A. NELLAYAPPAN: The expression 'antiquated' does not refer to the sections as such. It refers to the antiquated mode of recovery.

SHRI D. L. SEN GUPTA: Suppose there has been a decree and payment has not been made deliberately. In that case also will you suggest that there should be no provision like this.

SHRI T. A. NELLAYAPPAN: That is the suggestion.

SHRI D. L. SEN GUPTA: He is not giving the money. Then how will you try to recover the money?

SHRI T. A. NELLAYAPPAN: The creditor has to proceed against the means. The Government's view is that we should not resort to arrest and imprisonment for non-payment of money.

SHRI D. L. SEN GUPTA: There may be *benami* transactions. You will be again encouraging so much of litigation under Section 53 of the Transfer of Property Act.

SHRI T. A. NELLAYAPPAN: For non-payment of money we do not want to arrest a person and retain him in prison.

SHRI D. L. SEN GUPTA: According to you civil prison is an antiquated conception. Do you think that prison itself is antiquated conception? How do you make a distinction between civil prison and other prisons. How do you draw a line? I can understand if you say that prison itself is an antiquated conception. Civil prison is intended for persons who do not pay the money due. You are very much against civil prison, it appears.

SHRI T. A. NELLAYAPPAN: We want to give protection to honest debtors. So far as civil debt is concerned, we do not want to resort to imprisonment.

SHRI D. L. SEN GUPTA: What is the difference between a prison and a civil prison? Can you tell me?

SHRI M. P. SHUKLA: Somebody, a respectable person, takes away other's money and leads a life of luxury and he refuses to pay back the money due. He evades income-tax. I do not think that you have any explanation to taking a different view in respect of a criminal prison and a civil prison.

SHRI D. C. SEN GUPTA: You have an attitude that Government should be distinguished from a citizen.

SHRI T. PRABHAKARAN JOHN: From the point of view of time.

SHRI D. C. SEN GUPTA: I want an answer from you as a good friend of mine. What is your attitude? If there is a real conflict between the Government and a citizen, I want to know whether you will be with the citizen or with the Government? Is the Government for the people or the people for the Government? How do you think?

SHRI T. A. NELLAYAPPAN: The Government views dispassionately and takes a decision. We cannot forget our capacity as representatives of the Government.

SHRI D. C. SEN GUPTA: You have maintained the position in your memorandum that there should be a notice. Now every party wants to serve the Government and wants to earn through the Government. So, there will be a lot of correspondence between a party and the Government. Suppose there is no chance of recovery in spite of several correspondences, they give a notice under Section 80. This has been my experience in the Bar. What I want to know is this. Do you insist that there should be a formal notice or any such letter would suffice without insisting on certain formalities or whether the substance of the notice will do. Would you make any difference between a demand and a formal demand?

SHRI T. PRABHAKARAN JOHN: The factor of time should be taken into account.

SHRI D. C. SEN GUPTA: Would you insist on notice or formal notice?

SHRI T. A. NELLAYAPPAN: The notice is contemplated under Section 80. It carries plaint with it.

SHRI D. C. SEN GUPTA: So you feel there should be a notice under Section 80.

SHRI T. A. NELLAYAPPAN: Provision has been made in regard to all matters. How can the Government require a man to send a notice to us. If he sends a notice on his own accord, it is well and good.

SHRI D. C. SEN GUPTA: Your government may have so many customers in the sense that you buy from them articles and you owe them for the same. They bring to your notice that such and such sum is due from the Government and you are liable to pay. You might have agreed to pay but you might have forgotten to pay.. Do you take notice of such a letter or not? That is my question.

SHRI T. A. NELLAYAPPAN: We are taking notice of such letters. But if civil proceedings have to be instituted, we would like to have a clear notice in a formal manner in order to enable the Government to avail the time. I do not think the people would be put to much trouble by this.

SHRI D. C. SEN GUPTA: How does it improve matter? If they bring to your notice all the details in the form of a letter without observing the technicalities, which is a long process, expensive affair, time consuming affair, would you consider that sufficient or not.

SHRI T. A. NELLAYAPPAN: In a particular case, the position referred to by the hon. member may be there.

But here the Govevrnment have to think of all the cases and provisions made under Section 80 refers to all the matters on which suits are filed against the Government. In several cases, the legality of the claim has to be examined, especially when a notice is served. That is to be examined by various Departments.

MR. CHAIRMAN: The Law Commission itself has commented on this technical aspect under Section 80. Shri Sen Gupta wanted whether you insist on a technical notice under Section 80 or whether you want the claimant to make this demand by observing the legal notices? Supposing a demand is made in writing by a claimant on a Government for a particular sum of money for any service that has been rendered or for goods sold—whatever it may be—whether it is to be taken as a notice and action would be taken on that. What action will you take on that?

SHRI M. C. DAGA: How can the Government go against the law?

MR. CHAIRMAN: The amending bill is against certain provisions of the existing law. All these proposals are against some of the provisions in the existing law. The question is how to overcome these difficulties. That is being contemplated in this Bill. The litigation may be against the Government or public servants. Mr. Sen Gupta was insisting whether a letter would not suffice instead of giving a notice under Section 80.

SHRI T. PRABHAKARAN JOHN: It will be disadvantageous to the suit notice giver.

SHRI D. C. SEN GUPTA: I think your Government functions in a manner in which it is possible for the Government to know who are their creditors. The Government maintains records and it is easily ascertainable from them as to who are their creditors in the market etc. Do you maintain such records or not?

SHRI T. A. NELLAYAPPAN: They do maintain the records.

SHRI D. C. SEN GUPTA: So, they maintain records with dates or with details.

SHRI T. A. NELLAYAPPAN: Yes.

SHRI D. C. SEN GUPTA: In such cases also you will insist notice under Section 80.

SHRI T. A. NELLAYAPPAN: Yes, we have to. Because the Government is not a single person. It maintains records with regard to so many places. They have to get information from various places. Therefore, the verification of the claim may take time.

SHRI D. C. SEN GUPTA: Then according to you, unless there is a notice, you have no obligation to pay. That is your stand or attitude.

SHRI T. A. NELLAYAPPAN: We have to verify the information from various places and settle the accounts. It will take some time.

MR. CHAIRMAN: The Government knows its liabilities—civil liabilities. They have to pay for the goods purchased or for the services rendered. They are liable to pay and the Government has also got the records. The time within which they have to pay is also known to the Government. In spite of all that, the payment is not made and the creditor demands repeatedly by writing; but it is not treated as notice. It is sufficient to bring a suit in the court for the violation of payment of dues to the creditor by the Government or by a public servant acting on official capacity. Therefore, when the official knows that demands are made repeatedly in writing and many other ways, yet payment is not made. Why it should not be treated as notice and the man allowed to go to the court to file a suit without going into the technicalities and formalities.

SHRI T. A. NELLAYAPPAN: That would be in rare cases. When a man is asked to send a formal notice to sue against the Government, it comprises of so many things. That is why a period of two months has been prescribed.

MR. CHAIRMAN: There may be irritants with regard to certain provisions of the Bill. The Committee, therefore, has to satisfy itself with regard to certain amendments proposed in the Bill. The Committee has to satisfy with your claim for the retention of section 80. When the Government has to pay and has liability, it cannot take shelter under Section 80 or even 82. That is the main purpose of the whole question. The purpose of the amending bill is to do away with section 80. The Tamil Nadu Government feels that there is need for the retention of Section 80 and also for enlarging the scope of the amendment proposed under section 82. When you want to emphasise this, you have to come with more argument than what you have so far deposed.

SHRI D. C. SEN GUPTA: What should be the ingredients of a notice. What particulars you require in a notice?

SHRI T. A. NELLAYAPPAN: The existing Section 80 provides for that.

SHRI D. C. SEN GUPTA: We are going to repeal Section 80. What more do you want in the notice?

SHRI T. A. NELLAYAPPAN: The Government consider that a copy of the complaint that is filed in the court is the notice.

SHRI D. C. SEN GUPTA: You have referred to the Calcutta decision. The Calcutta High Court did not express an opinion for the retention of Section 80, but they only explained what Section 80 was.

SHRI T. PRABHAKARAN JOHN: They explained the object of the Section.

SHRI D. C. SEN GUPTA: When Section 80 came up for interpretation, they interpreted it as it stood then.

SHRI M. P. SHUKLA: Now a person who has to claim money from the Government goes to the court only after running to this office and that office for years together. Our experience is that most of the claims are delayed due to the obstinacy of a particular officer. For instance, in connection with the *Mela* at Allahabad, a particular officer might have hired or purchased so many things but the claims of the concerned parties have been delayed for years. Now two months time is given. Can this not be reduced to one month? Is this not sufficient? Don't you think that the payment should be made more expeditiously and that one month's time is sufficient?

SHRI T. A. NELLAYAPPAN: One month is too short a time.

SHRI T. PRABHAKARAN JOHN: Even two months is too short a period. In a Government machinery, very seldom an individual takes a decision. Several individuals take a decision.

SHRI M. P. SHUKLA: We realise that the administrative machinery is so complex that it requires some time to examine the records, to take the opinion of the Law Department etc. before deciding what they should actually pay. But there should not be much delay and lesser time than the usual time allowed 60 or 65 years ago should be taken. Now it takes a lot of time and the persons concerned have to go to various offices and ultimately they go to the public men and the Minister concerned. It is only after all these things, that they go to the court. So we are of the view that the provisions of law should not be such as to give any party unlimited latitude with regard to the settlement of any matter.

SHRI NAWAL KISHORE: Your Government are not in favour of a civil lock-up for non-payment of money. In some States when the tenants do not pay land revenue, the Tahsildar gets hold of them and puts them in the tahsil lock-up. I want to know whether in Tamil Nadu this practice continues or not?

SHRI T. A. NELLAYAPPAN: No tenant is arrested for non-payment.

SHRI NAWAL KISHORE: You want the distinction between the State and the citizen to be there. Don't you feel that a time has come when the officers should be more vigilant, and more prompt in their dealings with the people outside. Why should they insist on the old undemocratic and antiquated procedure? Time has come when they should change it. The Law Commission also has made so many recommendations. You have not been able to convince us so far as to what particular advantage it is going to give to the Government by retaining it.

SHRI T. PRABHAKARAN JOHN: An opportunity to settle the issue amicably should be there and it should not be shut away.

SHRI NAWAL KISHORE: Suppose the Government of Tamil Nadu owes a contractor about Rs. 2 lakhs. He corresponds with the Government for six months and only when he is convinced that nothing has been done for payment of money, he files a suit against the Government. But if the officer is quite vigilant he could settle the matter after the contractor writes to him.

SHRI T. PRABHAKARAN JOHN: He will then straightway go to Court. At least now he corresponds with Government to settle the matter.

SHRI NAWAL KISHORE: He goes to court only as a last resort.

SHRI CHANDRIKA PRASAD: Now I want the section to be there for upper class. But for lower class, I want the Section to be amended. Can you say how it could be done?

SHRI T. PRABHAKARAN JOHN: How can we make a distinction between rich and poor. We cannot discriminate.

SHRI NITIRAJ SINGH CHAUDHARY: You have said that provision for detention and arrest in civil prison should be deleted. The detention is there if a person is likely to abscond or is likely to leave the jurisdiction, the local limits, without lawful excuse. If he goes, on lawful excuse, to see his ailing father-in-law and mother-in-law who may be dead, he can say that to Court. For lawful purpose he can leave. Only if he leaves without lawful excuse, just as Mr. Shukla said, if it is for the purpose of defrauding the creditor, be it the Government or any other person, only if there is such a likelihood,this question of detention comes in. Are we to take it that Tamil Nadu Government is not for a distinction being made between honest and dishonest citizens?

SHRI T. A. NELLAYAPPAN: Government feels that in practice it is only to harass the creditor. Government feel that the provision is resorted to more to spite persons whom they want to disgrace, and not to recover money. Our Government does not want to make any distinction between persons so far as arrest and detention is concerned.

SHRI NITIRAJ SINGH CHAUDHARY: Thank you. So far Sec. 80 is concerned, you want it to remain because it is already there. This may fall under three groups. (i) As a consequence of breach of contract. You know Government is a party to terms of contract. If there is breach, you are not in equity bound to give notice, (ii) when there is dispute between Government and citizen, may be on a right. Government may

assert a right. The citizen may refute it, (iii) on tort. It might have been committed by a Government employee. Government may say the concerned officer has not informed them that he had done anything wrong. Now time is given to you to make enquires, to enable Government to enquire and prepare for defence. It is there in Order 27, Rule 5. You can also ask the Court to extend the time. In page 59 of the Bill, you find that Rule 5 has not been done away with. We have added the words "but the time so allowed and the time so extended shall not exceed two months in the aggregate". 5A and 5B are added. By this order 271 Government gets 2 months' time. If the State convinces the Court, it can get further time. Will this not satisfy Tamil Nadu Government.

SHRI T. A. NELLAYAPPAN: This will be sufficient for Government. By the time the suit is filed, the party might have incurred expenses.

SHRI NITIRAJ SINGH CHAUDHARY: If you are so alert in settling the claim, all right.

SHRI T. A. NELLAYAPPAN: We will give you statistics to support our arguments.

SHRI M. C. DAGA: You say detention and arrest in civil prison should be barred. In your statement of objects of your bill, you have said that the arrest and detention in civil prison of a judgment-debtor in execution of a decree for payment of money is somewhat antiquated. You have decided to discontinue that practice. This is for purpose of execution of a decree. But you are silent about Order 38, Rule 12. Suppose he absconds. What you have said is after decree is passed.

SHRI T. A. NELLAYAPPAN: We will take the hon. Member's suggestion to Government for consideration.

MR. CHAIRMAN: Let me seek a clarification. In Sec. 80 and 82 distinction is sought to be made between State Government and a public officer acting in his official capacity. The main objet is to reduce the delay. Let me know your view on this question. Suppose the officer who is primarily responsible, is put as a defendant. At a later stage, the officer may have ample scope to consult the particular department, file his written statement and prepare his defence. What is your view if the suit is filed against the officer who is primarily responsible. Whoever has entered into the contract, he can be proceeded with, straightway. What is your view?

Ultimately that public officer acting in his official capacity will have to be reimbursed or whatever it is. The liability has to be paid by the Government. The Managing Director of a Government Company or Corporation or whatever it is, any Officer who has passed that order and who has entered into an agreement or the contract, he should be the defendant in case of default to make payment.

SHRI T. A. NELLAYAPPAN: It may be that the particular Officer may be high enough to take a decision. It is some times the case that even lower officers are sued and we cannot be making a distinction between an Officer who is empowered to take decisions and an Officer who is not. Therefore, unless there is a provision made requiring notice in respect of a case, we won't be in a position to come to a decision. The Government have necessarily to examine the case and then only ask the public officer either to defend or yield.

MR. CHAIRMAN: So many persons are creating liabilities on behalf of the Government. We are not holding brief for any State Government or the Central Government. The only thing is to find out whether the Government will actually have any reasonable difficulty and whether there is any scope for reasonable

opportunity being given to Government to take their decisions. Merely filing a suit does not preclude the Court to give time and the Government to seek time. Only we want to lessen the delay in view of the non-use of Sections 80 and 82. You want to retain these Sections. Suppose notice is given to a particular officer responsible on behalf of the Government when he acts in his official capacity. is it not enough. Why notice should be given to the Government again? He should be responsible for Government and Government should be responsible for him. The party is the officer responsible and he is there as the defendant. Let him consult hundred persons on behalf of the Government. You please give your considered opinion on this matter.

SHRI R. V. BADE: In how many cases you have decided wherein notice has been served already? At least you will be able to give us the percentage of such cases?

MR. CHAIRMAN: Several members have put that question. The position is, they will collect the information and send it on to us and we will consider the same. Even the percentage they will not be able to give now.

SHRI R. V. BADE: What is your view regarding attachment of salary of Government servants? There is restriction for attachment upto Rs. 200|-.

MR. CHAIRMAN: The Tamil Nadu Government have no comments to make on other Clauses. The Government have restricted their comments to particular clauses they have mentioned in their memorandum. In respect of other clauses they have no comments to make.

I thank Mr. Nellayappan and Mr. John for the cooperation. I thank you also for your valuable opinion. I take it that you will furnish us with the information that we have asked for. I thank you again for your cooperation.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMUNITY 'A' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Wednesday, the 18th September, 1974 from 10.00 to 13.00 hours in Committee Room, Legislators' Hostel (Old), Madras

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri Debendra Nath Mahata
7. Shri R. N. Sharma
8. Shri Niti Raj Singh Chaudhary

Rajya Sabha

9. Shri Nawal Kishore
10. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

I. Shri K. Parasakan, Senior Advocate, Central Government Senior Standing Counsel, Madras.

II. Government of Andhra Pradesh, Hyderabad.

Spokesman:

Shri P. Ramachandra Reddi, Advocate-General.

I. SHRI K. PARASAKAN, Senior Advocate, Central Government Senior Standing Counsel, MADRAS.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Before you start, I may draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any

part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

On behalf of myself and my colleagues of the Committee we welcome you. You have already gone through the Bill. You have not submitted any written memorandum. So, you are welcome to make your observations on any of the proposals made in the draft Bill.

SHRI K. PARASAKAN: Primarily I want to give evidence on the proposal to omit Section 115 C.P.C., that is, the revisional jurisdiction of the High Courts. The reason given is, Article 227 of the Constitution will serve the purpose. If that is so, it is certainly not going to lessen the Court's work. Instead of labelling it under Section 115, it will be labelled under Article 227. Therefore, you are not going to augment your proposal to minimise the work or liquidate the arerars.

I do not know about the other High Courts. As far as Madras High Court is concerned, for a revision under Article 227 of the Constitution the Court fee is Rs. 100/-. but for a revision under 115 C.P.C. it is only Rs. 10|-. You want to reduce the cost of litigation. From that aspect also it would appear that Section 115 is absolutely necessary.

Thirdly, 115 jurisdiction has been exercised from very long a time—in Bombay from 1827 and in other States like Madras from 1859 and it is a jurisdiction of Court of Records. The Court of records has got special jurisdiction like committing persons for contempt. They are necessary concomitants of the Court of Records. Under Sec. 115 the High Court can even interfere *suo motu* and revise the order of the lower court. Hence, such a power is necessarily to be preserved. It is one thing to say that some judges are using it liberally, but the remedy is not to delete the provision. As regards second appeals, formerly there was interference by the High Court on questions of law, but now only on substantial questions of law. Like that some guidance can be given for interference only in sparing cases. But there is no reason why it should be deleted. The scope of this revisional jurisdiction has been considered by the Supreme Court in *A.I.R.* 1964 *S.C.* 497 *Major Kanna vs. Brigadier Jiller*. That gives the guide lines. When you are preserving the jurisdiction under Article 226 and revision under Article 227 of the Constitution, there is no reason why this should be omitted from the C.P.C.

There is also divergence of opinion as to the scope of jurisdiction under Article 227. If 115 is omitted, the interference may become very narrow and in many cases injustice may be done. For instance, there may be petitions for amendments of pleadings in the plaint or written statement and the question of limitation may arise. The Court may say that it is not bound to interfere under Article 227. A similar question recently arose in the Supreme Court involving question of limitation with regard to the amendment petition. They held that an L. P. Appeal will lie. If that is so, why the revision jurisdiction should be curtailed. It is really meaningful if you want to cut down too may orders of interference under Sec. 115. For instance. there may be order for discovery, order for inspection. If necessary, you can add that in such and such matters no revision may lie. High officials like Chief Minister or a Vice President or a Judge of the High Court may not be summoned to attend the Court but a Commission may issue for his examination. But a Judge may wrongly say I would not issue a Commission and he can come and appear and give evidence. Then the remedy lies under Section 115 and it will be adequate remedy. Otherwise, you will have to resort to Article 227 where the scope of jurisdiction is rather narrow. I feel that the

jurisdiction which has been exercised for so many years should not be deleted.

For instance, supposing there is a petition for stay of trial of a suit on the ground that the same issue is pending in another suit already filed and supposing the Judge wrongly stays the suit, and if really they are not inter connected, you will be without a remedy to the High Court. It is going to add to the prolongation of the case and arrears being kept up. In the Madras High Court the procedure they follow is this. If a revision is filed against an interlocutary order and the suit is stayed pending the revision, as soon as summons is served on the respondent, they post the revision itself for hearing. In the Madras High Court they mark them a prior to decree cases. As soon as the opposite party is served with summons, the revision itself is listed for hearing and is disposed of. In the Madras High Court they are doing 1974 cases of such type. Therefore, Sec. 115 can be preserved and whenever there is a stay, a provision can be added that the revision should be heard and disposed of within 6 months or 8 months or within a month of the service of the summons.

One other matter by which this delay can be avoided relates to appeals to Supreme Court. When a matter is disposed of by the High Court, we are requesting the High Court to certify that the case is a fit one for appeal to the Supreme Court. After the amendment of Article 133, in 90 per cent of the cases they do not certify. If it involves only a question of general importance, a certificate is issued. Many of the cases are between two parties and no general importance is involved and hence, they do not certify. One has to file a petition for obtaining a certificate. That takes two months or even one year for disposal. If the High Court refuses to issue the certificate, then the party goes for special leave to Supreme Court and that takes another two months. This delay can be curtailed, if the High Court either certifies or not certifies as a fit case for appeal to Supreme Court even at the time of disposal of the case. That procedure was followed under the Government of India Act 1935 in granting certificates under Section 205 of the Act. That procedure can be followed by the High Court. That will really save time. Along with the judgment the High Court may issue the certificate if it involves a substantial question of law or it is of general importance or it may say that it is not a fit case to be certified like that.

Another matter by which delay can be avoided relates to appeals against orders of remand. An apepal is provided against orders of remand—Order 43, Rule 1. The provision is also retained. Is it really necessary? Delay can be avoided by removing the provision for appeal against orders of remand. If the higher court finds some lacuna in the judgment of the lower court, it remands it for re-enquiry. If you abolish appeals against such orders of remand, pursuant to the remand the case goes to the District munsif and then comes to the High Court in second apepal. Then the party may be permitted to attack the order of remand itself in the High Court. In the Supreme Court, that procedure is followed. No appeal is provided against orders of remand. The Supreme Court has ruled that you can question not only the judgment appealed against, but also the prior judgment of the High Court which remanded the case to the lower Court because originally no appeal lay against the order of remand. It really saves time. Such a provision can be made even with regard to the cases in the High Courts. *In 1969 Supreme Court* A.I.R. 764 it has been held that where there is no appeal against the order of remand, you can question the order of remand in the appeal filed against the final disposal of the case itself.

But if the Committee feels that an appeal should lie against an order of remand, such appeals against orders of remand should be directed to be

disposed of within a particular time, say, 6 months. Such a provision is found in respect of election petitions under the Representation of Peoples Act. The third alternative is. whenever some lacuna is found and the Court feels that it should be remanded, instead of remanding the entire case, it can ask the trial Court to submit its finding on the particular matter on which there is a lacuna and keep the appeal pending before it. Then the trial Court will enquire into only those matters on which a revised finding is called for and submit a revised finding.

Further, some judges resort to remanding of cases because of statistcis mentality. Similar mentality is seen in the disposal of suits also. For instance, if a suit is decreed *ex parte* for non-appearance of the defendant, the defendant within 30 days has got a right to plead for setting aside the *ex parte* decree if he can show sufficient reasons for non-appearance. He files a petition within 30 days. The practice has been, no judge disposes it of even within 6 or 8 months. Once he restores it, one more suit is added to his file. For the purpose of statistics, they go on keeping pending such applications. If a petition is filed for setting aside the *ex parte* decree or judgment, it should be directed to be disposed of within a month. If you want to set aside an *ex parte* order or a dismissal for default. you serve the notice on the advocate of the other side who must be directed to file a counter within two weeks and within another four weeks the petition should be disposed of. Such a provision should be made in the C.P.C. itself.

When once the matter is disposed of and if notice of further proceedings is given to the Advocate, he should not say 'I have no instructions, you send it to the party. Unless the *Vakalath* is revoked, the Advocate for the party is bound to be served and service on him is sufficient service.

One question has been asked whether the proceedings for publication of record of rights should be treated as civil proceedings. With regard to tenancy legislation records of rights are prepared and it will depend upon the nature of the proceedings with regard to the preparation of the record of rights. Some local Acts make the entry which enacts a presumption that the entry be presumed as correct unless proved to the contrary, for instance, Madras Estates Land Act— Section 167. If the local Acts make such a provision, then there is always a remedy before the Civil Court because the presumption is that the entry is correct and you can rebut it by letting in evidence. But if the correctness of record of rights is made by the local Act as conclusive, then you cannot rebut it. In such cases certainly some remedy may be given to the Civil Courts by making it civil proceedings.

Another question has been raised about preliminary objections, whether they should be heard along with the merits or should be disposed of as preliminary objections. They should be disposed of only as preliminary objections. If you dispose of them along with the merits of the case then you are not avoiding the delay. If you allow preliminary objections to be heard apart from the merits, in the first instance, after issues are settled, you can give one hearing for it and then dispose of it. Then you can go on with the trial of the case. If the preliminary objection is overruled, you can say there will be no appeal. When an appeal is ultimately filed against the decree you can also argue upon the preliminary objection. But if the preliminary objection is upheld and the suit is dismissed, then you can give a right of appeal. This will avoid delay and ensure the preliminary objections being heard at the earliest stage then along with the merits.

Is a provision for review necessary? Provision for review is absolutely necessary because as a human being nobody is infallible. The Court must have an opportunity to rectify its own mistake. The Courts use their powers

of review only sparingly. Unless it is a patent error, a review is not allowed. Therefore, review provision must be retained. The best illustration as to why a review should be sustained is found in the case—Review Judgment in Review petition 79 of 1974 *dated* 9-8-1974—*Logakanatha Thoiaram vs Gangavaradan.*

Provisions of Order XI—are they necessary? I find Law Commission has sustained Order XI. They have not omitted it. I think it is also essential. Many Advocates do not freely resort to it and use it. But that is one of the most efficacious provision in the C.P.C. Even before trial, by discovery, inspection, interrogatories, you eliminate delay as some of the evidence to be let-in in the suit itself could be made available before trial. It is very essential and it should be retained.

Another question is, whether copies of documents and statements of witnesses should be furnished to parties free of cost. This may have relevance on the first question relating to minimising the cost of litigation. I would submit that everybody who comes to a Court must be furnished with a copy of the judgment free of cost. If he wants further copies, he may be asked to deposit the charges. The party in Madras for example pays Court fee of 7 1/2 per cent on the value of the subject matter when filing a suit and I think he should be entitled to a copy of the judgment free of charges. Why should he be asked to pay for a copy of the judgment separately? But, if he is a third party, he must pay the charges. But as regards documents and copies of evidence, they may be charged because the Court has to maintain staff for preparing the copies. But in cases where personal liberty of a citizen is involved, copies of documents and evidence should be furnished free of charges. But in cases involving property rights, charges can be levied for such copies of documents and evidence.

As far as expenses are concerned, in some States the Court fee is rather very high. Some provision should be made for lessening the Court fee. though this may be beyond the scope of the amendment of the C.P.C. Because you want cost of litigation should be lessened. Substantial expenditure is only Court-fee, apart from the Advocate's fee.

Printing can be dispensed with. Even in Supreme Court we find in most cases records are only cyclostyled or typed. Parties can be permitted to file cyclostyled copies or typed copies. That will be a measure to reduce the expenditure on litigation.

One other matter is appeals against orders of interim injunctions. Supposing a suit is filed and along with a suit an application for injunction is also filed and if the Court thinks that there is a *prima facie* case for grant of injunction, the Court says 'interim injunction—notice'. Some of the High Courts have taken the view that even such an order is an appealable order. In Madras High Court such orders are not treated as appealable orders. Then the Court after hearing both the parties passes the final orders in the matter of injunction, either making the injunction absolute or vacating it. Then, if any of the parties is aggrieved, he can go on appeal. But recently following the Allahabad High Court, certain High Courts have said that an appeal lies even on orders like 'interim injunction and notice'. Then we will be flooding the High Courts with C.M.As. Some amendment should be made that no appeal should lie on such orders—that is—'interim injunction—notice'. The Allahabad High Court decision has been given in *A.I.R.* 1970 *Allahabad* 376. This is really not a correct approach. The C.P.C. itself defines what an order is. Appeal is provided against a decree or order as defined in Section 2. Supposing an order for adjournment is made, you cannot say that it is also an order on which an appeal lies. That will work havoc. Madhya Pradesh and Himachal Pra-

desh High Courts have taken such a view following the Allahabad case. But it seems to be incongruous. The only scope in such an appeal is whether without hearing the other side on finding that there is *prima facie* case made out for granting interim injunction, injunction has been ordered.

SHRI R. V. BADE: Then according to him, there will be two stages.

SHRI K. PARASAKAN: As the hon. member pointed out there will be two stages of appeals. First interim injunction should be granted before hearing the respondent. The second stage comes after the injunction is granted. So far no Court has decided on this except the Allahabad High Court and the 1953 Hyderabad Court. I have also referred this matter to Justice Kailasam who is the Chairman of the Rules Committee to consider this in the Rules Committee of the High Court. He said that he would consider this. It is a common problem for all the States. It should be solved. There should be a common procedure with regard to this matter. It is not as if the other party has no remedy. There is a remedy of moving the Court to vacate the order of interim injunction. This aspect should also be taken into consideration.

One another submission that I want to make for the consideration of the Committee is this. I am referring to the provisions under Order 1 rule 10 (a). Writ Petitions are filed in regard to service matters seeking justice in regard to promotion and other matters. In such cases, 70 or 80 persons may be involved. In such cases the seniority is decided by the Court and the affected persons seek remedy under Article 226 or 227 of the Constitution. The interest of all the persons who have to be added as respondents is common. The Court hears representations of all the parties and disposes of all the cases. This sort of case may also arise in cases between landlords and the tenants. There may be several tenants under one landlord. 25 or 30 persons might file a writ Petition with regard to the character of the lands as to whether they are pannai or ryoti. The matter will be common to all. The nature of the case will be the same in regard to all the tenants. The Court may decide in the case of one tenant. It should be made applicable to all the tenants without increasing the writ petitions. A procedure should be made in regard to matters of common interest. Because, the interest is common with regard to all the parties. It would minimise drawing people to the Court and it would also minimise engaging the Counsels by many people, to argue the case in such Writ Petitions. Why not we follow the Civil Procedure Code *viz.* Order 1, rule 10 in regard to matters of common interest? The Committee may consider this aspect also.

Then I would like to refer to another provision made in the amended bill that is with regard to proviso under rule 1. It has been mentioned that the following proviso shall be inserted, namely:—

"Provided further that in appropriate cases, the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.". One difficulty with regard to this is this. In many of the Suits, suit summonses are served wthout a copy of the plaint. So a provision may be made that summons should be served with a copy of the plaint. Because we find very often summonses are served without plaints. So provision should be made to serve the summons along with plaint in order to enable the defendant to have time to get ready the written statement on the next hearing.

Then I would like to refer to executions under Order XXI. Supposing a money decree is passed, an appeal is taken against that. Because the appeal is pending, there

is no stay order. The decree may be executed and the property is sold. Ultimately, if the appeal is allowed restitution is ordered. If third party purchases the property in execution of the decree which is later reversed, there is some difficulty. The Madras High Court has taken the view that if a decree is reversed the court sale will still stand. The same thing will arise in the case of a person forging a promissory note and getting a decree thereon. Suppose appellate court reverses the decree upholding the case that the promissory note is a forgery, ultimately the property of the individual which is sold pending appeal is not got back by restitution. The restitution means that the party must be placed in the same position as he was before the decree. Therefore, some provision should be made with regard to the restitution. The Madras High Court has held that the sale cannot be set aside in AIR 404 of 1964 Madras 404. The Supreme Court in AIR 1967 S.C., page 609 left the question of the right to restitution open (*vide* page 614 para 25). Therefore, there should be a provision for restitution.

SHRI R. V. BADE: If this is not done, he should be given some compensation.

SHRI K. PARASAKAN: Certainly, some solatium should be given. These were some of the matters which I have noticed. I have not prepared a written memoranda, because I have received the letter only on Monday.

SHRI NITI RAJ SINGH CHAUDHARY: Mr. Parasakan, you have suggested the abolition of Order XLIII because you are of the view that Section 105 takes care of these matters and that there will also be some saving of time. Taking this argument further, could it not be 105 takes care of these matters and that there will also be saving of time? Taking this argument further, could it not be said that if Section 115 is deleted, some matters which go to the court can be avoided and further time could be saved because in some cases the matter may be referred for fresh trial and there may be subsequent delay?

SHRI K. PARASAKAN: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: You have not said anything about Section 100—Right of appeal. You must have read the provisions in this Bill. When the Judge admits the Second appeal, he formulates the question of law.

SHR K. PARASAKAN: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: Thereafter, appeal should be heard on the questions formulated by the Judge while admitting the appeals.

When that has to be done, the party who files the application will certainly try to convince the judge to his or her side and formulate the question. Would you agree to that proposition?

SHRI K. PARASAKAN: I would make a small alteration. The judge should formulate that question and state his reasons for so certifying..

SHRI NITI RAJ SINGH CHAUDHARY: So far as the formulation is concerned.

SHRI K. PARASAKAN: I agree.

SHRI NITI RAJ SINGH CHAUDHARY: For giving reasons, you have reservations.

SHRI K. PARASAKAN: Yes.

Secondly, at the time of admission when a substantial question of law is raised, he formulates the question of law. When the Respondent enters appearance, he may be able to meet that question of law by another substantial question of law. If you say that he could only hear that substantial question of law, can the respondent be able to meet

it. The point as to what is a substantial question of law has been dealt with in A.I.R. 1951 Madras 969.

SHRI M. P. SHUKLA: If clause 39 is accepted, is clause 42 necessary.

SHRI K. PARASAKAN: Clause 42 may be necessary. The lower court may decide upon a particular question of fact or a particular view of law but the High Court may take a different view and so clause (b) of the Section is necessary.

SHRI M. P. SHUKLA: Do you want both clauses 39 and 42 to remain?

SHRI K. PARASAKAN: Yes.

SHRI M. P. SHUKLA: Cannot both the clauses be put in one clause?

SHRI K. PARASAKAN: Yes.

SHRI M. P. SHUKLA: What about minimising the cost of litigation and the class of people to which free legal aid should be given....

SHRI K. PARASAKAN: About the cost of litigation etc. I have not applied my mind. There is some discussion for legal aid to the poor. While submitting the written memorandum, I will look into this matter also.

SHRI M. P. SHUKLA: What is your view with regard to avoiding delay and simplifying the existing procedure?

SHRI K. PARASAKAN: With regard to minimising delay in execution. Frequent adjournment of execution petition even where judgment debtor pays only a small amount towards decree should be awarded. Unless one-fourth of the decreed amount or more substantial amount is paid, no adjournment should be granted. Some such provision can be made. With regard to delay in suits court can be liberal in granting adjournment for filing written statements. But once a written statement is filed, adjournment should not be freely granted. Once a trial commences, it should go on day after day till it is finished unless there are special reasons for adjourning it. After finishing one suit the judge can take up another suit. Suits should be tried day to day and finished. Granting adjournments on flimsy grounds should be discouraged.

SHRI R. V. BADE: Sometimes all the witnesses may not come on the same day.

SHRI K. PARASAKAN: You examine the witnesses present but for other witnesses, do not adjourn for two or three weeks but one day or two days.

As regards disposal for statistical purposes, if a case is dismissed on grounds of default or decreed ex-parte and if petition is filed for restoration or to set aside ex-parte decree, it should be disposed of within another one month.

SHRI M. P. SHUKLA: Some times the parties in the civil cases see that their cases are adjourned on some excuse or other and the rules in the Civil Procedure Code give scope for such things. To avoid delay and corruption in the court, what do you suggest?

SHRI K. PARASAKAN: In the written memorandum I will deal with it. In 'conditional orders' many apply for extension of time. That causes delay.

SHRI M. P. SHUKLA: Some unscrupulous lawyers are responsible for it.

SHRI K. PARASAKAN: There should be code of conduct among lawyers. It started as a noble pro-

fession. Barrister was not entitled to charge a fee. It is the jurist that gave the judgment and Roman Emperor issued the decree on the basis of the judgment of many jurists. That is how the practice of judgment and decree came into being. The legal profession started as such noble profession. But now it has changed and many lawyers treat it as if it is a business. What I say is lawyers must have some norms and code of conduct.

SHRI B. R. KAVADE: Sometimes I am in a sugarcane area a nd persons work there for three or four months in a year, coming there leaving their villages. I am not able to contact my client. What am I to do?

SHRI K. PARASAKAN: You can inform the Court and the Court can issue summons. In fact three months' time is given for issuing further summons. That is in order to enable the other party to find the whereabouts of this person. If you are not able to contact the client, you can inform the Court through memo and court can contact the man through summons. It can be done like that.

MR. CHAIRMAN: I might inform members that Mr. Parasakan has said that for the points that he had not covered so far, he will submit a written memorandum to us later.

SHRI B. R. KAVADE: What about preliminary objections?

SHRI K. PARASAKAN: They should be heard and disposed of quickly.

SHRI R. V. BADE: In 27th report Law Commission has given some arguments regarding Sec. 115. Do you agree with it. What is the alternative you suggest?

SHRI K. PARASAKAN: What the Commission has said is a safeguard against frivolous revision. What I say is that may be retained. This is a fertile area for the juniors to operate. They do not get opportunity to argue heavy cases like writ appeals, original suits etc. They get opportunity only in petitions and CRPs and second appeals. Some do not send juniors even for second appeals. After all juniors should be trained sufficiently. By taking this section, you are taking away that field for juniors. Retaining Sec. 115 is a help for them.

SHRI R. V. BADE: What about Sec. 80?

SHRI K. PARASAKAN: That should be omitted. By that number of writs coming will be reduced. At present, even though it can come in the form of suits, writ is resorted to, for dispensing with notice. Previously when notice was given, they investigated the matter and if there was sufficient ground, they settled the matter. Now it is not the case. By the time it goes to four sections in the Government office, the two months' time is lost and the party is ready with suit. Very often it is replied as this. 'Your threatened suit is awaited'. So what I say is, when it is not serving any purpose, it is better it is omitted. Out of 100, they might not have settled even in 10 cases.

SHRI R. V. BADE: Suppose the party buys a property in auction which is held in execution of a decree. If sale is set aside later on, what is the remedy for the buyer?

SHRI K. PARASAKAN: He will get back the money he had paid plus a solatium of 5 per cent. That may be increased to 7 per cent.

SHRI A. N. MAHATA: What are your arguments for retention of Sec. 115? If it goes, remedy is there under Article 227.

SHRI K. PARASAKAN: If it goes, he will come under Article 227.

By abolishing it, number of cases is not going to be diminished. You will only destroy the fertile field for juniors.

SHRI M. S. BISHT: In German Democratic Republic, the Government provides lawyer for defendant also. Don't you think that system is better here also.

SHRI K. PARASAKAN: In criminal cases, when the accused is poor, the Court appoints an advocate, amicus curie, I agree that the procedure in German Democratic Republic may be followed.

MR. CHAIRMAN: Then on these questions you are in agreement.

SHRI K. PARASAKAN: Yes, I agree.

MR. CHAIRMAN: Mr. Daga, Mr. Parasakan has deposed on the questionnaire that we have circulated. He has also suggested voluntarily with regard to certain sections and he has also assured the Committee that he would submit a written memorandum to the Committee. He will cover all the points in a comprehensive manner in his memorandum.

SHRI M. C. DAGA: I suppose you are in the Bar for the past 30 years or so.

SHRI K. PARASAKAN: For thirty-five years.

SHRI M. C. DAGA: From your experience, you can give your views on the amendments proposed in this bill. I want a clarification with regard to a provision in the amending Bill. Now the government has suggested certain amendments to the Bill with a view to eliminate delay in disposing of cases. Do you propose any other suggestions or you agree with all the suggestions made in the Bill.

SHRI K. PARASAKAN: I mostly agree. Most of the suggestions are agreeable to me. Here I would suggest that trial suits should be taken in a chronological order. When the case 70 is pending, 71 or 72 is taken up. In the trial of suits, as far possible, should be taken in a chronological order, unless there are valid reasons. They should go by chronology.

SHRI M. C. DAGA: Do you agree with provisions made under sub-clauses (b), (c), (d) and (e) on page 26 in toto or partly? Being an advocate, do you want them to be retained or deleted?

SHRI K. PARASAKAN: I agree with C also because it can be adjusted by an advocate. Even in the part heard cases, his Junior can appear and carry on the case. Even if he has any other work, he can finish it and attend this work.

SHRI M. C. DAGA: Have you gone through the Bill which has been recently introduced in the Tamil Nadu Legislature with regard to an amendment to the Civil Procedure Code?

SHRI K. PARASAKAN: I have not gone through the Bill.

SHRI M. C. DAGA: Have you applied your mind to the clauses relating to Directive Principles?

SHRI K. PARASAKAN: No. If the hon. member can tell me the clauses, I shall submit my views on them.

SHRI M. C. DAGA: Clause 23, 24, 55(a), 73(3), 75(1) (4) (19) (29), 84(3)(7) and (8), 92(1)(d), 93(3) and clause 102, which give effect to the Directive Principles of the State Policy.

SHRI K. PARASAKAN: I shall go through those clauses and submit my comments on them also in my written memorandum.

MR. CHAIRMAN: We are thankful to you for having come here and given your views and valuable suggestions. You also take into consideration the suggestions made in the Law Commission Reports and send your replies to the Committee as early as possible.

[*The Witness then withdrew*]

II. Shri P. Ramachandra Reddi, Advocate-General, Government of Andhra Pradesh, Hyderabad.

[The witness was called in and he took his seat]

MR. CHAIRMAN: Before you start I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI P. RAMACHANDRA REDDI: The government itself is interested only in three provisions proposed in the amending bill. First is Section 80 of the Civil Procedure Code. Second is Section 82 and the third is Order 27 of the Civil Procedure Code.

So far as Section 80 is concerned, the omission of the Section is objected to. So far as section 80 is concerned, it may be noted that two months notice was given to the Government. An opportunity was afforded to the Government to examine the merits of any claim that is made by an outsider. It enabled the government to consider whether it was a fit case of settling the claim and whether the claim was legitimate or not. There has been justification for the criticism that this provision had not been made use of for the purpose for which it was originally intended. But still, I submit that the total abolition of the provision may not be good in the public interest. Whatever the intention of the original section be, with the advent of the Constitution and change in the concept of the objectives of State as Welfare State, the State has come to undertake several transactions of commercial nature, apart from several schemes which the State undertakes in order to give effect to the public policies. Therefore, the State has come to safeguard itself from innumerable litigations not merely with reference to commercial activities but also with reference to activities of a Welfare State. This situation was not anticipated at the time when Section 80 was introduced in the Code. Therefore, I would submit that if the committee considers that two months time is a long time, there must be some reasonable time for the State to take a decision, say a month's time should be there, before any action is taken against the State in a Court of Law.

Now with the expansion of the State's activities, the subject matter of litigation in every case is dealt with by more than one Department. Some sort of co-ordination is necessary between the various Departments dealing with a particular subject-matter of a particular case, and this will take time. If you do away with the two-month period, that means any court can grant any ex parte interim relief against the Government. Now with reference to the public services and with reference to activities which bring in revenue

to the State or the undertaking of any development programme, any ex parte interim order without a period of notice is bound to cause substantial loss of revenue and also public dissatisfaction. For instance, a public servant on the verge of retirement may file a suit that till the court decides the correct date of birth he should not be retired from service. The Government may consider that it is undesirable to continue him in their service but according to the order of the court he cannot be retired in another case relating to excise contract, one contractor may file a suit that the other contractor to whom contract is given and who is the highest bidder is disqualified under the rule and if the court passes an interm order, the State will be losing revenue on that account. So, to understanding the nature of the claim and to make preparation to face any possible litigation, some reasonable notice would have to be provided before the State is proceeded against in a court. I would submit that at least a month's notice is necessary. The State is certainly not a favoured litigant but it stands on a different footing from that if the ordinary citizen. So, firstly the State must have reasonable notice of any possible claim against it before action is commenced. The period of three months is a longer period and that can be retained in Order 27.

Section 82 provides for a report being sent to the Government by the court whenever a decree is passed aginst the Government. Now acording to the amendment proposed, instead of the report to the Government, some notice should be given to the Government Pleader and that I submit would not lead to any practical result. The Government Pleader handles a number of cases and there is a regular general correspondence between the Government Pleader's Office and the Government. If the Government. Pleader is to be informed that a decree has been passed against the Government there is no notice necessary to be sent to the Government. Pleader because he will automatically know that a decree has been passed against the Government. Therefore, the present Section 82 which requires the court to sent a report to the Government about the decree being passed, would be a more salutary provision, as that would command the immediate attention of the Government. If it is to be a part of a routine correspondence which the Government Pleader had to carry on with the Government, the importance of communication of the decree may not even be realised by some of the officers of the Government. I have come across cases wherein on account of the delay in the creditor went and attached the treasure for the realisation of small amount. The whole purpose of Section 82 is that the Government must be made aware of the decree passed by the court and therefore that provision should be retained. No particular reason has been suggestion for the change.

SHRI M. P. SHUKLA: With regard to Section 80, you insist only on some time being given to the Government. You do not insist on the form provided in the section.

SHRI P. RAMACHANDRA REDDY: I do not insist on the form but the Government should be informed about the gist of the claim.

SHRI R. V. BADE: The cause of the notice should be given.

SHRI P. RAMACHANDRA REDDY: Notice should be given. The gist of the claim should be given. It need not be in any particular form.

SHRI R. V. BADE: So you want a report from the court about the decree passed by it and not a report from the Government Pleader to the Government.

SHRI P. RAMACHANDRA REDDI: Yes. A report from the court would command better respect and immediate compliance. Why should there be a change?

SHRI M. C. DAGA: Please give us statistics for the last three years as how many claims had been settled, how many had been replied and what is the percentage of settled claims to the total notices received?

SHRI P. RAMACHANDRA REDDI: I shall ask the State Government to sent those statistics to you. But I might be permitted to say this. In the case of Government, it is the custodian of public property. They require time to get particulars. In one case of petrol, for interim injunction of 15 days got by the dealers, the government lost 20 to 30 lakhs of rupees. They took 15 days to collect materials and get the stay vacated.

SHRI M. C. DAGA: That may be one in 100 cases. Should we say then that in revenue matters, the Sec. may be retained.

SHRI P. RAMACHANDRA REDDI: It is difficult to classify like that. That is why I say a *via media;* give I month notice. I am not sacrosanct about the form of notice.

SHRI M. C. DAGA: Do you note that the Law Commission has concluded in its 27th and other reports in 3 reports that the Government and public officers had not made use of this opportunity afforded to them under this Section.

MR. CHAIRMAN: Let me intervene. If Government or any officer acting in his official capacity has not done the duty properly and if litigant finds that there has been wrong, he gives notice. If on receipt of notice, the officer finds that there is wrong and if there is genuine desire to settle the claim, well and good. This notice would serve the purpose and the litigant would be saved of the court fee. That is before the suit is filed. But our experience does not justify that. The Law Commision has also found that the public officers had not made use of this opportunity under the Section. The experience of many M.Ps is that this is time-consuming and only delays matters and Government does not care for it in majority of cases. In regular suit also, before filing a suit notice is given to the other party that such and such money is due. If the other party has not remembered it, can settle the matter before the suit is filed. But that notice to Government has not been made use of. That is our grievance. If liability is settled, then Sec. 80 is meaningful.

SHRI P. RAMACHANDRA REDDI: I had found that in some districts, there is quick response to this notice. In the State capital, there is lethargy than in the districts. It varies from district to district. That is why I say, don't take it away but let the notice period be for 1 month.

SHRI M. C. DAGA: In railways, they lose 10 to 12 crores of rupees per annum. I issued two notices; one under Sec. 79 of the Railway Act and the other under Sec. 80 of the Civil Procedure Code. Even then the officers do not settle the matter. That is why I had pointed out how the Law Commission had concluded in three of its reports that the opportunity afforded under this Section had not been made use of by the Government officers.

MR. CHAIRMAN: We will address all the State Governments and departments concerned, whoever it might be, to give their suggestions regarding action taken on Section 80 as well as Section 82. That is what we have decided yesterday.

SHRI M. C. DAGA: Do you consider that two months is a long period to pay the amount?

SHRI P. RAMACHANDRA REDDI: I have not said anything about the time. I have said that report must be sent by the Court to the Government. For the time, I am not objecting.

MR. CHAIRMAN: Regarding statistics, you have said that you will send it after contacting the concerned Department. That is all right I would like to seek a clarification

from you with regard to utility of Section 82, as proposed now. Is it your suggestion that the intention of this Section should be that once the Court send its order with a court seal to whomsoever, the Government should not stagger the suits, and that they will settle the claims without delay within two months.

SHRI P. RAMACHANDRA REDDI: That is the purpose. The three months time is to satisfy a decree against the Government. Within three months, the Government is suppose to settle the claims. It is now sought to be reduced to two months. It is the intention that the Government should not prolong the payment and that it should settle the claims. On that we are seeking information regarding settlement of decree order by the Court within this period.

SHRI M. C. DAGA: Under Section 82, the Court may extend the time from time to time. Now under clause 29, it has been stated that where in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be the public officer, such decree shall not be executed except in accordance with the provisons of sub-section (2). The court may, in its discretion, and from time to time extend the period and send an intimation to the Government Pleader, by whatever name called. My contention is why such a long rope should be given to the Court.

SHRI P. RAMACHANDRA REDDI: Now a change has been effected. It has been changed from the date of such report to form the date of such a decree.

SHRI M. C. DAGA: So when once a decree is passed, it is a sufficient notice for the Government to settle the claims. Even then the claim is not settled.

SHRI P. RAMACHANDRA REDDI: Then execution has to be taken. The Court may extend the time from time to time. It is left to the discretionary power of the Court.

SHRI M. C. DAGA: Suppose the government files a suit against a citizen. The citizen asks for extension of time. Will the government give extension of time?

SHRI P. RAMACHANDRA REDDI: The government may not agree.

SHRI M. C. DAGA: Why?

MR. CHAIRMAN: We shall formulate our own decisions. In the amending bill it has been suggested that the period will count from the date of such decree. Do you think that three months' time is sufficient for the Government to settle the decree?

SHRI P. RAMACHANDRA REDDI: 3 months are quite sufficient. The three months time should be retained in the Section.

MR. CHAIRMAN: You have made a distinction between a Government Pleader or any advocate as such acting on behalf of the Government. Is he not a public servant for that purpose? As Shri Daga has pointed out, when a decree is passed, the lawyers of both the sides or Pleaders as the case may be get a notice. From that time 3 months time is there. I think it should be sufficient. Instead from the date of report, in the amending bill it has been suggested that it would be from the date of such decree.

SHRI P. RAMACHANDRA REDDI: Three months time from the date of decree is all right.

SHRI R. V. BADE: I think the amended clause is better suited for the purpose of the Government than the previous one.

MR. CHAIRMAN: In that also, the Court has been given unfettered and unlimited dicision to extend the time too many times. How long they will extend is not known.

SHRI M. C. DAGA: Why should there be a distinction between a state and a citizen. When a judgment is pronounced and a decree is passed against the Government it is the duty of the Court to inform the Government in time.

SHRI P. RAMACHANDRA REDDI: Such provisions have been interpreted by the Supreme Court and held constitutional on the ground that the government has no personal interest in any litigation. Only as a Custodian of public interest and in charge of public administration the government has to act. Ordinarily the government does not want to cause hardship to the public unless there is something *malafide*.'

SHRI M. C. DAGA: Sueh things happen because the Government employees—the law officers—are not very alert in their duty.

SHRI P. RAMACHANDRA REDDI: Unfortunately it is so in some cases. Till last moment they do not take any diligent action.

MR. CHAIRMAN: You kindly study the questionnaire and give your reply later in writing.

SHRI M. P. SHUKLA: You kindly go through the questionnaire and give your answer so that it may assist the Committee to come to proper conclusions.

SHRI P. RAMACHANDRA REDDI: I require time to study it and I will send the reply later.

On behalf of the Bar Council of Andhra Pradesh, I have a few suggestions to make on the provisions of the Bill.

As regards Section 2, in clause (2) the words 'and may be either preliminary or final are proposed to be omitted. So far as mortgage suits are concerned, the amending Bill seeks to do away with the distinction 'preliminary or final'. There is no purpose in taking away from the definition 'either preliminary or final' and the deletion of these words may not be desirable.

MR. CHAIRMAN: We will look into it.

SHRI P. RAMACHANDRA REDDI: Section 96 is sought to be amended by adding the Explanation with regard to finding incorporated in a decree. The Explanation should be deleted because there can be a decree but the decision may not be the same because no decree will contain an adverse finding. Findings will be given in the judgment and the decree is the final conclusion. Therefore, there is no question of any finding in a decree.

MR. CHAIRMAN: You are making a distinction between a finding and a decision. In the judgment there is a finding and on the basis of the finding a decree is passed by the court. The decree will be in favour of a person but the findings may contain certain adverse remarks. While he will be satisfied with the decree passed in his favour but so far as the adverse remarks in the findings are concerned, he should be enabled to file an appeal to quash it.

SHRI P. RAMACHANDRA REDDI: The Explanation says that the findings must be incorporated in the decree. When once it is incorporated in the decree, the decree itself is against him.

MR. CHAIRMAN: Anyway that is a matter which will have to be examined. The basis on which the amendment has been proposed should be examined.

SHRI M. C. DAGA: For instance, a decree may be passed in favour of the plaintiff but the finding may be against him.

SHRI P. RAMACHANDRA REDDI: According to the Explanation, only

if the finding is incorporated in the decree, the aggrieved party has got a right of appeal. So, the Explanation should be deleted.

MR. CHAIRMAN: Your point seems to be clear. You are not against the appeal being provided against the finding with an adverse remark to the party who wins the case. He should be enabeld to appeal against it so that the adverse remark can be removed. Therefore, your suggestion is that the world incorporated' should be deleted. That is a very fine point you have raised.

SHRI P. RAMACHANDRA REDDI: Then Section 100 should not be interfered with. The present amendment will practically destroy the right of second appeal. Also everything will depend on the decisions of the subordinate courts. This amendment is not based on a realistic appraisal of the character of the judgment of the subordinate courts. If you only say 'substantial question of law' there may be little or no case whatever for the second appeal. The substantial question of law was interpreted by the Supreme Court in 1962 (1314) in the case filed in the Madras High Court in 1951 (969). They have stated that the substantial questions of law are highly complex legal questions on which there is a conflict of judicial opinion.

SHRI M. C. DAGA: In the case of appeal to the Supreme Court the High Court should certify that it involves a substantial question of law.

SHRI P. RAMACHANDRA REDDI: Yes. The High Court will give that certificate.

MR. CHAIRMAN: The High Court certifies only in rare cases.

SHRI P. RAMACHANDRA REDDI: The present door open to the litigant should not be closed. You cannot ask for issue of certificate. Even now in admission stage, they are strict. It is posted before a Judge and even though it is not strictly in the form of certificate, he verifies whether there had been error in law etc. Then only the appeal is admitted. So let the status quo continue. Substantial question of law are complex legal questions on which there is conflict of judicial opinion. That is there for Supreme Court. Even for High Court you need not insist on that. The second appeal comes if there is error of law. Error of low is not substantial question of law. If you shut the door, then there could not be appeal against 'error of law'. If the lower court has 'erred in law' and if you say that certificate of appeal can be given only in substantial question of law', that suit wherein there had been 'error in law' in lower court, cannot at all come to High Court. Surely that is not the object, I think, of this Bill.

MR. CHAIRMAN: You have given a good point. What will happen if the word "substantial" is omitted.

SHRI P. RAMACHANDRA REDDI: Then there is no necessity for amendment. The *status quo* remains.

SHRI M. C. DAGA: Law Commission has studied this question in 20 pages and given its report.

MR. CHAIRMAN: Mr. Reddi had given is the benefit of his experience and we are thankful to him. He has said that he would ask the Government to send us the statistics. He had given us valuable suggestions. Another witness is waiting. We are thankful to you, Mr. Reddi for your suggestions.

SHRI P. RAMACHANDRA REDDI: I want to say only one thing more. Sec. 115 may be retained. It should not go. Article 227 may be there. But that is a costiler process. This Sec. 115 is there even for the poor. Don't take it way.

Another point also I would like to submit. This Civil Procedure Code amendment may not be sought on the ground that persons entrusted with administration of justice or law have not been liberal in the interpretation. That can hardly be any ground for amendment of civil procedure code.

SHRI M. C. DAGA: Only one question, Sir. Why do you want Sec. 100 to be there.

SHRI P. RAMACHANDRA REDDI: Suppose there has been defect in procdure which has affected dispensation of justice. It is ground for second appeal. But such things would be excluded by your present amendment. That is why I say let the present thing remain. I have already explained it.

MR. CHAIRMAN: Thank you Mr. Reddi. On behalf of the Committee and on my own behalf, we thank you for the valuable suggestions you have given us. I can assure you that oyur suggestions will be carefuly considered by the Committee.

SHRI P. RAMACHANDRA REDDI: Thank you.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'A' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Thursday, the 19th September, 1974 from 15.00 to 18.40 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2, Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Sardar Mohinder Singh Gill
6. Shri B. R. Kavade
7. Shri Debendra Nath Mahata
8. Shri M. Satyanarayan Rao
9. Shri R. N. Sharma
10. Shri Niti Raj Singh Chaudhary

Rajya Sabha

11. Shri Nawal Kishore
12. Shri Dwijendralal Sen Gupta
13. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

I. Shri G. K. Govinda Bhat, Chief Justice, High Court of Karnataka, Bangalore.
II. Shri M. S. Phirangi, Advocate, Dharwar.
III. Shri M. R. Achar, Advocate, Bangalore.

I. Shri G. K. Govinda Bhat, Cnief Justice, High Court of Karnataka, Bangalore.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Mr. Chief Justice, I am glad to welcome you to our deliberations. But before we actually start our work, I want to draw your attention to direction 58 of the Directions by the Speaker which says that the evidence that you give before us would be treated as public and as such is liable to be made public. If you desire that all or any part of your evidence should be treated as confidential, it will be treated as such; but even so, the evidence will be made available to other members of Parliament.

We have received your memorandum. After you make your submissions, the hon. members would like to seek some clarifications. Now I request you to make your submissions.

MR. CHIEF JUSTICE: Whatever I have felt strongly about certain clauses of the Bill, I have put my ideas in the memorandum that I have submitted. I am not hesitant to make them public. I shall not feel shy to speak in the public.

MR. CHAIRMAN: I request the hon. members to seek clarification from Mr. Chief Justice.

SHRI NITI RAJ SINGH CHAUDHARY: You have stated in your note that the Court which makes a submission to other court should itself indicate the date on which the parties will have to appear before the next court. We thank you very much for your suggestion. With regard to the second point which you have raised *viz.*, section 54, this is a matter which requires some consideration. In Art. 31 of the Constitution we have some difficulty. The ryotwari estate is defined as an estate.

MR. CHIEF JUSTICE: That is a matter which is very much affecting our State. Who are the persons that appeal for partition? It is only those persons who have been given unless lands will approach the court for effecting proper partition. In Madras State all ryotwari estates partition will be done by the court. Therefore section 54 should be eliminated or so that the cases decided by the Revenue authorities should be made appeallable to the courts.

SHRI NITI RAJ SINGH CHAUDHARY: Do you not agree that while admitting the appeals, if responsibility is placed on the judges to settle the question of law that is involved and to state it in the order sheet; will that not put some obstacles?

MR. CHIEF JUSTICE: I have elaborately dealt with section 100. My own experience is if you ask the judge to give reasons for rejection, they would rather reject it than giving reasons. Most of them will not be able to give reasons. They may not be able either to grasp the law or the scope of the second appeal. Sometimes the accummulation of the work might be the main reason for not assigning reasons.

SHRI NITI RAJ SINGH CHAUDHARY: Why not we give a go by to these revision petitions?

MR. CHIEF JUSTICE: Sometimes it is necessary. In a recent case of Bangalore University, an appeal petition was preferred against the order of a Munsif Court. This is a case of appointment of some Readers and Professors in the University. The Munsif court had granted an injunction. The Civil judge had confirmed the order. When the matter came up before me in a revision petition, I set aside the order. I have observed that the orders of the lower courts was perverse. If I had not interferred, the litigation would have gone on endlessly. Wherever there is abuse of power, the High Court must intervene.

SHRI NITI RAJ SINGH CHAUDHARY: Is it not your experience that a person who is affluent, he will go in revision and thereby harass the poor litigant?

MR. CHIEF JUSTICE: The High Court is not expensive; both can go to the courts.

SHRI NITI RAJ SINGH CHAUDHARY: Is it your view that even a pauper can approach the High Court?

MR. CHIEF JUSTICE: To our court even poor people approach.

SHRI D. L. SENGUPTA: Who often comes to the courts, whether a poor man or a rich man?

MR. CHIEF JUSTICE: The litigation is very much in the blood of our people. Therefore rich and poor alike come to the courts. The powers should be exercised with a sense of responsibility. The trouble is not with the law but with the persons who administer the laws.

SHRI D. L. SENGUPTA: I will draw your attention to page 9 of your memorandum. May I know whether an appeal would lie only against these orders and not against every order?

MR. CHIEF JUSTICE: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: I would like to have your views with regard to retention of order 43.

MR. CHIEF JUSTICE: I think it should be retained. Sections 54, 100 and 115 should be deleted.

SHRI NITI RAJ SINGH CHAUDHARY: A provision in the Bill is proposed to be made by insertion of Rule 10 by which the responsibility is being cast on the advocates to inform the court about the demise of his client, will that not serve the purpose?

MR. CHIEF JUSTICE: This may serve the purpose.

SHRI NITI RAJ SINGH: CHAUDHARY: With regard to Order XXXIX, in the first para you say that the proposed provision to Rule 3 makes it impossible for the Court to grant an *exparte* injunction in appropriate cases. This provision is sought to be added so that delay is minimised and the Court is not barred from granting injunction if the party satisfies the Court's conscience and an affidavit in support of it.

MR. CHIEF JUSTICE: You have to make proper provision.

SHRI NITI RAJ SINGH CHAUDHARY: At what point? Would it be to Order XX Rule 1?

MR. CHIEF JUSTICE: You have to make in Order XXXXI.

SHRI NITI RAJ SINGH CHAUDHARY: How the trial Court will have jurisdiction under Order XXXXI? Supposing we have it in Order XX empowering the trial Court—what is your view?

MR. CHIEF JUSTICE: Provision should be made though I had not made up my mind as to where it should be added.

SHRI M. C. DAGA: Regarding Order X, Rule 2 (1) (a) you have stated that it is not desirable to make it obligatory on the part of the Court to examine the parties orally at the first hearing of the suit, and that the existing provision does not require any change. How do you support this view?

MR. CHIEF JUSTICE: The existing provision itself says that. It is not a real stage of evidence; it is only for obtaining clarifications.

SHRI M. C. DAGA: The subject can be narrowed down by examination. Even the Law Commission in its 27th Report has stated that it is mandatory, the party should be examined. This suggestion was given in 1964 and again it was endorsed that the party should be asked to give the statement so that the subject can be narrowed down and time can be curtailed. You have simply said that it requires no change. We want to know the reasons?

MR. CHIEF JUSTICE: There is already power in the Court to examine. What is the purpose of examining the witness? Issues are framed in the chambers of the Judge, but not in the presence of lawyers.

SHRI M. C. DAGA: Would it not be more beneficial if this is made mandatory and parties are examined?

MR. CHIEF JUSTICE: It all depends upon the officers.

SHRI M. C. DAGA: Regarding Order IX, Rule 13, you say that the explanation should be omitted. How do you justify this?

MR. CHIEF JUSTICE: The scope of an appeal is entirely different against an *exparte* decree and an application to set aside the decree. When the scope is different, the explanation as it now stands will not be correct.

SHRI M. C. DAGA: He can also mention before the Appellate Court.

MR. CHIEF JUSTICE: He cannot argue in appeal what is not in the trial court. The scope of the application is entirely different.

SHRI M. C. DAGA: He would give the reasons in order to set aside the *exparte* order passed by the Court.

MR. CHIEF JUSTICE: That cannot be urged in appeal. I would not have chosen to give evidence, but for this Section 100, which I feel strongly about it.

SHRI M. C. DAGA: In your Memorandum, you have stated Clause 58 may be omitted. In appropriate cases, if he is asked to file the defence statement, what is wrong in it?

MR. CHIEF JUSTICE: At present, the subordinate judicial officers, in most cases, never practised before taking up the post and some of them were mere clerks and they do not have very wide knowledge on legal matters. If these powers are given, I do not think it would serve the purpose.

SHRI M. C. DAGA: You have rightly said that 80 per cent of the subordinate judicials are incompetent officers.

MR. CHIEF JUSTICE: I have not said mathematically. I said 80 per cent of them are incompetent.

SHRI M. C. DAGA: You have given reasons also. If we pay more for the judges, would it solve all the problems and honesty will prevail in courts?

MR. CHAIRMAN: I would like to draw the attention of the hon. Members that the Learned Chief Justice has touched upon the instances on his own experience to highlight certain points. During the course of his deposition also, the Chief Justice has stated that he is more concerned with one particular aspect of the Bill on which he has elaborately explained. I think on other points mentioned by him, he has not gone into it.

SHRI M. C. DAGA: He has mentioned all these points in his memorandum in order to show that particular Section should be retained. I submit that suppose if the judiciary is improved in future, then, what the Chief Justice say about these two Sections, *i.e.*, 100 and 115?

MR. CHIEF JUSTICE: I am giving my evidence to consider my points only in the present circumstances.

SHRI NITI RAJ SINGH CHAUDHURY: Whether the value of rupee has fallen down only for judges or for all citizens in the country?

MR. CHIEF JUSTICE: For everybody else, salaries have been enhanced from time to time but in the case of High Court Judges, their salary is fixed by the Constitution and it remains where it was in 1950.

SHRI NITI RAJ SINGH CHAUDHARY: In the case of subordinate judges, according to the Constitution, the High Court should take action. Has this High Court done anything to left the level of judges of the subordinate courts? May I know whether the High Court has taken any action to see that incompetent people are punished and not promoted? You have got power to stop their promotion.

MR. CHIEF JUSTICE: We cannot dismiss them.

SHRI M. C. DAGA: In order to improve the quality of judges, what steps we should take and what we should do and all that, would you like to give some concrete suggestions?

MR. CHIEF JUSTCE: That cannot be done on the Civil Procedure Code. That can be done on a different level altogether.

SHRI D. L. SENGUPTA: Mr. Chief justice I would like to draw your attention to page 4 of your Memorandum wherein you have stated like this: "...'No doubt a second appeal lies where there is a substantial error or defect in procedure, but an erroneous finding of fact is a different thing from an error or defect in procedure Where there is no error or defect in procedure, the finding of the first appellate court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding, even though the finding is material for the determination of a question not raised in the Court below but raised in the second appeal..." You are a most qualified man who could speak more on this subject. I think you agree that the Supreme Court has already held in that subject. If the error is to the extent that no reasonable man will believe that it is a fact as if the gross error is inexcusable. There is a limit to the gross or inexcusable errors.

MR. CHIEF JUSTICE: Yes.

SHRI D. L. SENGUPTA: Enunciating perverse findings. means no reasonable man can believe.

MR. CHIEF JUSTICE: What was perverse, was a statement. that is all.

SHRI D. L. SENGUPTA: After the Supreme Court Judgment on that matter, no water holds good.

MR. CHIEF JUSTICE: Yes.

SHRI D. L. SENGUPTA: Then, we come to the general question. Mr. Daga has put certain questions on the recording of evidences. You must have possibly seen the findings of the Supreme Court in today's paper or yesterday's, where they are just thinking of curtailing delays in Courts so as to dispose off cases as early as possible.

MR. CHIEF JUSTICE: I have not seen it.

SRI D. L. SENGUPTA: How to deliver justice to the litigant public expeditiously is the purpose with which this Civil Procedure Code Amendment Bill has brought in. That is the object of this Bill. With regard to the power of review, is it not your experience that the petitions and litigations go through so many channels of review and then order which takes lot of time?

MR. CHIEF JUSTICE: With regard to the review, I could give you one example of Madras when I was in Madras High Court. There, very very rarely review petitions came in the High Court, not even single case out of thousand. If at all any correction or a patent mistake, then such petitions were coming. But, when I come to Karnataka High Court, for every Writ Petition another lawyer is engaged and review petition is submitted. Of course, 99 per cent of such petitions are dismissed. What happens, another lawyer comes and says that the other lawyer has not sufficiently argued on that point etc.

SHRI D. L. SENGUPTA: Will you agree that even if there is a provision for a review, it must be limited to correction of typographical errors.

MR. CHIEF JUSTICE: Yes, I agree.

SHRI D. L. SENGUPTA: The procedure laid down in the Civil Procedure Code for the production of documents and inspections etc., is a lengthy one. Will you agree that if a party wants certain documents from the opposite side, it could be permitted just by filing an application instead of all such procedures?

MR. CHIEF JUSTICE: Of course, even today, the procedure is not so lengthy.

SHRI D. L. SENGUPTA: Is it not necessary to file an affidavit etc.?

MR. CHIEF JUSTICE: Affidavit is not necessary.

MR. CHAIRMAN: That can be checked up.

SHRI D. L. SENGUPTA: I would like to know from you whether it is necessary to have interrogation, proof documents and other expensive processes or is there any scope for reduing all those things in the interest of the litigant public?

MR. CHIEF JUSTICE: If one provision is not properly utilised, naturally it will be lengthy one. If utilised properly, most of the evidences could be curtailed. With my experience I am telling you. Here, I find that in the case of identity of properties, boundary dispute etc., no commissions are taken to hold inspection and report. Nearly, 20—30 oral witnesses will come and give oral evidence on a matter which could be settled by the issue of a commission.

SHRI R. V. BADE: I want to draw your attention to your note on page 3—under Section 96—Clause 34. How there will be appeal then? Appeal will be on the decree. In Section 11 also there is no word of finding.

MR. CHIEF JUSTICE: Your Bill provided. But, I have not made those suggestions.

SHRI M. P. SHUKLA: He is giving some deductions in which you can do correct thing. So, this question does not arise.

MR. CHAIRMAN: He has made very clear that he has given his ideas. He says that this is not the place for it. This could be done by amending that Section 11.

SHRI M. C. DAGA: We say whether there is any appeal against four decided in favour of the Plaintiff and one is against him. We want to know whether we can have an appeal against that finding or there could be a separate suit? May I know whether an aggrieved party can go in appeal against the finding or not?

MR. CHIEF JUSTICE: He cannot go in appeal in respect of the decree.

SHRI D. L. SENGUPTA: Is it not correct that an appeal lies against the decree but not against the finding?

MR. CHIEF JUSTICE: That is my view.

SHRI S. K. MAITRA: As the law now stands, the appeal lies only against the decree but we are changing the law. In the law we can provide that the appeal can lie in respect of a finding which is adverse to the successful party. It is for the Parliament to decide this issue. The Law Commission has recommended that multiplicity of litigations should be discouraged. If no right of appeal is provided against an adverse finding, the same matter can be adjudicated by a separate suit. The successful party will be given an opportunity to appeal against the finding so that the decision of that finding may operate as *res judicata* in a subsequent litigation. But the language put in the Bill is as suggested by the Law Com-

mission. It requires little redrafting. That can be done later on.

SRI D. L. SENGUPTA: Under section 100, we have been informed that the substantial question of law and the question of law are quite different things. The substantial question of law, as explained to us, is a complex question; there are divergent opinions of different high courts. If the question of law is retained, I think, the provision of second appeal will be suitable and it will not come in conflict with the opinion of the High Courts.

MR. CHIEF JUSTICE: Even now it is a question of law. The present section 100 is only a question of law. Second appeal lies only on the question of law. Substantial question of law is dealt with by the Supreme Court.

SHRI M. P. SHUKLA: Since you have not received the questionnaire, probably you are not in a position to enlighten us on the questions ocntained in the questionnaire. I would therefore request you kindly to go through the questionnaire and on the strength of your experience both at the Bar and the Bench, for the benefit of this Committee, you may kindly furnish your views at some later date. Since you have already taken the trouble of furnishing us with a memorandum. I request you to take a little more trouble and furnish us the information on the points indicated in the questionnaire.

MR. CHAIRMAN: I would join with my colleagues and make a request to you to go through the questionnaire and furnish your views at some later date. This would help us to formulate our recommendations on the Bill.

Before I conclude, I would like to seek some clarifications.

In the event of a suit being transferred from one court to another, the transferring court should indicate to the party the date on which he has to appear in the next court. Don't you think that fixing of the date would embarrass the other court?

MR. CHIEF JUSTICE: This would help the court to avoid delay in the issue of notices. For appearance there would be no difficulty.

SHRI M. C. DAGA : Supposing a party has not engaged a lawyer and in the meantime he dies, then what will happen to his litigation?

MR. CHIEF JUSTICE: My suggestion is in respect of a party who has engaged a counsel.

SHRI M. C. DAGA: If he is not represented by a Counsel, then what will happen to his case?

MR. CHIEF JUSTICE: Then the burden lies on the plaintiff to prove.

MR. CHAIRMAN: On behalf of myself and my colleagues, I express sincere thanks to you for having taken the trouble of preparing a memorandum and also for giving oral evidence before the Committee. We are indeed grateful to you for having answered patiently all the questions that were put to you.

(*The witness then withdrew*)

II. SHRI M. S. PHIRANGI, Advocate, Dharwar.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Phirangi, you may kindly note that the evidence that you give before us is to be treated as public and it is liable to be published also. If you so desire that any part of your evidence should be treated as confidential. it will be treated as such, but even so, the evidence will be made available to other members of Parliament. You have made a large number of suggestions in your memorandum. You may make your submissions.

SHRI M. S. PHIRANGI: With reference to definitions, I suggest that in the principal Act, in the sub-section (2) of section 2, after the words "The determination of any question within section" the figures "34 or 35 or 35A or" be included because now there is absolutely no provision for appeal. Clause 8 is only with reference to the pecuniary jurisdiction.

SHRI NITI RAJ SINGH CHAUDHARY: Section 21 of the Bill serves the purpose.

SHRI M. S. PHIRANGI: When we are restricting that it should be only with reference to pecuniary jurisdiction, it is necessary.

MR. CHAIRMAN: This will be examined.

SHRI M. S. PHIRANGI: Clause 11, Section 24A shall be deleted. That is with reference to the transfer. It will increase the litigations and some times, consumes the time also. This procedure will be redundant.

SHRI NITI RAJ SINGH CHAUDHARY: According to the present Bill, the Court will ask the party to appear before the appropriate court and filing of fresh vakalath etc.. are all eliminated.

SHRI M. S. PHIRANGI: But the difficulty is, the Court also may not be in a position to determine which Court the suit or the proceeding will lie.

I have suggested an amendment to Section 50. I feel it is better to make application to Executing Court which will also save the time. If the decree is transferred from one court to another, then the decree holder has to make an application to the original court which passes the decree.

I have mentioned in my memorandum that Section 52A be inserted after Section 52.

MR. CHAIRMAN: Most of your suggestions we have gone through and we find that they are all new clauses. Would you like to throw some light on Section 100?

SHRI M. S. PHIRANGI: As regards Clause 39, Section 100, my suggestion is, it should be retained. So, after this stage is passed, notice will be received by the Respondent and the Respondent will come and appear and again the date will be fixed for hearing. At that stage, law provides for restoration, but at the initial stage when the appeals are fixed for hearing or for admission. no provision has been made. Therefore, it is necessary that it should be restored at that stage also. If the appellant fails to appear when the appeal is fixed for hearing at the beginning, the appeal may be restored because teh Court has got power to restore at that stage. Rule 11 speaks about the provision at the time of hearing only.

Lastly, Clause 92—in clause (b) of rule 1 of Or. XLIII of the Bill, clauses (b) C & V (3) of the bill may not be omitted. In clause (ii) of rule 1 after the words "judgement is pronounced against such a party." the words "and a decree is drawn up" be omitted and in the same rule, after the words "in an appeal", the words "against the decree" be omitted.

In respect of those clauses, not only judgement should be passed, but the decree may not be drawn up.

SHRI M. C. DAGA: You say order should be accompanied with the decree.

On which Clause you want to lay more emphasis?

SHRI M. S. PHIRANGI: I am emphasizing on Sections 100 and 115. Absolutely, there should not be any change in Section 100 and it should be retained as it is, so also Section 115.

SHRI R. N. SHARMA: You have given 34 suggestions. I wanted to know from you which are the suggestions out of these 34 going to minimise cost, avoid delay and seek to

give effect to the directive principles of the State Policy? You can mention the number as given in your memorandum only.

SHRI M. S. PHIRANGI: Point No. 4 Sir. (Section 50.)

SHRI M. P. SHUKLA Most: of your amendments are valuable and the Committee is going to consider all your suggestions.

SHRI M. S. PHIRANGI: Order 13 provides that the documents can be produced at any stage of the proceedings.

SHRI M. C. DAGA: Whether the document is genuine or not?

SHRI M. S. PHIRANGI: That makes no difference at all. Even there, the leave should be given at the latest stage, but there is no necessity for provision in the Act.

Further Rule (15) to the Principal Act, that is only with respect to the provision of Section (5) of Indian Limitation Act 1963 be added. In respect of applications which are filed to set aside the exparte decisions or order of dismissals are governed by Indian Limitation Act. So, the provision of section 5 of the Indian Limitation Act, shall apply to the application under sub-rule 9 and 13. Therefore, these provisions are necessary. Some times, admissions will not be a conclusive proof Decree should not be passed only on the admission of the parties.

SHRI M. C. DAGA: What are the circumstances?

SHRI M. S. PHIRANGI: Sometimes, the guardian of the minor will have prejudicial interest and may go against the minor's interest. There must be some corrobarated evidences. The Court should not straight away pass a decree, but it may also call upon the party to satisfy by evidence in support of the plaintiff's case.

MR. CHAIRMAN: But, how can the Court intervene?

SHRI M. S. PHIRANGI: The Court will not make an appointment with the minor, but somebody represents and says that I am the nearest friend of the minor.

SHRI M. SATYANARAYANA RAO: If anything goes against the interest of the minor, then some protection should be there. Only for the benefit of the minor you can say anything but not contrary to that.

SHRI D. L. SENGUPTA: It is the duty of the Court to see whether the guardian of the minor has collided with the opposite side against the interest of the minor. So, mere consent of accord between the two is not enough. It is also the obligation of the Court to see whether they permit a particular thing or not which prejudices to the interest of the minor. So, the Court has inherent jurisdiction. How this proposed amendment improves the matter?

SHRI M. S. PHIRANGI: Just now one hon. Member told that the interest of the minor should be safeguarded. When the admissions made by the guardian of the minor, then, it is the obligation on the part of the Court to decide.

SHRI D. L. SENGUPTA: In another stage the guardian is there. Plaintiff and the defendants file a joint petition. There also the duty is vested in the Court to see whether it is just, fair and reasonable to pass orders in the interest of the minor. The Court is not only the custodian of the law, but also the supreme custodian of the minors interest.

SHRI M. C. DAGA: It is laid down in 32(9).

SHRI M. S. PHIRANGI: When it is the obligation of the Court to see that the best interest of the minor is served, and if there is any admission made, then there is no question of passing the decree. Whether these provisions are necessary to pass decree on the admissions made by the defendants?

MR. CHAIRMAN: Yet he feels that there may be other cases also. We will look into it.

SHRI M. S. PHIRANGI: There is nothing in the Civil Procedure Code to appoint a translator. There will be many documents which are not in the language of the court and if such documents are produced in a court of law, then the translation of the documents becomes necessary.

SHRI M. C. DAGA: You are suggesting that a party should produce the documents in the court language duly certified by a lawyer. Supposing in Rajasthan I submit a document which is translated and certified by the Court, then the court accepts it.

SHRI M. S. PHIRANGI: Copies of the original documents should be made available to the court. At present there is no provision in the Code to submit a document in the language of the court. Hence my amendment.

SHRI M. P. SHUKLA: Have you found any difficulty in the course of the practice of law?

SHRI M. S. PHIRANGI: In order to know that the document produced is a genuine one or not, it is necessary for such a provision. The Court can appoint a translator for this purpose. A similar provision is contained in the Criminal Procedure Code.

SHRI NITI RAJ SINGH CHAUDHARY: If your amendment is accepted, then there should be translators for all the languages spoken in our country.

SHRI M. S. PHIRANGI: Unless the court knows the language in which the party speaks, then it would be difficult for the court to come to a proper conclusion.

In clause 2 Rule 6A of Order 20 of the Bill. "After the words 'where a decree', the word 'on application made for a certified copy to be inserted'."

In order to obtain a copy of the decree, the party should make an application to the court.

SHRI D. L. SENGUPTA: Why do you want to cast a responsibility on the party to make an application?

SHRI M. S. PHIRANGI: I feel it necessary Sir.

I have made a new suggestion in sub-rule 3 of the Rule 12 of Order 20 of the Principal Act.

SHRI M. P. SHUKLA: We are unable to know the impact of your amendment.

SHRI M. S. PHIRANGI: This is with respect to mesne profits. Whenever a party requires to move the appellate court, to hold an inquiry with respect to mesne profits, then the party may make a request to the appellate court to hold an inquiry with respect to mesne profits whenever such a decree is reversed or varied.

I have suggested an amendment to Rule 60A. The idea is whenever a third party is affected being a bona fide purchaser of a party under litigation, he should be given compensation.

SHRI D. L. SEN GUPTA: Why are you showing your sympathy to a third party? What about the man who has lost his property in the litigation?

SHRI M. S. PHIRANGI: With respect to the bona fide purchaser, I have suggested a remedy.

SHRI R. V. BADE: If the property is sold to a third party during the course of litigation, then it becomes an illegal sale.

SHRI M. S. PHIRANGI: The idea is that the bona fide transferee must not suffer an account of the reversal of the order.

I suggest that a new Rule 63A shall be added after Rule 63 of Order XXI of the principal Act as under:—

"when attachment of moveable property ceases the court may order the restoration to the person in whose possession it was before the attachment."

SHRI M. P. SHUKLA: Has it happened at any time?

SHRI M. S. PHIRANGI: Sometimes it has happened. Therefore, it is better that the Court passes an order for the restoration of the property. Section 64 will not be applicable in such cases. I am not suggesting abolition of section 84.

SHRI NITI RAJ SINGH CHAUDHARY: Will it not be contrary then?

SHRI M. S. PHIRANGI: Then, I suggest that the following proviso to be added to rule 89 of Order XXI of the principal Act:

"provided that if the full amount required to be deposited in the court under this rule is not deposited at the time of making the application through some bonafide error, mistake or miscalculation and the shortfall is made within one week from the date of discovery of error, mistake or miscalculation, the court may condone the delay, if it considers just and proper."

SHRI M. P. SHUKLA: A mistake may be discovered in a day or month or a year, if it is a mistake. Why should we put limitations?

SHRI M. S. PHIRANGI: Otherwise it will be endless. It must be settled as early as possible.

SHRI NITI RAJ SINGH CHAUDHARY: Please read line 27 at page 51 of the Bill. It will serve your purpose!

SHRI M. S. PHIRANGI: Sub-clause 4 to rule 4 of Order XXII of the principal Act may be added as follows:—

"(4) the court, whenever, it thinks fit, may exempt the plaintiff from the necessity to substitute the legal representative of any such deft. who has been declared *ex-parte* or who has failed to file written statement or who having filed it has failed to appear and contest at the hearing and the judgment may in such cases may be pronounced against such deft, and shall have the same force and effect as if it had been pronounced before the death took place."

SHRI M. P. SHUKLA: A party may not have appeared for any reason. Do you mean to suggest that his son or heir should be penalised? Your suggestion amounts to that!

SHRI M. S. PHIRANGI: The law provides for setting aside the decree in such circumstances.

SHRI M. P. SHUKLA: When the plaintiff knows that the defendant has died, you want that he should not be compelled to get his legal representative to be brought on record?

SHRI M. S. PHIRANGI: My humble submission is that if the party is aggrieved, he can come to the court and put an application to set aside the *ex-parte* order on various grounds. The question depends upon the facts of the case.

SHRI M. P. SHUKLA: Your suggestion means that the plaintiff should be in an advantageous position and the representative of the deceased person should also suffer for the default though not willful.

SHRI M. S. PHIRANGI: Some persons deliberately will not appear at all. So, I have suggested this.

Then, I have suggested a new Rule 17 to the effect that nothing would apply to execution proceedings. This is with respect to the suits barred against the minors. Now there is no provision with respect to executions. We have a provision

under Order XXII with respect to bringing legal representative on record. Therefore, a similar provision should be there under Order XXXII.

With respect to appointment of receiver, I suggest that in sub-clause 2 of the rules of Order XI of the principal Act for the words "any person" the words "any person not being party to the Suit" be substituted.

SHRI D. L. SEN GUPTA: 'Any person' includes a person not being a party to the suit. Has any such person been appointed?

SHRI M. S. PHIRANGI: Sometimes, with the consent of the advocates.

Then, I suggest that Sub-rule 1A to rule 1 of Order XLI of the bill be omitted, and in rule 5 of Order XLI of the principal Act after the words "such preliminary decree" the words "or order" shall be inserted and below that the following explanation shall be added:—

"Nothing herein contained shall affect or limit the power of the court to stay other proceedings either before it or any court in appropriate cases."

SHRI M. P. SHUKLA: Is it whether the Court has jurisdiction over the other Court or not?

SHRI M. S. PHIRANGI: If any proceeding is pending.

Sub-Rules 4 and 5 to rule of Ord. XLI of the bill shall be omitted. (point No. 31).

In rule 11 of Ord. XLI of the Act, after the words "sending for the records" the words "of its own motion or at the instance of the party" be inserted.

Some times the Court will not pass an order for the records of the lower court. At that time, if the party feels that the records are necessary, in that case, the party may apply to the Court to call for the records in the lower court. With that view in mind, I have given my suggestion.

SHRI M. SATYANARAYANA RAO: What is the practice being followed at present?

SHRI M. S. PHIRANGI: The Court will not call for the files in all cases. Rule 11 does not speak that at the instance of the party, the records of the case can be called for. It is only *suo moto*, the Court can call for the records of the case. Whenever the party desires that certain record is material, then, I think, it would be better to consider the amendment suggested by me.

Sub-Rule 2A to rule 11 of the Ord. XLI of the Act, the following be inserted:

"2A—the appeal may be restored to file on sufficient cause being shown by the appellant for his non-appearance on the date of hearing."

This provision is not there in the Bill. If the party shows sufficient reasons for the restoration, then, the appeal has to be restored. Dismissal under Rule 11 is quite different from the stage of dismisal of the appeal, at the time when the party is called on for hearing, or when it is fixed for hearing.

Clause 40, newly added Section 100 A shall be omitted.

Clause 45, Section 115 of the Act shall not be omitted. If at all that power is taken away from the High Court, then, it should be conferred upon the District Court.

SHRI M. C. DAGA: Your suggestion is that all powers should be decentralised.

SHRI M. S. PHIRANGI: In Clause 51, Section 145 of the Bill, the following new clause numbering as (1) be inserted:

"(i) Firstly the decree or order may be executed against the prin-

cipal debtor". The Clauses I, II and III be numbered as (ii), (iii) and (iv) and then for the words or "he" in clauses (ii) and (iii), the words "surety" be substituted."

We found in the Court of Law, they leave the principal debtor and proceed against the judgment debtor Therefore, the decree or order may be executed against the principal debtor first.

About Clause 60—sub-clauses (2), (3), (4) and (5) of Rule 10A, I would like to suggest that those Clauses shall be omitted. My little experience of 23 years shows that such clauses are redundant. If once the Court passes an order rightly or wrongly, if it has passed a wrong order, it is very difficult to do anything because that order must be complied with. If that order is taken to the other court and that court had no jurisdiction at all, then, it is really a very difficult problem for the party. It will create difficulties. Therefore, it must be left to the parties. Some times notices will not be served on the Defendants and it will take time. I would like to submit that some times it is very difficult for the plaintiff also to say, because, it is only the legal expert can say to which Court the suit or any proceeding will lie. But, if the Court directs that it should be filed in the proper Court and if that court is not the proper court, then, it creates difficulties. Therefore, my humble suggestion is, it must be left to the party himself and it is for the party to chose the proper forum and not the Court to chose the forum for the party.

Next I would like to say that Clause 61, rule VIII of the Act be retained and Sub-Rule 2,3,4,5, 6 and 7 of the VIII of the Bill shall be omitted. I would also like to submit that rule 5 of Order VIII shall be retained and the sub-rules 2 to 4 shall be omitted.

This is with reference to the production of documents. When the Court has given time for the production of documents at a later stage then, all these provisions are redundant. At a later stage also, the Court can give permission for filing the documents. Then point No. 10, 11 and 12, 14 15 also. Some other minor points are also there.

MR. CHAIRMAN: We can pacify ourselves. Anyway, we appreciate the trouble you have taken and labour you have put in examining the whole Code to submit your memorandum. It has covered wide grounds. I can assure you that we will examine all your suggestions and consider which are found competent. I thank you on behalf of the Committee for extending co-operation in our work.

III. Shri M. R. Achar, Advocate, Bangalore.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Mr. Achar, the evidence you give will be treated as public and liable to be made public. If you desire that any part of your evidence should be treated as confidential, it could be done so but even then the evidence will be made available to other members of Parliament. So, if you like to make your observations on the memorandum submitted by you, you can do so.

SHRI M. R. ACHAR: First of all, I will make my submission with regard to Section 100. What is sought to be done is unless the High Court certifies that there is substantial question of law involved in the appeal, no second appeal could lie. My submission is that this expression is used in the Constitution, i.e. Article 136. So far as Supreme Court is concerned, many questions of general importance will arise, because, what the Supreme Court lays down is the law of the land. It is very difficult to understand what is the meaning of substantial question of law. Even as it is the section 100 stands it is very difficult for the High Court to interfere. Question of law must be

involved as Section 100 stands at present. I do not know whether High Court will be able to interfere in any matter of such nature. For example— it has been held that if certain evidence which is in-admissible in law has been taken into account by the Court, it is a question of law and High Court can interfere. Can we say that question is a substantive-question of law or not, and so also in a case where the lower Courts have rejected or failed to consider some of the important documents or piece of evidence, High Court has held that it is a question of law. Will it be a substantial question of law? Let us take another example. With regard to easementary right which the plaintiff had on 4 feet land. The Court held that one foot is enough for a man to freely move and carry on his business. But, High Court pointed out that it is not the law. The right of the dominant owner was unnecessarily curtailed it. Can we say that it is question of substantial law. I am not able to understand when the question of law becomes substantial. Can we say that the Court can deliberately ignore the expression and go ahead. Therefore, my submission would be that the insistence of certificate that the appeal involves substantial question of law, will not serve any purpose. Rightly or wrongly, today, the Courts do not have facilities to function. I know how subordinate Courts are sitting in what kind of atmosphere. There are no library facilities, no proper assistance. Some times, it becomes very difficult to give judgement. I have great respect for the Judiciary and Judges from the lower rank to the higher. But, if the powers of the High Court are restricted the poor litigant will not get justice. I feel checks should be there and they are essential, otherwise, grave injustice will be there. In my experience I find even officers of the cadre of District Judge are capable of committing very simple mistakes. In a case, where a claimant in land acquisition case had claimed compensation. He was dis-satisfied with the award and he filed an appeal. Government and the Deputy Commissioner did not file appeal. District Judge, merely, heard the arguments and decided the appeal in favour of the respondent by setting aside the award passed. He could not have set aside the award but at best dismissed the appeal. In another case, the District Judge thought that the investment to be made on the erection of pump set to cultivate lands will fetch less income than the interest it would earn if it was put in some Fixed Deposits. On this ground he denies the relief. Can we say that these are all substantial questions of law? We cannot equate constitutional law with the Municipal Law. When private parties are concerned, what they want is justice and in many cases question of general importance may not arise. Whereas under the Constitution it does arise.

There is another reason also. Let us assume that our judiciary is honest and we cannot question its integrity. But the feeling that his judgment is not going to be easily disturbed because substantial question of law should arise, it goes to his head and he may pronounce judgement without much care. As it is the High Court has put so many fetters. My submission is that this amendment is unnecessary. The High Court has interfered only when it has felt that gross injustice has been done in the case.

It is find when power has been conferred on the High Court under Article 227 of the Constitution, this section 115 of the Civil Procedure Code is redundant. The idea of this Bill is to make litigation cheap and justice is done even to a common man. In our State, the court fee prescribed for a petition under Art. 227 is Rs. 100, whereas for a revision petition the fee is Rs. 5 and Rs. 10/-. There are so many orders which require the interference of the High Court at the earliest stage. It is possible to say

that any error during the course of a trial could be corrected by the first appellate court. I would submit that if the High Court may take three months to correct an error. My submission would be if already an irreparable damage has been done because of a wrong order and the High Court is unable to correct it, then in the appeal even if the appellate court comes to the conclusion that it is a wrong order the damage would have already been done Suppose the party is precluded from adducing proper evidence and damage is already done and what the court will have to do is to remit the case on that ground and it would take much more time than the exercise of revisional powers. I would draw a distinction between Art. 227 of the Constitution and section 115 of the Civil Procedure Code. No doubt in wide terms even the orders of the courts could be corrected. But in one or two cases the Supreme Court has held under that article cannot be involved as power of revision. Same decisions have equated section 115 with article 227. But Art. 227 is a much wider in the sense that it contemplated Tribunals. But Section 115 does not contemplate tribunals but contemplates only subordinate courts. Art. 227 contemplates all the tribunals such as Industrial Tribunals, Labour Courts, Cooperate Appellate Tribunals, Sales Tax and Income Tax Appellate Tribunals. Therefore my submission would that deletion of 115 is not desirable specially in view of the fact that the court fee for a revision petition is Rs. 100|-.

MR. CHAIRMAN: Supposing the court fee under rule 227 is reduced to Rs. 5|-

SHRI M. R. ACHAR: For argument sake if the court fee is reduced under Article 227, no purpose would be served. On the contrary I would say that the remedy under Article 227 and 226 is always considered to be somewhat extraordinary remedy. Why should we seek an extraordinary remedy in a civil suit which involves municipal laws? If your aim is to eliminate further litigation, then justice will not be done. That is my firm view. So far I have come across middle class and poorer sections of clients. If we do not give relief to such litigants, we will be committing serious errors. If court fee is reduced instead of filing petitions under Section 115. Petitions will be filed under Article 227 and then there will be no difference.

SHRI D. L. SEN GUPTA: Is it not your experience that most of the petition under Section 115 of the C.P.C. are dilatory in nature and are intended to delay matters and most of the litigants are frivolous?

SHRI M. R. ACHAR: You are partly correct. If there are certain litigants who want to delay matters—I know some, their cases should have been rejected. If such cases are admitted by the High Court, is it the folly of the law or is it the folly of the judge who admitted such cases? I have told the Chief Justice whenever he has told me not to entertain such cases, why should the judiciary exist. While he was hearing certain cases, he has remarked how such cases are admitted. There also I disagreed with the Chief Justice. The Judge who has admitted the case might have viewed it from another angle. Just because there are many cases, we should not find fault with the laws which are quite good.

SHRI D. L. SEN GUPTA: Despite the laws are good, yet 75 per cent of the people do not get proper justice. Is it not due to wrong judges being appointed? When there is no dearth for doctors, why should we not try to cure the disease by approaching another doctor? Instead of putting good judges we say let us amend the law in the interests of the poor people.

SHRI M. R. ACHAR: If it is against the interest of the poor litigant, because only small litigants seek relief under section 115: I do

not want to blame so much the judges. There is a general lower standard, the witness lie, parties are not truthful. Sometimes the lawyers oblige the clients to build up their cases, and because of certain deficiencies and over-burden of work the subordinate judiciary is not capable of getting at the truth. We are in the dark to find out the truth. In such a situation, if there is no remedy, who is going to suffer? The rich will not suffer.

SHRI D. L. SEN GUPTA: Do you mean to say that the poor go to the Court in larger number than the rich?

SHRI M. R. ACHAR: I am not saying that the poor can afford to go to the Court in large number. But, wherever they go, they go for cheaper remedies.

SHRI D. L. SEN GUPTA: During course of your evidence you stated that you do not understand what is substantial question of law that may be involved in a dispute between the parties. As a lawyer you must know that it has been decided by the Supreme Court and the High Courts what substantial question of law means. If there is a basic error there is substantial question of Law. In the Constitution the language used is: 'substantial question of law of general importance'. But in our amendment the words "of general importance" are absent. Do you appreciate that?

SHRI M. R. ACHAR: Perverse finding has never been treated in an appeal as a question of law at all. They have said that even if it is a perverse finding if it involves appreciation of evidence, we are helpless to correct. Perverse finding in other context may be bad. Thereore, I think it will be difficult for us to interpret this question of substantial question of law.

SHRI M. P. SHUKLA: How many per cent of litigants go for revision under section 115 and how many per cent of them succeed?

SHRI M. R. ACHAR: About 20 per cent go and less than 10 per cent succeed.

SHRI M. P. SHUKLA: Then you cannot establish your case that the majority of the litigants will suffer. According to you out of 100 only 2 will succeed. For this small number is it advisable to burden our High Courts and add to the statistics that so many cases are pending?

SHRI M. R. ACHAR: At least a few persons are getting justice.

It is not correct to say that 2 out of 100 succeed. I stated that 20 out of 100 approach the High Court and about 10 succeed. Therefore, nearly 50 per cent will succeed and the question of the other 80 persons suffering will not at all arise.

SHRI M. P. SHUKLA: Those people can find remedy under Article 227, which has a larger scope.

SHRI M. C. DAGA: How do you appreciate the views of Lord Hastings in this regard?

SHRI M. R. ACHAR: We do not want to perpetuate litigations. We want to put an end to them in a just manner. Nobody is here to go on multiplying the cases. In our State, I do not think anybody can indulge in a luxurious litigation.

SHRI M. C. DAGA: Why should we not give a chance to the litigant to go to the Supreme Court to get better justice? There should be a provision for third appeal also!

SHRI M. R. ACHAR: No Sir. I am not saying that there should be endless appeals. I am not condemning all judges. The subordinate judiciary is not well equipped in library, do not get able assistance and they

do not have enough time also because they have so much of administrative work and they are over-worked, and therefore sometimes they commit mistakes. But in the High Courts you have selected eminent people, there is library facility, assistance and congenial atmosphere and it is possible for them to quietly decide the case. At the same time I am not saying that the High Court is infallible. Why I said that High Court should have the power is, that a higher man will be able to do better justice. We are all human beings. The Supreme Court also might commit mistakes. As far as the Judges are concerned, I do not hold them responsible unless a particular things is proved.

SHRI M. C. DAGA: Suppose the officers of the First Appellate Court are provided with all facilities and they are completely competent and are able judges, do you appreciate the amendment under section 115?

SHRI M. R. ACHAR: It is impracticable to get that kind of calibra throughout. If that supposition holds good, then everything is all right.

SHRI M. SATYANARAYAN RAO: You agree partly that so much litigation is coming because of Section 115, and the poor litigants are coming to the High Court because they do not succeed in the lower courts.

SHRI M. R. ACHAR: Yes.

SHRI M. SATYANARAYAN RAO: You have also mentioned that lack of proper application of mind at the time of admission in some cases result in unnecessary litigation. If they apply their mind properly, then there is a possibility of controlling the litigations. This is what you have said. Supposing, by retaining the Section 115, if we put one condition that the judge should record the reason and in exceptional cases, he should admit.

SHRI M. R. ACHAR: Recording the reasons is welcome. There should not be any difficulty.

SHRI M. SATYANARAYAN RAO: What is the practice at present being followed?

SHRI M. R. ACHAR: They are not recording the reasons. What they are doing is, while admitting, they do not record the reasons. They hear us and if they feel it could be admitted, they will admit.

SHRI NITI RAJ SINGH CHAUDHARY: You have said, substantial question of law of importance. Suppose the word "substantial" is deleted and if we only make it obligatory for the Court to formulate the question of law on which he is admitting, will you have any objections?

SHRI M. R. ACHAR: There is no objection.

SHRI NITI RAJ SINGH CHAUDHARY: When you say that a small percentage succeeds in revision, would you agree that revisionary powers may be withdrawn if there is alternative remedy?

SHRI M. R. ACHAR: Yes. Section 115 starts with that.

SHRI NITI RAJ SINGH CHAUDHARY: I would give an example. Suppose a point was decided. I could the a revision or I could agitate that point. I do not file a revision. I wait for some time. When I filed an appeal, I raised that point. What is your opinion in that case?

SHRI M. R. ACHAR: Wherever an appeal lies, a revision will not be entertained.

SHRI NITI RAJ SINGH CHAUDHARY: I If a person is allowed to file an appeal under Section 100 on matters where revisions are filed and

admitted, will you have any objection?

SHRI M. R. ACHAR: I do not know how it would serve your purpose. Unless I come within these three categories, the revision petition will never be entertained by the High Court. If you provide the right of appeal, then he can file an appeal petition.

Always an interlocutory order or any wrong order can be questioned in an appeal. It is permissible but we have to wait until the final order is made. When an appeal is filed against the final decree, we will say decree instead of final decree, then we have to come to this question. As I submitted earlier, there may be certain matters where the damage would have already been done. If vital issues that have to be framed have not been framed and the trial court proceeds, in that case, the appellate court has to send back the case. Once again, here, the delay would be about 2-3 months on the revisional side but the delay would be more on the appellate side.

SHRI NITI RAJ SINGH CHAUDHARY: Is it not a fac that persons go in for revision against almost every interlocutory order if they feel that the other side can be thrown out of the Court? If the other side is poor, he cannot afford to go to High Court.

SHRI M. R. ACHAR: The question of harassment comes only when the revision petition is admitted. If I take a copy and file the revision petition it will not harass the other side.

In this connection, I would like to pass on a paper containing the instances and other details relating to Section 115 for kind consideration.

MR. CHAIRMAN: We are thankful to Mr. Achar for having taken pains to give valuable suggestions. I assure you that the Committee will consider all your suggestions. I once again thank you on behalf of myself and the Committee.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'A' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Friday, the 20th September, 1974 from 10.00 to 11.15 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri M. C. Daga
5. Shri B. R. Kavade
6. Shri Debendra Nath Mahata
7. Shri M. Satyanarayan Rao
8. Shri R. N. Sharma
9. Shri Niti Raj Singh Chaudhary

Rajya Sabha

10. Shri Nawal Kishore
11. Shri Dwijendralal Sen Gupta
12. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

Government of Karnataka, Department of Law and Parliamentary Affairs, Bangalore

Spokesmen:

1. Shri N. D. Venkatesh, Secretary.
2. Shri T. Venkataswamy, Additional Secretary.
3. Shri M. L. Ramaswami, Draftsman.
4. Shri B. C. Srinivasan, Joint Law Secretary.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we start our business may I draw your attention that whatever evidence you give before this Committee will be treated as public and as such liable to be made public and if you so desire that any part of your evidence should be treated as confidential it may be treated as such. But, even such evidence may be made available to the other Members of the Parliament. You have not submitted any memorandum to us. Therefore, you are welcome to speak on any clause or anything pertaining to the Bill.

SHRI N. D. VENKATESH: Sir, firstly, I would like to submit about the proposed amendment to Clause 28, *i.e.* to Section 80 on page 9 of the Bill. It is proposed to completely omit section 80 as it stands Sir. It is necessary that two months time as it is now should be made available to the State. It is necessary because, barring cases like injunctions such remedy is absolutely necessary in litigant's interest. For other cases where the suit is for declaratory decree or claiming compensation or claiming money etc., in all such cases two months time, as it is, may be retained. Because, the State may also concede to many genuine requests of the citizens thereby avoiding cost of the litigation at both sides.

SHRI NITI RAJ SINGH CHAUDHARY: The Law Commisison suggested that the State rarely settle matters on receipt of notice under section 80. After the suit is filed objections were raised by the State Government. Do you like to make any suggestions?

SHRI N. D. VENKATESH: Some technical difficulties are there. In certain cases, we need not require notice in a technical form. What is required is cause of action for which normal notice is sufficient. Suppose in the case of temporary injunctions he cannot wait for two months. Only in such cases he may be permitted to file the suit without notice. Of course, I have nothing to say with regard to the State Government's mode of taking action on such matters. In many cases, on the basis of mere issue of notices, we have settled those cases.

MR. CHAIRMAN: May I make one point very clear. We have taken a decision to request all the State Governments to furnish this Committee with factual position of their State for the last three years on Sec. 80 and also on Section 82. That will also come to you. We requested the statistics as to the number of notices issued, complete number of cases settled and other things. On that basis you have to send them to us. You say that Sec. 80 should be retrained, isn't it?

SHRI N. D. VENKATESH: It may be amended to provide for notice in such cases other than injunction matters.

SHRI D. L. SEN GUPTA: You mean in all urgent matters?

SHRI N. D. VENKATESH: Yes.

MR. CHAIRMAN: The injunction arises after the suit is actually filed. Injunction cannot be passed by a Court before the suit is actually filed. But, Sec. 80 postulates two months time should be given to the Government to settle cases, and to avoid the suit being instituted. Therefore, let us confine to Sec. 80 only.

SHRI N. D. VENKATESH: Two months notice may be made necessary in cases other than suits for injunction. In a suit for injunction, the very purpose of which will be to evict certain persons or there may be a case of demolishing certain structures etc. In such cases injunctions are issued. In other cases, if notices issued, we will take action.

MR. CHAIRMAN: Is that your opinion that it should be retained? If so, could you kindly take the trouble of sending a draft on those lines to us?

SHRI N. D. VENKATESH: Yes Sir, I will do it.

SHRI B. R. KAVADE: When we are in the welfare State, the Government has got many responsibilities. So, you cannot confine it to injunctions only.

SHRI M. P. SHUKLA: He means where the very purpose of injunction is likely to be defeated two months notice is required etc. could you kindly formulate your ideas in the form of amendments and send to us.

SHRI N. D. VENKATESH: It will be sent later, Sir.

SHRI D. L. SEN GUPTA: You have made yourself very clear that you don't insist on technicalites so far as Sec. 80 is concerned, but you insist on the substance of Sec. 80. As you know, from your experience, inspite of several letters written or sent to the Government, the Government do not take any action, and it has got its own luke-worm attitude on such matters. When there is a demand for justice, there is no response from the Government. Then red-tapism and other things will come. So, I want to know from you whether any party before going to the Court, writes any letter in which the party draws the attention of the Government. Will it meet the purpose of your Section 80?

SHRI N. D. VENKATESH: Yes. In many cases these requests are not being complied with. It is only a question of making somebody responsible to look after this aspect and see that the advice is accepted.

SHRI M. P. SHUKLA: A notice is necessary only to draw the attention of the final authority of the Government that a suit is likely to be instituted against it. As pointed out by Shri Sen Gupta, the letter is likely to be retained by the concerned Department. The final authority in the Government is the Chief Secretary and therefore a notice is issued to the Chief Secretary. I think the formal notice in your view is necessary to draw the attention of the final authority in the Government and you do not insist upon the notice to be given in a particular form. You want that two months' time should be included in the Bill itself.

SHRI M. C. DAGA: May I request the Law Secretary kindly to let us know a single case where a client has filed a suit without notice or a letter to the Government?

MR. CHAIRMAN: Let us not be too rigid. Our main purpose is to elicit information from the witness before us. We are discussing section 80. The learned witness has offered his views. We must allow the witness to complete his submission and later on we can seek clarifications from him. I request the hon. members to allow the witness to complete his submissions. I request the witness to take up next point.

SHRI R. V. BADE: May I know whether the witness is very strict about two months' time?

SHRI N. D. VENKATESH: Two months' time is not much in my view.

MR. CHAIRMAN: I will draw your attention to section 80 of the existing Code. I request you to please go through section 80 of the Act and while formulating your amendment, you may take this section into consideration and submit the same to the Committee for its benefit. I would also like to draw your attention to order 39 Rule (1) regarding temporary injunction. As I pointed out in my earlier interven-

tion that a temporary injunction will be issued in a matter of dispute which concerns the State or the public official. Temporary injunction will come in after the suit is instituted. Section 80 postulates a notice to be issued. Before a suit is instituted, no injunction can be passed by the court unless the suit is before the court. Therefore temporary injunction would be left out. Unless a suit is before the court, the question of injunction does not arise.

SHRI NITI RAJ SINGH CHAUDHARY: How to amend section 80?

SHRI N. D. VENKATESH: We will send the draft amendment for your consideration.

Section 54 of the CPC as it is, is not touched; no amendment is suggested to this section. I have got a few suggestions to make in this connection. Under Section 54 of the CPC as it stands now, in a decree for obtaining a partition of the undivided property belonging to a joint family or a joint proprietor the decree is executed by a Collector or the Deputy Commissioner as the case may be. Now, this is best with a lot of delay and difficulties; not that, of course there is any want on delay but in view of the fact that the court which gives the decree in the first instance is not responsible to execute it. If the Deputy Commissioner is made responsible to execute it naturally he takes his own time. While executing a decree for dividing the property there is bound to be some friction; some disputes do arise. At present there is no provision in the CPC providing for an appeal against such disputes that may arise while actually executing the decree. Sir the decree is being executed by the Deputy Commissioner and his agents. While executing the decree frictions are bound to arise. The value of the property will not be taken into acount. While making a division of the property there may be garden land, wet land and the dry land all the lands will not be of the same value but there has to be equitable distribution. In case of such disputes there is no provision for the civil court to decide such disputes. In fact virtually it is left to the revenue agency to decide such issues and there are also instances of enormous delays which extend to a period of 10 to 12 years. This difficulty could be removed by giving power to the civil court or to the court which passes a decree making provision to execute the decree by appointing a Commissioner—may be an Advocate or may be a Tahsildar of the Tahsil. Those people can execute the decree by taking assistance of Revenue Surveyors. In each State we have got a Survey Department attached to the revenue establishment or the Revenue Department and the asistance of such officers might be availed of by the Commissioner appointed by the Court. If the Tahsildar or any revenue officer or an advocate is appointed as a Commissioner by the civil court, the civil court retains the control, it can ask as to why the decree has not been executed, If there are any other defects, the Civil Court will still have powers to set right these things. To this extent, Sir, section 54, can be amended. This is my humble opinion.

MR. CHAIRMAN: On what line you would like to suggest amendment to section 54, a draft of which may kindly be passed on to the committee.

SHRI N. D VENKATESH: I shall send a draft amendment to your Secretariat.

SHRI NITI RAJ SINGH CHAUDHARY: About agricultural lands in U. P. the Courts have been empowered under the general law to take cognisance of such cases.

SHRI N. D. VENKATESH: I will suggest a suitable draft for your consideration.

SHRI NITI RAJ SINGH CHAUDHARY: The word 'estate' incidentally finds a defination in art. 31A of

the Constitution of India regarding saving of laws providing for acquisition of estates etc.

SHRI R. V. BADE: All the States have framed their own laws in accordance with Art. 31A of the Constitution.

MR. CHAIRMAN: I think your view is that the execution of a decree for partition of any estate or the share thereof should be done under the supervision of the court and not to be allowed to be executed through the revenue authorities, Since you have already agreed to give us a draft please send the same to us so that it could be considered.

SHRI N. D. VENKATESH: I have nothing to say on section 82.

SHRI NITI RAJ SINGH CHAUDHARY: After Rule 5, we are proposing to add Rule 5A and Rule 5B. You may also consider the provisions of Order XXVII.

SHRI N. P. VENKATESH: We will do it.

Under Clause 39, a new section 100 is being substituted in place of the old one. This new section is restricting the scope of a second appeal to the High Court. There is first appeal under section 96—clause 34, in which there is an explanation added on and one sub-section is also added on. But in my view, when the scope of second appeal is restricted in that manner, it is better that there is some provision in section 96 for the first appeal being heard by a senior subordinate judicial officer of the rank of a District Judge at least. Now, in several States under the Civil Courts Acts, as they are in vogue, Civil Judges are authorised to hear appeals—Sub-judges or Civil Judges as they are called—whose cadre is next higher to that of the Muniffs in view of the fact that the Parliament is proposing to restrict the scope of a second appeal in High Court, let there be a provision in section 96 C.P.C. providing an officer of the rank of a District Judge to hear the first appeal. On facts the power of the High Court is being drastically curtailed. When it is conceded that there is a first appeal let at least a senior subordinate judicial officer go through the facts and decide on facts. Unless you provide such a provision. it may be that several States may proceed with the matter as it is now and may authorise a Civil Judge. This is in the interest of the litigant public.

I would like to say one or two things on new sub-section 86. No appeal at all is provided and there are no revision at all. After all, to err is human. Therefore, there should be some provision for a litigant who feels aggrieved. My submission is that some way may be found for providing for a revision or appeal even in small cause matters. It may be a pro-note suit. There are cases where injustice has been caused in such cases. No man should be allowed to feel that not being given a proper opportunity, not having a proper application of a Judge that a case is lot. That is why I feel that this should be taken note of.

MR. CHAIRMAN: Are you suggesting this taking clause 45 into consideration?

SHRI N. D. VENKATESH: True, Sir.

SHRI NITI RAJ SINGH CHAUDHARY: The word District Court is defined in section 2 Will it serve your purpose?

SHRI N. D. VENKATESH: Yes, Sir.

MR. CHAIRMAN: May I request you to please send a draft on this point also as early as possible because it involves several other sections also?

SHRI N. D. VENKATESH: We will do it.

Then, I request you to kindly peruse clause 84—Order XXXIII providing suits by indigent persons. It is

proposed to give more assistance to poor and needy people in prosecuting their plaints. When you are thinking of providing some relief to the poor and needy persons, I may humbly submit that if possible you can also provide for a defence by providing for some assistance in order to defend civil causes by the poorer setions. It could be done by having a Board of Advocates in each District constituted by the State Government on the recommendation of the District Judge to decide which matter is worthy of this and which advocate can do justice.

SHRI NITI RAJ SINGH CHAUDHARY: We have sent a report to your Government wherein this suggestion has been made. So, you may kindly consider about formulating your ideas on this.

SHRI N. D. VENKATESH: Yes, Sir.

MR. CHAIRMAN: You agree that this provision is made for relief to the plaintiffs. But you feel that the defence also who are indigent should be given some aid!

SHRI N. D. VENKATESH: Not merely this. To all causes there are various proceedings under special enactments. They are being taken up in the Civil courts. Take for example motor vehicle cases. Invariably under the rules made the procedure of the C.P.C.. is being taken as the procedure governing the causes. Poor people who meet with road accidents come there without proper assistance and many of them had suffered. So if this provision is made applicable either to prosecute or to defend such cases it would be better, and it will go a long way in alleviating the sufferings of the poor and the needy people.

HON. MEMBER: May I know whether you have applied your mind on other questions also?

SHRI N. D. VENKATESH: We have gone through the Bill Clause by Clause. We have applied our mind on all Sections.

SHRI M. P. SHUKLA: The Witness has given his suggestions and we have given him a questionnaire. I think it is better to give him some time to formulate his views and send them to us.

MR. CHAIRMAN: My view is this and I think you will all agree with me that in the questionnaire, the questions are not comprehensive. They are indicative and therefore, you may go even beyond those questions and make an additional submission of yours. Secondly, we will consider the suggestions of the witness on all the questions. The Witness will send the suggestions in writing on behalf of the Government. I would like the hon. Members to know all these things.

SHRI R. V. BADE: For Section 54. you have said that it should not be given to the revenue authorities. But, here, there is one word, "deputed by him in this behalf in accordance with the law...". In different States, different laws are there. They have got their own laws. What objection you have got in giving them authorities?

SHRI N. D. VENKATESH: Even then, they are executive officers and not judicial officers. They are the laws governing their relationship between the Collector and his subordinate officer.

SHRI R. V. BADE : The State might have provided some provision because some items are State subjects and the State has got power to make the law.

SHRI N. D. VENKATESH: The Parliament can provide.

SHRI R. V. BADE: You have said that for small causes, some provision should be made for appeals or revisions. But, it is common that if the decree is going against him, he is feeling aggrieved even though the decree amounI is small. Why there should not be an end to it?

SHRI N. D. VENKATESH: Some times. from the monetary point of

view, it should be a small decree involving Rs. 100 or Rs. 200 but the decision may have its far reaching consequences over other litigations between the parties

SHRI R. V. BADE: Don't you agree that there is unmixed truth in the world?

SHRI N. D. VENKATESH: What I am submitting is that it is better to provide one more forum to apply its mind to the decision rendered by such Courts. Sometimes, he may overlook the relevant fact, it may be a small suit, may be a promissory note, but, even then, some interesting questions will arise. It is possible that some times the Advocate will not have pointed out some material and like that.

SHRI M. SATYANARAYAN RAO: Regarding Section 100, if some provision is incorporated in this Section saying that the appeal should lie with the District Judge. Does it make any difference between Sub-ordinate Judicial Officers and higher officers?

SHRI N. D. VENKATESH: It does. The Judge of the District Court is the selection post.

SHRI M. SATYANARAYAN RAO: The human material everywhere is the same. Is it not so?

SHRI N. D. VENKATESH: The District Judge is more ripen than an officer next below him. I beg to differ because there is a lot of difference between the District Judge and the Judge of Sub-ordinate Courts. They select the best person for the post of District Judge. We select the Officers more mature in understanding not merely of the facts of life but also principles of law and in my humble opinion, they are better people than their subordinates.

SHRI D. N. MAHATA: Are you in favour of giving revisionary powers to the District Judge under Section 100?

SHRI N. D. VENKATESH: Well if the Parliament does, it is welcome. We welcome it Sir. It will difinitely improve.

SHRI M. C. DAGA: We have gone through the 27th and 54th reports of the Law Commission. They have covered all points under Sec. 80 of the CPC. Kindly let me know if any case has been settled during this year 1974 by your legal advise?

SHRI N. D. VENKATESH: We will verify and submit to the Committee.

SHRI M. C. DAGA: Do you find that the Supreme Court is also favouring that we should do away with this Section 80? I want to know whether Supreme Court rulings are honoured and can we go against them?

MR. CHAIRMAN: I want to make it very clear. Whatever may be the recommendations of the Law Commission, or whatever may be the law enunciated or interpreted by the Supreme Court. at the moment, all will be superseded by the Parliament when they legislate finally on this score. Thence forward, the Supreme Court and any other Courts are within their rights to interpret the law that we may make. So long as the Government is concerned, they are governed by the Supreme Court decisions. Everybody is governed by the Supreme Court decisions. But, today we are considering how to over-come those rulings given by the Supreme Court. If so necessary to sub-serve the objectives of fundamental rights and directive principles to which you refer.

SHRI M. C. DAGA: The High Courts have their own rules. We have studied the Madras High Court rules.

MR. CHAIRMAN: That we can discuss later on. Now, let us confine ourselves to the witness's suggestions.

SHRI M. C. DAGA: Whether you agree with the views of the Supreme Court or have your own views?

SHRI N. D. VENKATESH: On interpretation of law we have to obey the decisions of the Supreme Court. But while making a new law, Parliament has its own powers, we are supreme.

SHRI M. C. DAGA: Why should we not do away with all such lower Court officers and there should be only one appeal to the High Court and there should not be any second appeal?

SHRI N. D. VENKATESH : There is no harm. Ideas are welcome. There are also good judges in the lower courts. I never said against the integrity or honesty of the Judges.

SHRI M. C. DAGA: Then why do you say like that?

SHRI N. D. VENKATESH : If you provide an appeal, only to the High Court, then it would normally be costy affair. Because, in Karnatka there are places the distance of which is nearly 400 miles and odd. So, for a man to come from such a distance to the Headquarters in connection with the appeal is normally costly affairs. Secondly, the work of the High Court has enormously increased.

SHRI M. C. DAGA: Can we do away with Court fees?

SHRI M. P. SHUKLA: This is not relevant to the subject, so I object to it.

MR. CHAIRMAN: Whether it could be avoided?

SHRI N. D. VENKATESH: Because, we are in a poor country, naturally, the burden will be too much on the litigant public.

SHRI NITI RAJ SINGH CHAUDHARY: Mr. Bade was referring to Madhya Pradesh with regard to section 54. His suggestion was even after deletion of Section 54, Revenue Officers could be appointed by the Commissioner to safeguard and control over the whole matter. But, some State Governments are not ready to hand over to the Judiciary?

MR. CHAIRMAN: There is at least one State here who have made a suggestion in that behalf.

SHRI NITI RAJ SINGH CHAUDHARY: Would you advise your Government to consider the abolition of Court fee?

SHRI N. D. VENKATESH: I bear in mind your advice and think over it.

MR. CHAIRMAN: Mr. Venkatesh, I am really very happy that the evidence you gave before this Committee was very valuable. The information and suggestions given by you are quite appreciable. I can assure you on behalf of the Committee that we will give our earnest consideration to your views and take them into consideration whichever we find competent. I once again thank on behalf of the Committee for your co-operation in our work. Thank you.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'A' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Saturday, the 21st September, 1974 from 10.00 to 13.05 hours in Eastern Lobby, Assembly Building, Vidhana Soudha, Bangalore

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Shri B. R. Kavade
7. Shri Debendra Nath Mahata
8. Shri M. Satyanarayan Rao
9. Shri R. N. Sharma
10. Shri Niti Raj Singh Chaudhary

Rajya Sabha

11. Shri Nawal Kishore
12. Shri Virendra Kumar Sakhalecha
13. Shri Dwijendralal Sen Gupta
14. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

I. *Advocates' Association, Bangalore.*

Spokesmen:

1. Shri B. T. Parthasarathy
2. Shri S. K. Venkatarangaiengar
3. Shri G. Dayananda
4. Shri R. N. Narasimhamurthy
5. Shri S. Udayashankar

II. *Karnataka State Bar Council, Bangalore.*

Spokesmen:

1. Shri Manohar Rao Jagirdar, *Chairman.*
2. Shri B. Jayachariya.
3. Shri B. G. Naik, *Member, All India Bar Council.*
4. Shri B. M. Natarajan, *Secretary.*

I. *Advocates Association' Bangalore.*

Spokesmen:

1. Shri B. T. Parthasarathy
2. Shri S. K. Venkatarangaiengar
3. Shri G. Dayananda
4. Shri R. N. Narasimhamurthy
5. Shri S. Udayashankar

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we embark upon our deliberations, may I draw your attenton to a direction, *i.e.*, whether evidence you give before us. it will be treated as public and if you so desire that all or any part of your evidence should be treated as confidential, we will do so; but that evidence though confidential will be made available to other members of Parliament.

We have received your memorandum and noted the comments made thereon.

SHRI B. T. PARTHASARATHY: I would like to make a few general observations before we proceed to consider the clauses of the Bill. We had a detailed discussion of the proposed amendments. While we welcome quite a number of those proposals, we have found in respect of certain things, the approach was not to our satisfaction. The general impression was that this C.P.C. which has been evolved over a century has stood the test of time and it has inspired great confidence in the general public in the administration of justice. If we bear in mind the situation that was prevailing prior to the advent of the British rule, there was no rule of law and there was no order; there was no institutional arrangement. And however much we may dislike the English rule, we cannot ignore the fact that they gave to us certain fine institutional arrangements which are the products of their experience and which are intended to safeguard the rights and liberties of the citizens and particularly when we had no systematic arrangement. We had not developed a law of procedure in such detail as we find from English experience. There were no courts which were functioning at specific times and places with persons appointed to discharge certain duties and it was a mere vacuum and that was filled in a certain measure by these institutions which the English brought with them; not that they wanted to give us law; but they wanted to make their own position secure. We find from a study of our legal history that for the last 2 centuries we did not have any institutional arrangement and even though they came as rulers and esta-

blished courts for their own requirement, our people flocked to their courts. We submitted ourselves to their jurisdiction and it was much later that they established their political hegemoney. During the course of their rule the law has undergone considerable change. One aspect of their law which we notice here is that the common man in our country is not associated in the administration of justice. It is purely Europeanised by the system of jury trial. The moment they left our country, the entire responsibility lies on the Presiding Officers and if they fail, then the confidence in the system of administration of justice would be completely shaken and this thing we can ill afford and we would like to caution ourselves as members of the Parliament being a party to any such arrangement where the confidence of the public is shaken.

Today we are undergoing a series of changes to contribute to stability. The confidence in the system of administration of justice can be created in several ways. One such thing is that the members of the public are participating in several aspects of administration of justice like the jury trial, assessors and all that. We have now given up the system of jury trial. We must give a chance in the courts to have a right of appeal and in some cases the right of second appeal. It is this opportunity that inspires confidence in the mind of the general public. If during the intermediate stages certain irregularties are noticed, there should be an immediate opportunity for seeking redressal.

We must always see that the supremacy of law is maintained and the concept of the rule of law should not be watered down. There should be trial of all cases in open courts by persons who are well-versed in laws and by those who are trained in laws. If we have any other system, that would go against the very grain of the concept of the rule of law and that our confidence in the Constitution would be completely undermined. So, with these words, we must deal with this amending Bill.

MR. CHAIRMAN: In your memorandum you have indicated as to how we must approach this problem. In order to retain the public confidence in the law, you have suggested certain things. But I hope you will not disagree with us to have a second look at this law. We have to make this law uptodate. Even the proposed amendment should stand the test of time. Now I request the hon. members to confine themselves to the points urged in the memorandum and seek clarifications. Your memorandum is the consensus that has emerged at a recent seminar held at Bangalore.

Clause 6 (b). This will be confined to civil suits only.

SHRI B. T. PARTHASARATHY: Otherwise the tendency is to set up certain quasi judicial bodies for the administration of justice and invest them with powers almost equating to the powers of the civil courts and that would be a serious inroads into the sphere of civil law and unless we completely do away with our appearance, the principle of rule of law will disappear.

MR. CHAIRMAN: A note on clause 6 which refers to independent proceedings is not clear to us. I request the Joint Secretary of the Ministry of Law kindly to examine the significance of this note.

SHRI S. K. MAITRA: The Law Commission has expressed that we are of the view that an express provision is desirable as regards second appeal. We recommend therefore that the principle of *res judicata* should be applied to the situation of proceedings in execution. A question has been raised as to what is meant by independent proceedings. The legal proceedings which are initiated by a plaint are known as suits and those judicial proceedings which are instituted by a petition are called civil proceedings. Pre-emption proceedings are independent proceedings.

SHRI B. T. PARTHASARATHY: Most of these special enactments relate to certain special situations. For example, in arrears of rent cases, if there are certain other things done, the tenant is liable to be evicted. So, those are the limited questions.

SHRI S. K. MAITRA: If in a judicial proceeding, the rent is decided thereby the relationship of landlord and tenant is also decided.

SHRI B. T. PARTHASARATHY: They are all under special enactments, and the jurisdiction of courts to go into the question of titles is a very limited one. In such a situation whatever observations those Courts make, even to safeguard, should not be such as to be equated as adjudication of question of title.

SHRI S. K. MAITRA: As per the provisions of section 116 of the Evidence Act, the tenant is estopped from denying the landlord's title. In a rent suit, the decree indicates that the relationship of landlord and tenant exists between the parties. It does not establish anybody's title to the property.

MR. CHAIRMAN: Shri Parthasarathy says that the Association has not examined this aspect on the basis of the Law Commission Report. He may kindly examine this aspect and submit his comments later on, but as early as possible. After examination he may perhaps revise his opinion in the light of the clarification given by the Joint Secretary, Ministry of Law.

SHRI M. C. DAGA: There are Revenue Courts and generally they are guided by the C.P.C. Certain issues are framed and they are decided. Are not those decisions proper?

SHRI B. T. PARTHASARATHY: Those matters which are exclusively within the competence of the Revenue authorities are not within the jurisdiction of the Civil Courts at all and they are outside the purview of the Civil Courts; they are not suits of civil nature at all.

SHRI M. C. DAGA: Can you give me any instance where the Revenue Courts have got their own procedure? Every Revenue Court follows one procedure. The Revenue courts are flooded with litigations by agriculturists. In such cases, the issues are framed, the parties are entitled to give their evidence and they produce documentary evidence, and very complicated questions of title come up. In order to expedite the matters, cross-examination is made by revenue records. Will not their decision save a lot of time?

SHRI B. T. PARTHASARATHY: It is precisely against the decisions of those Revenue authorities that we want to safeguard also. We do not want the Revenue Tribunals to be equated with the Civil Courts.

SHRI M. C. DAGA: Do you mean to say that the Revenue Courts cannot decide the title?

SHRI B. T. PARTHASARATHY: No. The decision of the Revenue Court will not be the last word in such matters. That safeguard we want. If you make this *res judicata*, that is lost. So far as section 11 is concerned, it is applicable only to decisions of courts. But this is only a Tribunal.

SHRI D. L. SEN GUPTA: The main purpose is to avoid repetition of litigations. In view of that will not the purpose of your amendment be within the frame work of the proposed amendment of the Bill?

SHRI B. T. PARTHASARATHY: It goes against the grain of the rule of law we have accepted. The Revenue Inspector is approached by a poor agriculturist to attend to some of the matters, who would have a mahazar done and the matter would go before the Tahsildar and some order would be passed without taking any evidence and without knowing what is relevant. Such mahazars are always attacked and very often they are proved spurious. That would be some-

thing dangerous. In the Civil Court, the party comes, takes an oath, he is cross-examined and the Judge is their to preside and assess and then gives a decision after hearing arguments of either side. Such a thing is just not there here.

SHRI D. L. SEN GUPTA: The purpose of our present amendment Bill is to avoid delay.

SHRI B. T. PARTHASARATHY: Not at the expense of justice!

SHRI D. L. SEN GUPTA: How to make a compromise then?

SHRI B. T. PARTHASARATHY: We differ entirely from that approach. We do not say that justice has been denied. There are ways of minimising delays and the time that is involved in a Court proceedings. But allowing these quasi-judicial and administrative bodies to the level of the Civil court proceedings would be something dangerous, and I would lose confidence in such a system.

SHRI D. L. SEN GUPTA: Will not delays occur in civil proceedings?

SHRI B. T. PARTHASARATHY: That is because of the procedural formalities. We have given our suggestions for minimising this time factor. If we provided for certain continuity there, then a substantial part of the delay could be easily avoided. If you want a Tahsildar or the Revenue Inspector who knows nothing of the law to be equated with the Judicial Officer. trained, educated and assisted by those who have also trained in open court, then, that would be a very shocking development indeed.

MR. CHAIRMAN: The Joint Secretary has already mentioned about the recommendation of the Law Commission. You may kindly examine your point as carefully as you have done in other cases and submit your considered views on this particular aspect as early as possible.

SHRI M. C. DAGA: Suppose there is a judgment of the Revenue Court, will it not be a piece of evidence?

SHRI B. T. PARTHASARATHY: Please refer to Section 43 of the Evidence Act. It has no evidenciary value and not binding.

MR. CHAIRMAN: So far as the learned witnesses are concerned, they have made their points. From the Government side, the recommendation of the Law Commission has been cited. Therefore, I would like to inform the witnesses to send their views later, after consulting their colleagues.

SHRI NITI RAJ SINGH CHAUDHARY: Before the witness says something about Clause 14, I would like to clarify why this amendment is sought to be made. This question was considered by the Law Commission and the Law Commission have tried to make a distinction between normal advances and money advanced for commercial transactions. I would like to quote the particular portion. It says:

> "We have in mind commercial transactions, i.e.. tarnsactions connected with industry, trade or business. Monetary liabilities arising out of such transactions stand on a special footing, because the activities concerned are carried on with a view to profit. The debtor and the creditor do not stand insituations of disparity. If, for example, it is a case of loan, then the money would have been borrowed for carrying on or improving the business of the borrower."

It is felt that for normal transactions, to meet the needs would be within Rs. 10,000, but. of course, they are persons who borrows lakhs and lakhs of rupees.

SHRI B. T. PARTHASARATHY: If the record shows that it is of a commercial nature, then, this may apply, otherwise, it should not and we see no sanctity in fixing a limit.

SHRI NITI RAJ SINGH CHAUDHURY: We should now consider the effect of the proposed amendment. So far as the relief of agricultural indebtedness is concerned, in the Law Commissions report, it has been stated 'that there is in most States, self-contained legislation for the scaling down of debts, and such legislation will not be affected by any amendment of the procedural law. Even where such legislation itself contains a provision referring back to section 34 of the Code, the Court can be expected to exercise its discretion fairly and after bearing in mind the special features of the case. The last-mentioned reasoning applies equally to situations where the judgment-debtor, though not an agriculturist, belongs to a section of the society which is more often exploited than not, or where the circumstances in which the monetary liability was incurred, make it desirable that the court should not be awarded a high rate of interest. It should be pointed out that even after the amendment which we propose, the rate will be in the discretion of the court. And, it is well established that such discretion must be exercised on sound judicial considerations."

Further, they have stated as follows:

"As regards the amendment proposed in Section 34, we may repeat that even under the amended section, the discretion will be exercised after due regard to the circumstances. Every debt is not necessarily a loan and the circumstances in which a claim for interest may come up for consideration vary from case to case. This variation is, in most cases, attributable to the difference as regards one or more of the following circumstances:—

(a) Financial capacity of the judgment-debtor (*e.g. the* judgment-debtor may have the means to pay and yet fails to pay);

(b) Financial position of the decre-holder;

(c) Comparison between (a) and (b) above;

(d) Conduct of the parties, *e.g.*, dishonest transfer of property by the judgment-debtor after or in anticipation of the litigation, or inordinate delay in taking steps necessary for progress of the litigation;

(e) Relationship which gave rise to the liability sued upon, *eg.*, the judgmen-tdebtor atanding in fiduciary apacity towards the decree holder;

(f) Nature of the monetary liability."

This is what they have said.

SHRI B. T. PARTHASARATHY: But when the discretion is there, the judge can very well say whether it is purety commercial nature or something other than that. If he finds that it is of the commercial nature then,, he need not be bound by this limitation. But this is a minor nature and I would like to ask whether you are going to recognise this non-institutional banking and say higher rate also could be given. Now that leads to exploitation of people in need. In some of the ordinary transactions, the rate of interest goes up to 30 per cent. We should not lay so much of value to the Money-lenders' Act. The contractual rate should not have so much respect shown here.

MR. CHAIRMAN: If the contractual rate is made within the provisions of the Money-lenders' Act, is it alright?

SHRI B. T. PARTHASARATHY: I wanted that reservation. Otherwise, we are encouraging parties to go to the private bankers and in their need and difficulties, submit themselves to any of the terms those bankers being posed.

MR. CHAIRMAN: Anyway, your submission will be considered.

SHRI G. DAYANANDA: Unless they are registered money-lender, the provisions of the Money-lenders' Act will not apply.

MR. CHAIRMAN: The point is, the Court while decreeing the money suits and awarding interest, are they not governed by the rate of interest as per the Money-Lenders' Act even though the particular party has not registered as money-lender? Anyway, you want this contractual rate to be qualified. Your purpose is that it should not be limitless.

SHRI B. H. PARTHASARATHY: About Clause 24, I would like to say the expression 'Labourer' that is not defined anywhere, and in the Industrial Law, we got the expression "Workmen". Workmen is defined but the definition of 'Labourer' is not. Let me take the analogy of the Industrial Law. Workmen means any person whose wages will be less than Rs. 500|- and who performs manual. skilled and semi-skilled work and who does not perform any supervisory or such other work. There are two limits. One is the nature of the work done and the other is, the responsibility that he has to discharge. If he is discharging managerial and such other responsibilities, then, he is not entitled to the provisions of the Industrial Disputes Act. Therefore, such limitations should be there, otherwise, the skilled labourer must be a scientist drawing Rs. 1500|.-.

MR. CHAIRMAN: In the existing code, provision has been made. We have mentioned labourer or a domestic servant', even though the "Labourer" is not specifically defined under Section 2. The expression "Labourer" is already there in the Code.

SHRI B. T. PARTHASARATHY: I want "Labourer" should be defined on the analogy of the Industrial Law.

MR. CHAIRMAN: In that case, may I request you to kindly send us your draft definition for the consideration of the Committee.

SHRI B. T. PARTHASARATHY: Yes Sir. I want the definition similar to the definition of the "Workmen" defined under the Industrial Disputes Act. In place of "labourer" it should be "workmen".

MR. CHAIRMAN: That we will consider and examine, Then on page 2, Explanation 5—Clause 24—what do you say about it?

SHRI B. T. PARTHASARATHY: Here, there is no limit. There may be an agriculturist earning 30 thousand rupees and there may also be another agriculturist earning 300 rupees.

SHRI R. V. BADE: Why not apply the same definition to the work-men also?

SHRI B. T. PARTHASARATHY: The latest decision in a Burmah-Shell case clearly says about the definition of a work-man. Even a Scientist could be called as such who is drawing a salary of Rs. 1000|- and odd.

MR. CHAIRMAN: You want to give this concession to the upper limit also.

SHRI B. T. PARTHASARATHY: Not to the well-to--do agriculturists.

MR. CHAIRMAN: We will consider it.

SHRI B. T. PARTHASARATHY: We have stated on two or three occasions as to why we want the retention of Secs. 100 and 115. We have emphasised the importance of the present scheme and the great value that it attached to those sections.

SHRI NITI RAJ SINGH CHAUDHARY: Under Article 133 of the Constitution the words used are "substantial question of law of general importance.' But, here the words used are "substantial question of law not of general importance". Substantial question of law was also defined by the Supreme Court. There is very good case reported in Madras Law

Journal. They have tried to make distinction in every matter, whether there is something substantial or not, between the party and the parties. Secondly, the suggestion that the Court should study the question of law. I think, you will agree that out of the appeals that are admitted, the percentage ultimately allowed is very limited.

SHRI B. T. PARTHASARATHY: Not very limited; it is around 50 per cent.

SHRI S. K. VENKATARANGAIENGAR: There is a responsibility cast on the Counsel. Therefore, 50 per cent should not be a surprise.

SHRI B. T. PARTHASARATHY: Easier course would be—simply to dismiss and be done with it.

SHRI NITI RAJ SINGH CHAUDHARY: Whether admission or dismissal, the Court has to record reasons. In such a way the questions of law are brought out clearly.

HRI B. T. PARTHASARATHY: When we find the wrong, can we go on a further appeal. We have posed that question also.

SHRI S. UDAYASHANKAR: The delay depends upon the persons who do the job of Judges. Many a time, we even do not utter a single word, before that stay is being granted. So, it is the responsibility of the persons who occupy the position as Judges, but there is nothing wrong in the law. It is only on account of such men the delay occurs, but not on account of the law or rules.

MR. CHAIRMAN: I will pose a general problem. When we make law, will it not be presumptuous to have any idea in making that law that it will be administered by a class of people who are sometimes, below the requirement etc. Therefore, it is very unfortunate if a particular case or cases are decided in accordance with the wish or desire of certain persons occupying such position of authority and responsibility. Therefore, I am making a suggestion that when we make a law we should perhaps presume that our Boards, Legislators and others who are in the helm of affairs—are not upto the standard and who cannot make a full-proof law. That is why at this stage let us not be influenced by that position. It may be true that we must make best laws and see that it gives best justice to the citizens of our country. It is for the Court to decide, whether in the first, second or in Revision petitions. Even there is provision for appealing to the Highest Courts on the same grounds and on the same case. In the Supreme Court also, from Bench to Bench they differ in many matters. So, let us confine ourselves to scrutinise the provisions of the law, whether they subserve the litigant public or not.

SHRI S. K. VENKATARANGAIENGAR: Even the head of the Court has to see to the substance of the law as to whether we conform to the ideal picture or not. When considering Sec. 100 you are thinking of making the proceedings final, because, we are thinking of second appeal. To give a finality, we are thinking of changing the Section 100. The first question we have got to put is whether there is need to change Sec. 100 as it stands. Then, if there is need, the amendment that is sought to be made—does it serve the purpose? The point is this. As you said, a clear picture of how the jurisdiction of the Supreme Court under Art. 133 has been utilised under Section 100. We have got to remember both the Privy Council and Supreme Court have pulled up High Courts whenever they have deviated from the provision of Sec. 100. Now, Sec. 100 is so well drafted that it is a fool proof. Now, you are making a suggestion that an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court certifies that the case involves a substantial question of law. If I may say so with utmost respect that immediately an appeal is filed, even at the first appeal, we must remember that

may also be subjected to the dismissal straight away, as per Civil Procedure Code. If that is so, regarding the first appeal, as regards the second appeal invariably it has got to be admitted on its merits. At the stage of admission itself, if the Judge finds that it does not conform to the various classes of Sec. 100, he will dismiss it outright. I am telling this with some experience. The question of next stage comes only at the later stage. If the admission judge should formulate the question and give his reasons; without meaning any disrespect as you have stated from bench to bench and from judge to judge. He might have given the reasons which certainly does not touch the court and the judge who hears the appeal may feel embarrassed in dealing with other judge's finding. That is why I am saying that the remedy is worse than the disease. After all you are going to have a judge who has to certify and that judge may not be the hearing judge at the final stage and that judge in his own view might think that a particular thing is substantial and the other judge may take a different view and say that it is not a substantial thing. With utmost respect I might say where is the need to seek an amendment to section 100? I request you kindly to enlighten me how in practice or even from a theoretical approach, section 100 is badly worded, then we could think of this amendment. That is why I say, let us take the present section 100 whether this has given any room for anything like uncertainty in the finality of the judgement. If it has given scope, let us think of amending it otherwise, leave things as they are. This section has stood the test of time. The High Courts and the Supreme Court have made it fool-proof. I request you kindly to point out any particular sub-clause in section 100 which wants an amendment, we shall be more than satisfied.

WITNESS: The Supreme Court has codified section 100 and therefore no High Court can traverse beyond the scope of section 100 and limit itself to the point which the Supreme Court has enumerated. There are 6-7 decisions which define the exact scope of section 100. There is no scope to traverse beyond the scope of the definition.

MR. CHAIRMAN: We are only seeking clarifications from you. Uultimately our committee will have to take a decision and those decisions will have to be accepted by the Parliament. I cannot commit myself either this way or that way. Your suggestions will be closely examined and formulate our own opinion at the appropriate time.

SHRI R. V. BADE: What is the remedy that you suggest for the clear rance of arrears in the High Courts?

SHRI NITI RAJ SINGH CHAUDHARY: The Law Commission have found out that certain judges have admitted all the appeals that came before them and ultimately 90 per cent of them are rejected. This seems to be the main cause for the increase in work and thereby cost and delay. Could you suggest any remedy for this?

WITNESS: At the time of hearing if the judge finds that it involves a question of law, then he is precluded from doing any justice. That anomalay is there. Even though he finds that injustice has been done and that it should be corrected by the court, but the court feels helpless in the matter. If such a position is allowed to continue, what will happen?

SHRI D. L. SEN GUPTA: While agreeing with your premise that confidence in the administration of justice should not be shaken, but in this system are there not complaints that justice is delayed through the laws?

WITNESS: All the loopholes in the laws should be plugged.

SHRI D. L. SEN GUPTA: If the time is restricted while developing arguments, how ca you do justice to a case?

SHRI S. K. VENKATARANGA-IYENGAR: The more that I have thought of section 136 and the way it is being administered by the Supreme Court, I am firmly of the opinion that any reform you might think of, section 136 itself being delayed if you ask me. 22 petitions come up, 2 petitions being admitted and 20 petitions being thrown out. On the two admitted petitions the hearing Judges would have seen that some times the certificate given on the particular point is no point at all. The unfortunate aspect of the analogy of section 136 is not being correctly used by the Supreme Court, should not really confuse the issues as far as section 106 is concerned. You are restricting the litigant's anxiety to the High Court, the finality is there and the cause of litigation is there. While considering that, in most cases the litigant should be confident of the High Court itself rendering justice, not even approaching the Supreme Court, sitting in Delhi administering the law for the whole country. Most of the litigants should be more than justified if their litigation should get a fair deal at the High Court stage. Any analogy of the leave proceeding to section 100, I say with certain amount of emphasis is certainly taking away that fair aspect of the finality, and that is why we have said that what is at present in vogue will mean stability, will mean confidence. We are saying this with our own experience as to how section 136 proceeding is of no help. When we are thinking of reformation, I am requesting you to avoid that pitfall.

SHRI M. P. SHUKLA: Your stand point is that the proposed sub-section 100 does not serve the purpose that we have in view; it would involve more delay and more duplicacy of petitions. You agree that delays should be avoided.

SHRI B T. PARTHASARATHY: No two opinions on that.

SHRI M. P. SHUKLA: Delay should be avoided, justice should be done and it should be cheaper. You may please send your submissions on these points later for our consideration, because this is one of the most important sections.

SHRI S. K. VENKATARANGA: IYENGAR: A few suggestions of mine on the lines you are thinking may just be considered. Those who sit in second appeal—without meaning any disrespect to the constitutional judges—the Chief Justice who has to arrange for the work of the Judges ought to be in a position to allot the work of second appeals to certain judges who are better experienced in the application of the facts of the case to section 100 proviso. I was surprised to hear that all the second appeals were being admitted by a particular judge in spite of the Privy Council and Supreme Court strictures. Here, I can only think that the Chief Justice who is to arrange for the work of the Court has not done his duty properly. Those who sit for hearing second appeals should be Judges of a particular calibre and ought to know really how section 100 has got to be applied to the facts of the case. So the remedy would be by giving instructions to the Chief Justice.

SHRI B. T. PARTHASARATHY: We have a view in respect of avoiding delay and in respect of avoiding costs.

SHRI NITI RAJ SINGH CHAUDHARY: Suppose I agree with the observations made by the learned senior advocate Could you kindly arrange to send us your concrete proposal as to how section 100 should be formulated and how it should be drafted?

SHRI S. K. VENKATARANGA-IYENGAR: Supposing we give in our draft something to your scrutiny, section 100 being retained as it is, adding explanation as we are accustomed to, so that it will avoid amendment and will bring out the points in explanation.

MR. CHAIRMAN: Even if it be an explanation or explanations to section 100. that can be incorporated in the Code only through an amendment. It will be helpful if you can kindly send us some concrete suggestions.

SHRI B. T. PARTHASARATHY: We shall do that. Codification also becomes necessary from time to time.

SHRI M. P. SHUKLA: I would like to have your opinion on Clause 34 of the amendment Bill—section 96.

SHRI V. K. SAKHALECHA: I have one question on the previous point. Does the learned witness feel that delay would be caused at the time of admission?

SHRI B. T. PARTHASARATHY: There is no risk in admitting, *ex-parte* cases, because if I am aggrieved by the decision of the lower appelate court, then, I point out the grounds on which it could be admitted. If the Judge is satisfied that there is a *prima facie* case and comes under Section 100, he will admit.

SHRI V. K. SAKHALECHA: There will be no justice done to the cases at the time of admission because they have no time to hear. In some cases, admissions are finished within an hour.

SHRI M. P. SHUKLA: If some provision is made that the opposite party could also put forth his argument at the time of admission, will it satisfy the witness?

MR. CHAIRMAN: No more discussion on this. We have requested the Witness to kindly reconsider and send his views.

SHRI R. N. SHARMA: As regards Section 100, will you suggest that no admission could be made without hearing the other side except where order for injunction is necessary?

SHRI D. L. SEN GUPTA: At the admission stage, the other party is not heard, as a result of which, sometimes, the record is not before the judge and delays are also caused. The mischief of delay could be avoided if some provision stating, that no admission is allowed except in cases of injunction without the other side also is made, would it not solve the problem? What is your opinion?

SHRI B. T. PARTHASARATHY: As I said earlier, there is no risk in admitting *ex-parte* cases. It would be rather impracticable Sir.

SHRI S. K. VENKATERANGAIYENGAR: I would like to suggest to adopt the practice of Caveat. The person who has already won in the litigation is keen that there will be a finality and he would be vigilant and he will enter caveat. At that stage, the Supreme Court or the High Court which is hearing could dispose of the matter. Therefore if my suggestion is considered, the insisting on the opposite party being, present may be avoided.

SHRI NITI RAJ SINGH CHAUDHURY: If you refer to Page 16, you can find that Section 148 A is proposed to be inserted and your suggestion is already there. You wanted that it may be extended.

SHRI B. T. PARTHASARATHY: Yes Sir.

SHRI S. UDAYASHANKAR: At the time of admission, notice will have to be issued. This will involve lot of expenditure on the other party also. At the time of admission, even in the case of Supreme Court, notice will have to be given to the Respondent and he had to travel from his place to Delhi. The Learned Judges did not ask anything. Therefore, there is lot of inconvenience to the other party. Because there is a provision, they have to do like that.

SHRI B. T. PARTHASARATHY: If the Judge is satisfied that it is a fit case for admission under the strict requirements of section 100, he will

do it and in the normal course, notice will go. If it is not at all a fit case, he will dismiss and the matter ends.

SHRI D. L. SEN GUPTA: In the Supreme Court, they make an order and issue notice to the other party. If there is a provision in the statutes itself, then, without a caveat also, this could be done.

SHRI B. T. PARTHASARTHY: It could be done. As it is, there is no difficulty so far as admission is concerned.

SHRI D. L. SEN GUPTA: In some cases, the judges cannot apply their mind.

SHRI S. K. VENKATARANGAIY ENGAR: I am appearing for three High Courts and as far as our High Court is concerned, the prevision petition is posted for admission within a week, or 15 days or at most a month for admission. Some-times, it comes up for admission on the very next day I would like to say that you may allow the caveat practice by amending Section 148A and keeping this thing in view of regulation of work by the Chief Justices. In some Courts, they are having number of pending cases.

SHRI B. T. PARTHASARATHY: We have no grievance so far as the working of law under Section 100 and 115 are concerned.

MR. CHAIRMAN: You have agreed to send the draft explanation to Section 100. Amendment or no amendment, it is certain that this delay is caused by certain other matters and other exigencies of situations which are not within the purview of our examination. As Mr. Shukla ably summed up, to avoid delay and at the same time to ensure justice, which must also be inexpensive if not cheap, the action to be taken to achieve that end is our aim.

SHRI M. C. DAGA: Suppose the appellate court is very competent, in that case, will you suggest that there should be only one appeal, there should not be provision for second appeal or would you like to suggest that from any court, whether it is *Munsiff* or the Civil, matters could directly go to the High Court?

SHRI B. T. PARTHASARATHY: In that case, High Court becomes another District Court.

SHRI M. C. DAGA: May I know whether you want to retain Section 100 only or both Sections 100 and 115?

SHRI B. T. PARTHASARATHY: The purposes of two Sections, i.e., Section 100 and 115, are very much different. We are in favour of retaining both the Sections.

MR. CHAIRMAN: Regarding Sec. 115, do you want to make any comments?

SHRI S. UDAYASHANKAR: So far as Karnataka High Court is concerned lot of delay would be involved if powers exercised as per Art. 227, wherein the Judge has got some reservations. But, the Judge exercising powers under Clause 115, is entirely different. In both Sections 100 and different. In both Sections 100 and 115, there will be no scope of remedy for the High Court to judge the capacity of the Subordinate Judges. In no case, the scrutiny of the High Court and its control so far as subordinate Judges are concerned, will not be there. By this, it may lead to certain arbitrary judgements in some cases.

SHRI D. N. MAHATA: On page 3, last para, you have suggested certain methods. What are those methods? and whether delay could be avoided by such methods?

SHRI B. T. PARTHASARATHY: After cause 90, we have suggested the incorporation of a Rule on the following lines. I have mentioned it in our memorandum. What we suggest

today is that under the existing scheme of things there is break at every stage. In the Court of first instance and its responsibility, granting of decree and then starting afresh and go to the Appellate Court etc., make lot of delay. That itself takes time. Service of notice takes months sometimes. Even in presenting appeal memorandum so many months are taken. Notice also takes so many months. If notices are not served, once again there will be delay. So, there is repetition at every stage. This could be extended even to the execution stage also. For that purpose we have suggested the remedy in our memorandum. If that is done half of the delay could be easily avoided.

SHRI NITI RAJ SINGH CHAUDHARY: May I draw your attention to page 38, Rule 6A of the Bill.

SHRI B .T. PARTHASARATHY: These are very welcome.

SHRI S. UDAYASHANKAR: The delay could be avoided in certain cases. If interim order is required the copy is necessary. In other cases, merely lodging an appeal is sufficient.

SHRI B. T. PARTHASARATHY: It should be in the Court of first instance itself and then transmission of the records automatically to the Appellate Court. The function of the Appeallate Court is only to hear and pronounce. So, all such procedural formalities could be avoided and delay could be curtailed.

SHRI S. K. VENKATARANGAIYENGAR: In Tamilnadu, right from the beginning *photo-state* copies are given from the Trial Court. The cost will not be much when compared to the present day charge of copy making and the process is also quick. You may also consider this aspect.

MR. CHAIRMAN: We will consider it.

SHRI B. T. PARTHASARATHY: Another thing is in the matter of judgements I found some difficulties. We do not have anything in the matter of execution of foreign judgements. We have got Sec. 13 of the C. P. C. We are un-aware of the English Courts of law. We take decree against English Firms. They are registered and executed. It is not so in England. They have got very clear method. So, unless we made similar measures, we are in a disadvantage position. So, we have to adopt similar measures, we are the losers. I have given suggestions in the last para in this connection.

MR. CHAIRMAN: You kindly send it in your memorandum.

SHRI B. T. PARTHASARATHY: To avoid delay you are suggesting certain cost to be awarded. The Judge has to determine which party is responsible for the delay. I suggest if additional cost is given on the time factor after fixing responsibility for the delay on the party, that would be better to some extent. Under notice to pleader when there is death, that would be a onerous duty cast upon the advocate. We will practically become parties.

With regard to injuction, even before granting injunction if we are to serve copies to the opposite party, it would be very difficult.

MR. CHAIRMAN: Those are all matters of detail.

SHRI S. K. VENKATARANGAIYENGAR: As regards minimising the delay at the stage of orginal hearing of the cases, more than often very salutary provisions of the judge settling the issues are forgotten. We have got to make it very clear that if a judge applies his mind at the stage of settling the issues, most of our litigations can be ended. They must devote some time between low cost cases and small cause cases. In such cases the points would be very simple. I request that a provision as

regards the settlement of the cases should be made. You will have to insist on the trial court judges applying their mind so that many of the small cases where frivolous defences are taken can easily be avoided. Second thing, if a trial judge has got six cases for hearing, and he can only dispose of only two cases, then the parties who will have come to attend the case, will be put to great financial loss. In these days of unemployment, the cross examination of witnesses could be conveniently avoided. This would render the work of the judge easier.

WITNESS: At the time of pronouncing judgement, if the counsel is engaged elsewhere, he will be simply penalising the party. Particular care should be taken to avoid such contingencies.

MR. CHAIRMAN: We shall consider all your suggestions.

SHRI D. L. SENGUPTA: Day before yesterday in the Indian Express, a decision of the Supreme Court was reported. Mr. Justice Iyer of the Supreme Court has suggested that instead of wasting the time of the court in taking oral evidences, it can be done through affidavit. Do you encourage such a proposition in the interests of the litigant public?

SRI S. K. VENKATARANGAIYENGAR: Order 19 Rule 1 and 2 are already there as far as affidavit evidence is concerned. All oral evidence is too dangerous.

WITNESS: If provision is made for filing the draft issues, it would give an opportunity to the advocate to file the issues before the Court. This would enable the court to a great extent.

MR. CHAIRMAN: I think the practice is already there for filing the draft issues.

On behalf of myself and my colleagues, I express my deep appreciation of the study which you have made and the pains that you have taken in preparing a memorandum. I can assure you that we will give our earnest consideration to your suggestions.

(The witnesses withdrew)

II. Karnataka State Bar Council, Bangalore.

1. Shri Manohar Rao Jagirdar, *Chairman*
2. Shri B. M. Natarajan,
3. Shri B. Jayacharya.
4. Shri B. G. Naik.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we start discussion, I would like to draw your attention to a direction which governs the taking of evidence by the Committee. Whatever evidence you tender before us would be treated as public and as such is liable to be published. But if you so desire that all or part of your evidence should be treated as confidential, we shall treat it as confidential but even then the evidence will be made available to other members of Parliament.

You have not submitted any memorandum as yet to us.

Now you are welcome to make any submission you want regarding the proposed amendments.

SHRI MANOHAR RAO JAGIRDAR: The proposed Code of Civil Procedure (Amendment) Bill, 1974 is introduced to achieve certain objectives. The main objectives to be achieved are:

(1) Minimising costs,

(2) Avoiding delay in litigation,

(3) Implementing the directive principles, and

(4) Resolving divergence of judicial opinions with regard to certain provisions of the Code.

I. The amendments regarding resolving of divergence of judicial opinions are concerned, they are welcome. By settling down the divergence of opinions in the various High Courts, litigation will be reduced and there will be certainly in the law, and the litigant public will not be harassed in view of the divergent judicial opinions. If there is certainty in the law, people will decide beforehand whether to take up the matter to the Court of law or to settle the same between themselves. In case there is conflict of judicial opinions. the litigants, even on merits if they have no case, may try to take their chance in the Court of law and by that process, there will be unnecessary litigation and the rightful party will be harassed. Hence, resolving of divergence of judicial opinions is a welcome measure.

II. So far as implementing the directive principles is concerned, certain provisions which are proposed in the Bill are welcome. The weaker sections of the community i.e. which cannot fight their litigation, should be assisted by competent Advocates and further they should not lose their rights because they are not capable of spending necessary amount for the expenses of the litigation. The persons who really deserve the assistance, should be provided with assistance by the State. The question of deciding, whether a person is really not capable of meeting the expenses of litigation and deserves assistance, has to be taken up by the Legislature and the Court, and if necessary, certain Rules have to be framed. The principle is that a deserving person should receive all the benefits at the cost of the State and his rights must be defended and there should be social justice to one and all.

Then the other factor with regard to the cost is the fees of the advocates. Advocates charge fee according to whims and fancies. For the interest of the society in general, when there are going to be restrictions on the class of properties, I think there should be a restriction also as to what amount the advocate should receive as his remuneration. There is a possibility of saying how can we restrict it, after all it is indidual's choice. But as Chairman of the Bar Council, I would say that the rules should provide the minimum fees according to the valuation of the suit, and in case more fees is charged by an aodvocate, that should be considered as mis-conduct on his part, and proper action can be taken if it is mis-conduct. If these factors are taken into consideration. then they will reduce the cost of litigation to a certain extent, though not fully.

The other thing is, the cost of witnesses has to be met by the client. In every Court, according to our experience, in the lower judiciary i.e., either before a Munsiff or a Civil Judge, a long list of 30 to 40 cases will be there. In each case, there will be 5 to 10 witnesses. The Presiding officer, inspite of his best efforts can record the witness in one case, and the statements are not recorded in respect of other cases because of the time factor. But the client has to pay the charges. And there is no guarantee that the statements would be recorded next time also. This should be avoided so that the expenses are minimised. The amendment of the C.P.C. is not at all connected with how the costs are to be minimised so far as the litigation is concerned.

The most important question is how to avoid the delays in litigations and certain amendments are proposed, especially amendment to Section 100 and deletion of Section 115. It is also proposed to treat a matter *res judicata* even if that is decided by a quasi judicial officer or administrative body. The entire amendments in this respect to achieve this objective will

not serve any purpose. The cause of the delay in litigation is not so much due to procedural defects, but it is due to human agency which implements the procedure while performing the duties prescribed under the various enacts for the decision of the rights of the parties. One of the amendments proposed is that the suits or even any other civil proceedings, should be held to be *res-judicata* between the parties though they are tried by quasi judicial officers or administrative bodies The civil proceedings which were tried by quasi-judicial officers or administrative bodies should not be held to be as *res judicata* between the parties The parties should be allowed to re-agitate the matter in an appropriate Civil Court. The ends of justice will suffer if such civil proceedings which were decided by the quasi-judicial officers or administrative bodies, are held to be res judicata and final. This itself will not avoid delay in litigation, and the purpose will not be achieved. Take for example the Land Reforms Act in our State. So far as the Tribunals which are formed are concerned, the Assistant Commissioner, the local M.L.A., one harijan member, and one Taluk Development Chairman, who are incapable of knowing even the family definition, will be there to decide the matter, and if their decision is made final the very purpose of the legislation will be defeated and the real tenants will not get the benefit.

MR. CHAIRMAN: Here, I request the Jt. Secretary, Ministry of Law, to explain to the hon. witness as to what is meant by civil proceedings because the hon. witness I think is presuming that the power is being extended to other authorities which are not Courts.

SHRI S. K. MAITRA: Civil proceedings mean proceedings of a civil nature as defined in section 9; they must be of a civil nature. In the light of the evidence taken, we will clarify this in the Bill.

SHRI MANOHAR RAO JAGIRDAR Then, it is all right. The other amendment proposed is to delete Section 115 from the Code. If Section 115 is deleted, the purpose will not be served. On the contrary the parties will take recourse to Article 227 of the Constitution of India and there will be a large number of petitions in the High Court. The High Court can admit petitions and issue stay orders under Article 227. What is the guarantee that they will not entertain petitions under Article 227 and grant stay orders? The human agency which sits there is most important and it has to see that there should not be delay.

If now the present judges are admitting the applications of revisions under Section 115, irrespective of the fact that the Privy Council has laid own that only questions of errors and jurisdiction are entertained then, I would like to mention that more powers have been conferred on them under Article 227 of the Constitution also. Those powers carry more weight. The High Court will, in appropriate cases and if the concerned judge feels that the petition will be admitted, stay will be granted and there will be pendency of the petitions under Article 227 instead of revision petition under Section 115. The idea of omitting Section 115 is merely to cut down the delay and other things is not a correct answer. As it is, Section 115 is in force since such a long time and it is working well. Even a particular litigant feels injustice is done to him, he brings the matter to the highest court. My submission is, Section 115 in the circumstances all along is working well. That should not be deleted merely on the ground that certain judges are making the petitions are admitted.

Coming to Section 100, now the proposed amendment is that certain appeal will lie only if there is a substantial question of law. Substantial question of law is now settled and that has been decided by the Supreme Court and as well as Privy

Council also. The highest Court will be entrusted to decide in a particular case, what is the substantial question of law. In India, the Supreme Court is only the authority which should decide on substantial question of law. If every High Court is entrusted with that power, that will led to clearer injustice, to every litigant

SHRI S. K. MAITRA: Under our Constitution, Article 133 says that an appeal shall lie to the Supreme Court if the High Court certifies that the appeal involves a substantial question of law of general importance. There is a distinction between the substantial question of law as envisaged in this Bill and in the Constitution. While under the Constitution, the substantial question of law is to be of general importance, under the Bill the question of law should be substantial as between the parties.

SHRI MANOHAR RAO JAGIRDAR: I do agree but one thing I would like to mention is that at the time of admission, in the High Court, the judge who admits must say what is the substantial question of law, whereas, according to the proposed bill, he need not give any reason. I would ike to submit that the way in which the recruitments are made in our country is to be considered. So far as lower judiciary is concerned, various considerations are taken into consideration either communal considerations, or regional representations, whatever may be good or bad, while appointing lower judiciary officers. If their judgments are made final and the High Courts are completely prohibited from going into the matter, my submission is, it will cause greatest injustice so far as litigant public are concerned. Though it is a perverse finding, the High Court will not interfere in the matter and it will cause a great injustice, according to me, if Section 100 is amended as proposed in this Bill. The real fact is there will be a check on the lower judiciary to see that there is a higher authority to correct the mistakes. If that check goes, then, there will be no fear and what the lower courts will decide will be the final and in the given circumstances in which our society is now working, if that check is removed, i.e., the control which the High Courts are having over the lower courts, then, it will led to injustice. From that point of view, the Section 100 should be retained as it is. Judges does commit some mistakes but the question is appointing proper judges which is a different aspect. The question is, the judges for some times committing mistakes and therefore cut down the right of appeal. This I think is not good.

My first suggestion is, taking into consideration the volume of litigation now which is going on in the country, the number of judicial officers in Taluka headquarters, District headquarters and in High Court has to be increased. In every Court, according to my experience, in the lower judiciary, i.e., either before a Munsiff or a Civil Judge, a long list of 30 to 40 cases will be there and nearly 2 hours will be taken for adjourning the cases or attending to preliminary things. Any honest officer if he wants to apply his mind on the facts of the case, it will take nearly 2 hours for him atleast to go through it and decide which case should be taken, which case should be adjourned and in which case, witnesses are ready. Later on, he can record 2-3 statements of the witnesses. In the meantime, he may hear some miscellaneous applications. This is the position throughout the State and in every Munsiff Court, you will find 30—40 cases. If that is the position, is it possible to say there is delay? Delay is due to the fact that the number of judges are less. Therefore, more judges are required taking into consideration the volume of work.

The other thing which should be taken into consideration is, that while appointing Judicial Officers, always merit should be considered. If merit is not there, naturally, there will be delay. Inefficient man may not be

able to carry on the work properly. Why I am requesting to increase the number of judges in High Court and in lower courts is, to see that the delay is avoided and the cases are early disposed of. While disposing cases, there should not be unnecessary hurry. If there is unnecessary hurry, there is the possibility of committing injustice, whatever may be the intelligence of the judge. That is more dangerous. Therefore, more number of competent judges should be appointed so that all these cases should be disposed of. If there is more pendency of litigation in the lower courts or at the High Court, temporary appointments of competent persons have to be made till the arrears are all wiped out and later on, regular work can go.

In servicing summons and in getting the witnesses on the date of hearing and all that, the Presiding Officers have to take strict action to see that summons are served and to take recourse to coersive methods for the attendance of witnesses. Therefore some strict action is necessary in order to see that the parties and the witnesses attend the Court.

The other thing and the most bad so far as our legal system is concerned is, we get a decree early, but execution is always being delayed. In one case, my senior-senior got a preliminary decree. Later on my senior was also undergone that case and later he became the judge of the High Court and later on I also handled the same case and it took nearly 40 years to execute the decree. Ultimately, we could not get anything though we are the decree-holder. In such decrees, I want to suggest that, so far as money decrees are concerned, once the trial court decrees the suit, the parties may have the first appeal, second appeal but stay should not be granted unless until the judgment debtors deposit the entire amount in the Court. He should deposit the entire amount as soon as the decree is passed, in the Court, though you may not pay to the Respondent immediately till the appeal is over. So far as suits regarding immovable properties are concerned, once the trial court decrees the suit, the properties should be taken under the Court custody. The receiver should be appointed and the property should be under his custody. If the stay is granted, the concerned appellant may try to prolong the litigation as he will be in possession. The Receiver will try to expedite the hearing.

MR. CHAIRMAN: I request you to send your observations in writing for the consideration by the Committee. You may kindly send the replies to the questionnaire also. I request Members to be brief. Because, they are going to send their replies to the questionnaire.

SHRI M. C. DAGA: Do you want that Sections 100 and 115 should be retained?

SHRI MANOHAR RAO JAGIRDAR: Yes, as it is, it should be retained.

SHRI M. C. DAGA: I think you must have gone through all the Sections of the Bill. Do you say that pre-trial enquiry should also be made applicable in other cases like the one required under Clause 83—pages 63-64?

SHRI MANOHAR RAO JAGIRDAR: Because, matters could be settled with the mediation of the Court.

SHRI M. C. DAGA: Do you want the difference between the Labourer and agriculturist?

MR. CHAIRMAN: I have already requested them to reply to the questionnaire. Now, on such of the clauses on which you have not made any comments, you can do so.

SHRI R. V. BADE: You have said about cheap litigation. Do you think for that purpose, there should be some restriction on the fees?

SHRI MANOHAR RAO JAGIRDAR: What I have stated that you have to reduce the cost of the litigation. In every stage even in Supreme Court also, there is a schedule of fees for Senior lawyers and Junior lawyers. They are prescribed under the Code of Advocates. That itself is exorbitant.

MR. CHAIRMAN: Can it be provided in the proposed Amendment Bill?

SHRI MANOHAR RAO JAGIRDAR: The purpose for which you are amending is to reduce the burdens of the litigant public. If you really want to do this, there is no harm to do it. In the Code of Advicates it has to be prescriebd. When they have prescribed for other things. even with regard to the fees of the Advocates a provision could be made.

MR. CHAIRMAN: Whether it can be incorporated, or not, we will examine it.

SHRI R. V. BADE: We have got different Acts in different States with regard to the Court fees. How can we provide it as it is a State subject?

SHRI MANOHAR RAO JAGIRDAR: These are the causes, I have pointed out. It is upto you to accept it.

MR. CHAIRMAN: How it has to be meted out is another thing.

SHRI D. N. MAHATA: What do you say about the definition of labourer and the definition of agriculturist, and do you want to fix certain maximum ceiling limit to their income?

MR. CHAIRMAN: You will find that there are certain definitions. You may kindly examine them and if you got any comments to make, please send them us.

SHRI MANOHAR RAO JAGIRDAR: Yes.

SHRI B. R. KAVADE: While you were suggesting that Section 100 should be retained, you have given the reasons that the appointment of judges are made according to the regional basis and caste basis by which method, justice is not delivered to the expected standards or levels. Will you still say that if the draw-baks are removed, is there any necessity to retain that Section 100?

SHRI MANOHAR RAO JAGIRDAR: At present, at the given set of circumstances, the remedy to that defect is not possible. Therefore, control must be there.

MR. CHAIRMAN: On behalf of myself and my colleagues, we thank you very much for the evidence given before us. You have taken the trouble of giving your valuable evidences before us very nicely. I can assure you that the Committee will give its earnest consideration to your suggestions made before us. We are also looking forward to your replies to the questionnaire. You can also send us other suggestions which you want to make. I thank you once again and to your colleagues for your kind co-operation.

(*The Committee then adjourned*).

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE B OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Monday, the 7th October, 1974 from 11.00 to 13.30 hours in Committee Room, Gujarat Vidhan Sabha, Griha, Gandhinagar.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rajdeo Singh
3. Shri T. Sohan Lal
4. Shri Niti Raj Singh Chaudhary

Rajya Sabha

5. Shri Bipinpal Das
6. Shri Syed Nizam-ud-din
7. Shri V. C. Kesava Rao

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. **Shri L. L. Meghanee, Bhavnagar.**

II. **Government of Gujarat (Legal Department Gandhinagar)**

Spokesmen :

1. Shri A. M. Ahmadi, *Secretary.*
2. Shri D S. Majumdar, *Deputy Secretary.*
3. Shri I. V. Shelat, *Deputy Secretary.*

SHRI L. L. Meghanee, Bhavnagar.

[The witness was called in and he took his seat]

MR. CHAIRMAN: Mr. Meghanee, you may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI L. L. MEGHANEE: I have just signed that and I am happy about it.

MR. CHAIRMAN: But even then, it is necessary to draw your attention in this Committee also to this direction which provides that whatever evidence you will be giving before this Committee will be treated as public and as such it is likely to be published also. But in case you so desire that all or any part of your evidence should be treated as confidential, we will do so. But even if it is treated as confidential, it would be made available to all the Members of Parliament. And you have already noted the contents of the said direction as you said earlier.

Now, Shri Meghanee, we have received your memorandum on this bill. We have all gone through it. I mean, our Hon. Members have also gone through it. It has been circulated to them. Now, may I request you to high-light any of the points that you have raised in your memorandum. Here in the memorandum you have mentioned at several places that the major part of your evidence would be oral.

SHRI L. L. MEGHANEE: Not major part of evidence but certain part of it which was not possible for me to reduce it in writing in such a short time.

MR. CHAIRMAN: Yes. Would you kindly take up those points in whichever manner you like. You are most welcome.

SHRI L. L. MEGHANEE: Before I proceed further, Sir, I have a request to make. I have to produce about nine documentary evidences to be taken on the records of this Committee. I have brought them with a list of the documents also. shall feel obliged if any of your officers would kindly receive them.

MR. CHAIRMAN: Yes. We would receive them.

SHRI L. L. MEGHANEE: I am grateful to you, Sir.

Now, Sir, if this Committee very kindly permits me to refresh my memory by going through certain relevant portions from the same memorandum which I have submitted, I shall be grateful.

MR. CHAIRMAN: Yes, you can refer to your memorandum.

SHRI L. L. MEGHANEE: Sir, I am not an educated person. The Hon'ble members of the Committee would kindly ignore mistakes in my workable English language, and would allow me to stand while addressing the Committee.

SHRI RAJDEO SINGH: Well, if you feel comfortable to speak by standing you can do so.

SHRI L. L. MEGHANEE: Sir, mike would create unnecessary disturbance between us and I may be permitted to speak by standing.

MR. CHAIRMAN: Yes. If you want, you can speak by standing and without a mike.

SHRI L. L. MEGHANEE: Sir, I have to draw the attention of the Committee on certain preliminary points. I do not know whether they should be called preliminary points,

or, fundamental points for the work of the Committee. Because, according to me it constitutes the foundation of the work of the Law Committee. of the Ministry of Law and Justice of Government of India and of this Sub-Committee too.

The fundamental truth kept in view by the Committee is that however elaborate and sincere has been the work of the Law Commission and the zeal of the Ministry of Law and Jus.ice and may be now of this Committee, the ultimate result of every one's would depend not on amendments passed by Parliament and the laws made thereupon, but would depend on the manner in which the laws so made are implemented by the Judiciary of the States and of the country.

I would like to draw attention of this Hon'ble Committee to one simple question, that what is the use of making any amendment in any law when we positively know very well that the laws which are already found to be perfect and satisfactory and are never thought to be requiring any amendment, are not implemented by the courts of law.

Sir, I must make it clear that I was not interested and I shall never be interested in my life time in the politics, but Sir. I am very much interested in the life, the life of the common man, of the simple people, Law and order is a question of life and death for these common men, because their life totally depends on the law and order in the socity they are living in:

And therefore, Sir, this question of implementation of law, according to me is one of the questions and the most important question before the Committee, and is a matter of life and death for the common men. The actual rulers for the common man, are not Prime Ministers, Ministers of States and Rashtrapais, but they are the Judges of the Courts of Law.

For the ecommon men, their Parliament, their Supreme Court, their everything is the Court of law. It begins from the Police Station and Police Officer and then it ends, for majority of the common men, in the courts of the first instance, because they are not in a position even to think of going too the High Courts.

Now Sir, while speaking something about the Judges, please let me make clear, that I am not out with any campaign against the judges, because I myself know the work of a judge is a very difficult job.

I have already mentioned in my memorandum that even for a mother, it is difficult to find out which one of her own two quarreling sons, born out of her own blood, is lying and which one is not lying, which one should be relied upon and which one should not be relied upon.

From this, if we judge the nature of a Judge's work in the court of law, we would realise that his work is not only difficult but is next to impossible. Because the judge has to find out the truth from a jungle of lies created by advocates.

But your honour knows that the advocates alone are not to be blamed for the said lies, we all know, and I have submitted all the documentary evidence also to prove before this committee beyond any doubt of any nature whatsoever, that the lawyers and advocates have not been left with any other way for them than to please the judges even by telling lies in order to have even the just orders passed in their favour by the Judges. The saying is well known in the legal profession that for an advocate it is better to know his Judge more than knowing his case.

There are many other well know slogans, known to the highest officers to the smallest one in the Judiciary. For an example. "The Justice delayed is the Justice denied." Justice delayed is a fact admitted by the Judi-

ciary and confirmed by documentary evidence like our present Bill itself. The Bill itself states that it has been required to be introduced in Parliament to find out remedies against the delay in Justice.

Now, Sir, how can we expect the people not to take the law in their own hands when we ourselves admit that the courts of law are not delivering Justice in due time, and before it is so late that the delay amounts to denial of Justice? This is one very simple question but most important question for the Hon'ble members of the Committee to be thought over.

On the other hand we order the people that "You are not permitted to use your sword which you are having to protect yourself and the common man who is so prevented from using his own sword is not entitled in law to ask the judiciary why the said firearms are not used when required.

This is the substance of everything that I have come here to submit before the Committee. I have not written this in my memorandum because this is one thing which, I should always avoid to put in writing and avoid thereby any agitation to be launched in this respect by interested anti-social elements in the society. I am not a person believing in agitations of any nature whatsoever for any good cause, which cause would never be helped but would suffer by agitations.

Neither the agitators nor the Rulers are ever worried about the consequences of their agitations and of their indifferent attitude against the agitations. How much sufferings are being caused to the common men by these agitations?

Sir, I have requested that my English language is only a workable one. If I am allowed to say it in Hindustani I would say, that हमारे आंगन में मैला पड़ा हो तो क्या सारी दुनिया से कहना चाहिए कि आकर साफ करो और उस बात पर आंदोलन शुरू कर देना चाहिए ? उससे जनता की सेवा होगी या मुसीबत बढ़ेगी ?

Section 52 of the Indian Penal Code says that "Nothing is said to have been done or believed in "good faith" if it is not done with due care and attention." We should appreciate that a specific section has been required to be enacted in law—i.e. the said section 52, to define the words "good faith" in their true meaning.

If this provision of section 52 of the Indian Penal Code is properly implemented by the judiciary, everyone responsible for agitations and for indifferent attitude against the agitations, irrespective of his being from any political party or from the Governments, could be so dealt with by the said negative aspect of the common men and the simple people of the country could be assured of that peaceful life and social security and justice which they are entitled to demand from the State under the provisions of our Constitution.

This is one thing which I would repeat again and again, and all that I have stated hereinabove could be reduced in few sentences, that is, when we know that the law which we are going to amend is not going to be implemented at all even after the amendments, it is no use wasting so much of public money after amending that law.

This is one negative point of my submissions but a very important one for the Committee to apply its mind to this negative point and save thereby a number of their positive attempts of bringing some really good results out of its work, from being defeated by the said negative aspect of the work of the Committee.

MR. CHAIRMAN: You have expressed your feelings about the Advocates and Judges and the Courts but you must appreciate that we have to examine the Bill and the comments on it as it is introduced in Parliament and Parliament in its wisdom has thought that the Bill requires further examination to see whether any changes are required as you also mentioned from the extracts from the reports of the successive Law Commissions.

For a Parliamentary Committee like this to examine a Bill, we have to observe certain rules. The rule provides that we have to see the provisions of the Bill before us and which will serve our purpose as provided in the Objects and Reasons to which also you have made a mention.

Now, so far as the general principles are concerned, there you have said before the Committee that no law would serve the purpose unless that law is implemented by those who are responsible for its administration. There are no two opinions about the fact that any law however whole-some it may be, must also be properly implemented and enforced. On that you have made certain observations. Then you have mentioned in your memorandum and you have also high-lighted it that the judiciary and the advocates should also rise to the occasion and administer the law in its true spirit. Then you spoke about the causes of the common man in so far as the justice to be meted out to them is concerned. Am I correct?

SHRI L. L. MEGHANEE: Correct Sir. Only one thing I would like to add and mention that...

MR. CHAIRMAN: Right. I will give you time for that also. Now, having outlined those things, those general observations which you have also high-lighted, there are no two opinions that the law should be properly administered. Then you said that the justice delayed is justice denied. May I draw your attention to one of the main purposes of this amending bill of Code of Civil Procedure and that is this that we have to reduce, if not to eliminate, the delay which has been faced by the litigants. That is one thing. And the second thing is to give some help to the poor litigants, that is the common man, who cannot go to the highest court of the country. In your preliminary observations before this Committee, you have mentioned that so far as they are concerned, their final place of justice is the court of the first instance because they cannot go to the High Court, leave apart the Supreme Court. Therefore, I would request you to concentrate, if possible, on those specific provisions of the Bill to which you think that certain improvements should be made. You have stated in your memorandum and referred to the Objects and Reasons. Then in Paragraph 6 and in several other sub-paragraphs you have mentioned something. On those points, if you kindly elaborate it would help the Committee to appreciate your specific points pertaining to the Bill and within the limits prescribed therein. That would make our task much easier and be helpful with your mature experience in the public life. So, I request you kindly to elaborate and concentrate on such points which are relevant.

SHRI RAJDEO SINGH: The hon. witness has just stated and I think the statement is a negative attitude on the subject. I want to know from the witness whether there are some positive suggestions also to correct the situation, which, according to him, operates in the judiciary in the Districts.

MR. CHAIRMAN: Here again, the hon. Member, my colleague, is very right and he has only corroborated what I have observed and that would help the Committee. Kindly be specific on your suggestions on the

various clauses of the bill. We should try to put our efforts in that direction. Now, may I say one thing? There are two aspects that you have to consider. While agreeing with you for the purpose of emphasising the point that you have made that no law, however wholesome it may be, will bring justice to the people, particularly the common people, unless they are meticulously enforced and administered by the judiciary. Your complaint through your memorandum and your oral evidence here is that in your estimation the judiciary is not discharging their function as they should. On this score, while we enter into this discourse with you, may I say this....

That takes us to another thing as to how our Judiciary should be constituted and how should the judicial functions be over-seen and how to supervise the proper functioning of the judiciary. Now, here the Constitution has provided a distinct rule various courts and that function has of supervising and over-seeing of the been assigned to the Supreme Court and various other agencies, such as, Bar Association to look after various aspects of this matter, *viz.* the administration of the judicial superintendence of the High Courts etc. You will find it in the Constitution but even I think if you can point out that Civil Procedure Code as proposed and now the Parliament is seized of the problem. If you want to provide any amendment, you kindly point out.

SHRI L. L. MEGHANEE: I am highly thankful to the Hon'ble Chairman and to Shri Raj Deo Singh. Both are correct, but my answers to all this are already there recorded in my memorandum. I have not yet completed the first part of what I have to say. With the permission of the Committee, Sir, I would like to take little more time, if the Committee does not permit I will close.

The limitations of Committee's work brought to my notice, have not been overlooked by me. I know that the basic work and object of this Committee within the jurisdiction of Committee, is to find out certain positive and constructive suggestions for the amendments, and not to waste its time after distructive or negative observations. But, Sir, I think even the beginning part of my submissions is not destructive.

MR. CHAIRMAN: I did not say so.

SHRI L. L. MEGHANEE: I myself say so, because it is a very thin line of distinction between the word negative and the word destructive, and my submissions might be taken as destructive because the part which I have not yet completed is not yet found to be constructive for the object which is before the Committee. This I myself admit Sir, and therefore, I feel that I must now concentrate more on the constructive side of my submissions.

Sir, the Committee would be pleased to find that my constructive suggestions have already been in a very precise manner in my reply to the Questionnaire that was sent to me by the Committee.

Sir, I should not leave anything unsaid within my limits to impress on the Committee, and must, therefore, request the Hon'ble members of the Committee to appreciate, that—that any Committee or any authority whosoever they may be, or even an ordinary officer of them, when asked that—"Look here, you are supposed to do only this much and nothing beyond that"—, so far as the military and its discipline is concerned I would not indulge saying anything, but where the civil questions are concerned, I submit Sir, that even an ordinary civil officer has every right—not only has right but it would be more of his duty, to bring to the notice of his superior

officer or authority, any and all such things which he thought to be worth considering for the purpose of that work which is asked to carry out.

I do agree with your honour on the point that the work given to this Committee is, no doubt, a limited one. But for that limit the Committee cannot afford to forget the very purpose for which it has been asked to carry out that work, spending so much public money and energy of the hon'ble members of the Committee.

Now as Your Honour has ordered, I would come to the constructive side of my submissions.

MR. CHAIRMAN: I would like to make clear once again that so far as the administration of a particular law is concerned, surely that is very important and the committee takes note of that. It is not that the implementation of law is not important. I did not say that. At the moment, the point is whether the amendments that are proposed in this draft bill are educative enough. The other point is, having done that, the meticulous implementation of the law as will be amended and that requires to be attended to. That observation has been noted.

SHRI L. L. MEGHANEE: I would like to satisfy Shri Raj Deojee first, because his question in respect of the implementation of law as observed by me is very much like that question which has been put to me by the chair.

You have said Raj Deojee, that you have seen my memorandum which is on record and you are aware about its contents. But it is significant that in spite of all that, it becomes necessary for me to remind you again and again about my those answers to your questions, which are there in that memorandum itself which is on record and is seen by you. With all my respect for the committee Sir, I must try to impress on the committee about this glaring example of the fact that when such important things which are there on the record and yet are forgotten or overlooked through oversight, it can be the reason for me to doubt whether my observations on the question of implementation of law also can be forgotten or overlooked in the same manner.

MR. CHAIRMAN: You should have no doubt about it at all. As I have said the observations have been taken note of. We will also examine this observation that you have made regarding the implementation of law.

SHRI L. L. MEGHANEE: I am coming to the next portion and replying that question, that what positive contribution could be done by me to the questions raised in the Bill and which are before the Committee.

आप ने भी बताया और अध्यक्ष जी ने भी बताया कि रिकार्ड देखा गया है ।

My first memorandum on record is there already before you Raj Deojee, and if you would turn over to pages 9, 10, 11 you would find the paragraph 18 thereon completely devoted to, according to you, the constructive side of my submissions. There I have made all constructive suggestions. Even the very first page of the title of my said memorandum shows that the concluding part of the memorandum contains constructive suggestions.

I have submitted my memorandum in four parts as shown on the said title page.

First part is preliminary, second is findings, third is submissions and fourth is suggested additions, which suggestions are positively constructive.

Sir, for additions which are suggested, I would not like to impose myself over the Committee, wherever your honour feels that it is not a question of my thinking but is a question to be decided by the Chairman of the Committee, and wherever the Committee think that I am wasting time, your honour can safely and without hesitation stop me at once.

I have mentioned there in one or two important parts of the Civil Procedure Code, one of them is Order 10. This Order 10 is a short one containing only four rules therein, and the entire Order is found to be essentially mandatory for the Judges.

If the provisions of this Order 10 alone are properly understood and followed by the Judges as they have been directed to follow by Civil Manuals, I think Sir, all the problems before the Committee and before the Judiciary too, would be solved. This is a mandatory Order to be enforced religiously by the Judges.

But as when a soldier refuses to use the fire arms given to him, it is no use giving him bigger number of and different qualities of fire arms, similar is the case of implementation of law to be thought over keeping all the aspects of the question in view, and that is why I have requested the Committee that such inquiries as suggested in my memorandum are very much essential to be ordered in certain cases by the Committee itself as the part of its research work, when a witness comes prepared with such cases, and prepared to answer any and all questions to prove his contentions in those cases, and undergoes punishments too, if fails to prove his said contentions.

Sir, I think this, to be most constructive part of my submissions which I have repeatedly reminded and emphatically recommended in my memorandum. The other important constructive part is my comprehensive answer to the very first question of the questionnaire, which is also circulated and copies thereof have been given to the hon'ble members in the morning at the guest house.

MR. CHAIRMAN: We have received the copies.

SHRI L. L. MEGHANEE: So Sir, only if this much is done, and when the Committee had been so kind to circulate the questionnaire which is containing practically the essence of the entire Bill and which questionnaire has also been answered by me precisely, now if the Committee deals properly with the very first question alone of the questionnaire, I am confident that the purpose of the entire Bill would be served thereby to great extent.

I think this should satisfy the Committee and the hon'ble members as far as the important, positive and constructive parts which according to the Committee, are within the limitations of the committee, are concerned, and the reply given by me to the questionnaire circulated by the Committee would be found sufficient.

सभी प्रश्नों के उत्तर मैंने उस प्रश्न पत्र के उत्तर में दिये हैं।

MR. CHAIRMAN: मैं यही अर्ज कर रहा हूं कि क्वश्चनेर का जो जवाब आया है आपके पास से उसमें सारी बातें आ गई हैं और भी जो बातें आप कहेंगे यह हम सारी बातें सुनेंगे।

You have said so far as this is concerned, it is there. Your only question is that it is not being properly implemented and that it should be implemented. If it is implemented, then much of the drawback in the

administration of the justice would be remedied. That is your point and that we take note of.

Now, so far as Order X is concerned, it provides for the oral examination of any party appearing in person or present in Court or any other person able to answer any material questions. Now Rule 2 is being substituted to make it obligatory on the part of the court to examine the party appearing in person or present in Court for elucidating the matters in controversy. That is the thing. In so far as Order X is concerned, it is already there and I think you also do not suggest any change to the existing Order and therefore there is no issue.

SHRI L. L. MEGHANEE: It is not correct Sir, I do have further suggestions and according to the Committee positive suggestions for the amendment in the existing Order 10.

MR. CHAIRMAN: You have suggested another thing. We will come to that. You have referred to this at page 10 in paragraph E. I am trying to refresh my memory. Now Clause 63 is like this:

"63. In the First Schedule, in Order X, for rule 2, the following rule shall be substituted, namely:—

'2.(1) At the first hearing of the suit, the Court—

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person able to answer any material question relating to the suit by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied.' ".

Now, this is an improvement to the existing order. Now, what you suggest is that each and every rule of Order 10 must be treated as mandatory in view or directions given to the Judges in Civil Manuals issued by such authorities like the High Courts of Bombay and Gujarat. That is what it should be and there is no question about it. So far as your reference to Order 10 is concerned, we appreciate the point that you have made that it should be adhered to and that it should be made mandatory.

SHRI L. L. MEGHANEE: It is already mandatory Sir, that is what I have said in the beginning that the entire order itself is essentially mandatory even as it stands today. But it is not being implemented in spite of the reminders and repeated directions given by the High Court to the Judges specifically that—"be careful, unless you follow the Order 10, justice will not be done properly to the parties."

I am having a questionnaire issued almost three years back by the Judicial Reforms Committee of Gujarat, and this very thing I had pointed out even at that time in respect of this Order 10, before that Judicial Reforms Committee appointed by the Government of Gujarat under that Chairmanship of the then Chief Justice of Gujarat High Court, but he also has not been able to do anything for the implementation of this Order 10, I do not know whether this Hon'ble Committee would like my this statement, but this is a statement of a real fact and an unfortunate fact.

So far as the question of constructive suggestions is concerned, I have stated that in my reply to Committee's said questionnaire I have already made the said suggestions in a comprehensive manner.

There I have dealt with the question about the Section 115 of the Code of Civil Procedure in altogether a different manner and in an eye opening manner. I am in agreement with the proposed amendment before the committee that this Sec. 115 should be deleted as proposed in the Bill, but it should be deleted not for the reasons which are given in the Bill, but for other reasons and more serious reasons. The reason mentioned in the Bill is quite different and fragile.

According to me, this section 115 of the Code of Civil Procedure is a criminally illegal provision and is against the law itself provided in the Indian Penal Code. That is my answer—most positive and constructive answer to the question asked in the Questionnaire in respect of the Section 115 of the Code.

Sir, I had an experience of an order passed in favour of a party and I advised the party to go in revision against that order. I was asked why that revision? I told him, that of course the Order was in his favour but it was passed on such a fragile ground that it could be smashed down within no time by the superior courts if moved by the opponent and therefore, he had every reason and right to get the order made on a proper ground by applying for in the revision.

Similarly, many amendments proposed in the Bill are very good but the reasons for proposed amendments are fragile and not strong enough to stand objections against the amendments if and when raised one or the other by any one. That is why I gave this example of the proper and improper grounds and reasons for the deletion of Section 115 from the Code which deletion is proposed in the Bill and not objected but welcomed by me also.

MR. CHAIRMAN: Well, that will not be recorded. Have you any other suggestions. So far as your original memorandum is concerned, and also your supplement which you gave this morning and also your replies to the questionnaire, I can assure you on my behalf and the hon. members of the committee, that every aspect of which you have drawn our attention, that will receive our utmost consideration. When we discuss this matter in relation to various provisions of the bill, we will make best use of the evidence you have given. You should not have any hesitation on that score at all. All your constructive suggestions, positive suggestions, as contained in your memorandum and as expressed here in your evidence, will be taken note of coolly and carefully by the committee.

SHRI RAJDEO SINGH: After hearing carefully what you have observed now and after going through the memorandum submitted by you, I feel that according to you the defect lies at the district level and not on the High Court or Supreme Court level.

SHRI L. L. MEGHANEE: No Sir, it is at the highest level, I have used a very bad language in my reply to the first question of the questionnaire—"corruption in the judiciary at the highest level"—I have to request your honour to refer to my memorandum dated 31st August, too.

The very recent experience, and my own experience in the Supreme Court has been that the Constitution bench of the Supreme Court itself has violated the Constitution, and, I have given this memorandum to the Committee with its heading. Flagrant Violation of the Constitution by the Constitution Bench itself of the Supreme Court of India as found confirmed by the Press report of the Press Trust of India."

P.T.I's that press report was published throughout the country Sir, I am sorry for making such allegations against the Supreme Court which is known by people as the last place for them to have Justice from.

But this is such an important question of great public interest, and so relevant with the mission of the Hon'ble Committee too, that it must be put to the notice of the Hon'ble members of the Committee who are the members of Parliament first.

Not only that Sir I have a request also to be made to the Committee, which I am compelled to do because of the Rules of Procedure and Conduct of Business in Lok Sabha, I wish to know from the Committee about its position in respect of my petition which I want to present before the Parliament in respect of said violation of our Constitution by the Supreme Court.

I find the Committee the most relevant and competent channel through which the said petition could be presented by me, because, according to the said rules I have to find out some member of Parliament who would be prepared to so present the said petition. And I find myself to be fortunate enough to have a big number of such members who know me and the content of my petition very well by this time through this Committee. So Sir, I request that the petition on the basis of my memorandum dated 31st August which is now on Committee's record as a documentary evidence to prove how the Supreme Court's Constitution Bench itself has violated the Constitution, be kindly arranged to be presented before the Parliament, and know from it Sir, that where is now the hope of Justice for the common men?

Kindly give me a minute more and I will finish Sir, I would repeat and state again that I am thankful to the Committee and to the Hon'ble members of Parliament for giving me this opportunity to express myself here, and I beg to assure them that I will never abuse the opportunity given to me.

MR. CHAIRMAN: I appreciate that.

MR. L. L. MEGHANEE: I don't believe in agitation, my desire itself for the said petition before the Parliament, should be sufficient for the Committee to believe in my these words.

MR. CHAIRMAN: I should make it clear so that whatever points Shri Rajdeo Singh has raised although it may constitute the subject matter of the petition to be presented to Parliament that is again governed by rules and procedure, therefore, it would not be quite proper for you to assume that beoause we are members of Parliament you have presented certain matters of petition which is for you to present to the Parliament. We will do whatever is within our limitation we will do but to treat this as petition before the Parliament is not correct. You have to follow the particular procedure for this. So it will not be correct to assume that because we are members of Parliament. It should be treated as petition before the Parliament. We will examine so far as the subject matter is concerned and whatever is possible for us so far as your submission is concerned. But this should not be treated as petition to the Parliament.

SHRI L. L. MEGHANEE: That is not my request Sir.

MR. CHAIRMAN: Then you clarify the matters raised by Hon'ble member Shri Rajdeo Singh.

SHRI RAJDEO SINGH: I was going through your memorandum. The first portion is that the defect lies at the district level in the judiciary but he has clarified it now that it is not only at the district level, but even the Supreme Court is not immuned from the corruption and all

those things. So, there are two factors which may be responsible for this, that is we Indians, as a whole, I am not forgetting the national character....

SHRI L. L. MEGHANEE: May I have your permission to interrupt and put one question to you in this respect Sir?

SHRI RAJDEO SINGH: Just a minute. Let me finish. There are two factors. One is the corruption all-round and there is no remedy possible now at this stage. Every where it is there. Either accept this thing or say that in the absence of national character such a thing happens. But what are your suggestions because we have to live in this atmosphere.

SHRI L. L. MEGHANEE: You have taken the most practical view.

SHRI RAJDEO SINGH: So, we have to face the Supreme Court. We have to face the High Court and we have too face the District Courts. They are all human-beings. Some of the judges may be corrupt while the others may not be corrupt. This is the correct position? Either this position is correct or everybody is corrupt without any exception. So, I am not clear about this thing What is your suggestion regarding corruption in the judiciary? First you kindly be clear on this point. That is to say, everybody in the line of judiciary is corrupt from the top, from the Chief Justice of the Supreme Court to the Munshiff in the lowest District Court, or they lack national character and, therefore, they resort to corruption.

SHRI L. L. MEGHANEE: Most fortunately in my latest reply to the said questionnaire I have cleared every letter of the questions put to me by Shri Rajdeo Singh. I am referring to my said reply to the questionnaire.

Shri Rajdeo Singhji would be happy to read my explanation about the broad meaning of the word corruption. By the word "'corruption" I do not mean only the bribe of money, bribe is not the only corruption.

कोई पांच रूपये दे और काम करा ले तभी करप्शन होता है ऐसा नहीं है।

This is not that corruption on which I have spoken here. I have given three examples in my said reply, of that corruption of which I have spoken, as it is stated hereinunder—

"A shop-keeper's act of asking higher price than the price fixed for the goods and of supplying less quantity and inferior quality of goods than the quality and quantity declared is corruption."

"A watchman's act of dodging or sleeping in the hours of his duty when he is supposed to keep awake and watch vigilantly for the safety of his employer's property is corruption."

"A soldier's act of keeping himself at a safe distance in the battlefield or running away from there for his personal safety is also corruption."

These are all different forms of corruption. And similarly, if a Judge who is the sentinal on guard to secure justice for the people, and, law and order for the Society, is found not vigilant but negligent in his solemn duty and heavy responsibility in the Court of law, it is a very bad type of corruption. So, by the use of the word 'corruption' don't mean that 'corruption' which is known as bribe and which meaning is prevailing in the society.

MR. CHAIRMAN: Will you kindly take your seat? Your reply to the questionnaire and the supplementary replies which you have given this morning to the Committee will be circulated. According to the word "corruption" it doesn't mean a person involved in money matters but negligence of duties, etc. also amounts to corruption. These are the ways how this administration of justice has to supervise and provide some guidelines and even make specific provisions that may be considered by the Courts to be framed therefor. But so far as these are concerned, even orders of the Court, the rules may be made mandatory.

SHRI L. L. MEGHANEE: It should be religiously implemented, mandatory it is already.

MR. CHAIRMAN: Mr. Meghanee. I draw your attention that whatever valuable information you have furnished us in your memorandum and the evidence that you are giving before the Committee and the supplementary reply you gave this morning to the Committee, I assure you that every aspect that you have mentioned in your memorandum, in the course of evidence before the Committee and the supplementary reply will receive our careful consideration. So far as the supplementary reply which you have given this morning, we will circulate to our Members so that all of us will examine them. We will give due consideration to it.

SHRI L. L. MEGHANEE: May I take it, Sir, that the Committee wants me to conclude?

SHRI RAJDEO SINGH: Well, if you have got any specific matter, you can say.

SHRI L. L. MEGHANEE: As I have already requested, if I am allowed to say more. I do not know how much time I will require to finish it, because I have brought all these books etc. to refer to, and I have spent about Rs. 1500 out of my pocket—out of my life-time savings. In fact I am financially ruined afer fighting all sorts of litigations from which only I have collected and collecting every-day my these experiences of law and courts of law which I am presenting here before the Committee.

And I am fighting all these litigations, not only for my self and my own interest alone but also for friend co-victims of the courts of law, and this I am doing from my own money of life-time saving, never having any obligation of any nature whatsoever from any one whosoever, for the said litigations so fought by me.

I should not take much time of the Committee now, I will be happily concluding my evidence Sir.

MR. CHAIRMAN: Mr. Meghanee, I have already made clear that your observations (a) during the course of evidence before the Committee (b) all aspects that you have referred to in the course of your memorandum and (c) also the documents that you have submitted to the Committee, will be examined carefully. Of course the discussions may continue for any length of time. You will kindly appreciate that we have to...

SHRI L. L. MEGHANEE: The purpose of my giving oral evidence before the Committee was to explain fully about the real position of the Code in the hands of judiciary, which position can never be helped by amendments in law. If I had known that this was the position of time here, then my presence to give oral evidence was not necessary, I would not have wasted this much time of the Committee, More for the reason that your Honour has already said that everything is recorded and is available on record, not only that, your Honour has assured me on behalf of the Committee also that everything will be carefully considered.

But Sir, I have been receiving this type of consolations for the last 40 years with no good result till now. I hope the same would ont be repeated.

SHRI RAJDEO SINGH: But you yourself confine to the Bill.

MR. CHAIRMAN: Even on the aspects which are very important, germane to the purpose, we have taken a note of it. On that also I have assured you.

SHRI L. L. MEGHANEE: I will conclude Sir. I will take only two minutes more to conclude.

I have to remind and request the Hon'ble members of the Committee about only one thing—i.e. my worry is, that questions of life and death of the common men are not dependent on decisions made by the Ministers, Prime Ministers, or Rashtrapatis on extra extraordinary matters, but it depends on the ordinary judgments given in the courts of law on common mens common problems arising out of their every day life, and the said judgments are given in accordance with the provisions of that law on which this Committee is sitting for making some research work and amend the law.

And therefore Sir, I remind the Committee again and again and again, that it is dealing with the questions of people's life and death, of common men's life and death, and of that common men's life and death who is never represented any where by any of the political parties on any of the said every day problems of the common Men's life.

My most humble request to the Committee therefore is, that if this Committee also is not going to think of the life and death questions of the common men, and is not going to take this matter as seriously as it should take, then there will be no hope of that Justice which has been promised to be secured for the peothe administration of the law in our Constitution. I think Sir, now I should take permission from the Hon'ble Chairman to conclude.

MR. CHAIRMAN: You have concluded. I have also to conclude by expressing our sincere appreciation of the trouble that you have taken, the labour you have taken to study this bill and to draw the attention of the committee to the various problems in the administration of the law in our country. As I have assured you earlier, we will appreciate every aspect that you have drawn attention of the committee. I am repeatedly telling that you should not have any hesitation about the appreciation of the committee.

SHRI L. L. MEGHANEE: I am thanking the committee on behalf of the common men for the kind and patient hearing given to me. I am staying here in the Pathikashram, Room No. 10, and I am staying for 2 to 3 days more. If the Committee wants any service of mine, I am at the disposal of the Committee.

[*The witness then withdrew*]

Government of Gujarat, Legal Department, Ahmedabad

Spokesmen :

(1) Shri A. M. Ahmadi, Secretary.

(2) Shri D. S. Majumdar, Deputy Secretary.

(3) Shri I. V. Shelat, Deputy Secretary.

[The witnesses were called in and they took their seats]

MR. CHAIRMAN: Mr. Ahmadi, I welcome you and your colleagues on my behalf and on behalf of the Committee. Before we may start the proceedings may I draw your attention to the direction 58 of the Directions

by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha reads—

"58. Where witnesses appear before the Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specially desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Now you have not submitted your written memorandum. So your remarks will be given entirely in your oral evidence before us. About the Bill that has been introduced in the Parliament you are welcome to make your observations on any provisions of the Bill.

SHRI A. M. AHMADI: So far as the provisions of the Bill are concerned some of the amendments proposed will have some salutary effect. There are a few matters which are not incorporated in this Bill to which I would like to draw attention of this august Committee. Now after section 11 of the Principal Act, the following section should be inserted namely:—

'11A. The provisions of section 11 shall, so far as may be, also apply to—

(a) every proceeding in execution,....." if read with sec. 47 of the Civil Procedure Code the combined effect of these two provisions is that even though under the proposed Code no appeal is provided in execution matters, the number of appeals will go to High Court and other Courts because an order passed in execution amounts to a decree, and therefore I would suggest that we should provide the definition of "decree" so as to exclude execution proceedings from being appealable because that only multiplies the execution matters. That is the first suggestion I had to suggest so far as the matters which are not included.

There is a came mistake to which I may draw your attention.

SHRI NITI RAJ SINGH CHAUDHARY: You said two points. What is the second point?

SHRI A. M. AHMADI: I am coming to the other point also. I was referring to two points because I think you will have to make an amendment in the provision which defines the decree or some amendment in Section 47 so as to preclude appeals being taken to the higher forums. That was the point that I was making.

Now, Sir, in sub-section (3) of Section 21 which is sought to be amended on page 3 of the Bill, I think in line 24th, there is a slight mistake. It should be "executing".

SHRI NITI RAJ SINGH CHAUDHARY: Yes, that is a printing error.

SHRI A. M. AHMADI: Yes. I just wanted to draw your attention.

Now, so far as amendments are concerned, there is no provision, as I find, made in the amendment for pretrial proceedings. I understand that in the United States they are having these pre-trials. It has been working quite well. Pre-trial procedure as applicable in the United States may possibly not be practicable to be introduced in its entirety here, but we can introduce a system where, after the issues are settled, the matter is sent to an agency or a board where the parties are called before the Board and attempts to bring about an amicable settlement between the parties are undertaken. If these

attempts fail, the matter may be taken up by the Court and it may proceed from that stage. Such a provision of having boards at the district level can be envisaged because this bill does not envisage such a procedure. I am only speaking generally, at present, without going through the amendments proposed.

The third point which I wanted to make is that we should try to make some provision in the Civil Procedure Code restricting the power of the Mofussil Courts to grant interim injunctions. I don't, for a moment, propose that the Mofussil Courts should be deprived of the powers of issuing interim injunctions. But what I am trying to say is that their power should be curtailed or restricted inasmuch as a provision can be made that the interim injunction that the Mofussil Court may grant should not be say for a period exceeding 14 days or 15 days at a time. The time can be enhanced if the defendant against whom the injunction has been ordered is not very keen to have it vacated or if he does not take immediate steps to file his affidavit in rejoinder or answer to the notice of motion taken out.

SHRI NITI RAJ SINGH CHAUDHARY: May I refer you to the amendments proposed to Order XXXIX on pages 73 and 74. I think you have perused them before you are making this comment. There, I think, we have tried to put some restrictions in Clause 89.

MR. CHAIRMAN: Mr. Ahmadi, what I would suggest is this that the Hon. Minister has drawn your attention to the provisions which find place in the Bill itself.

SHRI A. M. AHMADI: I am sorry. I have missed this point.

MR. CHAIRMAN: I am sorry I have missed that point. But on examination we will consider your view. The provision that you might think fit or the amendment which is necessary, you can suggest. Then take another point.

SHRI A. M. AHMADI: Then there is a provision to be incorporated in section 24A, so far as revision is concerned which does not find its place in the Bill and which needs consideration of the Committee. If you will kindly refer to Clause 24A on page 4 which is sought to be re-introduced in the Bill itself. So far as that provision is concerned, there are two objections:

(i) the introduction of this provision might protract the trial; and

(ii) such a contention can be raised in the written statement with the result that the application of this particular provison would become attracted.

Section 24A reads as under:—

"24A. (L) Where any Court subordinate to the District Court is satisfied that a suit pending before it, which it has jurisdiction to try, involves a question of such a nature that if a suit had been brought for relief based principally on that question the Court would have been incompetent to try the suit and that determination...."

What happens is, supposing a defendant raises one of these issues then there will be an appeal against that order and the proceedings might be delayed. So it is absolutely necessary that we may omit it.

MR. CHAIRMAN: We have noted all the points. After you finish, Members will ask some questions. So far as this clause is concerned, you feel there is no need of amending it.

SHRI A. M. AHMADI: Yes, I am now referring to page 5, clause 30.

SHRI A. M. AHMADI: So far as the provision is concerned, there is no objection, and I have nothing to say about it. I have something to say about our experience. I only wanted to put it before the Committee, so that the Committee might consider to overcome this difficulty. The experience is that, once a summons has been sent to another court in another State, it is very often found that the summons is not served for pretty long time. Not only that but it is found that the court to which it has been sent for service, does not even respond to the communication received from the other court which has sent it. The experience is that considerable time is lost in the service by this process outside the State. I only suggest that some provision may be made to overcome this difficulty.

MR. CHAIRMAN: What is your constructive suggestion on that?

SHRI A. M. AHMADI: This is a very peculiar situation, wherein, I don't think we can do much by incorporating some provision in the act itself.

SHRI NITI RAJ SINGH CHAUDHARY: If you turn to page 21, 19A has been inserted.

"The court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive, also direct the summons to be served by registered post addressed to the Dependant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain."

I think this should help.

SHRI A. M. AHMADI: The difficulty is this. Supposing it has been sent, there is signature of the acknowledgement, but nobody knows who has picked it up.

SHRI NITI RAJ SINGH CHAUDHARY: Now read (2), "When acknowledgement.....that there has been a valid service."

SHRI A. M. AHMADI: That would be in the case of refusal. What I am saying is.

SHRI NITI RAJ SINGH CHAUDHARY: "When an acknowledgement purporting to be signed by the defendant or his agent is received by the court or the summons is received back by the court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent has refused to take delivery of the summons" then the qualifying clause is there "the court issuing the summons may declare that there has been a valid service."

SHRI A. M. AHMADI: Will it be possible for the court to declare that the service is valid? When the court is not satisfied as to who has received the packet?

SHRI NITI RAJ SINGH CHAUDHARY: What alternative you would suggest?

SHRI A. M. AHMADI: I must confess that it is difficult.

MR. CHAIRMAN: On this, Mr. Ahmadi, if you come across any suggestion you can send to us. You have drawn our attention, we will also consider that. It will help us if you can, after further consideration, if you arrive at concrete suggestion, send us the same. That will help us.

SHRI A. M. AHMADI: I would draw attention to clause 14 the proviso. The proviso desired to be incorporated to sub-section (1) of section 34 is:

"Provided that where the principal sum adjudged exceeds rupees ten thousand and the liability in relation to the sum so adjudged has arisen out of a commercial

transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

Is it necessary that we draw distinction between commercial litigation as against other litigation where money is involved? Or can we not make the provision which may be applicable to all cases *i.e.* at the rate of interest, contractual interest, or the nationalised bank interest whichever is less?

SHRI NITI RAJ SINGH CHAUDHRY: We had a request by the money lenders to incorporate this and amend because if a man purchases the commodity and sales it at higher rates it is a common practice. There should be distinction between borrowing by a private individual and the Government and the Government institution. Para 32 of the fiftyfifth report of the Law Commission of India reads as under:

"32. We have in mind commercial transactions, *i.e.* transactions connected with industry, trade or business. Monetary liabilities arising out of such transactions stand on a special footing, because the activities concerned are carried on with a view to profit. The debtor and the creditor do not stand in situations of disparity. If, for example, it is a case of loan, then the money would have been borrowed for carrying on or improving the business of the borrower. It is far removed from a debt incurred by a poor agriculturist or a needy urban resident to make his two ends meet.

33. We are, therefore, of the view that:

(a) Where the principal sum adjudged exceeds five thousand rupees, and

(b) the liability in respect of which the decree is passed arose out of a commercial transaction, the court should have a discretion to order that the rate of further interest may exceed six per cent per annum.

For this purpose, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability."

SHRI A. M. AHMADI: There are observations of the Law Commission. If this distinction is maintained what happens is that in certain other suits where money is involved the defendant is interested in protracting the trial. Because it will be a considerably lower rate than the rate at which he will be able to procure money. The result is that he goes on protracting the trial as much as he can. This is the reason why I was saying that for the rate of interest we may not make any distinction between the commercial and other transactions. What I was suggesting is that the rate of interest may be contractual rate or national bank rate whichever is less.

MR. CHAIRMAN: Your suggestions have been noted.

SHRI A. M. AHMADI: May I now draw your attention to Clause 16 on the same page? This is about Section 35. There I have only one doubt and you will pardon me if I put it in the form of a question. Section 35B which is sought to be incorporated says that:

"35B. While making an order for costs in a suit or proceeding, the Court may, for reasons to be recorded, require the party to the suit or proceeding who is responsible for delaying, without any reasonable excuse, any step in such suit or proceeding, to pay such costs, commensurate with the delay so caused, as it thinks fit, and the costs so required to be paid shall not be included in the costs

awarded in the decree or order which is ultimately made in the suit or proceeding."

This has created a little doubt in my mind as to the stage at which the order can be made. The order can be made at the interlocutory stage; does the provision envisage that it should be made at the final stage? If it is to be made at the final stage the deterrent part of it may not be realised till the final stage is reached and at that particular point of time it would be too late.

SHRI NITI RAJ SINGH CHAUDHARY: Clause 16 is as under:

"35B. While making an order for costs in a suit or proceeding, the Court may, for reasons to be recorded, require the party to the suit or proceeding who is responsible for delaying, without any reasonable excuse, any step in such suit or proceeding, to pay such costs, commensurate with the delay so caused, as it thinks fit, and the cots so required to be paid shall not be included in the costs awarded in the decree or order which is ultimately made in the suit or proceeding."

SHRI A. M. AHMADI: That would go in the ordinary sense. The order may come the interlocutory stage or at the final stage, depending upon the nature of the application which is being disposed of.

MR. CHAIRMAN: Would you kindly read the remaining part also?

SHRI A. M. AHMADI: Yes, Sir, it is like this:

"35B. While making an order for costs in a suit or proceeding, the Court may, for reasons to be recorded, require the party to the suit or proceeding who is responsible for delaying, without any reasonable excuse, any step in such suit or proceeding, to pay such costs, commensurate with the delay so caused, as it thinks fit, and the costs so required to be paid shall not be included in the costs awarded in the decree or order which is ultimately made in the suit or proceeding."

MR. CHAIRMAN: That answers your query. The cost is to be allowed to the party who suffers from that delay. That is the distinction made from the decree. And then you read from the portion "... and the costs so required to be paid shall not be included in the costs awarded in the decree or order which is ultimately made in the suit or proceeding." I am trying to draw your attention to that.

SHRI NITI RAJ SINGH CHAUDHARY: The purpose is that such order can be made at the interlocutory stage and we felt that let us now make it complete. But you feel that there is some doubt. We have taken a note of it.

SHRI A. M. AHMADI: Thank you, Sir. Then. Sir, I come to the next point. This, of course, is little matter of experience which I will place before the Committee. This is the experience or what the judges have faced. Under the City Civil Court Rules, in Ahmedabad we have a provision where we allow, I mean, the judges allow to award costs in certain matters. Generally, what happens is that if an adjournment is sought, then we are allowed under the Rules, to award costs. But in practice, no body takes it. I mean both the sides are agreed on one point that this will not be recovered from either side. Therefore, even if we have a provision in the Code, the difficulty is very peculiar.....

SHRI S. K. MAITRA: The costs are included in the decree.

SHRI A. M. AHMADI: I agree but the purpose is defeated. Can we not make a provision of the type that the order of cost at that particular point of time would be to deposit money in the court not to be paid immediately. But the final order would make a mention about it. What happens ultimately is that the Judge at that parti-

cular point of time might have asked the party to deposit the money in the court. It may be a single instance where the party has been found guilty of delay. But on examining the subsequent conduct of that party, the judge feel that the party was in fact, honest in appearing before the Court for trial. So he might issue order that this gentleman should not be penalised for a single act of misconduct and he may be refund the costs. Ultimately how much amount of this money will go to the court.

MR. CHAIRMAN: When the case is ready for a particular stage one party submits a petition to the Court requesting for adjournment. That means the delay is caused. The other party is ready. They are ready with evidence etc. So for the sake of other party's adjournment, the party which is ready with all documents etc. would suffer. So why should that party suffers. This clause is meant for this purpose. Kindly examine all the aspects of the case and suggest what we should do in the matter?

SHRI A. M. AHMADI: I am only suggesting for your consideration. If it is deposited in the Court the Judge may order at a later stage to refund the costs to the party.

MR. CHAIRMAN: It is the Award of the Court. What is its implication.

SHRI A. M. AHMADI: I am not objecting to the Penal clause. On the contrary there should be some provision in the Bill. But I am trying to make it more effective that there is this particular difficulty which we have envisaged in many cases.

MR. CHAIRMAN: Well, the Minister has already suggested. We will consider how far we can do it.

SHRI A. M. AHMADI: There is one objection which Mr. Shelat would point out.

SHRI I. V. SHELAT: Sir, there is section 38 in the Code of Civil Procedure. Sometimes it happens that one suit is lying in one court. Another suit is lying in some other district which is far away from that court. What happens that the parties approach the High Court and get the suits transferred to one court. I will give you an example. One suit is filed at Bulsar and another suit was field at Rajkot. Now Bulsar is far away from Rajkot. Now the decree is passed at Rajkot for a party staying at Bulsar. Now party at Rajkot would try to go Bulsar for execution. Whereas the party at Bulsar may not know about the decree passed against him.

He would have to undergo lot of inconvenience. He might not be a native of that place. In such cases, when once a decree is passed by the transferee court, the execution should also be made by the original court.

SHRI NITI RAJ SINGH CHAUDHARY: In Section 38 of the Civil Procedure Code, you propose that the provision should be changed. The decree may be accepted by the original court or the court to which it is transferred.

SHRI D. S. MAJUMDAR: The decree may be executed by the court which passed it, or by the court which transferred the proceedings under section 38.

SHRI NITI RAJ SINGH CHAUDHARY: Suppose this is done, then the sale of property execution is there. That will be another problem. if we accept your suggestion.

SHRI A. M. AHMADI: I have nothing to say about the amendment proposed, but I have only one submission to make. In certain courts, particularly in Gujarat and Maharashtra, judgements are orally dictated. I think there should be some provision in regard to oral judgements. Because, it says "Where a written judgement is to be pronounced..." On page 37 clause 73 says:

"In the First Schedule, in Order XX—

(i) rule I shall be re-numbered as sub-rule (1) of that rule, and after sub-rule (1) as so re-numbered, the following sub-rule shall be inserted, namely:—

(2) Where a written judgement is to be pronounced.... So the Court shall pronounce judgement and the additional rule is to be added.

If I remember correctly actually previously there was a difficulty and there was an amendment on that. There was the case in Bombay City Civil Court.

SHRI NITI RAJ SINGH CHAUDHARY: We will try to get it from Bombay.

SHRI A. M. AHMADI: I will try to find out. Then I would draw attention to page 40 which is dealing with Order 28. Costs. So far as this provision is concerned there cannot be any dispute as regards the incorporation of this provision. But item 1(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party .... There is difficulty in calculating the words.

SHRI NITI RAJ SINGH CHAUDHARY: Why not prescribe per number of words say this much for 400 or 500 words.

SHRI A. M. AHMADI: That is what I was trying to suggest.

SHRI NITI RAJ SINGH CHAUDHARY: That can be covered under rules.

SHRI A. M. AHMADI: Sir with regard to that previous Bombay case that I was referring to, there was in the Madras High Court also similar difficulty. They had made some change in the rule regarding oral judgement.

SHRI NITI RAJ SINGH CHAUDHARY: Kindly let me see.

SHRI A. M. AHMADI: Now, I would draw your attention to page 48. The amendment that is proposed in Rule 54 of Order 21 line 15. Therefore, I have not much to say except that sub-rule (2) of the Civil Procedure Code as it is presently, states, that the order shall be proclaimed at some place on or adjacent to such property....." This has become almost out-dated.

SHRI NITI RAJ SINGH CHAUDHARY: No body does it except certifying that it is done.

SHRI A. M. AHMADI: So, we can as well make some change there and drop it, if I may say so. Generally it is only written and one rupee is debited.

SHRI NITI RAJ SINGH CHAUDHARY: Right.

SHRI A. M. AHMADI: On the same page, in Rule 57, we are incorporating Sub-rule (2). Here so far as the principle is concerned, there is nothing that I would say but the only question which I would pose is how long we should continue?

SHRI NITI RAJ SINGH CHAUDHARY: How long?

SHRI A. M. AHMADI: There is one suggestion which is not found in this but I propose to make it. In the execution proceedings which we contemplate at present what happens is that when the decree for possession is passed and a warrant of possession is issued, an obstruction application is invariably given to the bailiff or process server. Now, the provision in the Civil Procedure Code as it stands today is that the judgment creditor or the decree-holder has to make an application to the Court for removal of the obstruction. Now, this causes lot of delay and protraction of the execution of the warrants.

SHRI NITI RAJ SINGH CHAUDHARY: Order 27, we are changing that,

SHRI A. M. AHMADI: It is not here. Not of the type I am suggesting. I am suggesting something different than what it is here.

SHRI NITI RAJ SINGH CHAUDHARY: What we are suggesting is in 52-53...

SHRI A. M. AHMADI: I am making a different type of suggestion which the Committee may kindly examine. What I am suggesting is that, generally, what happens that the obstructionist is not at all eager to see that the obstruction application is disposed of quickly. More often than not more obstructions are made for the sake of obstruction. What I am suggesting is that instead of this particular provision we can reverse the whole system. If we reverse it possibly the delay part will be reduced considerably. Instead of providing that the judgment-debtor shall make an application for setting aside obstruction, I would suggest the obstructionist shall establish his claim within 30 days. Then, what will happen is that the obstructionist will have to come to the court to establish his right over the property or the possession of the property. The judgment-debtor who is too eager to obtain possession will more often than not waive service. So at present when the service of the process is effected on the opponent he often evades service of the process with the result that the service is not effected even within 6/8 months time. This delay will be bridged if we make a provision that the obstructionist should come to the court and establish his claim within thirty days. Besides at present we are asking the judgment debtor to prove the negative.

SHRI NITI RAJ SINGH CHAUDHARY: It may be a paper possession. The possession may continue and the judgment-debtor will never even file a fresh application. So it is delayed. Then the position can be that the person who obstructs may not appear at a time when possession is taken about the papers. Thereafter when he goes for effecting the decree for actual possession he does not succeed. He will say, well, he might not be able to get it. So he will have to file a fresh suit.

SHRI A. M. AHMADI: What happens the court issues a decree. The decree-holder's application is valid. Normally third party is not bound by the decree. But since he has to establish a claim, he must establish it within a prescribed time. In short we must make it clear "*within thirty days*" in the clause itself.

MR. CHAIRMAN: Well, your suggestion is that the third party has a claim. He must come. He must make a claim and come before the court and decide that.

SHRI A. M. AHMADI: Otherwise he will be in dispossession of it

SHRI BIPINPAL DAS: Why should the third party come to the court?

SHRI S. K. MAITRA: The point is that when a decree is obtained, the obstructionist is in possession of the thing. Then why should he come to the court?

SHRI A. M. AHMADI: At present as the things are, if we make provision to this effect, he will certainly come to the court and that will save lot of time.

SHRI S. K. MAITRA: That will lead to frivolous suits and would compel a third person to establish his title. That will be dangerous.

SHRI A. M. AHMADI: He may be either an applicant or an opponent. In fact when the person sets up a claim, he will have to establish his claim. Supposing the decree holder comes to the court, he has got to come to the court; after having come to the court, he has to establish his claim. What I am proposing is nothing new. I am only saying let him make the application within 30 days and establish his claim.

MR. CHAIRMAN: In the light of your suggestion, you kindly send us

the same in writing to the office of the committee, so that the committee may consider.

SHRI A. M. AHMADI: Very well, Sir. Now I would like to draw the attention to page 78 Sir, clause (aa) to Order 41.

> "The party seeking to produce additional evidence. establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not be produced by him at the time when the decree appealed against was passed,

I am only proposing that the latter part of this provision should not be there. "or could not be produced by him at the time when the decree appealed against was passed? The first part is alright, but the later part, would only reopen the trial again at the appellate stage.

SHRI NITI RAJ SINGH CHAUDHARY: Let us read Order 41 as it stands. If you read Order 47 Rule I you will find almost identical language and, therefore, we have copied these words.

SHRI S. K. MAITRA: In some cases it happens that in spite of diligence, some documents which are not in his possession, he cannot produce. That is why this amendment is proposed to be made so that that difficulty should not be there.

SHRI A. M. AHMADI: I am one with you with the view that the evidence which he could not produce in spite of due vigilance may be allowed to be produced. That purpose would be served by part one. I am, therefore, of the view that for Part one there is no objection but the second part will open the flood gates because....

MR. CHAIRMAN: We have your view before the committee that while first part should remain there the second part should be reconsidered.

SHRI A. M. AHMADI: There are one or two matters which I will draw attention of the Committee. At present. Sir, in the judicial hirarchy in the State of Gujarat, there are Civil Judges. Jr. Div. Civil Judges, Sr. Div. District and Sessions Judges and then the High Court. At present appeals from the decision of the Civil Judge (Sr. Div.) go straight to the High Court. To relieve the High Court of the pressure a provision can be made that the appeal shou d go to the District Judge of the District Court. That is one suggestion for the Committee to consider.

MR. CHAIRMAN: That is one. Then?

SHRI A. M. AHMADI: Jr. Div. Judge has some limited jurisdiction. On this particu'ar aspect he has some limited jurisdiction. But if the Committee is not in favour of that proposal then of course the other alternative is to raise the limit from Rs. 10,000 to Rs. Rs. 20,000. My first proposal is that it should go to the District Court by way of an appeal. If the Committee is not one with that view then I would put the alternative and make a suggestion that the limit should be raised from Rs. 10,000 to Rs. 20 000.

SHRI I. V. SHELAT: In the case of a suit for accounts. involving Rs. 1 lakh, that can be tried by Junior Division Judge and the appeal lies to the District Court.

MR. CHAIRMAN: Yes, any other point.

SHRI D. S. MAJUMDAR: Clause 42, Section 103, page 14. The limit to the second appeal is only to the specific question of law and that has to be said by the High Court and the appeal has to be limited to that question. Now, while introducing the proposed amendment to Section 103, what is said is that the question of fact would again be agitated at the High Court. So, that would not be consistant with the provision of Section 103.

SHRI NITI RAJ SINGH CHAUDHARY: So, what is your suggestion?

SHRI D. S. MAJUMDAR: It should be omitted. Clause (b) of the proposed Section 103.

MR. CHAIRMAN: So. you want that Sub-section (b) of Section 103 should be deleted. Do you want any further amendment?

SHRI D. S. MAJUMDAR: No.

MR. CHAIRMAN: Will you kindly examine the whole clause and send your suggestions.

SHRI S. K. MAITRA: But that decision has become wrong by reason of applying a wrong principle of law.

"103 (b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 10".

Fact has been wrongly determined by reason of application of a principle of law which has been reversed. Therefore the decision on facts it may be reversed.. Why? Because it was based on wrong assumption.

SHRI A. M. AHMADI: What we feel is that a question of fact. The court decides either way. Then the question is whether the decision of the Court on question of law has any effect or relation on the question of fact which is decided. Because otherwise what happens that on the question of law the High Court can decide inter-mingling substantive question of law. So what is apprehended that under clause (b) of section 42 (old section 103 of Principal Act) all questions of facts will be reopened wherever any matter of question of law is opened in the High Court.

SHRI NITI RAJ SINGH CHAUDHARY: So your suggestion is that we should take care that under new clause 42 the questions of fact are not brought in on questions of law as determined by section 100 of the Principal Act.

SHRI A. M. AHMADI: There is a difficulty in regard to the question of "substantial question of law". What is meant by " substantial question of Law?"

SHRI NITI RAJ SINGH CHAUDHARY: We have found a lot of cases on "substantive question of law". The latest case is of 1974 of Orissa. I think you just refer to it where you will find the definition about the substantial question of law" and the provisions of the constitution and the sequences.

SHRI A. M. AHMADI: In a decision in the Bombay High Court even the service of a notice or non-service of a notice was considered ' 'substantial question of law". It varies according to the situation. It is given different colours at different times. Sir, could we make some concrete provision.

MR. CHAIRMAN: Your suggestion is 'substantial question of law" should be defined in section 2. How its wording shall be, we would like to understand from you.

SHRI A. M. AHMADI: I quite understand the difficult proposition. Because "substantial question of law" is an expression which is very difficult to be given in a very precise definition. But from the decisions of various courts it would be possible to indicate what the "substantial question of law" is. It would be better. That is my humble submission.

MR. CHAIRMAN: We will consider on " substantial question of law" as to how it should be defined as you have just now illustrated. An indication should be given about it.

SHRI A. M. AHMADI: Yes, an indication should be given so that it would not be made vague.

MR. CHAIRMAN: Under clause 42, in the name of substantial question of law, the facts should not be allowed to be brought in. These are two points. As I mentioned in the other case, you can kindly apply your mind, try to concretise your suggestion and in what manner you would like this provision should be modified in the light of your judgement or the experience of the state and send to us. The Committee will consider that. We have already taken note of the suggestion in a general way. It will help us. You try to pin-point in what manner you would like the provision to be modified.

SHRI A. M. AHMADI: We should extend the application of order 37. At present order 37 is made applicable to certain courts, not every court has that power. I was only making a general observation that it should be extended gradually.

SHRI NITI RAJ SINGH CHAUDHARY: What change you would suggest?

SHRI A. M. AHMADI: I am not suggesting any change. At present it is not extended to all courts. That is only I am saying.

MR. CHAIRMAN: The general feeling is there. If you will kindly examine the existing order 37 and also various amendments proposed at page 71, which refers to order 33, and kindly take your time and try to pin-point to the committee.

SHRI NITI RAJ SINGH CHAUDHARY: Clause 87, Page 70. There the proviso is that "Provided that in respect of other courts, referred to in clause (b), the High Court may by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper etc. What wou'd you suggest?

SHRI A. M. AHMADI: So far as the provisions are concerned I have nothing new to suggest. I was only saying that there should be liberal application of order 37 to other courts. At present it is very restricted. Order 37 applies only in the State of Gujarat to the City Civil Court.

SHRI NITI RAJ SINGH CHAUDHARY: Kindly turn to page 70. Clause 87 this order was applied to following courts: "High Courts," Civil Courts and Courts of Small Causes and other Courts." Now what other courts you would like to include here?

SHRI A. M. AHMADI: It is already there but the proviso again restricts the application.

SHRI NITI RAJ SINGH CHAUDHARY: Provided that in respect of other courts referred to in clause (b).....as it deems proper. Courts are not omitted, only suits are omitted. Not only to restrict, but to enlarge also. This option has been given to the court.

SHRI A. M. AHMADI: If we can make a provision that other courts where suits are of the value of a particular amount, then that power would be with all courts.

MR. CHAIRMAN: That option has been given to the High Court. Now you suggest that such category of courts to be determined by the amount.

SHRI A. M. AHMADI: Category may not be dependent on the amount. It may be under negotiable instrument or suits against contract. This should be modified in such a way that the power to dispose of suits of a particular value should be available to most of the courts. Category may be defined.

MR. CHAIRMAN: Option has been given under the proviso to the High Court and other Courts. Will you kindly suggest exactly as to the limit of the amount?

SHRI A. M. AHMADI: So far as other Courts are concerned, my suggestion was that the power should be extended if the suits are of less than

Rs. 500 or Rs. 300 whichever valuc we might put.

MR. CHAIRMAN: You put the limit which in your considered view is just, or proper.

SHRI A. M. AHMADI: Between Rs. 300 to Rs. 500.

MR. CHAIRMAN: If you will give option to the Committee we will apply our mind. If you want to be specific and give afterwards in writing you can do so also.

SHRI NITI RAJ SINGH CHAUDHARY: But your Government should be agreeable to the contention.

SHRI A. M. AHMADI: We have not made any comment on this.

SHRI NITI RAJ SINGH CHAUDHARY: You say that it will open the flood gates for filing of appeals. For your information, these are orders which are not made appealable. Proposed sections are not being revised. So there would be no appeal. But you said that to save the time limit should be fixed for the time.

SHRI A. M. AHMADI: Yes Sir.

SHRI NITI RAJ SINGH CHAUDHARY: You were suggesting something on the point of pre-trial matters.

SHRI A. M. AHMADI: That might help in determining the compass of dispute.

SHRI NITI RAJ SINGH CHAUDHARY: May I request you to consider this matter again rather than to commit and send your concrete suggestions what your feelings are about pre-trial matters?

SHRI A. M. AHMADI: Very well.

MR. CHAIRMAN: I may make it clear that you are not committed to the Committee in any manner for your oral evidence regarding the provisions of the Bill on which you feel strongly some improvement should be made. So far as the bill is concerned, you will kindly refer to the clause and then make your amendment in some concrete form. That is one thing. That would be one category. That is in such a thing, you want such and such thing: Number two is that the new provisions which are not there in the Bill, the other provisions of the Code on which you have made suggestions and so on, they are also in the second category. You will kindly prepare your suggestions and say in what manner you require those provisions to be modified so that we can consider them.

Then, Mr. Ahmadi, our Committee has issued a questionnaire. It has been sent to the Government of Gujarat. But it has not been examined. We are, therefore, making one copy more available to you. You may consider it. You may kindly tell us on which questions you would like to advise the Committee. Then about the new provisions on which you feel very strongly that some improvement is necessary and also your replies to the questionnaire; on such questions on which you would like to submit your views, you may kindly send them to us as early as possible.

Now, on behalf of myself and the Committee, I would like to express our thanks to you and to your colleagues Sarvashri Shelat and Majumdar and to the Government of Gujarat for the cooperation that they have extended to the Committee for understanding the legal provisions of the Bill.

We expect your written comments and the suggestions at an early date.

SHRI A. M. AHMADI: I thank you very much, Sir, on behalf of myself and on behalf of my colleagues for allowing us to place some of our views before this Committee and for the patience with which we were allowed to place our views. I am really indebted to this Committee for having given us this opportunity and the Government of Gujarat is also indebted to this Committee.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE 'B' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Tuesday, the 8th October, 1974 from 10.00 to 13.00 hours in Committee Room Gujarat Vidhan Sabha, Griha, Gandhinagar.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri V. Mayavan.
3. Shri Rajdeo Singh
4. Shri T. Sohan Lal.
5. Shri Niti Raj Singh Chaudhary.

Rajya Sabha

6. Shri Bipinpal Das
7. Shri Syed Nizam-ud-din.
8. Shri V. C. Kesava Rao.
9. Shri Sawaisingh Sisodia.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative ounsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

Bar Council of Gujarat, Ahmedabad

Spokesmen :

1. Shri Vasant Jhaverilal Desai, Advocate.
2. Shri Ranjit Motilal, Vin. Advocate.
3. Shri Ajitray K. Oza Advocate.

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: I welcome you all to come to give evidence before this Committee. But before we enter into discussion, may I draw your attention to Direction 58 of the Directions by the Speaker governing the evidence before this Committee. That is the evidence that will be given before us will be treated as public and as such liable to be published also. But in case you so desire that all or any part of your evidence before this Committee should be treated as confidential we will do so. But in that case the evidence, that is confidential according to your desire, may be made available to the Members of the Parliament.

SHRI R. M. VIN: We are thankful, Sir. It may be noted that so far as we are concerned, we do not want any part of the evidence that may be treated as confidential because all

these questions are arising on this Bill, *viz.* The Code of Civil Procedure (Amendment) Bill, 1974, they are the questions of public importance. There should not be any objection on our part for its publication or that any part should be treated as confidential.

MR. CHAIRMAN: We are glad to hear about this. But it is my duty to draw your attention to the rule that governs the evidence tendered before the Committee. So you do not want any part of your evidence to be treated as confidential. We have noted it. I would like to know whether any of you wants to submit your Memorandum or make your oral submission highlighting on the points which you consider for the Committee to consider it.

SHRI R. M. VIN: We have not submitted any written Memorandum. We have no such Memorandum to submit before the Committee. Well, Mr. Oza, he himself has prepared a memorandum and he will be submitting it to the Committee. But so far as Gujarat Bar Council is concerned we have no written memorandum to submit, Sir.

MR. CHAIRMAN: You can make your submission and we will take a note of it.

SHRI R. M. VIN: So far as the Amending Bill is concerned, I would say, Sir, the amendments suggested in the Bill are welcomed. But we would like to make a few suggestions which should be incorporated in the Amending Bill. First of all the burning question of the day is the question of delay. And second is the question of costs of the litigation. These are the two burning questions. First of all addressing ourselves to the question of delay in litigations, we may say that so far as delay is concerned we can obviate the delay merely by curtailing the process or the opportunities for redressing of a grievance. As a matter of fact, delay can be obviated by speeding up certain processes. As for example, there is delay in disposal of a suit and that can be obviated by making a suitable provision that the plaint when it is submitted should be accompanied by all the documents. Similarly when the written statement is submitted, it must be accompanied by all the copies of the documents on which that arises. Moreover, at present in the present Civil Procedure Code, it is only by application to be given by a party that the other side is called upon to make affidavit. That can be made a compulsory requirement, that an affidavit on document shall be made either by the plaintiff or defendent concerned, so that much procedural delay of making an application could be obviated. That would be according to us a correct procedure for curtailing delay in litigation. In simple suits, summary procedure as provided in Order 37 of the Civil Procedure Code should be made applicable. Of course, there is a proposal in the amending bill to make it applicable to more and more cases. That is welcome. It should still be applied to cases of simple nature.

The third thing to which I invite attention of the hon. Members is that as we have got in labour legislation, there should be some method by way of conciliation between parties. During the time the suit is pending before the court, there should be provision at the intermediary stage for conciliation. There should be a permanent conciliator attached to more than one court, who may contact the party, and who may collect the references and may try to explore the possibilities of compromise. That will certainly curtail or obviate much delay, because once the suit is settled by compromise, so much work of the appellate court would also be saved. That of course has been successfully practised in labour legislation. In labour courts, we have got this matter of conciliation. I don't know, I can't make a definite statement, but from some information I have gathered, I am inclined to believe that there is some such procedure

of having a conciliator in courts in Japan. The next thing that I would submit is that one of the largest litigants are the Government and the public corporations. For such litigants, a procedure must be devised. In case of railway administration, there is already a procedure for arbitration. It is provided that the Chief Executive Engineer of the Railways shall be the arbitrator and his decision shall be final. Under law, he has been made an arbitrator. If a procedure for arbitrator is adopted on the lines of which it has been done in the railway administration, I think that will go a long way. I am told that this arbitrator in the railway administration, his arbitration, the manner in which the disputes are settled, has satisfied the private contractors etc. In respect of public corporations and Government, I think such a procedure can be evolved. Before a suit is filed, the parties must be made to come to that arbitrator or to that tribunal, because that tribunal is free from any bias and many of the technicalities that go with the courts will not be there and that would also curtail much delay in litigation. The parties would get relief and the Courts would not be flooded with unnecessary litigation. That is another way in which this litigation should be curtailed and the same thing should be applied to the corporations like municipalities, the universities and the public corporations like O.N.G.C. or such other corporations and I think the bulk of litigation in the Courts is on account of these corporations because they have got large interest in the public undertakings of the country. So far as lower Courts are concerned they should emphasise on compromise between the parties, to bring about compromise between the bar. That can be done by making a provision as in case of divorce litigation the Courts that they should try to the Courts that they should try to bring about compromise betwen the parties. So the Courts should be directed by making specific provision in the Code itself that they should try to bring about compromise.

SHRI NITIRAJ SINGH CHAUDHARY: Order 22-A is supposed to be added. Do you want this should be extended to other suits?

SHRI R. M. VIN: Yes as far as possible it should be extended to other cases also because once the Judge spends his energy to bring about good compromise that litigation will be out at the first stage itself.

SHRI NITIRAJ SINGH CHAUDHARY: We must understand the human psychology. If I find that Mr. Desai is unreasonable that will not affect me adversely so far as Mr. Desai is concerned.

SHR R. M. VIN: From our practical experience in the Courts we find that even in some litigation between three or more parties and outsiders have intervened and made them to compromise and if the Courts take upon themselves this work of compromise it results in good compromise even at the stage of High Court.

MR. CHAIRMAN: The Hon. Members may kindly put their questions afterwards. I have requested them to make their submissions first. Therefore, all the Hon. Members may kindly remember all their points and then we will go into those points again and seek whatever clarifications we would like to have. So, the witnesses may complete their submission first so that the whole thing is before the Committee.

SHRI R. M. VIN: On the question of delay one more suggestion that I would like to submit is that at the stage of framing of issues and settling the issues, generally, what happens is that framing of issues and settling of issues is taken as a sort of, so to say, a mechanical affair at present. Sometimes the parties are called upon to submit their issues one or the other and then the particular issue is taken up by the Court. Now, even in the present Civil Procedure Code, there are ample powers, they should be made more specific and express that

at the stage of framing of issues, the Court should apply its mind so that many issues which unnecessarily arise at the time of pleading can be avoided. You can say, how this issue arises? What is the provision of the law by which you can take your issue. Even if more examination is directed by the Court, most of the issues which in the final hearing would be settled, could be settled at the stage of settling the issues. So, there should be an express provision directing the Court to apply its mind at the very stage of framing and settling the issues. That would obviate much delay. These are the broad submissions so far as I am concerned.

Now, I come to the question of cost of litigation. The cost is mainly, first of all, on the court fees on the head of the litigant. The question of court-fee of course, is a province of the State. In our State, there is the Bombay Court Fees Act. Of course, it may not be directly the concern of the Parliament but the structure of the Court fees act should be rationalised. So many times it happens that because of the wordings written in a particular way on some cases the court fee is smaller and for a relatively simple suit the court fee may be higher. As far as agricultural land is concerned, our basis is particular multiple of the assessment of the land, that will form, so to say, the basis for assessing the advelorem duty of court-fees. Now, the whole structure of court fees must be rationalised in such a way that more complicated the litigation the greater should be the court-fee and that should be the consideration. Otherwise, at present, the whole structure is such that in respect of more complicated cases there is less court-fee and in the case of more simple cases, there is greater court-fee. So, the structure should be rationalised.

Then, Sir, I suggest that the rates of the court-fees should be amended in such a way that a part of the cost of the litigation would be decreased. Secondly, there should a larger and larger scope of free legal aid.... Legal Aid must not necessarily be confined to certain communities or tribes but should be made available on the basis of the means and the financial capacities of the parties concerned. And when this legal aid is given, it may be given through the Lawyers. But the Legal Aid should be given in such a way that the party should feel satisfied that he has really got the assistance of a competent lawyer commensurate with the importance of that particular type of cases. Secondly, on reducing the cost of litigation I may submit that the cost can necessarily be curtailed at the stage of appeal. Now, supposing there is first appeal in the District Court. The paper books are prepared at the District Court. But when the matters are coming up before the High Court even on a question of law there is a fresh paper book prepared for the purpose. And when you go to the Supreme Court, there is still further paper book is prepared for the purose. I think that cost can be reduced by preparing all paper books at one stage and then adding only the memoes and the judgement or additional papers to that. That would obviate the cost and delay. I recognise the present Amending Bill containing sections 100 of the Code of Civil Procedure and 115 of the said Code. But in spite of all that the fact remains that there is some scope for the appeals going right to the Supreme Court. So that much time and labour can be obviated by adopting this provision, *viz.* duplication of paper books at various stages, that can be done away with. These are my suggestions for curtailing the cost of litigation.

I would submit that the Hon'ble Member may kindly give an opportunity to my learned friends Mr. Desai and Mr. Oza what they have to say in the matter. So far as I am concerned, I have made my suggestions.

MR. CHAIRMAN: Mr. Vin I would request you that there may be some important points which according to

you are important to suggest to the Committee you can speak on those points. If you feel that there are some points independent of a particular clause of the Bill, you can suggest about it to the Committee. We will definitely welcome your suggestions. Alternatively, if you feel that certain provisions are inadequate and you want the Committee to consider improvement of that clause or clauses you can make a suggestion about it.

Secondly, if such a suggestion is not related specifically to any particular clause of the Bill but they are very important. So far as the deposits are concerned, in that category all your suggestions are welcomed. Kindly refer to the previous provisions in the Bill under whch it is governed in your court, what difficulties you are experiencing in the matter which you want the Committee to consider. Well, Desai to speak.

SHRI V. J. DESAI: As the Hon'ble Chairman has suggested that we should deal with the clauses.

Regarding the delay in courts we welcome the proposed amendment regarding serving of summons to plaintiff by Registered post. I submit that it should be simultaneous. Even at the time of serving personally the summons may also be sent by Registered post so that either service should be considered as valid because that takes a lot of time. An individual would try to avoid the service of the summons. It takes about one month or sometimes six months also. We welcome the suggestion that summons should be sent by registered post and even if it is refused, as it is laid down under Section 28 of the General Clauses Act, if summons has been sent and properly posted, it is deemed to have been served and that provision has been incorporated here and we welcome that provision. There is only one clarification required Sir. Here the endorsement mentions only refusal. It does not say that it is tendered and refused. Unless some provision is entered as in Post Office Act, which specifically says that it was tendered, tender is important, not only mere refusal. Here endorsement mentions only refusal. I submit that only mere refusal should not suffice. There is lot of controversy regarding the interpretation. Recent Gujarat judgment has held that under section 28 of the General Clauses Act, the postman is not required to be examined. Therefore, proper amendment should be made that it was tendered and refused. Such an endorsement should be there. Otherwise, there is a possibility that the litigant may manage with the postman and ultimately endorsement is obtained and that will be conclusive with regard to defendent. With regard to provisions before the preliminary stages of the suit, it is there, but only in some courts these provision are applied. Particularly in Surat courts, all the provisions of the Civil Procedure Code are applied. The parties, before they go to the trial points in controversy should be cleared, and then only evidence be taken. The provision is retained and we welcome the proposed amendment. Regarding the cost, Bombay Court Fee Act provides first Rs. 3000|- at the rate of the 10 percent. This is very excessive because most of the poor litigants who go before the court will have to pay at the rate of 10 per cent, while the rich ones above Rs. 50,000 or a lakhs of rupees, they have to pay about Rs. 3000|- which comes to less than 10 per cent. I submit that proper amendment should be made under the Central Court Fee Act and State Court Fee Act in such a way that poor litigants who have to litigate, for the first Rs. 5000|- they should have to pay only at the rate of five per cent and not more than 5 per cent. Income from the judiciary which is received from the court fees should not be considered as tax or general revenue, but it should be pooled and utilised for the administration of justice. Because on both the counts delay and the costs the presiding Judge would be able to dispense with the judgement quickly. Then we can get better

people in the lower category i.e. Jr. Div. And I submit that the conditions of Civil Judge Jr. Div. should be improved otherwise good people will not come at the Jr. Div. level and then the litigant is bound to suffer. The quarters should be made available to them. There is a proposal of the Gujarat State that residential quarters will be given to them wihin five years and I hope that proposal is implemented as early as possible. I have proposed amendment to section 22 and clause 7. The amendment which is proposed in clause 7 is only at "principal office". I submit that original explanation 2 should be kept as it is, that it should be numbered as explanation No. 1 because otherwise litigant would be put to hardship because principal office is there, the litigant say from Madras will have to go to the principal office to file a suit against the corporation. Such a difficulty arose under Article 226 of the Constitution of India that in case of our Indian Government or the other corporations cases can be filed only in Delhi High Court or at the place where the Central Office is located. A suitable amendment has been made under Article 226 of the Constitution of India that even if the cause of action arose at some place, then we can file our application under Article 226 of the Constitution of India in Gujarat High Court or in the Madras High Court or wherever the cause of action arises. That is why the proposed amendment is not in the interests of the litigants because they will have to incur lot of expenses and practically it would be impossible for them to get relief against the corporations if they are asked to file the suits again only where the principal office is situated. This is with regard to Section 20.

Then, Sir, in Section 21. that is Clause 8, we welcome the proposed amendment that the question of jurisdiction or with regard to territorial jurisdiction should be taken at the earliest opportunity. But I submit that even if a decree has been passed then such a decree cannot be considered as a nullity or void on account of the territorial jurisdiction, because of the question of territorial jurisdiction, the party is not going to suffer in any case. That is why suitable amendment is included. If the Civil Judge has got the power to try a particular suit at Surat, the party's interest is not going to be prejudiced by one way or the other.

MR. CHAIRMAN: Now, Mr. Desai, before you take up other clauses of the Bill, may I suggest that at present we are at the stage of making general observations. Your colleague started like that. Do you want to make submissions on general principles of cost and other matters? Then when we take up the clauses, you may explain them and the Hon. Members may also like to seek further clarifications from you so that that method would be more fruitful. You may make your submissions on clauses when we come to clause by caluse reading. Have you any suggestion to make on the submissions of Shri Vin. If so, I would request you to finish it.

SHRI V. J. DESAI: I will confine myself just now to the general discussion and not to clauses.

MR. CHAIRMAN: Right, clauses we will welcome later on.

SHRI V. J. DESAI: About the general matters, I have already made a submission about the residential accommodation for the judges.

Now, with regard to the queries of the Committee, I would submit like this. With regard to the query number one, as I have already said that we welcome the proposed amendment with regard to service of summons by registered post and this is one of the causes of delay in the disposal of cases. Regarding court-fees. I have already dealt with. Then about the next point, I submit that even in some City Civil Court such a provision has been made. It is welcomed. Because once the Advocate appears in the litigation and he represents the defendants all the summons, etc. should

be given to the Advocate so that the time can be saved in the disposal.

Now with regard to your Questionnaire S. No. 3 I submit that it refers to the agricultural lands. I would submit that it should be left to the officers who are dealing with the cases of Land Revenue Code to deal about it. At present record of rights are dealt with for taxation or recovery purposes and in case the parties are aggrieved with regard to the entries in the Record of rights, they have a right to file a suit. So, the present set-up in Gujarat is working satisfactory.

Now regarding question No. 4 of your questionnaire I submit that in Gujarat and in the old State of Bombay there was an Act called Bombay Money Lenders' Act, etc. and the debts were scaled down. There the Government appointed Advocates in each court and that Advocate used to represent the debtors at various courts under the Tenancy or Agricultural Land Ceilings Act where the litigation is to be carried out. I submit that that type of permanent Government Advocate should be appointed to represent the tenants who are without legal aid and that arrangement should be made permanent with the courts so that just like Police Prosecutors who are appointed by Govt. in disposing of criminal cases. Similarly for Agricultural Reforms the Mamlatdar's Court the Govt. advocate may be appointed in order to help the tenants.

Regarding question No. 5 of the Questionnaire I submit that I have already dealt with it with regard to court fees.

Regarding question No. 6 of the Questionnaire I submit that according to the Bhagwati's Legal Aid Report the Committees are formed at some of the places to give free legal aid to the needy people. It is being enforced in some of the districts of the Gujarat State. So, that Report is being adopted in the High Court. I have nothing further to add.

Regarding question No. 7 of the questionnaire I submit that the copies of the documents on which the plaintiff or the defendant wants to file a case in the Court they should be given to the opposite party. That practice is adopted in the City Civil Court of Ahmedabad. That saves a lot of time. I would suggest that that procedure should be adopted and it would save the time.

Regarding question No. 8 of the questionnaire I would submit in negative. The preliminary issues regarding jurisdiction etc. should be decided first. So, that should be kept.

Item 9—Provision of review is necessary as provided under Order 47 of the C.P.C. and sufficient conditions are laid down in what conditions review is allowed and I think it is working very well.

Item 10—Section 115; It has been suggested to delete this section altogether, as the party will be entitled to file writ petition under Article 227 of the Constitution of India. I submit that it is only changing the forum for the litigants to go to the High Court. Otherwise, it will not make any difference. I submit that Section 115 is contrary to the structure contained in Article 227. The question or power of jurisdiction is required in order to entertain revision applications. In Gujarat State. the revision applications which are filed are 1582 in the year 1972 and in the year 1973, the figure was 1479. These revision applications also include revision applications under Rent Act provided under 29(2). Out of the total figures of 1500 to 1600, 1|3rd of the number is pertaining to Rent Act and 2|3rd is dealing with Section 115 of the Civil Procedure Code. At present, on 1st Oct. 1974, total 1427 cases are pending in Gujarat High Court under C.R.A. I submit that Section 115 has been entertained here and faithfully followed at least in Gujarat High Court and admissions of the C.R.As. are very

few. Interpretation regarding clauses (a), (b) and (c) which has been given by the Supreme Court has been strictly followed. So, that section 115 should not be deleted. The mere nomenclature that by omitting Section 115, the party will still come under Article 227 of the Constitution of India is not correct because there are some of the orders which are passed by the Civil Judge, Junior Division, and which are required to be rectified, otherwise the litigants will have to go in appeal, pay court fees and such orders will be rectified in appeal. I submit therefore that Section 115 as it is, should be kept. I might suggest that the provision may be made that civil revision application should be disposed within three months or six months.

There is another aspect with regard to section 115, if it is omitted then High Court will not have jurisdiction to see the judicial conduct and the decisions by the Jr. Div. Judges because first appeal will be filed with Sr. Div. If section 115 is abolished then High Court will not have jurisdiction to consider the orders and consider judicial conduct of judiciary. That is the only window through which High Court looks at it that how the suit is conducted by the trial Judges. Moreover from litigant public view point section 115 is the cheapest remedy where only Rs. 10|- fee is provided. Costs varies from State to State. In Gujarat Rs. 20|- and Rs. 25|- will have to be paid and Rs. 50|- for petition under Article 226 and I submit that litigating public will have to pay more if they have to file petition under Article 227

With regard to question No. 11, I agree that provisions of order XI are necessary.

With regard to question 12 we welcome that proposal. The proposed amendment is already there with regard to order XXXVII with regard to mofussil courts and we welcome that proposal, this amendment.

With regard to question No. 13 I submit that the provision has been made for interim injection and that provision should be there so that while granting injection the party can oppose and time can be saved. Because delay in judiciary has been continuing. It will be surprising to note that one of the parties to litagation is interested in delay that is why it has been continuing all these years, and that is why there is no hue and cry of the public also because the man might be interested at one stage to expedite the suit and at another stage he might be interested in delaying the suit. That is why when there is delay in deciding the suits or the appeals there is no hue and cry. But for the State of Gujarat I may point out to you that when the late Chief Justice Shri Chainani was the Chief Justice of the High Court of Bombay he had made a rule that the civil suits must be decided within 1 year and the criminal complaints should be decided within 6 months and that rule is faithully followed there and in the Gujarat High Court also in the administration of justice because a Special Officer is kept to see the disposal of all the subordinate judiciary. That is why the returns from the Civil Courts and the District Courts are filed every month and if the suit is gone beyond one year, then the District Judge usually writes to the subordinate judges that those suits should be disposed of, or some remark is sent confidentially to dispose of those suits on a priority basis, i.e. suits which are more than one year old. And the limit has been fixed like this that one year for civil litigation and six months for criminal complaints. And in most of the cases, that rule is complied with.

Then, Sir, I come to query number 14. We welcome the proposed amendment regarding the rate of interest which has been suggested. It has been proposed that the rate of interest which the nationalised banks charge should be made applicable which will come to 18 per cent now. And I submit that will have a deterrent effect for the debtor. Further, with

regard to the query number 14, I submit that in respect of money decrees, if a defendant or a judgment debtor is able to pay certain thing we can verify from his property or from his status or from his living by then an arrest warrant or execution of decree should be done by arrest and not by attachment of property and then the decree can be satisfied easily. That is why a liberal provision with regard to the well-to-do people who try to avoid to honour the decree should be made.

This much regarding the general submission that I have to make.

SHRI A. K. OZA: Sir, I endorse what my friend has suggested with regard to the conditions of service of the judges. Further, I have to say that there is no adequate strength for the judiciary. I feel that it is very very inadequate. For example, for about 100 villages there would be one Judge and in some Mahal there would be only 20 villages, with less population. So, there is unequal distribution and there is inadequate strength and that is the major cause for the delay. If a judge is efficient then much of the work would be expedited.

SHRI NITI RAJ SINGH CHAUDHARY: May I just interrupt for a moment? How justice can be achieved by the Code of Civil Procedure?

SHRI A. K. OZA: I am just referring to the points about the causes of delay.

SHRI NITI RAJ SINGH CHAUDHARY: I wanted to interrupt to have your views. We are here for amending the Civil Procedure Code. If you suggest some arrangement by which it can be achieved, we welcome it.

SHRI A. K. OZA: It is on the execution of the decree that, as soon as the decree is passed a notice should be issued to the judgment-debtor to the defendant that such and such a decree has been passed against you.

SHRI NITI RAJ SINGH CHAUDHARY: If it is an *ex parte*.

SHRI A. K. OZA: Yes. It can be in both the cases. I am on the point of expediting the matter because much of the trouble starts after the decree is passed. What shou d happen that as soon as the decree is passed. a notice should be issued to the judgment debtor which should be served personally, saying that under such and such an order you are entitled to file an appeal with-in thirty days. So, it is for you to obtain a stay order. If you want to file an appeal. Otherwise the plaintiff will proceed with the execution of the decree by attachment or by some other means for its execution. If that is done then immediately after the decree is passed, after 30 days the decree-holder will be entitled straight-away for execution. There will be no notice or any other process required. That would definitely save the time. That is with regard to the execution of decree.

Wih regard to the suits I have a novel procedure to suggest. It is like this that the plaintiff should be entitled to send the copy of the plaint along with summons before filing a suit in the Court. He should send a copy to the opposite party and in that he should clearly state that he is filing a suit, a copy of which is attached and you (means opposite party) are to give your written statement within 30 days in a particular court having its jurisdiction. If you fail to file the written statement within the specified period of 30 days, a decree is likely to be passed by the court. There you attach copies of documents you have to file in the court. I would suggest that copy may be served personally to the individual concerned. If it is sent by registered post then a copy of Registered Acknowledgement Due shou d be produced specifying clearly that he has already sent a copy of the documents at the proper address. That would curtail much of the procedure. As soon as on the first

day on which the plaint and the summons date is given for appearing before the court he has to file a written statement or he must file a coincise statement of defence requesting granting time for submitting written statement. But he must file a coincise statement. And that if he fails to file written statement, oral examination should be made and that would curtail much of the delay. Now with regard to Section 115, I fear there is no other provision which gives suo motu jurisdiction to High Court for calling for record. If we were to delete 115, then under Article 227, the party has to move the court. *Suo motu* jurisdiction is only given under section 115. Section 115 should be kept, not only that but in order that the parties may not have recourse to Article 227, it should be amended. Suto motu jurisdiction of the High Court would be there and along with that the powers would be enlarged. That is with regard to section 115.

SHRI R. M. VIN: Before the hon. Members put their own queries, so far as I am concerned, it was pointed out to me that I should in my suggestions and submissions, pin point the provisions in the bill. As a matter of fact these suggestions that I have made are clearly not in relation to or in reference to anything contained in the old or the new Civil Procedure Code. Some of the suggestions are entirely independent suggestions, as for example, regarding conciliation, I don't think you will find about that either in the old or new bill. My suggestion regarding appointment of arbitrator in relation to Government or corporations, that is also an independent suggestion. The idea in making these independent suggestions is that they will decrease the delay and the cost of litigation. I made those suggestions in a general way at that time. So far as the text of the amendments are concerned, as I submitted earlier, most of them are welcome. Now, I would make my submission specifically with regard to amendment under section 100 of the C.P.C. and on the question of deletion of Section 115. I think after I make those submissions, the queries by the Hon. Members may be put.

MR. CHAIRMAN: My colleague now wants some clarification at this stage. I would request him to put the queries.

SHRI RAJDEO SINGH: He said something about compromise. I wanted to know at what stage of the case the compromise should be attempted, whether in the beginning or during the course of the case.

SHRI R. M. VIN: I would submit that the court is called upon seriously to apply its mind at three stages of the case. First of all, if there is any prayer in the form of interim relief then if the plaintiff wants interim findings or judgement or appointment of receiver, then at that stage. So whenever the court it called upon to apply its mind to the acts of the case that would be convenient stage, for compromise. If there is no petition for interim relief then at this stage Court will be called to exercise jurisdiction at the stage of framing of issues also. The parties are there, it is at this stage that the Court exercises its jurisdiction or power or discretion to bring about compromise at the proceedings stage and lastly prior to the matter coming at the final hearing. These are the three stages and at whatever stage the Court gets the grip of the case it can compromise. Suppose I file a complaint, written statements are required by the administration of the Court. At this stage compromise can be brought. These are the three important stages at which it is called upon to apply its mind to the facts of the case and these are convenient three stages for compromise.

SHRI RAJDEO SINGH: It is noted that delays are there but I want to know whether parties, advocates, court people or service of summons what is responsible out of these four factors? Parties are claiming for adjournment on medical certificate and

other factors, advocates also sometimes try to get adjournments.

SHRI V. J. DESAI: Sometimes the parties are interested in prolonging litigation. I would illustrate this way. Suppose a party does not want to pay the money then he wants to see that the Court processes are utilised for putting off the judgment. On a particular date he does not want to pay, not because he is no capacity to pay but he knows that if the matter is lengthened he would get time to pay. That is why my colleague said that parties are interested in delay. Then where the advocates are concerned they are not generally properly instructed. A suit has been filed and the defendant comes to me asking for the copy of the complaint. I ask him where are all relevant documents? That is where advocates come into picture so far as delay is concerned.

SHRI R. M. VIN: But then in some case, he will make an endorsement that such and such a person is not found. That is what happens. These are some of the factors which cause delay. That is true. But that delay ultimately may be for a month or two months or three months. The real delay is in the loose procedure of the Court. That is my submission. Apart from these causes of the delay, apart from the amendment of the Code, improvement can be brought about by the better administration of the Court which has nothing to do with the Code itself. But this delay which happens in the Court, that can be curtailed, as my friend suggested, by a proper judicial officer in the Court. He sits there. After all, whatever good rules may be there, but how they are executed, that is the more important thing. That can be remedied by a proper judge. But this loose procedure, that is also so to say fundamentally responsible for this delay. This loose procedure should be corrected. The causes of delay which you have given, they are there but they can be remedied by a proper and, more efficient administration and by the Court officer himself.

SHRI RAJ DEO SINGH: In your observations about the delays, you have cited an example of an officer who collects the details and then the remedial measures are sought to expedite the cases. What is the position in this regard in other States?

SHRI V. J. DESAI: I am not conversant with other States. But about Gujarat I can say something. There is a procedure and it has been adopted by the Gujarat High Court. It was adopted in the times of the bigger bilingual Stat of Bombay when Shri Cha-inani was there. He laid down an administrative rule that the civil suit should be disposed of in one year and the criminal complaint should be disposed of in six months and then some orders were issued to the District and Sessions Judges to see that the subordinate people keep this in mind and then a return has to be sent and that rule has been adopted by the Gujarat High Court. For other States, I have no idea.

MR. CHAIRMAN: This matter came up before us earlier also. And we have taken a decision in this regard to request the State Governments to furnish these statistics regarding cases under 115 and as soon as we get those statistics I will circulate them to the members. There are different practices in different States and the statistics are being collected. Obviously, they may not be acquainted with other States. But we have called for those statistics from other States.

Now, Mr. Vin, before you make your submission pertaining to Sections 100 and 115, I should make it clear like this. We appreciate the general submission that you made. They are neither in the Code nor in the amendments proposed, nevertheless you felt that they are germane to the objective that is before us *viz.* obviating the delays, reducing the cost and so on and so forth. Not only you, your colleagues made a mention

about the improvement of the administration, the judiciary and their equality and so on. But they are not strictly relevant to the provisions of the Code. Indeed they are quite important points, that you have made. We have made a note of it But before we take up section 115 and other sections our colleagues would like to have further clarification on the provisions.

SHRI V. J. DESAI: You have made certain valuable suggestions regarding delay and naturally, your suggestions will receive consideration. But one point. I would like to be clarified by you. You said something that steps should be taken by the courts in framing, settling the issues. Now this is very important point. How do you want this point should be incorporated in the body of the Bill?

SHRI R. M. VIN: I would submit that an express amendment to this effect should be made in the Code in the present Order—if it is regarding framing and settling of issues—relevant provision is section XIV. An express amendment should be made that the court shall call upon both the parties to submit draft issues and the court should scrutinise and will be at liberty to take even the evidence of the parties to see whether draft issues do arise on the pleading of the parties. Thirdly if the court feels that it won't arise the court should discard that issue or by such an amendment the court can be empowered to deal with the case more effectively at the time of framing and settling the issues.

SHRI NITI RAJ SINGH CHAUDHARY: You say that it should be done in Order XIV at page 29, clause 63, rule 2. It reads:

"2. (1) At the first hearing of the suit, the Court—

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing is person or present in Court, as it deems fit; and

(b) may orally examine any person able to answer any material question relating to the suit by whom any party appearing in person or present in ourt or his pleader is accompanied.

(2) At any subsequent hearing the Court may orally examine any party appearing in person or present in Court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit put in the cotue of an examination under this rule questions suggested by either party."

SHRI R. M. VIN: May I submit, Sir, this pertains to the first hearing of the suit. It would serve the purpose. But I would like to suggest that it should be more detailed.

SHRI NITI RAJ SINGH CHAUDHARY: Besides this you want more to be added?

SHRI R. M. VIN: Yes.

MR. CHAIRMAN: I would request you to look deep into this particular point and make your concrete suggestions in the matter whether such modification is necessary or even if it does not pertain to the Bill we would also like you to examine that point so that it would be helpful for us.

SHRI R. M. VIN: May I refer to Order 14. After Rule 3, such an amendment can be placed.

MR. CHAIRMAN: There also, kindly apply your mind later on, not during the course of evidence, and send to us your concrete suggestion.

SHRI R. M. VIN: I am referring to Rule 3 which deals with materials from which case should be framed. After rule 3, such a comprehensive rule could be put.

MR. CHAIRMAN : Later on, take your own time and try to help the Committee with concrete suggestion as to where you would think this amendment can be put. We have taken note of what you have suggested. It is on record.

SHRI R. M. VIN : I am most thankful for this opportunity and I will certainly do it.

SHRI BIPINPAL DAS : You have said that 50 per cent of the delay is caused by the litigants themselves in their own interest. Now I am not a lawyer or legal practitioner. But there is a general belief amongst the public that, I do not know what percentage. but large number of cases where delay is caused, are due to some kind of understanding, if I may use a polite word, between the lawyer and the rich litigants. This is the general belief. You have said 50 per cent of the delay is caused by the litigants themselves. What kind of litigants? Certainly poor litigants are not interested in delay. As regards rich litigants, they try to drag on, the advocates try to drag on for their interest and sometimes also judges themselves have some interest. How will you comment on this?

SHRI R. M. VIN : Thank you Mr. Das for your query. Really speaking, at least from my little experience at the court, I have not found such uniform understanding. There may be case of understanding Supposing a rich or poor litigant, if he comes for redress of his grievance, then naturally he himself is not interested in delay.

Even if a rich litigant files a suit for recovery of Rs. 25,000/- or so, though he is rich. he is not interested in delay, but the defendant against whom the decree is passed, under law and morality, he is bound to pay that, there he would be interested in the delay. It is not because litigant is rich and therefore he is interested in delay or in case he is poor he is interested in delay. I don't think you can classify that way.

SHRI BIPINPAL DAS : I said rich litigant that means defendants in order to harass the poor complainant they are doing.

SHRI R. M. VIN: Rich and poor you cannot classify on the richness or the poverty of the litigant wanting to delay. If some liability is going to come then the person who has to undertake the liability of the decree is interested in delay. That is so far as litigants are concerned. So far as advocate is concerned he must identify himself with the client. If he is interested to bring speedy end of the suit advocate is equally interested to do it but if the client is interested in lengthening then advocate also is interested in lengthening the proceedings. That is so far as advocates are concerned. In large number of cases advocate identifies himself with the interest of his client. So far as Bench is concerned psychology is quite different. Bench is interested to take up such matter which does not occupy much of its time. If there is a case of Rs. 1 lakh which would involve recording of complaints and the evidence of litigants, then from the Bench's view point it will be easier suit to be handled than the property suit of Rs. 5 lakhs. To take up the simpler cases which takes less time that is the thinking of the Bench. I may be permitted to cite an example of a Civil Judge when I was practising in Broach, he used to put pressure on the parties to bring about compromise of the main points. A Judge would advise to accept Rs. 10,000 instead of Rs. 20,000 by persuation and pressure and he would keep only one issue

open, the interest on the amount of decree. For that he would read a judgement because according to the rules of the High Court a Judge has to submit certain written judgements in compromise. So in order to make up for his quota of written judgements to be submitted to the High Court he would do like this. Therefore psychology of the Bench is always to get disposal and that too by less work. They would like to avoid complicated cases and write judgements of simple cases.

SHRI RAJDEO SINGH: You will agree with me that that attitude of the Judge will play part in conciliation.

SHRI R. M. VIN: Courts should lay down that conciliation would be regarded as disposal.

SHRI BIPINPAL DAS: I get the impression that in your opinion the main cost to be borne by litigant is the cost of the High Court fees. What do you think about the fees demanded by the legal profession?

SHRI R. M. VIN for that, of course, I made a suggestion. Then about the use of legal aid. If there is legal aid, then naturally it is like this. Supposing any legal aid is to be given even on payment on the conditions of certain litigants, then it would be according to a particular schedule.

SHRI BIPINPAL DAS: Do you think that there should be some way, something by which we limit the fees paid to the legal profession?

SHRI R. M. VIN: It obviously give rise to unindicated operations. It is very easy, if you try to control.

SHRI SAWAI SINGH SISODIA: Well, you have advanced a point regarding conciliation. This point requires some further clarification. I want to know whether you think that there should be compulsory procedure for conciliation. Should there be some compulsory provision or should there be optional provision. Suppose you say that it should be optional, then there is the Arbitration Act, the parties can go for arbitration. But there are in some States of our country certain provisions under the Panchayat Act. I want to draw your attention to the provision regarding Nyaya Panchayats which deal with small matters of civil and criminal. In that it is compulsory that every matter that is brought before the Nyaya Panchayat, it must go to the Gram Panchayat for compulsory arbitration or conciliation. Do you suggest that in Civil Procedure Code that every matter that comes before the Court that matter should be sent to any authority for conciliation compulsorily? If there is no conciliation, the matter again should come to the Court and then there must be regular investigations and trial of the matter. Do you suggest anything. Have you get any comment on this?

SHRI R. M. VIN: I may be permitted to clarify that so far as the suggestion of conciliation is concerned, that conciliation may be after the suit is filed. Of course, an inducement for compromise may be provided in the form of substantial return of court fees or some such thing. But that conciliation must not be in the form of compulsory arbitration. Once you make it compulsory, then the parties would be tempted to get round it or to circumvent it In the labour proceedings, we have seen the working of the conciliation proceedings. According to my experience, that has worked quite well. But even then they get failure report. The Conciliators work very hard to obtain conciliation and after hard-working they make failure report and on failure report, ultimately the matter is conducted. So, even in the civil proceedings the conciliation proceedings should not be by way of a compulsory arbitration otherwise there will be a temptation to get round them. But there must be, optional arbitration and there should be

free consent or free desire of the parties. That is what I want to submit.

Regarding the other part of the Hon. Member's query *viz.* sending the matter to the lower level of Nyaya Panchayat, I may say like this.

SHRI SAWAI SINGH SISODIA: No. No. In that there is a provision for the Nayaya Panchayat that every matter that comes before them they will send it for conciliation and for compulsory conciliation. If there is no conciliation, then the matter comes up before the Nyaya Panchayat. Do you suggest some procedure like that? That any civil matter that comes up before the Court it must be sent to a conciliation authority and if there is no conciliation then the matter can be taken further.

SHRI R. M. VIN: To that extent, I may say that the conciliation proceedings must be compulsory. But I make a distinction between the compulsion to go to the Conciliation and the compulsion to arrive at an arbitration. There cannot be compulsory arbitration.

SHRI SAWAI SINGH SISODIA: Should there be a mandatory provision that every matter should be referred to the conciliation. If there is no conciliation or arbitration then the mattter should proceed in a regular way excepting in very simple suits like, money suits or some such petty suits to which provision Order 37 may be applied or can be applied. For other conciliation the matter can be resorted to court.

MR. CHAIRMAN: Mr. Vin I would seek your clarification on certain points. According to your today's experience as a legal professional, there is a provision in respect of money suits etc. At any stage there will be proceedings if the parties do not compromise and their advocates are there and it may be in suits that the parties are not interested for a compromise outside the court. Whatever might be the consideration. They submit a petition before the Court for compromise and subsequently goes for execution of a decree etc. Now, my friend wanted to know at what stage option for conciliation or compromise should start. You have suggested that the suit is before the court. It is a disputed case.

SHRI R. M. VIN: Sir, we have suggested that when the suit is before the court even at the first hearing conciliation or compromise can be done. But this whole exercise of compromise or conciliation is with the objective of eliminating the delay and also reducing the cost of litigation. But when a suit is disputed it involves the initial cost, drawing up the claim, fixing court fee stamps and then filing up of the petition in the court. And therefore if he compromises or a conciliation has been made and with a view to achieve those objectives of avoiding the costs will it not be advisable or desirable that such an exercise should take place as a matter of fact, I have appeared in disputes after the things are settled because the plaintiff starts a notice through the advocate that such and such a liability has been caused or incurred by the defendant and the suit is filed. And if at that stage before the dispute is entered or filed in the court, it should be processed through a constituted machinery, then all this subjective eliminating the costs would be less, if it fails at the lower court then the disputed party can take up the matter further to the high court. Then the whole process would start.

SHRI SAWAI SINGH SISODIA: What is the procedure today? What is the compromise suit? Can it be without prolonging the proceedings?

SHRI R. M. VIN: I would submit that it is a very novel idea. Before a litigation starts. I serve a notice on the defedant. Even at this stage a conciliation may be undertaken. Supposing I am serving a notice then a

provision can be made that copies of that should be sent to the Conciliator so that he can be aware of the facts of the case. He should try to see that the matter is conciliated even before the suit is filed in the court. That will be one stage. The second stage can be that as soon as the plaintiff has filed the case.

MR. CHAIRMAN: After the suit is actually filed, at any stage, before the decree is ordered by the court, compromise might take place and at a particular point it would eliminate further delay.

What I was trying to find out is this. If it is conciliation, what is the most appropriate time to achieve this in your opinion? I am trying to pin point out whether such a provision should be mandatory as it is sought to be put and if so, whether after the suit is instituted, of whether it should be possible to provide for such a conciliation even before a suit is instituted? How it is to be done?

SHRI V. MAYAVAN: The very idea of going to the court is to get an ingress in the judiciary. You have mentioned that the lower court should emphasise on compromise. But human psychology is that one gets satisfied with the pronouncement of the judgment rather than getting it out of the court. In the case of tenancy law, you know well that the executive authorities like Tahsildars, they do such sort of compromise, but being aggrieved of such things, they go to the court and seek redressal.

SHRI R. M. VIN: By tenants, you mean in respect of agricultural proceedings.

SHRI V. MAYAVAN: Yes, under that the Executive authority, the Tahsildar wants to settle it without allowing it to go to the court. He brings the parties together, hears them and gives his judgments and settles it out of court.

SHRI R. M. VIN: With great respect, I may submit that so far as we in Gujarat are concerned, the position of the tenants of agricultural lands stands on a quite different footing. Here we have got the existence of Bombay Tenancy and Agricultural Lands Act, 1948 since more than 25 years and under that act, the Mamlatdars have the exclusive jurisdiction to decide about these disputes between landlords and tenants which cannot be taken to the Civil courts. As a matter of fact, there is a further provision that if any dispute arises regarding tenancy or the possession of land subject to tenancy act, then in such a dispute or issue, the court has to refer to the Mamlatdar. So far as we are concerned, the Mamlatdar has exclusive jurisdiction. The civil court does not come into the picture. Of course lot of things are said about the proceedings in the Mamlatdar's court. Sometimes they are not happy proceedings. So far as we are concerned, because of this strict exclusion of the jurisdiction of the civil court, such a question does not arise in Gujarat. I don't know the definite position about the tenancy and agrarian legislation in other States but if the civil courts come into picture at some stage on the same points tenants could go to the civil courts. The better thing would be to bring about compromise at the earliest stage possible.

SHRI BIPINPAL DAS: Are you satisfied with what is in practice in Gujarat?

SHRI R. M. VIN: Not quite. As I submitted even in Gujarat the proceedings before the Mamlatdar are not very satisfactory. I have already said.

SHRI BIPINPAL DAS: In that case tenant should be entitled to go to the civil court according to you?

SHRI R. M. VIN: Civil Courts jurisdiction is completely barred under section 35 in Gujarat. After

the judgement is given by the Mamlatdar, there is an appeal to the Collector that is heard by the Deputy District Collector under the Act. Over that decision there is an appeal to the Revenue Tribunal. It is a judicial body that commands respect of the litigant. Over that, people go to the High Court under Article 227 of the Constitution. By and large Gujarat Revenue Tribunal and the High Court in tenancy matters they command respect of the litigating public. Even if the tenant is not satisfied with the Mamlatdars judgement he is generally satisfied by the Tribunal judgement and the High Court's judgement.

SHRI NITIRAJ SINGH CHAUDHARY: They are completely State subjects. Rajasthan, Bengal and Maharashtra they have legislated about their States. They are contradictory and not the same type of Acts.

SHRI R. M. VIN: I have not made that comparative studies of various agrarian laws in other States. I have told about the position of Gujarat.

SHRI RAJDEO SINGH: Do you agree that when one party believes that it is losing the case then it is prepared to compromise? One party to the case when it comes to believe that it may lose the case then it is prepared for compromise.

SHRI R. M. VIN: They get prepared for compromise when they feel the fate of the litigation is uncertain. Both the parties feel like that. I may give a personal example. Only about three months back there was a heavy appeal involving large amount between two litigants and the main question was limitation. I argued the question of limitation in the High Court and both the parties felt that the fate of limitation is not certain.

So, what will be the result of this? The High Court may throw it out on the question of limitation. The High Court may pass a full decree. Or it may be like this that this being a question which is highly controversial, both the parties feel induced for compromise and they compromise.

SHRI RAJ DEO SINGH: If one party is sure of its success, then there is hardly an inducement for that party to compromise. Unless both the parties are prepared to compromise, there is no climate for compromise. The chances of success are 5 per cent in the beginning, in the middle it is more than this and towards the end or at the delivery of the judgment there is still higher percentage. Do you agree with it?

SHRI R. M. VIN: Not necessarily so. Sometimes we feel that if I give a notice on behalf of an intending plaintiff and if I receive a reply to that notice, then I know that the litigation will be going on the lines of the reply to the notice. I can visualise and I can foresee as to what will be the trend of that litigation and see if it can be fitted in the Code.

MR. CHAIRMAN: I think we have discussed this matter of conciliation and compromise at great length and sufficiently. To me it appears that whatever be the present position on compromise about inducement if a conciliation can be provided in the Code it will eliminate the prolonged procedure of the suit. That should be examined. We will examine this aspect in due course.

SHRI V. J. DESAI: Mr. Chairman, Sir, can I reply to the query of Shri Bipinpal Das regarding the conciliation proceedings with regard to the gram panchayats? We have got the Gujarat Grant Panchayats Act and there is provision with regard to the Nyaya Panchayats also. The same provision may be made in the Civil Procedure Code. Certain types of suits may not be tried by the civil courts and may be tried by the Nyaya Panchayats where the Nyaya Panchayats exist. Such a provision can be made.

MR. CHAIRMAN: We will examine all aspects as to how this can be done.

SHRI V. J. DESAI: The conditions will vary from State to State with regard to the Nyaya Panchayats.

MR. CHAIRMAN: We have sufficiently discussed this and we understand your suggestion and we will examine this.

SHRI SAWAI SINGH SISODIA: I would like to know from Shri Desai. You have given your opinion regarding Section 115 and you have given the number of pending revision petitions with the High Court. I would like to know, if you can please give this information that actually how many revision applications were there in a particular year, say in the year 1972 and in the year 1973?

SHRI NITI RAJ SINGH CHAUDHARY: We are getting this information from the State Governments.

SHRI SAWAI SINGH SISODIA: I want to know as to how many revisions were actually field and out of those how many were admitted and how many were allowed. As a matter of fact, how many were filed and how many were admitted because admission of revision is very very difficult. That is not a general rule before all High Courts. If you can submit it now, well and good, otherwise you may furnish afterwards this information. That is to say, how many revisions were filed in the Gujarat High Court in the years 1972 and 1973.

MR. CHAIRMAN: May I draw your attention that Mr. Desai gave the figures:

1972 1882 cases of 115 section
1973 479 "

upto Octo. 1974 .. 1427 cases

He further explained that one-third of it would be covered under the Rent Act and the remaining two-third are Civil suits.

SHRI V. J. DESAI: The impending cases as on 1st October, 1974 are 1479. This information is regarding revision petitions pending before the High Court.

SHRI SAWAI SINGH SISODIA: I want to know the number of revision actually filed before the High Court.

SHRI R. M VIN: Once the revision is filed the argument for defence of the general revision are not admitted.

SHRI V. J. DESAI: We file the revision and after the removal of the objection, the matter comes up before the court for admissibility. If it is admitted then notice is issued. Now the figure of admissibility will come to about 30 per cent and 70 per cent are rejected. So the total figures are 1580 of which 1479 is the total figure. 1000 applications are filed of which 115 cases are of the Rent Act. It is about 30 per cent cases are only admitted and the rest are rejected at the admission stage.

SHRI SAWAI SINGH SISODIA: This information will be relevant for other High Courts also. I would request you to furnish information regarding revision applications pending before the High Court.

SHRI NITI RAJ SINGH CHAUDHRY: Filed and admitted by the Court.

SHRI V. J. DESAI: Mr. Chairman, if permission is given I will supply the exact percentage year-wise for the last five or seven years.

MR. CHAIRMAN: Yes. You may send it on to us..

SHRI V. J. DESAI: I will furnish information about the pending cases under section 115—how many are rejected and how many are at the final stage allowed by the court.

MR. CHAIRMAN: I will give you a copy of this proforma. You may kindly give a information on that basis. You may take your time and your information in the prescribed proforma be supplied to us.

Now I will invite the attention of my colleagues about the time factor at our disposal. We have devoted 2 hours on general discussion, on principles etc. These are very important and relevant. But we have to go deeper into the clauses of the Bill. Mr. Vin suggested that he would speak and make a submission with regard to sections 100 and 115. But before that Hon. Minister wants to have some clarification.

SHRI NITIRAJ SINGH CHAUDHARY: I want to make some things clear and I want your guidance in the matter. Regarding simultaneous service by post should be provided because service delays the matter. May I draw your attention to page 21 of the Amending Bill, 19A clause is inserted in rule 19, making a simultaneous provision in the rule itself. I think that will clear your first point,. Here you will find the word "simultaneously" is used.

Then you suggested about production of documents. You suggested that the document must be produced at the initial stage at the first hearing.

SHRI NITIRAJ SINGH CHAUDHARY: An amendment was sought to be made to Order 13, on page 30, clause 66. Would that serve the purpose or you would like some other thing. We are adding something to what is there.

SHRI R. M. VIN: What has been placed is sought to be substituted by "at or before the settlement of the issues". As a matter of fact, my suggestion was that they should be accompaniments of the plaint itself.

SHRI NITIRAJ SINGH CHAUDHARY: That is already there in the Civil Procedure Code. Therefore, I would request you to specifically suggest as to how we should word, so that the court is not allowed further time and at the same time, the party's interest will not be affected for no fault of his.

SHRI V. J. DESAI: Page 21, Rule 19A. I want to propose one amendment. Provision has been made that the summon is to be sent simultaneously. But the discretion has been given under the proviso. That proviso should be deleted.

SHRI R. M. VIN: Regarding production of documents, I would submit that the rule can be framed this way that the plaint shall be accompanied by copies of the documents on which the plaintiff relies.

SHRI NITIRAJ SINGH CHAUDHARY: Order 7, Rule 14 is there.

SHRI R. M. VIN: That is true, but it speaks of original document. I am saying of copies. This is also made as a ground for delay. We have not obtained certified copies. Therefore, I am putting copies, copies along with the plaint. It will form part and parcel of the plaint itself.

SHRI V. J. DESAI: Otherwise, it would not be admitted.

SHRI R. M. VIN: Or a rule can be made this way that subsequently copies of the documents shall be allowed to be produced.

SHRI V. J. DESAI: Order 9 would mean some circumvention by the court. The parties would be called upon to explain why they did not produce at the earliest stage.

SHRI NITIRAJ SINGH CHAUDHARY: You suggested about summary proceedings. Procedure should be extended under Order XXXVII. We have made certain amendment. Will that serve the purpose or not?—page 70-71.

SHRI R. M. VIN: Proviso to clause 87 is not necessary because uniform procedure is adopted in city civil courts and other courts and the types of suits are to be notified. Further power of the High Court is not necessary, Clause 2 enumerates the types of suits.

SHRI NITIRAJ SINGH CHAUDHARY: Order 32A is to be added. You will find at page 66.

SHRI R. M. VIN: Suggestion that I made was regarding far more comprehensive adoption of this method.

SHRI NITIRAJ SINGH CHAUDHARY: Your view is that it should be made applicable to all suits. It is thought to make a beginning and then extend it.

SHRI V. V. DESAI: Under 123 I think power to extend the limit for application to particular types of suits is given.

SHRI NITIRAJ SINGH CHAUDHARY: May I refer to Order XXXIII? In that rule 9A is sought to be added.

SHRI R. M. VIN: First of all I will take up section 100 of the main Act. Page 13 clause 39 of the Bill. With regard to section 100 my submission is that the powers of second appeal should be retained. The amendment that is sought to be made in different clauses of section 100 I would submit that even if there is an amendment to this effect that any judgment contrary to law may be appealed against under section 100 then also same effect can be achieved. Error of law includes errors of facts also Errors of facts will be also errors of law, errors by way of wrong inferences from true facts also may be included in the errors of law. So, if the amendment is to the effect that errors of law will be appealable on judgment concerning errors of law under Section 100, then the entire effect of the present provision of Section 100 would be achieved. Now, the amendment that is proposed is that there will be an appeal only on a substantial question of law. My submission is that this amendment will substantially curtail the power of the High Court and in principle I would submit that this is not desired because of two reasons. First of all, I would submit that so far as the lower judiciary is concerned, the High Court can effectively control the lower judiciary. That Control can be exercised. Even in the interest of the judicial control this Section 100, the spirit of the present Section should be retained. Of course, even if you make an amendment say by removing the three clauses had ameding one clause, *viz* errors of law, then the same object would be achieved. But if you restrict the power of the High Court to the substantial question of law then it means like that that the lower judiciary is permitted to commit errors of law and in principle one would be apt to say that there can be erroneous judgment on a question of law. So, in principle, curtailing the powers of the High Court merely to substantial questions of law in principle it would be bad and, therefore, my submission is that Section 100 be retained in the present form or should be amended to grant a jurisdiction to the High Court to correct ple it would be bad and, therefore, mission.

MR. CHAIRMAN: Mr. Vin, do we understand that in so far as this clause is concerned, taking out the second provision the first provision in that Section 100 should be retained as it is. But even if it is amendment as proposed in the Bill at pare 13, Clause 39.

SHRI R. M. VIN: That is true.

MR. CHAIRMAN: Now, in the new Section 100 in sub-section (1), do you mean to say that the words "substantial question of law" is objected to?

SHRI R. M. VIN: It would curtail the powers of the High Court. I object to the word "substantial" particularly.

MR. CHAIRMAN: If this word "substantial" is omitted. will that meet your second proposition?

SHRI R. M. VIN: Yes.

SHRI V. J. DESAI: At this stage, if the Hon. Chairman gives me permission, I will give the figures because this is the relevant section for this. In Gujarat High Court about 600 second appeals are filed in a year and about 350 second appeals i.e. about 50 per cent of the second appeals are admitted at the admission stage and the rest rejected. And at present on 1st October, 1974, 1,484 second appeals are pending. These are the figures with

regard to the second appeal. And I endorse the view of my learned friend on the second appeal and also with regard to the judicial control and also that with regard to the present Section. It works very well. Regarding the interpretation of statutes, regarding transfer of property act or other civil acts, law has been laid down for the second appeal....If you refer to law reports of other courts; the dispute might be involved for Rs. 500 or so. But the law lays down second appeal. Because it is necessary. The High Court lays down certain interpretations those interpretations are *binding* on other High courts. Because "substantial question of law" has been interpreted like Art. 133 of the Constitution where very substantial question of law is required admission is reduced to hardly 30|40 appeals filed in the second appeal. Now at the second appeal stage litigants will have to pay heavy court fees. Then only they are entitled to file a second appeal. What I would submit is that remedy for the second appeal that it is working very well and law has been laid down, which is binding on the Lower Court. But in the present form if it is omitted the parties will agitate. That is why I would submit by restricting this provision the purpose will not be served.

SHRI R. M. VIN: I was just going to add that section 100 should be retained or in the new provision the word "substantial" should be deleted. The reason is that there will be a uniform judicial interpretation of important provisions. In order to ensure a uniformity on the questions of law section 100 requires to be retained in its original form or the word "substantial" should not be there. That is, with regard to section 100.

SHRI SYED NIZAM-UD-DIN: I would like to know from you, in case you want the word "substantial" to be dropped, do you think that sub-clause 4:

> (4) Where the High Court certifies that a substantial question of law is involved in any case, it shall, at the time of granting the certificate,—
>
> (a) formulate that question; and
>
> (b) state its reasons for so certifying."

Is it necessary to be incorporated or not.

SHRI R. M. VIN: No. With great respect I submit that once you omit sub-clause (1) then the question of certification is not necessary.

Even in the present form if the High Court had to certify so validly, if it does involve a question of law, then that lengthy procedure involved therein may be omitted.

SHRI SAWAISINGH SISODIA: Your opinion is that section 100 in the present form, as it is, should be retained.

SHRI R. M. VIN: Yes. I would suggest that either it may be retained in the present form or if amendment is made the simplification may be made on these lines. "That an appeal shall lie against a judgment which is contrary to the law".

SHRI SAWAISINGH SISODIA: This is the present position.

SHRI R. M. VIN: No. With great respect there are 3 difficulties. An appeal shall lie against the judgment on an error of law.

SHRI SAWAISINGH SISODIA: Then all these 3 clauses can be automatically defective, because under the defective procedure they can be covered.

SHRI R. M. VIN: Yes. Then under that defective procedure that can be covered.

SHRI V. J. DESAI: There is a law that a party can challenge the judgment or a decree and the Court will satisfy whether the judgment or decree is defective and then the court allows. There is a clause like that in the Delhi Rent Act and the Bombay Rent Act.

SHRI NITI RAJ SINGH CHAUDHARY: Civil Procedure Code was amended in the year 1908. The other laws enacted but before the Constitution came into force. The Constitution adopts a particular phraseology "substantial" is there. An appeal

would not be entertained....There the reference was made of Art. 133. But Art. 133 provides the words "substantial question of law " of general importance" Here the "general importance" words are not there. That is to say a distinction ought to be made between "substantial question of law of general importance" and "substantial questions of law of particular importance". So Art. 133 says: that question of law of general importance comes in. Section 100 would cover "substantial question of law" of personal importance.

SHRI R. M. VIN: There is distinction between question of law and substantial question of law. That distinction cannot be got away with. May I be permitted at this stage to make my submission on Section 115?

SHRI A. K. OZA: I would go a step further than my friend. Even on findings of facts, there should be second appeals. I have practised before District Judges. My experience is that their findings are not neces. sarily correct and there are so many reported cases where though the High Courts differ from findings of facts, they are not able to do anything. Law prevents them and they are not able to disturb those findings. If there is miscarriage of justice from error of fact or error of law or error of procedure, then second appeal should be allowed.

SHRI NITI RAJ SINGH CHAUDHARY: Why not to Supreme Court also? If your argument is accepted, then if the High Court does not apply its mind, th Supreme Court should. It will be another question of facts of law.

SHRI A. K. OZA: If the court finds that particular findings are not correct, why the Court he be helpless to set it right? That is my point.

SHRI R. M. VIN: Now regarding 115, the reason for its deletion given is that there is now a power under Article 227 of the Constitution of India. It is true that under Art. 227, errors of jurisdiction and errors apparent on the face of the records can be corrected.. But the 3rd clause under Section 115 would not be covered by Article 227, namely, when a court acts or excercises jurisdiction with material irregularity; that may not be possibly covered by Art. 227 and therefore by complete deletion of Section 115, the scope would be restricted. Under section 115, a revision application would lie for a case decided. Under Art. 227, of course by the judgment of the Supreme Court, they say that Art. 227 should not be exercised except when the jurisdiction is invoked on a final determination of the suit or final interpretation of proceedings. In these two ways, the powers of the High Court would be curtailed. I would submit that Section 115 should be retained in the present form or at least that provision which is left out in Art. 227 should be retained *i.e.* wherever courts act not in its jurisdiction or if there is irregularity, there should be power in the High Court to interfere. And for such Order which come within the purview of the case decided High Court should be empowered to interfere with the Order of the lower Courts. That jurisdiction should be retained in the High Court by suitable amendment to section 115.

SHRI NITI RAJ SINGH CHAUDHARY: Revision application is entertainable only on a case called "a case decided". It is a subject matter of interpretation by the Supreme Court. Even in the present law with the present interpretation of sec. 115 revision application cannot be entertained at all. The word "a case decided" has been officially interpreted by the Supreme Court. Even at present scope is very much restricted. But in other arbitrary order there cannot be revision application. If it comes within the "case decided" then it should be allowed.

SHRI A. K. OZA: The matter under section 115 will be lost in the Jungle of writ petition with the result that the matters will be delayed. Because there will be lot of writ petitions filed before the High Court coming under

Article 227. That is why I have suggested that section 115 should be amended on the lines of Article 227. If parties are to take recourse to Article 227 then matters would be much delayed ultimately.

MR. CHAIRMAN: Section 115 should be retained in whatever form it is. That is your view. In section 100 word "substantial" should not be there. And according to your interpretation....

SHRI R. M. VIN: May I invite the attention of the hon'ble members on a case decided by the Supreme Court? Minakshi Mills case. It lays down clear exposition. If this distinction is kept in mind all the questions of section 100 would be met. What are the questions of law? What are the questions of facts? What are the findings of facts? What are the findings of law? You can say question of fact and question of law. If that is kept in mind, I don't think there will be any apprehension that this Section 100 would be abused.

SHRI V. J. DESAI: Mr. Chairman, the law has been laid down and there is strict interpretation. The difficulty arises in the application of the law. And that is why Section 100 is being amended so that the power of second appeal may be curtailed.

MR. CHAIRMAN: We understand your views on Sections 100 and 115. Do you want to refer to any other clause or have you concluded now?

SHRI V. J. DESAI: Sir, the Clause as I have suggested in the beginning regarding corporations, that may be noted.

MR. CHAIRMAN: Yes.

SHRI R. M. VIN: Regarding the other amendments, by and large, we welcome those suggestions.

MR. CHAIRMAN: As I have also suggested to you earlier, kindly give your views as early as possible on the amendments that you would like us to consider.

SHRI R. M. VIN: We are very much thankful to you for all this.

SHRI V. J. DESAI: Here there is one suggestion about the cost on page 36 of the Bill, Clause 71, sub-clause (d) which reads as under:

> "(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time."

Now, this provision is not necessary because the procedure has been provided that the hearing is to be done day to day because sub-clause (a) says like this:

> "(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witness in attendance have been examined unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary."

I would submit that if the day-to-day hearing is there and by chance if an advocate falls sick or is not able to remain present, I submit that the litigant should not be burdened with cost.

MR. CHAIRMAN: You want that the discretion should be left to the courts?

SHRI V. J. DESAI: Once there is a provision already for the day-to-day hearing. Now, actually when suits are filed, one date is given, after 15 days another one is given....

SHRI BIPINPAL DAS: There is a specific provision, it is like this:

"when the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary."

So, this is one of the exceptional reasons.

SHRI V. J. DESAI: Then it should be left to the courts to dispose of the case. This specific provision should not be made, that is the litigant should not be asked to engage another lawyer when the case is to be treated day to day. Suppose, some witnesses are examined. The man falls sick and another is engaged.

SHRI BIPINPAL DAS: Supposing this is deleted, then what happens?

SHRI V. J. DESAI: Sir, by that will be decided by the Court. Here also the ultimate discretion is given to the Court.

SHRI SYED-NIZAM-UD-DIN: You object to the portion "unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time." That you do not want?

SHRI V. J. DESAI: Sir, by that time the party must have paid the fees and then they should pay second advocate's fees. Ultimately, litigant is the first man who suffers.

SHRI NITIRAJ SINGH CHAUDHARY: Shri J. C. Shah reported about the causes of delay and there he has said that the advocates are responsible to a great extent. He has given the reasons and in consequence of that recommendations are made.

SHRI V. J. DESAI: I am aware of it. If the sickness is real then the Court should consider the case, and grant adjournment.

SHRI NITIRAJ SINGH CHAUDHARY: The witness comes here and if you get an adjournment, the advocate will get his fees.

SHRI V. J. DESAI: Sir, my experience has been just opposite to that. The presiding judge would dispose of the case as *ex-parte*.

MR. CHAIRMAN: On this particular issue that when a suit is at the stage of hearing and under the provisions that it should be working day to day for hearing and on a particular rare occasion the plaintiff or the defendant advocate feels very much about it and it is provided that the adjournment should not be given. If the Advocate is ill and he is forced to go to other place or due to other sickness, do you mean to suggest to this Committee that the interests of that particular party-whether plaintiff or defendant—should not be affected by the lawyer who is appointed but who is not appearing at the sittings of the court.

SHRI R. M. VIN: I would suggest that by making a provision in this form.

MR. CHAIRMAN: When the hearing is fixed and it works day-to-day for hearing purposes. I constantly fell ill. Then what happens to my client. Then somebody else is just picked out and he may continue on behalf of "A" Advocate in the said suit.

SHRI SAWAISINGH SISODIA: And he will not be in a position to continue properly.

SHRI R. M. VIN: But the Lawyer's work is not that of a worker. If one labourer is absent another labourer will do that work.

SHRI A. K. OZA: I would submit to the Committee whether the justice

should be done to the party if there is a change like that.

MR. CHAIRMAN: In case the Advocate has started hearing on behalf of the party and then he becomes ill. Well in exceptional, genuine cases where adjournment is justified, the court may grant it. But supposing the lawyer is, unfortunately, in a prolong protracted illness of heart-disease, etc. and he is hospitalised. Therefore in that case a reasonable time should be given.

SHRI R. M. VIN: Yes. It should be left to the discretion of the Judge.

SHRI SYED NIZAM-UD-DIN: There has been a suggestion that in case the lawyer does not really conduct the case properly, or absents himself from the court for some time just like me. I am a political worker. I have my clients at Delhi but I have come here. In such a case, because I am busy with political work. Well in that case, the party concerned should ask for a refund of the fees paid to the advocate. Would you favour that suggestion?

SHRI R. M. VIN: The relation between a client and an advocate is always like contractual relation and if ultimately it is a case of breach of contract, the client can certainly proceed against that advocate for breach of contract. The client has two remedies. Client has remedy under common law, *viz.* ordinarily law for damages or retain all fees and also a disciplinary jurisdiction under the advocates Act.

SHRI NITI RAJ SINGH CHAUDHARY: Page 55, proposed rule 10A, (1) and (2), do you agree with this?

SHRI R. M. VIN: It is a proper suggestion Sir.

SHRI V. J. DESAI: There is one thing with regard to Order 22 Sir. It gives injustice to litigating public. Under order 41, the provisions of Order 22 are applied. What I submit is that in appeals, provision of abatement should not be applied at all. Principle of amendment should not be applied even to suits. In order 41, provision should be made that order 22 will not be applied to amendments. Second appeal may last for 5 years. The party should not suffer for the delay in disposal of the case. Same principle is not applied in writ jurisdiction. Same principle is not applied in revision jurisdiction. In Bombay High Court, there is no abatement with regard to revision application. In any litigation, on principle, the party should not suffer merely because the legal heirs are not brought on record. The duty should be cast on the respondent to bring the legal heirs within time—say 3 months or so as provided in the limitation act.

SHRI NITIRAJ SINGH CHAUDHARY: *Suo motu* they have to come to the court and say we are the heirs.

SHRI V. J. DESAI: Here, duty is cast on the appellant.

SHRI NITIRAJ SINGH CHAUDHARY: I just wanted to understand. Have you any comments to make to Order 21, Rule 97.

SHRI V. J. DESAI: It is most welcome Sir.

SHRI A. K. OZA: One suggestion Sir, to Order 39, Proviso to Rule 3. That is with regard to injunction, where an injunction is sought for without notice, there the party is required to give an affidavit saying that he has already supplied the defendant with the notice. If the plaintiff is required to send notice before asking for injunction. The defendant would be forewarned. He will do mischief which is sought to be avoided by injunction. That proviso should be deleted.

SHRI NITIRAJ SINGH CHAUDHARY: Proviso to be added to rule 3—page 74.

MR. CHAIRMAN: Provision to give notice should not be there in case of injunction.

SHRI NITIRAJ SINGH CHAUDHARY: Proviso has provided that where an injunction is granted without notice to the opposite party, the Court shall, before granting such injunction, require the party praying for injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party.

SHRI A. K. OZA: It should be *ex-parte*?

MR. CHAIRMAN: Do I take it that we are about to conclude?

SHRI A. K. OZA: Order XLI—where an appeal is filed and cross appeal is not filed even then with regard to cross appeal the Appellate Court is given power to modify or change judgment.

SHRI R. M. VIN: This aspect was dealt with in Supreme Court Judgment. Even though the party may not have filed independent appeal still however at the stage of deciding appeal the appellate ocurt can state suitably in its decree because the party is already there. Suppose it has not filed any cross appeal then also another Court can give necessary relief to the party. That is Supreme Court judgement. The provision should be provided:

SHRI NITI RAJ SINGH CHAUDHARY: 148A, that is a general provision. So, for every rule and order, there need not be a cavil.

SHRI V. J. DESAI: Amendment may be made in Order 41.

SHRI NITIRAJ SINGH CHAUDHARY: There is a specific provision.

SHRI A. K. OZA: I refer to sub-rule (3) under rule 6 on page 20 of the Bill. There the court can compel a party to appoint a recognised agent. Now, that amendment is little hard because suppose there is a person from Punjab and he files a suit in Gujarat and he is not acquainted with anybody in Gujarat.

SHRI NITI RAJ SINGH CHAUDHARY: This provision on page 20 is for disposal of the suit so that the things may not be delayed.

SHRI V. J. DESAI: Your pleader is there.

SHRI NITIRAJ SINGH CHAUDHARY: Here the appointment of a counsel serves the purpose.

MR. CHAIRMAN: So, I think, you have made very valuable suggestions. As I have observed, even though some of them may not be strictly relating to the Bill, they are very important in so far as the litigants are concerned and for general improvement of justice and law. I can assure you that our Committee will give its earnest consideration to all those suggestions that you have made.

SHRI R. M. VIN: I am very thankful. On my behalf and on my colleagues' behalf, I thank the Committee for the opportunity given to us and we are sure and confident that the Committee will bring its most valued consideration on the suggestions that we have made. I also suggest that whenever this Committee goes to other places like Bombay and Calcutta, it may put our suggestions to the witnesses there also.

MR. CHAIRMAN: That is our work and we have been doing it. May I also remind you once again about the suggestion that I have already made that you may please send

to us your specific suggestions relating to relevant orders to enable us to consider them. You pin-point them.

SHRI R. M. VIN: We will do it at the earliest opportunity.

MR. CHAIRMAN: May I on behalf of myself and on behalf of my colleagues express our thanks to you, Mr. Vin and to your colleagues Sarvashri Oza and Desai and our sincere appreciation for the co-operation that you all have extended to us. Thank you once again.

(The witnesses then withdrew)

(The Sub-Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE 'B' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Wednesday, the 9th October, 1974 from 10.00 to 13.35 hours, in Committee Room, Gujarat Vidhan Sabha Griha, Gandhinagar

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri V. Mayavan
4. Shri Rajdeo Singh
5. Shri T. Sohan Lal
6. Shri Niti Raj Singh Chaudhary.

Rajya Sabha

7. Shri Bipinpal Das
8. Shri Syed Nizam-ud-din
9. Shri V. C. Kesava Rao
10. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. *The Gujarat High Court Advocates Association, Ahmedabad*

Spokesmen :

1. Shri Bhalchandra R. Shah
2. Shri Pradyumna V. Hathi
3. Shri Mayoor D. Pandya.

II. Shri K. N. Mankad, Advocate, Ahmedabad.

I. The Gujarat High Court Advocates Association, Ahmedabad

Spokesmen:

1. Shri Bhalchandra R. Shah
2. Shri Pradyumna V. Hathi
3. Shri Mayoor D. Pandya.

(*The witnesses were called in and they took their seats*)

MR. CHAIRMAN: Mr. Pandya and Learned colleagues, on behalf of myself and on behalf of the Committee, I welcome you. Before we enter into evidence that you will be tendering before us, I draw your attention to Direction 58 which governs the evidences given before a committee like ours, under which whatever evidence that you will lay before us now will be treated as public and is liable to published. In case you desire that all or any part of the evidence given by you should be treated as confidential, it will be treated as such, but even in that case, please note that it will be made available to other Members of Parliament. I hope you have noted this direction.

Now as far as this Bill is concerned, the Gujarat High Court Bar Association has not sent any written memorandum. But you are welcome to give your oral evidence on any aspect of the Bill. Therefore, I invite you to just proceed in whatever manner you like. You can make a general observation on the main principles of the Bill as given in the Objects and Reasons or on any particular aspect. Anyway, I leave that part to you. Mr. Pandya, your colleagues can also supplement to what you say and thereafter the members may put questions to you.

SHRI M. D. PANDYA: We feel it better to go clause by clause.

MR. CHAIRMAN: Yes, we may go clause by clause.

SHRI M. D. PANDYA: I have indicated the clauses on which I wish to comment.

Clause 5, p. 2. *Section* 9.

In this section 9, one aspect which requires consideration is that the jurisdiction of civil courts is barred impliedly and not expressly. A proper amendment should be made whereby so far as future legislation is concerned, unless there is some express bar, there will be complication in question of interpretation. There should not be implied bar.

MR. CHAIRMAN: What would you like us to consider?

SHRI M. D. PANDYA: I am referring to section 9 itself. If the jurisdiction is barred impliedly it will create controversy in interpretation. If specific bar is provided that will avoid any complication. Some sections are specific but this requires consideration in this section.

SHRI S. K. MAITRA: Supreme Court decision is that the excessive jurisdiction is not to be readily inferred unless necessary implication is put on jurisdiction. So this specific jurisdiction should not be readily inferred.

SHRI M. D. PANDYA: Interpretation of various legislation creates difficulties if there is no express and implied jurisdiction.

SHRI NITIRAJ SINGH CHAUDHARY: So you mean to say that exclusion explicit and express. It should be at the court's jurisdiction.

SHRI M. D. PANDYA: Yes.

Clause 14 *of the Bill*, p5.

This is a very wholesome provision which has been made by the proviso whereby in commercial transactions interest is now to be charged at the rate which might exceed 6 per cent but not contractual rate and it is on the basis of the interest on loans advanced by the nationalised banks. The only aspect which requires consideration is that by the present aspect as is suggested, the benefit would go only where the sum exceeds Rs. 10,000|-. Now, in matters of commercial transactions where the amount involved is Rs. 10,000|- or less, that should not, really speaking, be a criteria because to a small trader the value of his money would be much more than that

to a bigger trader who has more money. Therefore, in all commercial transactions, if it can be provided that the interest shall be charged at the rate at which the loans are advanced, that would be more correct.

SHRI NITIRAJ SINGH CHAUDHARY: Would you agree that the limit should be Rs. 5,000 ?

SHRI M. D. PANDYA: It should be for all commercial transactions.

SHRI NITIRAJ SINGH CHAUDHARY: You mean to every transaction, irrespective of its value, this should apply?

SHRI M. D. PANDYA: Yes. To a small person the value of one rupee is much more than to a bigger trader.

MR. CHAIRMAN: Right. Next.

Clause 16 of the Bill: Page 5.

SHRI M. D. PANDYA: This relates to cost for causing delay. This is sought to be provided as 35B. Even at the time when the Court grants an adjournment, the powers are already there, that the court could impose conditions which might be irrespective of the result of the suit, that power is already there. It could be exercised and by emphasising this one does not provide for more powers than what the Court already has. Firstly, it appears that it is superfluous because there is already a provision and over-emphasising it by 35B might, in a given situation, if a Court is getting more reminders from the superior Court about not giving disposal, that might induce the Court to go on imposing fine. So, it is a power which may not be conducive to proper administration of justice.

MR. CHAIRMAN: What is your suggestion so far as this is concerned?

SHRI M. D. PANDYA: It is not necessary because the power is already there and the court can exercise its discretion.

MR. CHAIRMAN: Right. Next.

Clause 24 of the Bill: Page 8.

SHRI M. D. PANDYA: Then, Sir, I come to Section 60 of the principal Act, Clause 24 of the proposed Bill. We are adding the words "an agriculturist or a labourer or a domestic servant". Now there are requires the consideration that today when on the one hand we are thinking of imposing tax on agricultural income on certain secters of agricultural economy whether the exemption from attachment should be to all houses and buildings....belonging to the occupant where he resides or whether it should be restricted to the residential house or houses. It will be necessary because he may have a number of houses out of his agricultural income. Now a days when the agriculturists income have increased considerably because of more facilities of irrigation etc. provided to them, they have become people of the richer strata of society with the result that it may not be necessary to afford them that type of protection to such type of persons, for attachment.

MR. CHAIRMAN: You do not want that?

SHRI M. D. PANDYA: Yes. It may be restricted to the residential houses or the power house but not to all the houses belonging to the agriculturist. He might own several houses.

MR. CHAIRMAN: So, you want to suggest any limit?

SHRI M. D. PANDYA: Yes. That, perhaps, might depend upon the facts of different states—between a State and a State—really speaking it requires State legislation or a rule making power should determine an *ad hoc* formula for the State. As a matter of fact, it should be defined in such a way that the clause gets restricted.

MR. CHAIRMAN: You want that some limit should be fixed?

SHRI M. D. PANDYA: Yes. I would suggest that the draft should be drafted in such a way that he should not get more than what is required.

SHRI SAWAISINGH SISODIA: Here for the words "an agriculturist", the words "an agriculturist or a labourer or a domestic servant" are to be substituted. So you feel that the word "labourer" connected with the agriculturist, is not an agriculturist?

SHRI B. R. SHAH: No.

SHRI SAWAISINGH SISODIA: But you spoke about the labourer connected with agriculturist.

SHRI M. D. PANDYA: I am sorry. When I am talking about agriculturist. I was restricting myself to agriculturist labourer, because labourers of that type of class. I suggested that it should be restricted to houses.

SHRI NITIRAJ SINGH CHAUDHARY: Generally the word labourer includes whether agriculturist or other type of labourer because this provision is discretionary.

SHRI B. R. SHAH: I would suggest that even the benefit should be confined to the residential houses of the labourers.

SHRI M. D. PANDYA: Under the new Housing Scheme one might find that they have more than one house. I mean an average middle-class people.

MR. CHAIRMAN: So, your suggestion is to restrict the labourer which is, in fact, kept by himself for residential work, etc. and it should be restricted to the house in which he is actually living. Isn't it?

SHRI M. D. PANDYA: Yes.

SHRI SYED NIZAM-UD-DIN: In the beginning you said economic position of the agriculturist. You mean house and no other house. Whatever his economic position may be. I may be having lakhs of rupees but if I have only one house, in that case, that house should not be attached.

SHRI M. D. PANDYA: I was suggesting that ultimately definition of agriculture itself should be there. As a matter of fact, this definition should be so worded that ultimately the benefit goes to those classes, for whom the legislation intends, not only to those persons who can really pay.

SHRI SAWAI SINGH SISODIA: The definition of the labourer is not necessary. There may be labourers who may be earning more than Rs. 1000.

SHRI M. D. PANDYA: That is true.

MR. CHAIRMAN: There is the proviso given where the property is not to be attached, but here also there are certain exigencies where the property shqild not be attached. But, here also you suggest that the agriculturists should not have unlimited exemption. Anyway, we will consider. The point is understood. We will see whether it can be fitted in. Your suggestion is clear.

SHRI M. D. PANDYA: Clause 24(c). Here, the amendment is that for the words "two hundred rupees and one-half of the remainder", the words "two hundred and fifty rupees and two-thirds of the remainder" shall be substituted. Here, there is no refernce to the income which a man actually gets, with the result that even a large income earning member might get this benefit. There must be some limit laid down. Beyond a certain limit, there should not be exemption.

Another aspect is at clause (ka) all moneys payable under a policy of insurance on the life of the judgement-debtor. One more thing can be added here, and that is having an account in the provident fund scheme. Those persons who are self-employed, they are entitled to get a scheme of the State Bank of India, under Provident Fund Schemes, where there is contribution by nobody else.

MR. CHAIRMAN: If you turn on page 18 of the code, where section 60(a) is not being amended. It remains.

SHRI M. D. PANDYA: That is with regard to compulsory deposit in the Provident Fund Account.

MR. CHAIRMAN: Apart from any fund to which Provident Fund Act, 1925 for the time being is applied, so far as the definition by the said Act is concerned, provident fund should not be liable to attachment, compulsory deposit as well as provident fund. I am just pointing out. You want insurance and also provident fund.

SHRI M. D. PANDYA: Insurance, we have covered.

MR. CHAIRMAN: It is being covered under the proposed amendment (ka).

SHRI NITIRAJ SINGH CHAUDHARY: Along with insurance policy according to you, public provident fund scheme should also be included along with other schemes like provident fund etc. Those fund schemes should also be covered, is it not?

SHRI M. D. PANDYA: One must lay some limit on the amount for which no such policy should be exempted so that upper limit amount may be covered from both the schemes. Section 82 deal with execution of decree against the Government. Provision is being suggested that pp. 10 sub-clause (4):

(4) The Court may, in its discretion and from time to time, extend the period specified in sub-section (2) or fixed by the Court under that sub-section, even though the period so specified or fixed may have expired."

If delay is to be avoided, it should be avoided where Government is party also. If ultimately it will require to be extended instead of giving such powers, we may suggest that a further time limit extension must be offered on the submission of causes being shown and the reasons being recorded so that Government may not be put in a more privileged position than ordinary man.

MR. CHAIRMAN: Your objection is on unlimited time extension. You want that some restriction should be there.

SHRI M. D. PANDYA: If sufficient cause could be shown it should be the matter of discretion with the court. If further petronage is to be put then it should be for reasons being recorded.

MR. CHAIRMAN: I think it is presumed in the provision. When a Government submits any petition to the Court, before considering it, Court will consider the causes. I am trying to meet your point if you accept it. What I would like to understand is that whether your objection is met if the discretion is given to the limit. You actually want-limit instead of unlimited time put here. Any way we will examine it.

SHRI NITIRAJ SINGH CHAUDHARY: In section 148 of the Code enlargement of time is provided for. So, the reasons should be recorded, that would satisfy?

SHRI M. D. PANDYA: I would submit like this.

SHRI NITI RAJ SINGH CHAUDHARY: The fear is that it may be done arbitrarily.

SHRI M. D. PANDYA: There should be a specific mention. It would be necessary to have such a provision so that the Government is not entitled to it as a right.

SHRI NITI RAJ SINGH CHAUDHARY: There should be sufficient cause and the reasons should be recorded.

MR. CHAIRMAN: I would like to understand from you as to what would be the idea in the matter of granting extension. If the reason for extension is not sufficient then it is going against.

SHRI M. D. PANDYA: That would imposed restriction on the Court.

MR. CHAIRMAN: It is the same court. It extends time to Government in this case. Suppose the reasons have to be recorded, what it will mean to the other party, the main plaintiff, the creditor. Government is the judgment debtor in this case.

SHRI M. D. PANDYA: It keeps a check in the case of Government.

MR. CHAIRMAN: I am asking a limited question. Whether such an order by the Court of giving extension to Government is advantageous to Government,

SHRI M. D. PANDYA: No.

MR. CHAIRMAN: Therefore, if the reason is recorded or not, it does not make any difference. If the Court grants time to Government under this section, whether recording the reasons for such an extension will give any advantage to the party?

SHRI M. D. PANDYA: Moreover, there is a supervisory control of the High Court.

MR. CHAIRMAN: I am trying to understand it.

SHRI M. D. PANDYA: The High Court is exercising control over the courts.

MR. CHAIRMAN: Your point is that the reasons should be recorded.

SHRI M. D. PANDYA: Yes, Sir.

MR. CHAIRMAN: Right, Next.

SHRI M. D. PANDYA: *Clause 32 of the Bill: Page 11:* Here one finds from the objects that pending any legislation to public charities, this amendment is sought to be introduced in the Civil Procedure Code. As we understand, there are already several State legislations dealing with public charities where there has been a provision in the matters of *cy pres* and it is combating the powers of the court and this has been a matter of adjudication. This deals with the State law, not with the matter of procedure, as a matter of substantive law affecting charities. As such, it would be advisable that such legislations or such provisions are made in the substantive legislation and, if necessary, public opinion is created so that it is available to the persons concerned in the matters of legislating rather than keeping it as a matter of law procedure by introducing this. There is enough provision in all State legislations dealing with charities. So, this provision should come as a substantive legislation rather than taking it in the Civil Procedure Code.

SHRI NITI RAJ SINGH CHAUDHARY: I think you have perused the observations of the Law Commission, in their Report in Chapter 1 H, pages 65 onwards. I will read the relevant portion...

MR. CHAIRMAN: The Law Commission Report should not be agitated upon. On the basis of recommendations made by the Law Commission this amendment is being incorporated in the Bill.

SHRI NITI RAJ SINGH CHAUDHARY: Here is the Law Commission Report it is stated:

"It appears to us that it would be desirable to make an amendment regarding the scope of this without waiting for a revision of the Public Trust..."

SHRI M. D. PANDYA: That is what we find in the clause 32 of the Bill. But experience has been that it causes delay and creates complications in the matter. There is a provision under the Shops Establishments Act—a State Legislation—dealing with the matters of payment of wages and that is likely to be lost sight of in the substantive legislations dealing with the subject matter rather than finding a place in the procedural law. The Law Commission has recommended that it should codify it. Then what is the doctrinnaire etc? Is there any existing legislation under the Public Trust relating to this? There are divergencies of the matters of detail in respect of the application in different States and for bringing a uniformity in all legislations, it may be desirable to have like that. But objection is not on codific action on that. The point is, whether we can do substantive legislation so that the people in-charge of Charity Act can also be made applicable to this. Because it represents various sections of religious trusts. The persons who have interest, they have to say something in the matter, or the cross section of people who might be affected by it.

MR. CHAIRMAN: Yes. We will examine that.

SHRI M. D. PANDYA: *Clause* 34, *on page* 12. Here an explanation is sought to be added. The experience we have on this side is much limited regarding cases where the judgment is held to be not well received on the ground of the findings in a decree. Here we are giving them more chances of appeal. By adding this explanation that a party aggrieved by a finding of a court incorporated in a decree may appeal, we may be adding to the bulk of litigations already there, which otherwise might be unnecessary. The man may not have to face another litigation at the end of first litigation. Since he is required to file an appeal against the findings, it could further lead to litigations, which otherwise may not commence at all. It depends upon ultimately the particular case. What are the number of cases where this difficulty has been experienced?

MR. CHAIRMAN: You are taking objection to this explanation. This is a very peculiar situation. Yet if something has crept-in in a decree by the findings of a court and it adversely affects the man. According to you such a provision should not be there. The man has won the case and the litigation has to come to an end. Judgment has been given in this favour.

SHRI M. D. PANDYA: There may be a question of personal remarks, which may be required to be expunged and which is on a different footing than findings on a question of controversy. This would be findings on a question of controversy, and it is the interpretation of the legal profession; they may take one way or the other. I feel the man should be contend with the result of the findings.

SHRI S. K. MAITRA: If there is a finding against the successful person, he cannot go on appeal against that. Therefore, subsequent suit is possible. In order to discourage subsequent suit, we have put this that the successful party can also go in appeal and the appellate court so that the decision may operate as *ses Judicata*. Initially there may be large number of appeals, but subsequent litigations will be discouraged.

SHRI M. D. PANDYA: The question is of balancing between two

things; whether the experience has shown that there have been more subsequent litigations or whether by introducing this provision, it will be adding more to the litigation. The view is that we will be compelling persons to go in for litigation in the form of appeals by making this provision, which otherwise he would not have thought of. It is only the unsuccessful party filing a suit against them.

Here we are encouraging defendant who is succeeded but ultimately goes for further appeal. That will given an incentive for him to carry on the case upto the highest level.

SHRI SYED NIZAM-UD-DIN : We have an institution for example of resident daughters. A particular plaintiff goes and claims to be a resident daughter and lower court says that she is not a resident daughter but she is a Khyanshi daughter. It will make a lot of difference to the status. In that case she will like to prove that she is Khyanshi daughter. Though she is willing the party may go in appeal in regard to her status.

SHRI B. R. SHAH : It does not debar her but if a status is concluded this should not arise.

SHRI M. D. PANDYA : Sub-section (4) of clause 34 :

> "(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

Appeal and cross-appeal should be provided on question of law and facts and should not be merely on question of law. Because it is a restriction on his right.

SHRI S. K. MAITRA : This is also an extension of the existing provision. Suppose we extend the limit put in the Bill and a case is tried by a civil court but the subject matter could have been tried by a court of small causes, then the effect will be that an appeal will lie on the question of law only. These cases are tried by Small Causes Courts.

SHRI M. D. PANDYA : He gets an opportunity to re-agitate.

MR. CHAIRMAN : What would you like to have?

SHRI M. D. PANDYA : On both, the question of face and law, it should be allowed.

SHRI M. D. PANDYA : Clause 39. This is a provision about which I think, you must have heard from all Bars.

SHRI NITI RAJ SINGH CHAUDHARY: Here we want to hear something new from you.

SHRI M. D. PANDYA : We have been thinking in these terms. It is true that the country is facing the question of protracted litigation and justice is being delayed and that is also the consideration. But simultaneously, while making this provision, one has to think in these terms, whether the existing provisions as they are and as interpreted by the highest court of the land are being insufficient to meet the same purpose because the present restrictions are themselves sufficient and the mere fact that there are cases where the Court does not respect these restrictions which have been imposed upon, that should not be a ground for amending this legislation. The superior Court has been correcting and it has corrected it.

Moreover, there is one further aspect which is involved that by the suggested amendment an appellant is required to formulate a question of law. the Court will there upon frame an issue and which alone shall be considered at the time of the final

judgment. We have been thinking like this. Today, suppose a litigant prefers a second appeal, he frames a question which, at present, has already been a subject matter of decision by the highest court of the land. But then, that decision itself might undergo a change by a suggestion order which takes a different view. That is also not unlikely. That happens every time. Now, therefore, at the time when a man raises a question, the normal inclination on the part of the High Court is that this is already a concluded, question is like this. Another question might have been raised. But this has not been permitted to be raised. The decision on that issue might have been reversed by a subsequent order of the Court of the State or by the Supreme Court. But the effect of that decision would not be given to these cases. So, the Court will be compelled to act contrary to the judgement of the highest court because the technical difficulty would be coming in the way. So, it would create an anomaly and the people will have to get their right determined and the matter is being adjudicated upon. This provision, in that sense. is not whole some. Ultimately, the restrictions are on questions of law. The question is that that person shall appeal to the Supreme Court. Naturally, it would be re-considered. At present as far as the State High Court is concerned, it is bound by the decision of the Supreme Court ....

But the point can be kept open, that became the position. Because it is sought to a question of framing questions for answers. Supposing some question is not being framed and not permitted to be raised then he might be required to proceed further before a higher forum on the validity or otherwise. In case you are not permitting the question to be raised that means a higher cost. It would mean multiplicity of work and creating complications on "question of law" which should be raised and settled by the Court and the High Court will be in a position to deal with it on the basis of question of law. I think that would be more conducive because on that the questions have not been formulated by the Judge and he can have an opportunity to speak. In other case final determination to proceed further in the matter. So, it will be more difficult. There will be another aspect against an appeal. Of course, objections do lie but the amendment do not provide limitations on the part of the Respondent to limit his cross-examination to a particular question. So the appellant will be unable to raise. Whereas the Respondent will be in a position to raise many questions. So, it will create anomaly.

MR. CHAIRMAN: What is your suggestion?

SHRI M. D. PANDYA: My suggestion is that the original provision as it stands today is sufficient.

MR. CHAIRMAN: You do not agree to the new provision made in the Bill?

SHRI M. D. PANDYA: Yes. I do not agree.

MR. CHAIRMAN: Now, let us hear about the "question of law" and "substantial question of law".

SHRI M. D. PANDYA: As far as litigation is concerned "substantive question of law" is understandable, when one goes to the Supreme Court where the court may not entertain this question. But at least as far as the State's jurisdiction is concerned, the State should recognise the problems of its citizens. It is always substantive as far as they are concerned.

MR. CHAIRMAN: Supposing the word "substantive" is omitted. Then what do you feel about this?

SHRI M. D. PANDYA: Even then to formulate a question and to restrict the hearing of the second appeal to that particular question could also bring it many difficulties because new questions might arise, new interpretations by the Supreme Court. So you want to deny the party to raise a question on such an important issue and on change in the legislation which one must take into account. Now, while formulating this type of questions that aspect should also be considered.

SHRI NITI RAJ SINGH CHAUDHARY: Supporting an appeal shall be heard only on the questions so formulated by the judge. What do you think if these words are added in clause 39 at page 13 of the Bill? You are agreeable with the question of law.

SHRI M. D. PANDYA: It should be question of law.

SHRI NITI RAJ SINGH CHAUDHARY: So far as the party is concerned, it would be a substantial matter. That is there. Your objection is that by the time the hearing comes, some other question may crop up which may not be in existence on the date of formulation of the case.

SHRI M. D. PANDYA: Clause 4 says at the time of granting the certificate, formulate that question and state its reasons for so certifying. Section 100 limits the jurisdiction of the court only to question of law. At the hearing the arguments are unnecessarily protracted to questions of law, which are obviously the questions of law. What further purpose is going to be served by adidng formulate the question and certify.

SHRI NITI RAJ SINGH CHAUDHARY: The judge should apply his mind to the various questions that arise.

SHRI SYED NIZAM-UD-DIN: As the Chairman already suggested, if the word 'substantial' is dropped, then there will be only question of law. Will you be satisfied by that?

SHRI M. D. PANDYA: That will be sufficient.

MR. CHAIRMAN: Even if this word 'substantial' is dropped, it will lead to only questions of law. I am trying to understand what you are saying.

SHRI M. D. PANDYA: Experience has shown that if one is permitted to this, the Junior Advocate might have drafted an appeal, and at the stage of admission, he might think of only one question which according to him arises in the matter.

MR. CHAIRMAN: We will examine from that point of view. We have not examined from this point of view.

SHRI M. D. PANDYA: Our experience is that when the matter goes for second appeal and revision one would be extremely lucky when the matter comes for hearing. That is the present trend here in the Courts. It is very difficult to get second appeal.

MR. CHAIRMAN: We will examine that.

SHRI M. D. PANDYA: Our suggestion is that larger scope should be given on either side.

SHRI NITI RAJ SINGH CHAUDHARY: It should be on par that is what you want to say.

SHRI M. D. PANDYA: Yes on par.

Clause 40—42. So far as clause 40 is concerned, the way in which we feel is that rather than doing away with second appeal, the appeal should be made available not on the basis of certificate required to be obtained from the Judge who has given judge-

ment in the original appeal. That will provide sufficient check. We can just provide by making suitable amendment here. Not only justice should be done but it should appear to the litigant public that it has been done. very few cases will go to the Supreme Court only if it is provided that and divergent views on the same might be there. Now, the reconciliation of these divergent views might arise in some subsequent matter of which the benefit would not go to those litigants. A conflict might result in somebody else's case. But since he could not go to the higher forum, he could not get the benefit and also there is a possibility of the same judge giving the certificate that the question requires consideration.

MR. CHAIRMAN: Right. Next. Clause 42.

SHRI NITI RAJ SINGH CHAUDHARY: Before you make any comment on this, I would like to have an idea.

SHRI M. D. PANDYA: Here, Sir, this expression "on such question of law as is referred to in section 100", would undergo a change if submission on Section 100 is considered by that body.

SHRI NITI RAJ SINGH CHAUDHARY: This is consequential.

SHRI SAWAI SINGH SISODIA: We shall have to read this and Section 100 together.

SHRI M. D. PANDYA: If one reads this with Section 100, where subclause (4) refers to a substantial question of law, one finds that the power is there about question of fact also.

SHRI NITI RAJ SINGH CHAUDHARY: Suppose a necessary change is made here or elsewhere and it is made obligatory for the judge to record his reasons, whether he admits this or rejects it, what will be your comment on it?

SHRI M. D. PANDYA: At present we find that for rejection the reasons are not contemplated.

SHRI NITI RAJ SINGH CHAUDHARY: Therefore, I said that if it is made obligatory, will that point be met that the judge is asked to formulate the question then he has to apply his mind?

SHRI M. D. PANDYA: Our experience on the Constitution amendment has been that at the time when a certificate is sought for, what normally happens is that you take the relevant constitutional provisions in your hand and write down those words of the Constitution and no question of general public importance is involved and there is no further check on that. Supposing they are not so recorded as to fulfill the expectations which the Legislature has from the judiciary, that might not solve the problem.

SHRI SAWAI SINGH SISODIA: May I say something on this point? Suppose they do record the reasons for rejecting the appeal, what benefit the Appellant will get out of it?

SHRI M. D. PANDYA: As far as the matter is admitted it would be an excellent situation. Because ultimately, recording of the reasons in case of rejection and admission will, *prima facie* be of the Judge. He will have to apply his mind and admit the matter. So the present provision at the time of admission of the Judge record the reasons for it but for rejection he shall not will...

MR. CHAIRMAN: Mr. Pandya, when an appeal is admitted for hearing, whether the reasons are recorded or not. that doesn't matter much. But if an application is submitted for admission, the reasons are assigned. Do you think some remedy should be provided for the aggreived parties for his application not being admitted. Now, the question is if appeal is admitted, then substantive question was section 103 whether assigning his

reasons or not. There the matter ends. But if it is actually not admitted what remedy the aggrieved person will have in the matter?

SHRI B. R. SHAH: If it is not there a certain provision should be provided that he can go to the court of law.

SHRI M. D. PANDYA: While rejecting the application recording of reasons, that provision should be there so that when he goes to the higher forum, and moreover in the second appeal, it would help the client. My feeling is that unless the reasons are recorded for rejection, it would be difficult for the party to know as to why it has been rejected.

MR. CHAIRMAN: Well, we pass on to the next point:

SHRI M. D. PANDYA: Now coming to clause 45 of the amending Bill. I would say that section 115 need not be omitted. It is not welcomed at our end for various reasons.

Section 115 will be restriction on the powers of the revision Court has already been explained by me earlier. If we restrict the scope to a limited extent and if that power is exercised that in very many genuine cases even at the interim stage we are able to remedy the defect which otherwise will be remedied only after a protracted hearing.

By providing section 115 as it is, it saves time, saves litigation and results into earlier solution of problems. What has been suggested is that there is already remedy under Art. 227 of the Constitution of India. The suggestion is that if under Article 227, this provision is already there, then retention of Section 115 would make it superfluous, if that is the idea, then differently things would be considered. But if Section 115 is retained in the present form, then there are several restrictions which if it is deleted may not be there. Art. 227 is wider. In interlocutary matters, under Art. 227, the court may not interfere. In interlocutary matters under Sec. 115, the court may interfere if the case is made out. Retention of Section 115 would be shortening the litigations. There will be earlier solutions of problems. Some such provision should be there instead of asking the litigants to wait. Now, it would be that by allowing retention of Section 115, the party can get interim stay of further proceedings and thereby the proceedings are protracted. Now that defect would be remedied by making a special provision that as far as revision applications are concerned under Sec. 115, they shall be disposed of within a particular period and that if a stay is not necessary for the purpose of disposal of that particular point, proceedings may not be stayed. For example, at times delay occurs because record is called for. Provision is made in the High Court rules that the party shall produce a certified copy with the result that for want of record the proceedings are not delayed. Delay could be obviated by making other provison allowing persons to get redress under section 115. By retaining Section 115, we will be doing more good to the litigating public.

MR. CHAIRMAN: Whether under Section 115 or under Article 227, if this provision for revision is there, the delay that is sought to be eliminated by omitting section 115, will still remain under Article 227 and therefore you suggest that the time limit may be made for disposal of revison petitions.

SHRI M. D. PANDYA: If the object is sought to avoid delay, that could be achieved by other means rather that omission of Section 115.

MR. CHAIRMAN: That point will be examined.

SHRI SAWAI SINGH SISODIA: Section 100 is not amended, even then you would like Section 115 to be retained in the present form.

SHRI M. D. PANDYA: Section 100 is for final stages. Section 115 would be available at interlocutary stages.

SHRI SAWAI SINGH SISODIA: If Section 100 is not amended and it stands as it is today, then the party can take benefit of Sec. 115 also. You want that.

SHRI M. D. PANDYA: Even before passing the final decree, we can remedy the defect at much earlier stage.

MR. CHAIRMAN: Can you give us an idea as to the number of cases filed?

SHRI NITI RAJ SINGH CHAUDHARY: How many applications are admitted, how many are rejected initially and how many are primarily allowed. It is the general experience perhaps that 75 per cent are rejected. So it is not that they admitted as a matter of course.

MR. CHAIRMAN: For non-admission there is no remedy. But even then about 30 per cent are admitted.

SHRI M. D. PANDYA: Our experience is that at the time of admission hearing takes considerable long time till revision. It is only at the final hearing stage that revision is admitted.

MR. CHAIRMAN: Your experience is there. Here this section is proposed. Your case is that it should be retained. The Committee has an open mind. The Committee has taken note of what you have expressed and suggested.

SHRI M. D. PANDYA: Yes Sir.

MR. CHAIRMAN: On this particular point, out of 100 petitions under 115 about 30 per cent are admitted. We request you that you later on send us the actual position about the number of petitions and how many of them are rejected and the number ultimately allowed.

SHRI M. D. PANDYA: Yes Sir.

SHRI NITI RAJ SINGH CHAUDHARY: Discretion between the rich and the poor should not be there.

SHRI M. D. PANDYA: Provision of section 115 should be scrupulously followed. The scope of this harrassment could be minimised. How the administration of justice is done by the judiciary is also relevant. And what can be the safe-guard? It should be more on administration rather than on legislation. Since legislation has provided a safeguard to see that such a situation does not arise. Ultimately and finally if all the provisions of this section are satisfied, even then the discretion is there to grant or not to grant the relief. By deleting the provisions of Section 115, the poor litigants will have to go on being harrassed and may not get an early end of their litigation which they can get by approaching the revisional court at the earliest stage. It would entail savings of time and money.

MR. CHAIRMAN: The question is about long time taken for final disposal. Now, it is suggested that this long time under 115 can be minimised by prescribing a time-limit for the disposal of the case. This can be provided under the orders or under the rules. That will eliminate this. You feel that there is a scope for providing for a clause, an amendment, time-limit for disposal.

SHRI M. D. PANDYA: That is true.

MR. CHAIRMAN: Shri Pandya, in certain cases like the disposal of election petition etc. That is another aspect. It takes time.

SHRI M. D. PANDYA: By and large, in our State they are being fixed up in time and being disposed of within the limits laid down.

SHRI NITI RAJ SINGH CHAUDHARY: Within 6 months?

SHRI M. D. PANDYA: Yes, except where a stay is obtained.

MR. CHAIRMAN: It has, however, come to our notice that even if the law is made so much speedy, it all depends upon the actual persons who are concerned, *viz.* the Judicials, the litigants, the lawyers, the clerks and the postal service efficiency is also necessary to eliminate delays. But even so this provision which you have suggested is good.

SHRI M. D. PANDYA: Here on page 107 of the 'Notes on Clauses' it is stated:

> "In view of the fact that adequate remedy is provided for in article 227 of the Constitution for correcting cases of excess of jurisdiction, or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction, the section is no longer necessary...."

If one looks at the petition under Article 227 the scope would be wider than one under 115. So instead of restricting or limiting the question to be agitated one should think of widening the scope. Because any error occurring on the face of the record can be corrected. Secondly the cost which one will have to incur for a petition under Article 227 will be much more than the cost incurred under section 115 of the Act. In short it will be a costly affair for the litigants and the delay in the disposal.

Secondly under Article 227 the court would be hearing so many other matters and the decisions of the several Tribunals with the result that, ordinary revision under section 115 which are allotted to different towns and it would entail more details in the matter than otherwise.

MR. CHAIRMAN: Now, that item covers your points regarding this section.

SHRI M. D. PANDYA: Clause 53 at page 16 of the Bill is not welcomed, Sir.

Rule 8 of Order 1, clause (2) on page 17; there is a provision for a public advertisement in cases where a representative suits is filed. As far as we are aware there are some limitations or divergence of opinion in a representative suit. Now if an amendment is sought for during the proceedings, that also requires advertisement. There is no specific provision to that effect, because an amendment might be a drastic character which might alter the nature of the proceedings altogether, with the result that the man gives one type of suit, but the relief he gets might be altogether different. Some provision must be made where if an amendment is sought for, that also requires to be advertised.

SHRI NITI RAJ SINGH CHAUDHARY: Thank you for the suggestion.

SHRI M. D. PANDYA: The same aspect may be kept when one is dealing with scheme suit under 92. There also the same question arises. Provision should be made that "subsequent to the filing of the suit which has been advertised," so that they may get an opportunity. Otherwise the matter will be decided without they being heard.

There is also another point which is relevant. It may be convenient at this stage to refer to that position. There is a provision that if a person has been served a trial and if he has not appeared, then for any obligation which are incidental to the hearing, he need not be served. The expression incidential to the hearing is so wide that I feel the same difficulty might be felt, if amendment is sought for at the stage of appeal. The person might think that the plaint stands as it is and there is no cause for complaint. If the appeal is restricted to the ground and nothing further, then it will take its own course. If an amendment is sought for of which he is not aware, and he is not required to be intimated, that might be difficult. A provision should be there that in cases where *exparte* proceedings are taken without the presense of either

and decision is taken, in the original case, representative case, public notice or any other case, it should be intimated by public notice.

MR. CHAIRMAN: We will examine that.

SHRI M. D. PANDYA: Then clause 60—sub-clause (vi) on page 24. Here one of the major causes of delay is time taken by the summons service. Under sub-clause (2) the plaintiff gives an intimation specifying the Court in which he wants to present his appeal. Decision of the Court is there. It does not adjudicate which Court has jurisdiction and it is left to the plaintiff to specify which Court he will choose as the next appeal. It should be intimated to the Court. It is for consideration whether any proper amendment could be made where this should be either decided at the time of returning the plaint or the defendant will specify which is the Court which Court has jurisdiction so that he cannot object to the jurisdiction of that Court. If ultimately question would arise either there must be some determination which Court has jurisdiction. In 10 (B) it is provided that the Appellate instead of retaining the plaint might transfer it to the Court in which the suit should have been instituted and fix a date for the appearance of the parties in the Court to which the suit is transferred to serve the defendant with the summons for appearance in the suit, unless the Court, for reasons to be recorded, otherwise directs. Something should be done in the initial proceedings so that there is no time lost in adjucating which is the competent Court by providing in subrule (2). So this is so far as the defendant is concerned that the suit will be filed on that day on which he will appear otherwise he will have to incur unnecessary expenditure.

MR. CHAIRMAN: You give that onus to the Court which will decide whether they have got power to try or not. How can a Court be given that onus by law? That particular court refer this question to a particular competent court. It can be rejected. Against that rejection....we have not been able to examine that but I think that Court should be able to exercise that responsibility.

SHRI M. D. PANDYA: Ultimately, the jurisdiction would depend on the investigation of fact and cause of action.

MR. CHAIRMAN: If the court takes a decision, then it becomes a question of law. Without jurisdiction it started this and the -judgment is *ultra-vires* and therefore it would be late.

SHRI M. D. PANDYA: For a limited purpose the power would be dependent on the court.

MR. CHAIRMAN: We do not know. We will examine that point. I am seeking your advice.

SHRI M. D. PANDYA: In 10B, there some provision is suggested of the transfer to the competent court. On page 25.

SHRI SAWAISINGH SISODIA: The plaintiff will request for a tranfer.

SHRI M. D. PANDYA: The words used in 10B are: "direct the transfer of the suit to the Court in which the suit should have been instituted."

SHRI SAWAISINGH SISODIA: The words are: "if the plaintiff by an application so desires, instead of returning the plaint, direct the transfer of the suit to the Court in which the suit should have been instituted...." Then, that will be on the application of the plaintiff. He will say that instead of "A" transfer it to "B" and the Appeal Court will decide.

SHRI M. D. PANDYA: The wordings as they are :".. instead of returning the plaint, direct the transfer of the suit to the Court in which the suit should have been instituted".

MR. CHAIRMAN: Anyway, we will decide. This requires some scrutiny.

SHRI B. R. SHAH: The District Court or the High Court can be given such power.

SHRI SAWAISINGH SISODIA It is there.

SHRI M. D. PANDYA: 24A would not positively cover this contingency.

SHRI NITI RAJ SINGH CHAUDHARY: Anyway, this is a matter of examination. We will examine it so that there is no conflict and every aspect is covered.

SHRI M. D. PANDYA: Here we are pondering over the suggested amendment because we could not find what was the purpose sought to be achieved by making obligatory. I think it would be a time-cosuming process, a duplication of the recording to evidence, etc.

SHRI SYED NIZAM-UD-DIN: Ored X clear specifies that the Court may ask for some elucidation. It is obligatory.

SHRI NITI RAJ SINGH CHAUDHARY: There is no elucidation necessary.

SHRI M. D. PANDYA: Because it is a more matter of clarification for us.

Now coming to Clause 71 (d) I would like to say that the words and expressions used are rather harsh. Where the litigant who has already engaged a law for no fault of his and the lawyer is sick or is engaged in some other court and he is not in a position to attend the litigant's case. In this case, what happens that when he has already engaged a lawyer and he has acquainted him with the facts of the case, he has briefed him and paid the necessary fees for that. If he leaves that Advocate and engage another Advocate, again he will have to brief that advocate in a short time and incur further costs.

MR. CHAIRMAN: So far as sub-clause (a) of clause 71 is concerned, you agree.

SHRI M. D. PANDYA: Yes.

MR. CHAIRMAN: So far as sub-clause (a) of clause 71 is concerned, you say, no.

SHRI M. D. PANDYA: That should be considered as a exceptional reason. In this case what happens that if an advocate falls ill and the client is compelled by circumstances to engage another advocate then I doubt whether that advocate would fight or defend the case so properly as the first one.

Secondly the proceedings of the court are altogether different from the appellate side proceedings. Because on the Appellate side the Council is briefed in the early morning. Whereas in the Civil Suits witnecesses are to be examined. So the second matter stands on altogether a different footing. There is no dual system. One is the solicitor who has prepared the case and the Council may not be in a position to come and appear on behalf of the witness. But that is not the provision prevailing on the Appellate side.

Even for clause (a), one aspect may be considered; that witnesses who might have been called from different places, if hearing commences and continued from day to day, several witnesses from outside the town and even from certain departments of Govt. machinery, they might have to go on waiting merely on the ground that the matter comes day to day and he does not know when his turn will come. Provision should be made for this sort of situation. Their stay would also entail cost to the litigants also.

Clause 73, *Order* 20. In clause 5. a salutary provision is sought to be

introduced. We would only wish that it could be made more effective even if the party is represented in the court. The judgment itself should contain the final part of the order, out of which he can file an appeal. At the time of the pronouncement of the judgment lawyers may not be there, the litigant may be there, but he has to wait till his lawyer gets the copy and reads out. So if he is made aware of the position there itself even though he is represented by the lawyer, it would be much better, except where both the parties are represented by the pleaders.

Clause 74, *Page* 40, *Order* 20A. *Sub*-clause (2), I understand as far as calculating the costs for the purpose of drawing the details are concerned, it is based on tax cost and not the expenditure incurred. Now it may be that in a given case on the date when the decree is passed, the lawyer may not have received the amount. The client might have only incurred the obligation to pay the requisite fees, he may not be in a position to pay, the lawyer may not have reminded, or might have given him legal aid without previous remuneration, in such cases, it may not be possible to get a certificate. We are not able to follow what is the underlying purpose behind having such a provision.

What is the purpose of this amendment I want to know.

MR. CHAIRMAN: Fee is based on the schedule to which they are entitled. Sometimes less also and many times on the higher side also. So a certificate should be given by a lawyer.

SHRI M. D. PANDYA: What is the purpose sought to be achieved for the purpose of procedure. Actual amount received is not the consideration because he shall be entitled on the valuation of the rule. The amount will not be taken out for the purpose of the case which he has incurred.

SHRI SYED NIZAM-DIN: Will it help the pleaders to realise the fees if the certificate is necessary?

SHRI M. D. PANDYA: How will you certify for the amount which you are going to receive?

SHRI SYED: NIZAM-UD-DIN: Because he has to receive certificate he can ask the client to pay him the amount. You can say this is the law.

SHRI M. D. PANDYA: Lawyer of the Corporation might not be knowing his amount of the case or the fees he is going to get because he may be getting remuneration. He gets remuneration. That is all what can happen. Now, the case might be over say in the month of April and he may get the payment in the Next April.

SHRI BIPINPAL DAS: Then the certificate will say that this is the arrangement.

SHRI B. R. SHAH: Why such a certificate is intended?

SHRI M. D. PANDYA: There is another possibility. For example, take the cases of Mills or Companies. Their fees are not settled intially. Fee is settled ultimately on the quantum of work done.

SHRI NITI RAJ SINGH CHAUDHARY: It has connection with the income-tax.

SHRI B. R. SHAH: It is not dependent on that. There may be cases where the lawyer may charge less than the scheduled rate. 99 per cent advocates charge more.

SHRI NITI RAJ SINGH CHAUDHARY: You have made your point. We have expressed our view before you. Now we shall consider.

SHRI M. D. PANDYA: Kindly read sub-clause (2). It reads thus:

(2) The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.."

So, ultimately, it depends on the rules made by High Court.

SHRI B. R. SHAH: Various amendments made in Order 21 are really good.

SHRI NITI RAJ SINGH CHAUDHARY: We We would like to have your comments where we have erred and not where we are improving.

SHRI M. D. PANDYA: In clause 16, on pages 54, rule 4A is like this:

"4A. (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as it would have been bound if a personal representative of the deceased person had been a party to the suit."

Now, in so far as it provides for the proceedings being represented by the Admiistrator General or an Officer of the Court or any such other person which the Court thinks fit to to represent, it causes no difficulty. But if the Court chooses to adopt the first made, *viz.* to proceed in the absence of the person without appointing anybody else, then to make it binding to the Estate, that does not appear to be doing justice to those persons who have not been able to come up because of certain reasons.....

Normally, the litigants, they will come before the Court. Now, here this situation would arise if he is not aware of the fact.

SHRI NITI RAJ SINGH CHAUDHARY: So, your objection is that somebody should be put so that the interests of the party should be taken care of.

MR. CHAIRMAN: Supposing we omit the word "or" on page 54 clause 76(ii).

SHRI M. D. PANDYA: For the word "or" substitute the word "and". Because the section does not make it obligatory to appoint a person to represent the case. I would suggest that the word "may" appearing in clause 4A be deleted:

"....should prepare and make such an order after some sort of advertisement whereby such a person may not be in the know of such a thing."

If some such procedure is evolved, he get himself represented there, a man of his choice, because the plaintiff is not aware of the legal representative dealing in his case.

MR. CHAIRMAN: Next.

SHRI M. D. PANDYA: On page 56, 3A—Bar to suit. It reads:

"3A. No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

I feel it would not be conducive to the administration of justice because the person have been contracted out of the benefits which law gives to him.

Persons who might have taken advantage of this, may not have been able to procure compromise and then if he is not permitted to a challenge even on this ground, that in our view, would not be a proper legislation.

MR. CHAIRMAN: Can you give any instance? In a particular suit,

compromise takes place and on the basis of the compromise, compromise decree was ordered by the court and the party filed another suit based on the compromise, that the compromise on which the decree was based was not lawful.

SHRI NITI RAJ SINGH CHAUDHARY: The matter was before the Law Commission. The Law Commission considered the views expressed on various courts. The Bombay High Court said that it is true that before a court passes a decree it should examine the lawfulness and validity of the terms of the proposed compromise. That was the view of the Agra High Court also. House of Lords also took up this matter. Taking all these factors into consideration, they suggested that it is desirable to make a clarification in the interest of finality. Rule 3A is based on that recommendation.

MR. CHAIRMAN: In view of this what is your suggestion?

SHRI M. D. PANDYA: The compromise might have been induced by fraud or coersion. At point of time, it may have been influenced, but that he is not in position before the court to say this.

SHRI NITT RAJ SINGH CHAUDHARY: Please read that explanation.

SHRI M. D. PANDYA: That would be unlawful and if that is unlawful, clause 3A bears challenge on this ground.

MR. CHAIRMAN: Here it is a decree ordered by the High Court on the basis of compromise which later on appears to be unlawful. In such case your point was that one of the parties does not realise what he has compromised. Supposing your point is conceded whether remedy should be provided by any order? The question of law is involved and no compromise which is unlawful can be accepted by the Court.

SHRI M. D PANDYA: There would not be evidence for substantiating a contention that it is not proper.

MR. CHAIRMAN: How can there be any finality in that case? It is for the Court to decide that it is unlawful.

SHRI S. K. MAITRA: When a decree is passed either a suit is filed or an appeal is preferred to set aside the decree. When the compromise is recorded by the Court and the Court challenged on the ground that it is records that it is lawful it cannot be unlawful. If it was unlawful Court would not have passed that decree.

SHRI M. D. PANDYA: It should be open to the litigant to go to the other Court.

MR. CHAIRMAN: We will examine that.

SHRI M. D. PANDYA: In Clause 89, sub-clause (iv) the following proviso is proposed to be added:

> "Provided that wherein an injunction is granted without notice to the opposite party, the Court shall, before granting such injunction, require the party praying for the injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party or, where such delivery is not practicable, a copy of the application together with the documents and affidavit on which the applicant relies and a copy of the pleadings has been sent to the opposite party by registered post."

This provision, in our view, requires your re-consideration. If a party desires to go before the court of law where the chances are such that if the other party is made aware at an earlier stage that they are going to obtain an injunction, then he might do some mischief which could not be remedied. When such an expediency becomes necessary, ultimately the court must be satisfied. That is already there. The *ex-parte* decision is required. If he is previously in-

formed, then the plaintiff would be without any remedy, in case he does some mischief.

SHRI S. K. MAITRA: Kindly read from line 17 onwards:

> ".....where such delivery is not practicable, a copy of the application together with the documents and affidavit on which the applicant relies and a copy of the pleadings has been sent to the opposite party by registered post."

You send it by registered post and then proceed as you like.

SHRI NITI RAJ SINGH CHAUDHARY: Sometimes the injunctions are obtained to harrass the people. You should consider the other side of the picture also.

SHRI M. D. PANDYA: The court shall have to be satisfied.

SHRI NITI RAJ SINGH CHAUDHARY: You send a copy today and apply for injunction and thereby the other side comes to know about it. If any mischief is created, it will be seen.

SHRI M. D. PANDYA: The first part talks of the delivery of the application for the injunction to the opposite party but the second part says that it has been sent to him by registered post.

SHRI NITI RAJ SINGH CHAUDHARY. It is up to you to choose.

SHRI M. D. PANDYA: It does not mean that it has reached him?

SHRI NITI RAJ SINGH CHAUDHARY: Yes, there delivery is not there. There you have to see that it is just sent to ensure that the mischief is not continued. He would come to know as early as possible.

SHRI M. D. PANDYA: I am only considering the second aspect. That aspect of "harrassment" would it be obviated by sending it by post?

SHRI NITI RAJ SINGH CHAUDHARY: He will get the copy.

SHRI M. D. PANDYA: If the injunction order is issued then it would also be served on him as early as possible.

SHRI S. K. MAITRA: Our experience is like this. In some cases people say that the building was being constructed to obstruct a passage, or that a wall has been built to block a passage and so on and so forth. Therefore, as soon as you want to go to the court the other party comes to know about it by post. We want to prevent frivolous and mischievous applications for *ex-parte* injunctions.

SHRI SWAI SINGH SISODIA: It may take about a week.

SHRI S. K. MAITRA: In any case, during that week he will come to know.

SHRI SAWAI SINGH SISODIA: During that time the order of injunction will also be served on him....

SHRI M. D. PANDYA: The order will be served. Even the petition along with the copy of the documents etc. are not sent. That can be provided that along with an Injunction Order of the High Court. Whenever an Injunction Order is issued it is always accompanied by the necessary documents.

SHRI S. K. MAITRA: If you want an Injunction, how can the other party come to know of it? If you want urgently an injunction, he can get the injunction but the other party may not be aware of it and the case would be *ex-parte* decided.

SHRI M. D. PANDYA: Can we not make a positive provision in the Bill? Can it not be made necessary that the process should be on the very same day or a copy shall also be simultaneously issued before obtaining order of injunction. I would suggest some such provision should be made

in the bill because the person troubled is being harrassed by substantive provisions rather than by making such a provision in the Bill itself.

MR. CHAIRMAN: We will examine this.

SHRI M. D. PANDYA: Now, coming on page 75, clause 90. What happens that:

Where the appellant fails to deposit or furnish security the Court shall reject the memorandum of appeal. It might work hard in the cases where interim stay is sought to be obtained. But for the purposes of even preferring an appeal without an interim relief being paid.

SHRI S. K. MAITRA: If an appeal is preferred, whether in such a case we must provide that he must deposit money?

SHRI M. D. PANDYA: The point is in a simple appeal we must not ask that he must deposit or furnish security to the Court. Otherwise what happens that a person who is not having sufficient money would be denied of the right of appeal. There is a similar provision of Appeal under the provisions of the Corporations Act. It has been set out on the ground that it is discretionary to those who are rich, who can afford to pay and the poor people, who cannot pay have no right to prefex an appeal. One relates to recovery and another is substantive. Both are on different footing. So, do we want to restrict the rights of appeal to rich and do we want to deny the right of appeal to the poor to suffer?

MR. CHAIRMAN: What do you suggest in the matters of appeal, the Committee will give its careful consideration. In the matter of appeal there are two different considerations expressed by you and the Committee will take different *consideration* in both the cases.

SHRI M. D. PANDYA: Similarly, provision relating to Section 47, on page 77. They are both equally important. They are on the same lines. As regards provision 12A, in clause 90, on page 76, line 36, provision is sought to be made of remitting in part only. Same difficulty, which I had pointed out while limiting the scope of second appeal under section 100 would also be felt.

SHRI NITI RAJ SINGH CHAUDHARY: Do not forget to read the last line.

SHRI M. D. PANDYA: Without leave of the court, that is true. The question is this. When the admission order is made restricting him to a particular part, rest of the part of the decree under appeal becomes final. It is as good as it is dismissed. Does he has to seek redress by rejection by the court?

MR. CHAIRMAN: The Minister has pointed out that without the leave of the court'. He cannot go beyond that. The door has been kept open. Anyhow, we will examine that also. If there is ambiguity, we will examine.

SHRI M. D. PANDYA: He should not be put to greater disadvantage than necessary.

MR. CHAIRMAN: Both sides are before us, we will examine.

SHRI M. D. PANDYA: On page 44 in regard to rule 14 it is provided that—

> "(4) Notwithstanding anything to the contrary contained in sub-rule(1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal."

This word 'incidental' might raise a complication.

SHRI NITI RAJ SINGH CHAUDHARY: 'Incidentally' should be made more exclusive is it not?

SHRI M. D. PANDYA: Yes Sir.

Clause 91. This cluase is dealing with 2nd appeal. Here reasons for rejecting the admission should be given. If Court does not admit there should be more reasons to record the reasons. Court should record. While admitting it will not necessary but it is not admitting then the reasons should be recorded.

Clause 92. Clauses in (b) are sought to be omitted, in order XLIII.

SHRI NITI RAJ SINGH CHAUDHARY: That is consequential,

SHRI M. D. PANDYA: Then clause (m). This would avoid awaiting till the final decree. That would serve the purpose. If the agreement is recorded nothing further requires to be done.

Clause 92: There is one aspect which we wanted to understand when we were reading clause 1A, sub-clause (2), on page 79, line 29. It is like this:

> "(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise it shall be open to the appellant to contest the decree on the ground that the compromise ought not to have been recorded."

These are the wordings. Now, the difficulty is this. Now, if there is a recording of the compromise, it is easy to prefer an appeal against that, whether that is open? There are two clauses. Unless we are making a mistake in reading the section, two contingencies are contemplated.

SHRI SAWAI SINGH SISODIA: Compromise on what is recorded or what should have been recorded. It should not have been refused.

SHRI NITI RAJ SINGH CHAUDHARY: It should be "ought to have been recorded". The phraseography shall have to be changed.

SHRI M. D. PANDYA: Now, as far as the appeals by indignant persons is concerned, there is one aspect which requires your consideration and that is whether presentation by him in person would be strictly necessary keeping in view that he might be residing at a long distance from the City of the Court, in which case, the indignant person is asked to come to the Court. That might be not in conformity with the spirit with which this is sought to be liberalised. So, it is possible to keep that he is represented through somebody else. We have Legal Aid Committes, where the lawyers would be giving legal assistance. So, his personal presence may not be necessary. So, unless the Court feels that his presence is necessary, it should not be made a rule that he shall present in person.

MR. CHAIRMAN: Next.

SHRI M. D. PANDYA: Then Sir, I come to page 89 about repeal and saving, Clause (n) ... .. Second appellable appeal will certify or certificate may have been granted but presentation might not have been done. Certification has been done when it goes to different courts. It may be admitted.

MR. CHAIRMAN: Mr. Pandya, on behalf of myself and on behalf of the Committee I express to you all appreciation of the valuable suggestions that you have made before the Committee. Let me assure you that your honest and earnest suggestions will be placed before the Committee for careful consideration. I thank you all once again.

II. Shri K. N. Mankad Advocate Ahmedabad.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: I welcome you to come and give evidence before the Committee. But before you enter into your evidence I would like to draw your attention to Direction 58 of the Directions by the Speaker which governs your evidence, *viz.* whatever evidence will be given before us will

be treated as public and as such liable to be published also. But if you so desire that any part or a part of the evidence should be treated as confidential, even then, in that case, the evidence shall be made available to other Members of Parliament. I hope you have already noted that.

SHRI K. N. MANKAD: Yes.

MR. CHAIRMAN: You have not given us any written statement. So you are welcome to make any suggestions.

SHRI K. N. MANKAD: So far as this Bill is concerned I feel it is well drafted and studied and several Commissions have laboured over it. I, myself appeared before the Law Commission a couple of years back under the Chairmanship of Shri J. C. Shah. The main controversial point which agitates us is the curtailment of the Second Appeal powers of the High Court and the abolition or extinction of the Revision Power also. There are several other points but these two points are important which require reconsideration by the Select Committee.

You have, in your letter addressed to me personally, said that the important point is the reduction of the cost and minimisation of the delay. So far as extinction of the revision is concerned, both the objects would be frustrated. You have said that as the High Court has the powers under Art. 227 of the Constitution, this power of revision under Sec. 115 is no more necessary. I do not think that is the whole truth for the reason that it all depends on different High Courts, how they interpret Art. 227. For instance, if Art. 227 is rightly interpreted, a High Court can interfere only on an error on the face of the record. Some High Courts have clearly held that error on the face of the ecord is one which requires no argument. In errors of law, even misapprehension or misappreciation of evidence was considered a good ground for interference. It is well known that writ petition under Art. 227 takes as many as 4 years to be disposed of. In our Gujarat High Court, it is 3-4 years. So far as the question of delay is concerned, I do not feel that abolition of the right of revision will achieve the object. It will certainly add to the cost rather than minimise the cost. Normally, for a revision application the advacate would be cmharging anything between Rs. 150 and 3000, whereas on writ petitions the fees are anything as the advocate choses Then there are the court-fees. The court fee payable on a petition under Article 227 is Rs. 20 whereas on revision application it is Rs. 10. Now how are the cost to be minimised? How is the delay going to be obviated? I feel that is not a legitimate cause for abolition of the powers of revision. As far as back 1949, the Privy Council has held that the question of jurisdiction is the only question under section 115 C.P.C. and no other question can come under 115. If that interpretation is adopted, there is no difficulty. However as a matter of fact, I know that several High Courts have interpreted this way that whenever the record is called, it can interfere in case of a miscarriage of justice. We know that delay is caused by the exercise of jurisdiction by the High Court but that is not because of Section 115, but it is because of the fallible human agency who administer justice. On the other hand, the Supreme Court has said that even if a case fulfills all the requirements of Section 115, the High Court is not bound to interfere. Therefore what I feel is that is not because of Section 115 that there is delay, but it is because of the fallible human agency through which administration of justice is being worked out. Different interpretations are put by different High Courts for different reasons. Section 115 is sufficiently stringent. Therefore, we need not do away with Section 115. On substantial question of law I would like to (Section 100 C.P.C.).

MR. CHAIRMAN: Before you take clause by clause, may I put on record

that so far as this committee is concerned it is not a general committee. This is a committee on the Government Bill. It has to scrutinise various proposals. Committee is scrutinising it on behalf of Parliament.

SHRI K. N. MANKAD: The Committee can suggest retention of section 115.

MR. CHAIRMAN: These are the proposals of Government and not of the Committee.

SHRI K. N. MANKAD: Yes yes. This is the Bill of Government and you are the Joint Committee appointed by the Parliament. So far as amendment of section 100 is concerned it is on a substantial question of law. What is a substantial question? That again will depend upon views of the Judges of the same High Court as well as different High Courts. On a question of law we do not know what is substantial. Therefore so far as this is concerned that would not minimise the delay or the cost. Because High Court can always say it is substantial, apart from the different interpretations of different High Courts. Today also section 100 says that on error of law High Court can interfere. High Court cannot interfere on errors of facts. What is a substantial question of law will depend upon the Judge. I don't think that will achieve the object. This Code is passed in 1908. It is a well known fact that in those days when the standard was high we used to have best of talents, as District Judges. We do have that talent now. Therefore, that fact also should be considered, that is, looking at it from their point of view Ultimately. the public litigant has faith in the highest judiciary. It has greater faith in the High Court than in the District Court. It has greater faith in the District Court than in the Subordinate Court. And it has greater faith in the Supreme Court than in the High Court. So, we have to look at it from the practical point of view. He will be incurring expenditure over Second Appeal in any case. Therefore, what I feel is this, the object of minimising cost and delay will be frustrated by this. That is what I feel by Section 100.

I very much appreciate that Section 111 is properly amended because so far as the question of writ petition is concerned, I welcome it. Amendment to Section 111 is very good.

Now, so far as the provision of litigations are concerned, they are also good provisions and are in accordance with the present time. Other provisions are also good.

There is only one point which I do not understand. This exemption period of 14 days is extended to 40 days. Why this privilege? We are abolishing the privileges.

SHRI S. K. MAITRA: The provision under the Civil Procedure Code is that a Member of the Legislature cannot be arrested in the civil proceedings 14 days before and 14 days after the session. Under the Constitution, the privileges of the Members of the Parliament and the privileges of the Members of the State Legislatures are the same as the Members of Parliament in the U.K. That was the law prevailing in U.K. and those privileges are applied. In U. K. the freedom from civil process is for 40 days before and 40 days after the session. That is actually what is being done.

SHRI K. N. MANKAD: So far as that point is concerned, I feel that that is a little relic of the past. There should not be anything like that. But when a provision is sought to be retained then I would request the Committee to compare our position our circumstances with the circumstances prevailing in the U.K. I might mention here for the information of the Committee that there is hardly any material factor for comparison with U.K. The M.Ps. of U.K. are performing many other duties outside the Parliament. They study the questions which are brought before them by their constituents. They seek information from the constituents on their day-to-day problems. Then they get so many facilities. Apart from that they are very much vigilant in their public duties

also. I am afraid that cannot be said about the Members of Parliament of India and of the State Legislatures. I feel 14 days time if the exemption is to remain is a sufficient time. Why should it be extended to 40 days! I don't think there is any logic behind it.

SHRI BIPINPAL DAS: It is laid down in the Constitution.

MR. CHAIRMAN: Mr. Mankad. will you make a submission so far as your opinion is concerned that this distinction should be made? Supposing, we are very much busy than others, perhaps, you may not be aware of it, you feel that this distinction may not be ruled out? Your objection is that it should not be increased to 40 days.

SHRI K. N. MANKAD: Yes. 40 days' should not be there. I feel 14 days' grace before the commencement of the Session and 14 days' after the session would be alright.

MR. CHAIRMAN: Alright. The Constitution has been amended. If Constitution has certain amendments, we have amended so many times the Bills. The Committee is there to recommend it to the Parliament that there is something that should be modified. So I am not taking that point.

SHRI K. N. MANKAD: Had I known about it either in the Statement of Objects and Reasons or on the "Notes on the Clauses" that such and such an amendment is sought to be incorporated in order to bring it in line with the provisions of the Constitution, then of course, my arguments would have been different.

SHRI RAJDEO SINGH: The restrictions have been laid down of 14 days.

MR. CHAIRMAN: Anyway, we will consider your point.

SHRI K. N. MANKAD: That is all. I feel many submissions have been made by the Bar Association and Bar Council before the Committee. Therefore, anything spoken by me will only be a duplication of it; unless the Committee wants me to give my opinion on certain provisions. Otherwise I am not in a position to say anything on this.

I am generally satisfied with the Bill excepting the proposed amendment of section 100 of the Principal Act and 115.

SHRI DINESH JOARDER: If you want to emphasise on certain points, you can do so. I think you have already done it.

SHRI K. N. MANKAD: Yes.

SHRI RAJDEO SINGH: We know you have just said that by way of amendments we are increasing the delay and litigation costs—revision application within a year or two and writ petition. I am talking from my point of view to reduce the time and cost. On that we want your suggestions.

SHRI K. N. MANKAD: My suggestion is that Section 115 should be properly implemented in the spirit in which it is there. On the question of Jurisdiction alone.

SHRI RAJDEO SINGH: Instead of dropping Section 115, what would you suggest that we should do.

SHRI K. N. MANKAD: It is absolutely necessary that even at the interlocutary stage the High Court must be in a position to set right an injustice that is being committed by the lower court. That power must be there in the court. I do not for a moment agree that reduction of cost to that extent will be there if section is abolished as a litigant will resort to Article 227. Revision is not a matter of cost. What is really the cost? Court fees which is Rs. 10|-. Then 2 to 5 per cent of the subject matter would be pleader's charges and 2 to 5 per cent other incidental charges in case of appeals so one has to spend 10 per cent to 20 per cent before he gets a decree. So, even if he succeeds

for Rs. 10,000|- he would have already spent Rs. 2,000|-. That is not the question that revision entails greater cost or greater delay. For instance, so far as delay is concerned, if the delay is lessened, cost will be lessened. If the court fees are lessened, cost will be lessened.

SHRI DINESH JOARDER: You have certain other reasons apart from the delay and cost for retention of Sec. 115. It is that High Courts should have the jurisdiction to rectify the errors. If the litigants want to take recourse to Article 227, in that case you proposed to amend Article 227 that litigants may not take recourse to that Sec. under article 227.

SHRI K. N. MANKAD: Even if miscarriage of justice is perpetrated, the litigants will have no remedy.

SHRI DINESH JOARDER: The primary reason should be that High Courts should have power to interfere even at interlocutary stage.

SHRI K. N. MANKAD: That power is there under 115. Many litigants prefer appeal only for the purpose of delay and stay and sitting tight over it. For an injunction, maximum duration is six months. That is sufficient for the purpose.

SHRI DINESH JOARDER: I think that we have come from a system of legal practice where the High Court has jurisdiction to interfere at the interlocutary stage and certain other legal proceedings. We have been accustomed to this system for a long period. If this system is changed there will be certain dislocation in the field of judiciary or in the practice of judiciary.

SHRI K. N. MANKAD: It is not the fault of the system but the fault of human agency administering justice.

MR. CHAIRMAN: Human limitation is there.

SHRI K. N. MANKAD: In the present Code there are provisions under section 115. How many courts exercise the functions that can be exercised under section 115?

MR. CHAIRMAN: Our limited function is to judge how far the proposals made in this Bill need to be improved although the other agency is human agency. So far as this Committee is concerned our mind is open. As I said earlier we are scrutinising various provisions made here. Regarding section 100 and 115 you have expressed your views. We shall take note of it and Committee will give honest consideration regarding other points also which you have mentioned we have taken note of that and we shall see how far it can be taken advantage of it by the Committee.

SHRI K. N. MANKAD: I knew that this committee cannot improve the administration of justice by itself. The delay is not merely due to the Code itself. It is due to the fault of human agency that works it. In the present code there are provisions which can avoid delay but they are not implemented at the stage they are wanted to be implemented.

MR. CHAIRMAN: I will only summarise the point which you have made and also other causes which create delay. That we have taken note of.

SHRI K. N. MANKAD: This Bill has many provisions which minimise delay. There are many provisions which are there, i.e. for the first adjournment, some modifications are made, then in the matter of passing the decree, etc. in mortgage suits. These amendments have a good effect of lessening the delays and I have nothing further to say than what has already been said, except on sections 100 and 115.

MR. CHAIRMAN: Thank you, very much, Shri Mankad. I on behalf of myself and on behalf of my colleagues take this opportunity to express our sincere appreciation of the points you have made and I can assure you that our Committee would give due consideration to them. Thank you once again.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'B' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Thursday, the 10th October, 1974 from 15.00 to 15.45 hours in Congress Party Hall, Council Hall, Bombay

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri V. Mayavan
4. Shri K. Pradhani
5. Shri Rajdeo Singh
6. Shri Satyendra Narayan Sinha
7. Shri T. Sohan Lal
8. Shri Nitiraj Singh Chaudhary

Rajya Sabha

9. Shri Bipinpal Das
10. Shri Syed Nizam-ud-din
11. Shri V. C. Kesava Rao
12. Shri Awadeshwar Prasad Sinha
13. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

Law and Judiciary Department, Bombay

Spokesmen:

1. Shri A. A. Ginwala—*Additional Secretary.*
2. Shri B. B. Tambe —*Joint Secretary.*

[*The witnesses were called in and they took their seats*].

MR. CHAIRMAN: Mr. Ginwala. I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha. which governs the evidence before this Committee. Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI A. A. GINWALA: Yes, Sir. I have already noted it.

MR. CHAIRMAN: You have not submitted any written memorandum on the Bill. You give your views on the various clauses of the Bill that you may like the Committee to consider.

SHRI A. A. GINWALA: I would like to give my views on certain caluses of the Bill.

Clause 28—Section 80 of the Act is proposed to be deleted. This is proposed to be deleted from the Code. The Section provides for two months' notice in case the suit is filed against the Government. We think it was a salutary provision because it gave advance notice to the Government so that if the Government found that the case was indefensible, they could give redress to the party concerned. In this way, a suit could be avoided and litigation could be avoided. If no notice is given, there will be no time to find out whether the case is defensible or indefensible and if it is indefensible, to settle the matter. The Government could avoid litigation. We think that this Section should be retained.

MR. CHAIRMAN: Will it be possible for you to give a factual statement to the Committee now or later on with regard to the notices served on the Government of Maharashtra under Section 80 for civil suits?

SHRI A. A. GINWALA: I will not be in a position to give statistics right now as to how many notices were served.

MR. CHAIRMAN: You can give later on.

SHRI A. A. GINWALA: Yes, Sir.

MR. CHAIRMAN: You feel that this notice is necessary so that the Government, before going into actual litigation, could find out whether the case is defensible or indefensible. We would like to have a factual statement whether Section 80 has actually achieved that purpose so far as your State is concerned.

Regarding public servants acting on official duty as such, they are also governed by this Section. You want that this should be retained in both the cases.

SHRI A. A. GINWALA: Yes, Sir.

MR. CHAIRMAN: In that case, I would request you to furnish information regarding that also.

SHRI A. A. GINWALA: Yes, Sir.

Now, I refer to clause 31, Section 91 So far as sub-section (1) is concerned. the words "wrongful act affecting the public" are sought to be added. Those words were not there originally. It provides that a suit could be filed by two parties in respect of a wrongful act affecting the public. That will widen the scope of section 91. Our apprehension is that it may lead to frivalous litigation or vexatious litigation. This will not require a permission of the Advocate General, but of the court. Two persons can file a suit in respect of a supposed wrongful act affecting the public. That way, litigation will increase. The Advocate-General himself can file a suit. If the members of the public want to file a suit, they will have to take the permission of the court. Formerly, it was the Advocate-General's permission that was

required. Now, the permission of the court has to be taken. In that case, the court will have to see whether there is a *prima facie* case or not. It will be, in a way, amounting to pre-judging the issue. So, far as these words "wrongful act" which may affect the public are concerned. we would suggest that these may not be there. So far a the members of the public are concerned, it should be with the permission of the advocate.

SHRI NITIRAJ SINGH CHAUDHARY: Suppose there is a fraudulent practice by a trader. In such cases, if these words are added, what will be the position?

SHRI A. A. GINWALA: A person who is accused of a wrongful practice can also file a suit.

SHRI NITIRAJ SINGH CHAUDHARY: Would that be enough? By this, in a representative way, action could be taken.

SHRI A. A. GINWALA: Any two persons can represent with the permission of the court and it is doubtful whether they represent the whole public or not.

SHRI SAWAI SINGH SISODIA: At present, the consent of the Advocate General is required. Now the present amendment is that the consent of the court is also required. One should think that this is a proper way of doing things. It is thought proper that this position would be there. What are the practical difficulties which you anticipate by this proposal?

SHRI A. A. GINWALA: The practical difficulty is that before giving the consent, the court will have to see whether there is any wrongful act against the public or not. If all this evidence comes before the court, that may affect the ultimate decision. As I said earlier, it prejudges the issue.

Kindly see page 59 of the Bill. clause 79, the very first line, that is, amendment to rule 5. Rule 5, as it stands, allows the court a discretion to grant a certain time to the Government for filing a written statement. Up till now, I think. no time-limit was fixed. Now, it is proposed that this time-limit should not exceed two moths. The words which are to be added here are "the time which will be allowed shall not exceed two months in the aggregate". The effect would be that the court would be able to give time for submission which would be two months, not beyond that. so far as the other litigations are concerned, there is no such time-limit fixed, as far as my knowledge goes. At least I have not been able to see anywhere.

SHRI NITIRAJ SINGH CHAUDHARY: Would you like that the Government and the private citizens should get power? There should be no time limit for anybody?

SHRI A. A. GINWALA: Excuse me for the comments on Section 80. All should be equal. That is the reason for creating Section 87.

SHRI NITIRAJ SINGH CHAUDHARY: By retention of Section 80, you will admit that the Government are the biggest litigants. You want that a special provision is to be retained in favour of the Government even though you would agree that as far as this notice to Government is concerned, hardly 1-2 per cent matters are settled. Otherwise, the authority has to go to a court of law. So, you want that this should continue and that should go away.

SHRI A. A. GINWALA: At that time, two months were there. So far as Rule 5 was concerned, there was no time limit. We used to get those two months *plus* whatever time the court was pleased to give. If Section 80 is to be deleted, then these two months' time should not be there.

MR. CHAIRMAN: Do you want both the things?

SHRI SAWAI SINGH SISODIA: Do you want that the *status-quo* should be maintained in any case?

SHRI A. A. GINWALA: Yes, Sir. There are so many Departments from where we have to collect information and that would take some time.

MR. CHAIRMAN: This Sub-Committee would like to have more information than mere asking for this provision to be retained. So far as your State is concerned we would like to know about section 80. I have already requested you to submit information saying that this section has actually given good results in your State. Anyway, if you want that this should also be retained, we will consider it.

SHRI A. A. GINWALA: Yes, Sir.

MR. CHAIRMAN: There are three matters on which this Sub-Committee would like to have your comments in writing. The first one is that you want that this section 80 should be retained. The second one is that you do not support clauses 31 and 79. Regarding other clauses, you have no comments.

SHRI A. A. GINWALA: Yes, Sir. We will sumit it.

MR. CHAIRMAN: I, on behalf of this Sub-Committee, would like to thank you for having taken the trouble to come over here and give evidence.

SHRI A. A. GINWALA: We thank you, Sir.

SHRI DINESH JOARDER: Our Chairman would like you to send the information that we had asked for.

SHRI A. A. GINWALA: We will send then to the extent possible. Sir.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE 'B' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Friday, the 11th October, 1974 from 10.00 to 14.10 hours and again from 15.00 to 18.00 hours in Congress Party Hall, Council Hall, Bombay

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri K. Pradhani
4. Shri Rajdeo Singh
5. Shri Satyendra Narayan Sinha
6. Shri T. Sohan Lal
7. Shri Nitiraj Singh Chaudhary

Rajya Sabha

8. Shri Syed Nizam-ud-din
9. Shri V. C. Kesava Rao
10. Shri Awadheshwar Prasad Sinha
11. Shri Sawai Singh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. Bar Council of Maharashtra, Bombay

Spokesmen:

1. Shri S. J. Deshpande, Advocate.
2. Shri P. V. Holay, Advocate.
3. Shri D. R. Dhanuka, Advocate.
4. Shri P. R. Mundargi, Advocate.

II. Bombay City Civil and Sessions Court Bar Association, Bombay.

Spokesmen:

1. Shri M. N. Kothari, Advocate.
2. Shri P. K. Pandit, Advocate.
3. Shri D. R. Dhanuka, Advocate.

4. Shri K. K. S. R. Rajguru, Advocate.
5. Miss Sheela P. Baxi, Advocate.

III. Shri Ramrao Adik, *Advocate-General, Maharashtra.*

IV. Shri C. R. Dalvi, Advocate.

V. Shri D. M. Rane, Advocate.

I. Bar Council of Mahrashtra, Bombay.

1. Shri S. J. Deshpande, Advocate.
2. Shri P. V. Holay, Advocate.
3. Shri D. R. Dhanuka, Advocate.
4. Shri P. R. Mundargi, Advocate.

(*The witnesses were called in and they took their seats*)

MR. CHAIRMAN: Mr. Dhanuka, I welcome you and your colleague to appear before the Committee. I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha, which governs the evidence before the Committee. Your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI D. R. DHANUKA: Yes, Sir. We have already noted it. We are of the view that our evidence may be made available to the public. We have no desire to keep any part of our evidence as confidential. But we will keep it confidential till the Report is placed on the Table of the House.

MR. CHAIRMAN: We have received your memorandum and also the replies to our Questionnaire just now. I can assure you that whatever you have submitted in your memorandum will receive our earnest consideration. As regards your oral evidence, you may express your views on various clauses of the Bill which you would like the Committee to consider.

SHRI D. R. DHANUKA: Firstly, I have suggested an amendment to Section 10 of the Code of Civil Procedure. It was held by the Supreme Court in a judgment reported in Air 1962 Supreme Court at p. 527 that even if the first suit is false and frivolous and it is filed in breach of a lawful agreement, Section 10 shall apply. Section 10 is mandatory and the court will be helpless even if the provision thereof is being misused by a litigant. The provision for award of compensatory costs in case of the first suit being found false in inadequate and the stay of second suit should not be granted if it appears *ex facie* that the first suit is false and frivolous.

Some people forestall the action by rushing to the court first in breach of a lawful agreement. Therefore, I submit, that Section 10 of the Court be amended as per memorandum already submitted.

It is also found that sometimes, the first suit is pending in the court of exclusive jurisdiction and the second suit is pending, say, in a civil court. The issues may be directly and substantially the same. At present, there is a statutory requirement of Section 10 that unless the court in which the first suit is pending also has jurisdiction to entertain the second suit

the stay shall not be granted, that causes great hardship. Suppose, the court has an exclusive jurisdiction to find out whether a person is a tenant or not under the Rent Control Act. Now, the other party has filed a suit as the cause of action trespass in a civil court. The defendant contends in such a suit that he is a tenant. The main issue is whether the person is a tenant or not. That is pending in one of the two courts. But the other court has no jurisdiction to entertain the second suit. It is submitted that the remedy for stay of a subsequent suit should be available only in the interest of justice and that it should not be denied on certain technical grounds.

MR. CHAIRMAN: You have spelt out in your memorandum, in the precise manner, how Section 10 should be amended. That will be considered.

SHRI D. R. DHANUKA: I have formulated the amendment.

MR. CHAIRMAN: Yes. We have received it just now. It will be considered.

SHRI DINESH JOARDAR: You are suggesting an amendment to Section 10. That is not in the Bill itself. You want to insert a new one.

SHRI DHANUKA: Yes, Sir. There are a few amendments suggested by us which are not in the Bill itself. I am bringing them to your kind notice. We welcome the provisions in the Bill regarding Section 11. I want to divide Section 11 into two parts. Firstly, it is suggested in the Bill that Section 11A be added. Then it is also mentioned against 11A "that the provisions of section 11 shall, so far as may be, also apply to—

(a) every proceeding in execution, and

(b) every civil proceeding other than a suit."

We welcome the above provisions in the Bill.

As far as Section 11A is concerned, I have made a suggestion in my memorandum on page 2.

Another suggestion regarding Section 11A. At present, it is requirement of Sec. 11, that a court of law which decides the first matter must have court jurisdiction to try subsequent suit before the decision of the court can operate as *Resjudicata*. The said artificial requirement does not serve any useful purpose. This suggestion is consistent with our suggestion regarding Section 10 also. I submit that the following words in section 11 of the code be deleted:

"In a court having jurisdiction to try subsequent suits."

We have nothing to say regarding amendment to Section 20.

SHRI SAWAI SINGH SISODIA: Do you find any difference between summary proceedings and execution proceedings?

SHRI DHANUKA: For example, an application is filed under Section 41 of Presidency Small Causes Court Act. In come of the proceedings, matters can be decided merely on an affidavits without recording of oral evidence. The execution proceedings are not summary proceedings. An order passed in an execution proceeding amounts to 'decree' within definition of the said word under the 'code'. A decision given in a summary proceeding should not operate as *res-judicata* in a subsequent suit.

SHRI NITIRAJ SINGH CHAUDHARY: In summary proceedings, there is no appeal.

SHRI DHANUKA: It is true that according to existing law, orders passed in summary proceedings do not operate as *res-judicata but* 11A is wide enough to change the said well settled law which is not desirable.

We have nothing to say about amendments to Section 25. We welcome these amendments.

Regarding Section 34, clause 14 in the Bill, in our respectful submission, this provision is not adequate Firstly, we feel that such a provision would lead to unnecessary on the question as to whether the transaction is a commercial transaction or not. Secondly, we feel there is no justification for this distinction. Thirdly, even if the amount of the decree is less than Rs. 10,000 why there is no reason as to the Court should not award interest at current market rate. Therefore, the Bar Council is of the view that discretion should be given to the court to award the maximum rate of interest; it— may be allowed upto the maximum rate on unsecured loans or 12 per cent whichever is higher depending upon the facts and circumstances. Therefore, where there is a decree for money, let there be a judicial discretion. In this respect, kindly see our suggestion no 5 on page 2 of our memorandum. We have provided that the court should have the power to award the maximum rate of interest which is allowed under the State Law.

We are divided in our submission on the question whether an objection as to nullety of decree on ground of error of jurisdiction should be allowed to be taken in execution, when a party has every opportunity to raise such a question in the original proceeding. Some members of the Bar Council are strongly of the view that the Judgement debtors should have a right to challenge direction of court which passed the decree even at the stage of execution. I am of the view that such a contention should not be permissible at the stage of execution.

As far as Section 21(b) is concerned, we represent both the opinions for your kind consideration. Mr. Deshpande is opposed to Section 21(b).

SHRI DESHPANDE: I oppose this for the simple reason that any proceedings can suffer from infirmity in two ways, firstly, for lack of jurisdiction and secondly where orders are passed which are contrary to law. Take for example a Sub-inspector of Police. When a complaint is made, he just decides the case. And the proceedings are declared null and void. Justice must be restored to the affected person. No delay or haste or expediency should be made a ground for denying the fundamental right of natural justice. For example, under article 226 of the Constitution, even after 10 or 15 years a judgment was challenged in regard to management of (Xavior) schools and it was discovered that such a thing was wrong. Such a challenge should not be barred on the ground that there is second ndgation or third litigation or whatever it is.

So far as we are not making any fundamental change in the inheritance law, the property right, the second litigation and third litigation is only a disguise nothing else. This is no obstacle or impediment a according to law. Sometimes we find that the authority acting on certain basis of statute has no power to act at all. There should be objection to challenge jurisdiction of an authority at any stage. Such a defect may be discovered even after 10 years. We are discovering certain things after 10 or even 15 years. That should be a continuous process. We must allow it. This is conducive to the growth of proper administration of justice.

SHRI S. K. MAITRA: How could a question with regard to jurisdiction be raised in the executing court? Once a decree is passed, the executing court has to execute the decree. If somebody wants to challenge the decree, he has to challenge it in the original court which passed the decree or the superior court. The executing court is not the forum.

SHRI DESHPANDE: The executing proceedings are a part of the suit itself. Appeals are provided for in our courts. If I raise an objection as to the validity of jurisdiction, that question should be taken up by the executing court itself.

MR. CHAIRMAN: So far as this question is concerned, a new clause or a sub-clause to Section 21 has been suggested. There are two opinions on that. Even if there was a unanimous opinion, we want to have the opinions of other Bar Councils also. So far as the Committee is concerned, we want to have all shades of opinion. Later on, we will consider what it should be.

SHRI DHANUKA: I am merely content in placing this view-point before the Committee. Even a transferee court goes into the question of jurisdiction of the court which passed the decree. It does create a situation which normally should not be allowed to be created. You may kindly consider it.

Now, I come to suggestion No 9, p. 3 of the memorandum. Under section 47 pre-decretal agreement can be put forward as a bar to the execution of the decree. Suppose prior to the passing of the decree, it is agreed between two parties, "Let the decree be passed. We will not execute the decree." Sction 47 should be amended by putting a sub-clause saying that unless the executing court shall not recognise a predecretal agreement unless the same is in writing and is made part of the decree sought to be executed.

Section 60 deals with exemptions. Certain amendments are also suggested in the Bill. We have also formulated one or two amendments for your kind consideration. There is an exemption to houses and buildings belonging to agriculturists from being attached. Our submission is that it should be only one house belonging to an agriculturist actually occupied by him which should be exempted. There should be an explanation that "an agriculturist is a person who cultivates the land himself" so that new types of agriculturists are not covered by it. If you give exemption to houses and buildings irrespective of value, the protection may be excessive. We have no objection to giving protection to agriculturists. Let it be there. We believe that as far as the value is concerned, if you specify the value, it might create complications. So it should be "one houses actually occupied by him". There should also be an explanation that "an agriculturists is a person who personally cultivates the land." We have taken that definition from the Bombay Tenancy Act. Some such restriction should be there.

We are suggesting one more amendment to Section 60. Tools or artisans are exempted. We feel that books and magazines, literary works, and instruments which are necessary for professional persons should also be exempted. Such a situation may rarely arise. But, on principle. suppose somebody who is a lawyer or a doctor is involved and he may have taken some loan for buying these things, books, instruments, etc. needed for his profession. When the tools of artisans are exempted from attachment these books, instruments, etc. should also be exempted from attachment. If somebody is doing business in these things, then, of course, no. This is one more suggestion that we thought should be brought to your kind notice.

MR. CHAIRMAN: So far as an agriculturist is concerned, you suggest that only one house should be exempted. You say that if you specify the value, it may create some complications. Can you suggest an upper limit that should be fixed? The majority view is that there need not be any fixation of price. You may stipulate it as on house occupied by the agriculturist, whatever be its value. Nothing more. Let the term 'agriculturist' be defined.

SHRI NITI RAJ SINGH CHAUDHARY: Suppose a person owns a

house in Bombay and another elsewhere. For which house should he get the exemption?

SHRI DHANUKA: Exemption should be given to whichever house he occupies as an agriculturist.

SHRI NITI RAJ SINGH CHAUDHARY: Do you mean the house occupied for agricultural purposes?

SHRI DHANUKA: I agree, Sir. That is the spirit of the suggesion. I am glad the Minister has put it better than ourselves.

SHRI NITI RAJ SINGH CHAUDHARY: You want that the term 'agriculturist' should be defined. An Explanation V to Section 60 has been proposed and included in the bill at page 9.

SHRI DHANUKA: You are right, Sir. It had escaped our notice. Our suggestion is that it should not be given unless the person cultivates the land personally there should be physical participation. You may consider the question as to whether the Explanation should include those not actually cultivating the land. There are two views possible in this regard and you may examine them.

SHRI NITI RAJ SINGH CHAUDHARY: Thank you very much.

SHRI DHANUKA: We welcome the deletion of Section 80.

SHRI RAJDEO SINGH: How, do you think, should the farm-house be treated?

SHRI DHANUKA: We have no objection to that house also being exempted. But the only object of bringing forward this suggestion is to prevent misuse since the provision, as it stands, relates to 'houses and buildings'. Therefore, Section 60, sub-clause (c) capable of being misused.

SHRI RAJDEO SINGH: Only those houses should come in, which he has rented.

SHRI DHANUKA: Suppose an agriculturist has spent Rs. 1,000/- it may be a very small house. Let it be exempted; but the words should not be 'house and buildings' without any limitation. We have suggested some exemption. You may consider some more exemptions, if necessary. We have no objection to 1 or 2 residential houses; but if a person owns 4 houses at different places, it will create complications.

SHRI SATYENDRA NARAYAN SINHA: He may have small farms at four places.

SHRI RAJDEO SINGH: What is to be done if he lives in a village but has got a house in the city or district headquarters; and he uses the latter for residence?

SHRI DHANUKA: Whatever is his original place of residence, that house alone should be exempted. Suppose he takes loans from nationalized and cooperative banks. He can have a limited immunity. If he has got too many houses, the nationalized banks will not be able to exert pressure on him, to return the amount.

SHRI SYED NIZAM-UD-DIN: Let us put it as "houses capable of being used for land operations."

MR. CHAIRMAN: As far as you are concerned, you probably feel that unlimited exemption should not be given to the agriculturist. There should be a limit, governed by the natural needs of the agriculturist. The rest of the properties should not be immune from attachment. Is it so?

SHRI DHANUKA: Yes, Sir; it is quite correct.

SHRI DINESH JOARDER: Does your suggestion regarding definition of the word 'agriculturist' involve his applying his own labour in the form of tilling etc. or appointing labour to work for him? He becomes just a middle man, in the latter case.

SHRI DESHPANDE: Much of the confusion arises because we have adopted certain definitions for the sake of convenience. Further definitions can be added on the basis of what we find in several other Acts. Once personal Cultivation is accepted as the basis, all cultivators anywhere in India will be covered. Personal cultivation has been defined as one including that through the members of the family of the agriculturist or through his servants. It lays greater emphasis on the actual tilling through him or his servants.

MR. CHAIRMAN: The hon. Minister drew your attention to the fact that whether a person is an agriculturist or a tenant, he should be given that exemption, as long as he is renting a house. Other accessories may also be included. The rent of the house will be subject to the normal law and not be exempted. That is exactly how it is to be defined. Can we understand that this is your stand?

SHRI NITI RAJ SINGH CHAUDHARY: You had suggested that a person who cultivates personally is defined as an agriculturist in the tenancy laws. It is true; but you would agree that the main definition of the term is not identical in the various State tenancy laws. There is some difference. In Maharashtra and Madhya Pradesh, the definition is identical to the present one. You would agree that the definition of the cultivator as a person who cultivates personally, should be the same throughout India and not vary from State to State.

SHRI DESHPANDE: That is my considered view, Sir.

SHRI NITI RAJ SINGH CHAUDHARY: Personal cultivation should be defined in the CPC itself; and not left to the tenancy laws.

SHRI DESHPANDE: Yes, Sir. That protection should be given.

SHRI SATYENDRA NARAYAN SINHA: With regard to Section 80, it has been urged by the representatives of the State governments that it should stand as it is, because according to them, the notice period of 2 months enables them to settle the cases without recourse to courts.

SHRI DHANUKA: During the last 17 years of my practice, I have appeared for the government, private parties as well as corporations. According to my experience, this provision is meaning less for various reasons. Matters are hardly settled within the notice periods. Secondly, in the case of injunction-suits and urgent matters, the suits have to be filed without giving notice. In Bhag Chand's case, the Privy Council had said that notice period was compulsory. Some judges keep their eyes closed to this. On many occasions, the claims require to be amended for some reason or the other. If a party wants to amend the claim, they say that he cannot do it, since the amended part of the claim is not in the original notice. Because of this, many good claims have been defeated in the past. I had said this in 1970 also, before the earlier Committee. After all, if a person files a suit without giving notice and the State is really interested in settling it, a settlement can be effected. Therefore, a genuine opportunity for settlement would always be there. Secondly, nobody would like to fight a litigation unless there is an urgency even if Section 80 not be there. There would be no hardship either to the State or to the citizens if Section 80 of the Code is deleted. People would still give notice and rush to the court only when there is an urgency. Let there be no fetter on the right of the citizen to move the court.

MR. CHAIRMAN: We have listened to various State governments on the question whether Section 80 should be deleted, as proposed in the bill, or it should be retained. There are divergent opinions. Can you furnish this Committee with statistical information on the operation of

Section 80? It may be a rough estimate; but it would still help us.

SHRI DHANUKA: There is a consensus of opinion among the lawyers that Section 80 should be deleted; we are unanimous about it; but to provide statistics will be very difficult.

MR. CHAIRMAN: I know it.

SHRI DHANUKA: It is very rare that suits are settled through Section 80. If statistics are available, we will definitely forward them to you. Now, about Section 82, we feel that the present provisions are adequate. It is now suggested that the copy of the decree must be forwarded to the Government Pleader; that the time should be extended and that new, additional safeguards should be provided. After all, the Government is also represented by lawyers. There is already a provision that no decree against the State should be executed unless a notice is given. Let the Government satisfy the decrees or obtain the stays. Why should there be any additional provision?

Now about the question whether Section 87B should be deleted. There is no question of requiring the consent of the Central Government. There are various suggestions in the bill with which we agree. We have given only the outlines of the reasons wherever we do not agree. We have given only the outlines of the reasons wherever we do not agree. Section 87B is about suits against rulers of former States.

SHRI S. K. MAITRA (LAW MINISTRY): After the princely privileges were abolished and the Bill concerned was passed, Section 87B has been modified. It is now confined to the events prior to the Constitution.

SHRI DHANUKA: I agree. That suggestion may be deleted, since it is covered. We now go to Section 100 i.e. our suggestion 19. I have suggested that there should be power to allow withdrawal of money deposited in court in disputes relating to maintenance.

SHRI SATYENDRA NARAYAN SINHA: Before going on to Section 94, I would like to know something with regard to Clause 31.

What about clause 31 on page 11 in the Bill?

SHRI DHANUKA: We support it.

As far as Section 100 regarding second appeal is concerned, we are not in favour of issuing a certificate. Coupled with that, if you kindly see provisions in Order 42, we believe that they will not serve any purpose Sometimes even the good matters may be rejected. Let the second appeal lie on a substantial question of law. But we differ only on giving reasons for the certificate being issued.

MR. CHAIRMAN: What happens if the matter is rejected?

SHRI DHANUKA: If the matter is rejected, it means it is not admitted. Then the remedy in such cases is only under Article, 136 of the constitution of India.

MR. CHAIRMAN: Do you suggest that the reasons should be recorded?

SHRI DHANUKA: There are two ways of looking to the problem. The first one is that whether it is first appeal or second appeal, reasons for summary dismissal should be recorded. Secondly, it will add to the work. We are of the view that unless the present system is shown to have worked unsatisfactorily in this respect, the necessary burden should not be put on the court of recording reasons at the stage of admission. Normally, reasons are not recorded.

SHRI SATYENDRA NARAYAN SINHA: Is there any law or practice which requires a certificate to be

given by a pleader in the second appeal?

SHRI DHANUKA: There is no practice. But, at the time of admission, an appellant has to justify that the appeal is covered by Section 100 of the Code. Otherwise, the matter will be dismissed. We do not have any practice of Certificate being filed alongwith second appeal.

SHRI NITI RAJ SINGH CHAUDHARY: That is the practice in the Calcutta High Court also.

SHRI DHANUKA: According to me, it is a matter of formality; it is not a matter of much importance. But the point is that if they give reasons, that may work the other way round also. Therefore, let it be left to judicial decision.

SHRI DESHPANDE: I agree that many matters are frivolously admitted. This restriction is valid. I must frankly confess that very few matters are dealt with on pure questions of law. We also deal with facts. If a hearing is confined only to law, it cannot go on for more than three hours. The hon. Member's question is correct.

MR. CHAIRMAN: The role of the lawyers is to assist the court. There is nothing new to my mind. But the authority is that of the court.

SHRI DESHPANDE: I want the Sub-Committee to note the actual state of affairs. We also assist. Many times our assistance is more to the client than to the court.

SHRI HOLAY: Section 115. If a writ petition is filed, the Cost of copying is more because we have to file all copies of documents as annexures in a writ petition. Now a days the rate of typing are so high that in a recent petition I had to pay large amount for getting it typed.

We will file revision application alongwith copy of the order and we are not required to file copies of other documents as annexure in case of revision application. The remedy of civil revision application is cheaper and should not be taken away.

SHRI DHANUKA: As far as Section 123 is concerned, we are sorry for the omission of the letter (e) within brackets in the second line of our suggestion 21. The Bar Council is the statutory body which has an electorate consisting of all the advocates in the State. In my opinion, let the attorneys and advocates chosen by the learned Chief Justice be there, but that the elected representatives of the Bar should have a place in the Rules Committee constituted under Section 123.

SHRI NITI RAJ SINGH CHAUDHARY: I would suggest, in regard to your suggestion 21, that we delete the words 'of Maharashtra' because the CPC is applicable to all the States.

SHRI DHANUKA: I respectfully admit the mistake; please excuse. Suppose the Bar Council wants to appoint somebody else, it should be permitted. We have not suggested the deletion of the word 'high court' either.

Then in our suggestion 23, we have said that certain provisions should be uniform throughout the country for all the courts. I would refer to Clauses (12) and (15) of the Letters Patent in particular. Suppose I file an appeal against a judgement of a Single Judge in High Court There would sometimes be a discussion for days together on the question whether order under appeal amonut to 'Judgment' under clause 15 of Letters Patent and whether an appeal lies. The List of Appealable Orders is provided in Civil Procedure Code. Why should there be different provisions for appeals. The same should be made uniform.

About Section 141 of the code, I have submitted that it should be applicable to writ petitions and all

other proceedings. In the bill it is stated that it shall not apply to wirt petitions.

SHRI NITI RAJ SINGH CHAUDHARY: I invite your attention to Clause 40 of the bill at page 14, wherein Section 100A is sought to be added.

SHRI DHANUKA: We welcome it; that is why we are silent about it. We also feel that once the second appeal is there, no further appeal should lie; but so far as the original appeal is concerned, it will not be applicable.

SHRI NITI RAJ SINGH CHAUDHARY: Do you want Clauses 12 and 15 of the Letters Patent also to be deleted?

SHRI DHANUKA: Yes, Sir. I would suggest that the simple List of Appealable Orders be provided.

SHRI NITI RAJ SINGH CHAUDHARY: I refer you to Clause 40 and Clause 15 of the Letters Patent.

SHRI DHANUKA: There is a positive suggestion there. Clause 15 of the Letters Patent lays down that appeals shall lie against judgement Different high courts have taken different views on the definition of the word judgment; Even Hon'ble Supreme Court has not resolved the controversy so far on diverse interpretations of the said word by different High courts. That word has been defined as an order which determines the rights. The right to file an appeal should be governed by the List of Appealable Orders and the usual provisions in the CPC.

MR. CHAIRMAN: Can you say something about your suggestion 23?

SHRI DHANUKA: The Letters Patent consists of various things, including testamentary jurisdiction, jurisdiction over the minors etc. about which we are saying nothing. But the jurisdiction to try suits should be governed by the CPC. That would make it more simple and provide a greater certainty. Clauses 12 and 15 of the Letters Patent have led to a lot of difficulties which can be avoided.

SHRI DESHPANDE: The reason for our suggestion 23 is this. There are two methods of appeal. In one case, the appeal is against the judgment of the high court which is not governed by the CPC but by clause 15 of Letters Patent. Let all appeal be governed by code of Civil Procedure.

SHRI DHANUKA: It is found on some occasions that the time for depositing certain amounts, maybe under the consent decree or order of the court, expires, and the court is unable to extend time for the same even in genuine case. We have therefore, given the suggestion 26, with a view to prevent this helplessness of the court in proper cases.

Our suggestion 27 is necessary to be considered as some times interim orders are not continued by a trial court on the dismissal of the suit till the appeal period expires on the ground that the court has become *functus officio*. Once the court decides the matter, it should have power to continue the interim orders, if it so decides till the appropriate proceedings are taken in higher court. As far as Order I is concerned, we welcome the suggestion regarding rule 10A. We have also suggested rule 10B. We have suggested that the court may allow intervention. It is being done in the High court and the Supreme Court. Therefore, from the point of view of simplification, we suggest that in case a decision is going to affect outsiders, a body of persons should be allowed to be represented.

As regards Order X, there is suggestion No. 3 at p. 6. Suppose a plaint filed in Calcutta court is required to be presented in Bombay court. It will

take some time before the plaint is represented before proper court. My submission is that when one court returns the plaint for presentation to another court, let a time limit be fixed within which the plaint will be filed in another court. Let continuity be not disturbed. Suppose the plaint is returned today and if it is to be filed tomorrow because it was filed on the last day, even if the whole period is excluded, the whole thing will become time barred. That is why I have suggested this amendment.

Now, I come to suggestion No. 5. When an *ex parte* decree is to be passed and the defendant does not appear in the court, as far as Presidency towns are concerned, the court does not dispense with the oral evidence at all even in clear cases. Take, for example, a suit on pro-note. Suppose the defendant is not there. The court should be empowered to pass an *ex parte* decree on the basis of documents tendered if the court wants to do that. The court may not insist on oral evidence. But if there is a suit for damages in an accident, if the defendant does not appear, how can the court decide the quantum of compensation without oral evidence. So, the court should be empowered to take oral evidence in such cases. In other cases, the court may be permitted to proceed on documents tendered without going in for an oral evidence. It will save the time of the court also.

In the case of *ex parte* decrees, there are two remedies available to the party. He may file an application for setting aside the same or he may file an appeal. I submit that the party should be allowed to choose only one remedy. He must not be allowed to pursue both the remedies. If he files an appeal, let him continue with that. If an application is also pending, it creates unnecssary problems.

Then, I come to suggestion No. 8 as far as books of accounts of big companies are concerned, of a third party is not concerned with the case it all. Suppose there is a dispute between two persons. You ask third party, a big company, to produce the books of accounts, Let them file certified copies coupled with an affidavit that they are correct copies so that in every single cases, the third party is not required to produce books of accounts.

There is another suggestion in regard to Order XVII which affects us very much. It provides that if a lawyer is engaged in another court, the case shall not be adjourned. If the lawyer is sick, in that case, the case shall be adjourned at the most for a limited period so as to enable the party to engage another lawer. We oppose this amendment. We feel that there should be a judicious discretion left in the court in respect of adjournment applications, depending upon the nature of the case. If in a given case a lawyer is busy in another court and if his case is likely to be over in a day or so, if both the parties agree and there is no previous bad record of adjournments, should the judge be prevented from adjourning the case for a day even if it is in the interest of justice? It is a normal right of a litigant that one must have his case argued by a lawyer of his choice. If you have a hard and fast rule that no adjournment is allowed, then it will be very harsh both to the lawyer and the litigant. It should be left to judicial discretion of the judge.

SHRI SATYENDRA NARAYAN SINHA: Will it not make for equitable distribution of cases?

SHRI DHANUKA: That process has already started. That is welcome. The question is that it should not lead to injustice. There should be a discretion left to the judge to decide. In the Bill as it is, there is no scope left for discretion at all. If the previous record is good, the conduct of a person is good, it should be allowed. If a person is in the habit of asking for ad-

journments, then it may be refused. Supposing a person is busy in another court and his estimate had failed to keep himself free for that day, if you do not leave any discretion to the judge, it will be very harsh in some genuine cases. I am not suggesting that the mere fact that a lawyer of the party is busy in another court it shall necessarily be the ground for adjournment of the case. Let it be at the discretion of the judge to decide. If the judge find that a party is obstructing the proceedings, he can refuse it the adjournment. If there is a genuine difficulty, adjournment should be granted.

SHRI SATYENDRA NARAYAN SINHA: That position is there even now.

SHRI DHANUKA: Once you say that the lawyer is busy in another court, the discretion to grant adjournment is taken away from the court under the Bill under consideration. It will create hardships if in genuine cases the adjournment is not granted.

There is another aspect also. Some times, the lawer has already taken the fee. Suppose he is sick for 4 or 5 days. If you say, 'No you engage another lawyer", the litigant may not be in a position to pay to the other lawyer. It will cause a hardship to him. Let it be left to the discretion of the judge. It should not be a hard and fast rule that no adjournment shall be granted. That will not be conducive to the administration of justice. Some of the innocent litigants will suffer. Some lawyers will also suffer. Ultimately, justice will suffer.

SHRI DINESH JOARDAR: Some provisions are there in the Bar council Rules that without the consent of the earlier lawyer, a party cannot engage another lawyer.

SHRI DHANUKA: Yes, Sir. The provisions made in the Bill in this respect be deleted.

SHRI DESHPANDE: The difficulty is felt only in big cities, like Bombay where there is a High Court and other courts and the lawyers are very busy. There should be a discretion left. What is exactly the purpose behind it?

MR. CHAIRMAN: It is obvious that delays take place in the matter of civil suits and proceedings. One of the causes is that lawyers are engaged else where also or they are ill and so on. One of the suggetions is that hearing should take place day-to-day. Therefore, we are trying to understand, if this section kept, who will suffer.

SHRI DHANUKA: The preparation of a case requires some time. The lawyer who is in-charge of a particular case must have gone through the various proceedings and case- law and to engage another lawyer on the spur of the moment is too much of expectation. Secondly, our experience in Bombay is this. Suppose a lawyer is given one adjournment on the ground that he is busy in the other court; the second time, if he is busy, he will transfer his brief.

MR. CHAIRMAN: What is your experience in Bombay about these adjournments on these grounds?

SHRI DHANUKA: My experience has been that matters are sometimes kept back or adjounred, say, for one day or two days from 11 A. M. to 12 P. M. and so on; My experience in Bombay is that matters are adjourned for a short time. I think if a lawyer who feels some difficulty in visualising things he is cautioned that next time somebody else appear, that is better for the end of the justice rather than to put these matters in a straijacket and prescrible rule to be followed mechanically. My experience is that Advocates in Bombay do not misuse and are also not able to misuse the limited facility of adjournment available in appropriate cases.

SHRI HOLAY: Suits should be decided in a particular period. If they

take more time, reasons should be recorded in writing at the time of judgement. In that case, all those applications for adjournment and other things will be included in that. In this way, record is being prepared and everybody apprehends that his name should not go on record, etc.

SHRI DINESH JOARDER: In the present Bill, there is a provision concerning the conduct of the lawyers also. If these provisions are made and the client feels that due to the negligence of his lawyer, his case has suffered. Will the lawer become responsible under the provision of the IPC?

SHRI DHANUKA: Sometimes it is said that a client may have a remedy against his lawyer. Therefore, in the main proceedings, in so far as it is reasonably possible, the litigants should not be deprived of their right to contest proceedings merely because they may have a remedy against the lawyer. There are so many situations which are required to be dealt with. If you put in a straight jacket, it will create complications.

SHRI DESHPANDE: My experience is that we always ensure that there should be no adjournment. This is only happening recently. A good lawyer does not ask for an adjournment.

MR. CHAIRMAN: We will examine it. You have made a number of points. We are glad to hear them.

SHRI S. SISODIA: The adjournments in High Courts are less than in other courts; they take place more frequently in other courts.

SHRI DESHPANDE: There such a question never arises.

MR. CHAIRMAN: You agree that adjournments not only involve cost but also delay the justice to one party or the other. Here, you are in agreement. We will consider it. But in doing so, we will see that other restrictions are not created.

SHRI DHANUKA: Order 43, suggestion no. 44 on page 12. We want that the remedy of appeal should not be curtailed. Now let us take suggestions 43 and 44 together. The List of Appealable Orders should not be curtailed. The provision in regard to pauper appeals has remained on the statute book for a long time. Why should his appeal be restricted only to the question of law? Once a person has been exempted from the payment of fee, his appeal thereafter must be on all the points. We have, therefore, suggested amendment in Order XLIV rule 1 sub-clause (2) and deletion of the provision to the effect that such an appeal shall be only on a question of law.

SHRI DESHPANDE: The personal appearance of the pauper should also be dispensed with.

SHRI DHANUKA: One more suggestion. The judgments are reserved and they are, sometimes, not delivered for months together. In Order XX, there should be a provision to the effect that Judgments shall not be reserved; but if they are reserved, it should be stipulated that judgements will be delivered within 15 days from the date of conclusion of the hearing. We have said:

> "In case the Court is unable to pronounce its judgement within 15 days from the date of conclusion of the hearing, it shall state the reasons in writing for late delivery of the judgement."

MR. CHAIRMAN: How much time is taken normally?

SHRI DHANUKA: It may sometimes take even 2 months, as a result of which the arguments are forgotten. The judgements are sometims dictated in the open court.

SHRI MUNDARGI: In a number of cases, the judgements are reserved for 7 or 8 months. In the meantime, the judge may not be knowing what the lawyer had said.

MR. CHAIRMAN: Now about Clause 94 of the bill at page 80, regarding the time fixed for hearing. You should say that it should not be delayed unduly.

Now about the questionnaire. We will examine the replies you have given to it.

SHRI RAJDEO SINGH: In your reply 1 (b) you have said that the quality of judgement has suffered because of the poor quality of the judges; cannot the same be said about lawyers also?

SHRI DHANUKA: Yes, Sir; because the judges are recruited from lawyers.

SHRI DESHPANDE: I strongly differ from this, Sir.

SHRI DHANUKA: The service conditions remain the same as they were 20 years ago. The civil judge gets Rs. 380/-, whereas a skilled worker in a factory gets Rs. 600/--p. m. We had stalwarts on the Bench 20 years ago.

SHRI RAJDEO SINGH: Similar is the case with lawyers. Their number has increased many times compared to what it used to be 20 years ago. The deterioration is all round, *viz.* among judges, lawyers, litigants etc.

SHRI DHANUKA: I agree; but my answer is that a party can choose his lawyer but not a judge. If a judge decides a matter wrongly the party has to go on appeal for the reason that the State has chosen somebody who does not know law correctly. The conditions of service must be improved and best talent must be attracted to the Bench.

SHRI DINESH JOARDER: Do you also not feel that sometimes judges are also responsible for the dely? Sometimes they attend the court at 12 noon, sit for 2 hours and leave thereafter..

SHRI DHANUKA: Yes, Sir; but that practice is not there in Greater Bombay. It may be there in the mofussil; it should be discouraged.

SHRI DINESH JOARDER: Our experience is that adjournments come about since there is no time at the disposal of the judges.

SHRI HOLAY: Supppose there is a time limit of one year in Order XX, and it is provided that if more time is taken, reasons therefor should be given in writing, it would put a restriction on the judge himself, since he will have to submit the reasons to the High Court. There should be a record for the delay.

SHRI MUNDARGI: In fact, the judges are responsible for the delays, to a greater extent.

SHRI DHANUKA: There is a practice of citing too many cases and to present very lengthy oral arguments. The responsibility is on everybody. There is blame even on the witnesses. We have listed some of the reasons and given suggestions in regard to inadequate number, quality, conditions of service, the need for simplifying the prevailing procedure, dishonest litigation etc. The cost is also a factor. We have also suggested that in appropriate cases the court must have the discretion to award higher costs.

As regards the dual system which is prevailing in the High Court, all of us are against it. Let them engage any lawyer. Why should there be any compulsion? As Mr. Holay pointed out, for example, sometimes witnesses like doctors are called from outside and the case is adjourned resulting in costs and delay. The witnesses should not be required to come again and again.

About legal aid also, we have made certain suggestions. If the case is reasonable and arguable, on the basis of the financial position of the party, the legal aid should be made available. The Bar Council could formulate a scheme which could be worked out with the help of State Governments and other agencies.

Then, you have asked for suggestions about execution of decrees. Sometimes, the drawing of decrees takes a long time. Therefore, the court which passes the decree should be entitled to execute the decree forthwith. If a decree is to be transferred to another court, the execution can be started on the basis of precept. You can forward a certified copy of the decree later on. The same court which has passed the decree cannot execute without certified copy of decree but if it is to be transferred to another court, execution can commence without certified copy of decree. There should be a similar facility available in all such situation and once the court has passed a decree and there is no stay order, it should be allowed to execute the decree.

MR. CHAIRMAN: I must say, on behalf of the Committee, that you have made very valuable points. We have not been able to go through all the points that you have made in your memorandum and in your replies to the questionnaire. We will examine them carefully and consider them at an appropriate stage.

I would like to say one thing here. So far as the various wings of the administration of justice are concerned, the judiciary and the bar, they all affect the society as a whole. This is a subject which requires an all round attention. Some unscrupulous parties harass innocent people. The States concerned should rise to the occasion and contribute their mite in reducing the cost as well as hardships to the common man. You have referred to Section 80. There also, the States are very much concerned. They must also do whatever is necessary by responding and settling the suits.

There is also a suggestion to provide for conciliation, compromise and all that. The prolongation of proceedings of civil suits should not be there. The Committee will go into all these aspects. You learned members of the profession can also rise to the occasion to achieve these things.

I thank you on behalf of myself and the Committee for the valuable suggestions you have made. You are welcome to supplement your views later on also. You are free to send them to the Lok Sabha Secretariat.

SHRI DHANUKA: On behalf of myself and my colleagues, I am extremely thankful to the Chairman and the Members of the Committee for the patient hearing given to us. It has been our proud privilege to give evidence before the Committee. If there are any other suggestions which occur to us in regard to this Bill, we will certainly send them to you.

Thank you, Sir.

(The witnesses then withdrew)

II. BOMBAY CITY CIVIL AND SESSIONS COURT BAR ASSOCIATION, BOMBAY:

Spokesmen :

1. Shri P. K. Pandit, Advocate
2. Shri S. R. Rajguru, Advocate
3. Shri M. N. Kothari, Advocate
4. Shri K. R. Dhanuka, Advocate
5. Miss Sheela Bosci, Advocate

[The witnesses were called in and *they took their seats.*]

MR. CHAIRMAN: Mr. Pandit, do you represent the Bombay City Civil & Sessions Court Bar Association?

SHRI P. K. PANDIT: Yes, Sir.

MR. CHAIRMAN: We welcome you all to our meeting. Before you tender your evidence, I draw your attention to the Direction of the Spe-

aker which governs your evidence. The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

So far as this Bill is concerned, you have not submitted any written memorandum. Therefore, you are welcome to make your observations on any aspect of the Bill.

SHRI P. K. PANDIT: First, I would like to make my submissions on Sections 10 and 11 which have not been dealt with in the proposed amendment. There are various tests which are prescribed both in sections 10 and 11 before a suit can be treated as *res judicata*. One of such tests is that the court by which the former suit was decided should be a court competent to try the subsequent suit. According to us, this does not have a subsantial logieo behind it. This particular test which is a prerequisite for making a degree *res judicata* is not necessary. There will be multiplicity of litigations without any purpose. This particular clause could be deleted, if it is felt desirable.

MR. CHAIRMAN: So far as Section 10 is concerned, we feel there is no amendment proposed.

SHRI PANDIT: Our suggestion is that the following words are not necessary: "Having jurisdiction to grant relief" and "having like jurisdiction." In this once an issue is pending that is the crux of the matter. If an issue is pending before another court, then the subsequent suit should be stayed.

Section 11. The words "in a court competent to try such subsequent suit" according to us, should not remain. Even though the court may be incompetent for the purpose of trying subsequent suit, since the issue is already decided by the court it should be treated as *res judicata*. The court is competent for various reasons. We would like to enlarge the scope of the *res judicata*. Because that would avoid the multiplicity of litigations.

As far as sub-clause (b) of 11A of the proposed amendment is concerned, here I would feel that it may be, "civil proceedings other than suits to which this code applies."

SHRI PANDIT: There are cases where the Code may not apply e.g. tribunals; but they relate to civil proceedings.

SHRI SATYENDRA NARAYAN SINHA: As Mr. Maitra had pointed out, even in the case of a court which has not not got competent jurisdiction other than on certain issues, would it still apply to the *res judicata?*

SHRI S. K. MAITRA: In regard to the original estimate, that court was competent to decide because of larger issues involved.

SHRI PANDIT: I will give some illustration. To-day, if the City Civil Court in Bombay tries an issues, *e g*. whether a particular person is a trespasser or not. The court will give only a finding to say whether he was, or was not one such. Once that verdict is given by a court, it should be binding on a subsequent court, if substantially the issue is the same. To say that even if in the city civil court a person is declared as a trespasser he can still go to the Small Cause Court for declaration of tenancy will be meaningless. According to the present rule, the second court would not be affected by *res judicata*, because the first court would not be having jurisdiction to try the second suit. I am suggesting a small modification to Clause 6-11, sub-section (b) in the proposed bill. I would

submit that we may have the words, to which this Code applies.' A similar wording we find in present Section 12 of the present Code. Then about Clause 7 at page 3 of the bill. The present Explanation II may be retained, because the proposed Explanation in fact narrows down the scope of filing a suit against the Corporation; and it makes a member of the public to go to the principal office to file a suit. Taking into consideration the costs involved in this it can be avoided. The present Explanation II permits a person to sue the Corporation even at a place where it has a branch office; therefore, the present Explanation may be deleted.

SHRI S. K. MAITRA: The 54th Report of the Law Commission of Indian on the Code of Civil Procedure has dealt with this Explanation in para 1-D-52 i.e. page 30. It says:

"The first part of the Explanation is, no doubt useful, since where a corporation has its main office at any place (in India), it is to be deemed to carry on its business there, irrespective of the nature of the work that is actually carried on there. But the latter part of the second Explanation is *otiose*. If no part of the cause of action arises at the place of the branch office, the corporation cannot, as the wording now stands, be said to transact business at the place. In the presence of clause (c), the purpose of the second part of Explanation 2 is obscure. Where the suit is instituted at a place where a corporation has a subordinate office, the court cannot dispense with the requirement that the cause of action must arise at such a place. If no part of the cause of action arises at a branch office of the corporation, a suit is not maintainable in the court of that place. The latter part of the second Explanation, therefore, serves no useful purpose. We are, therefore, of the view that the latter half should be deleted".

MR. CHAIRMAN: We will examine your considered views, if you can send them on to us.

SHRI DINESH JOARDER: Mr. Maitra, if an aggrieved person wants to seek redress, would he be bound to go to the principal place of business, under the present amendment to this Explanation?

SHRI S. K. MAITRA: One of the conditions relates to the cause of action. Secondly, the question relates to the point as to whether the property is located or where the cause of action arises either wholly or in part. If it does not have an office, it can still be filed at that place; in addition, it can also be filed at another place.

MR. CHAIRMAN: The amendment is not to curtail the facility for the party. As to whether it will lead to further complications, we will examine it. You can also send us a note. We will consider it.

SHRI PANDIT: We fully agree with the intention of the Law Commission. We however, feel that this wording will narrow down the scope and widen it.

MR. CHAIRMAN: We will consider it.

SHRI PANDIT: Now, I come to clause 9. The object of the amendment is that no separate suit shall be filed by any party to challenge a decree on the ground that the previous court which passed a decree did not have territorial jurisdiction to pass that decree. I submit that this bar may be extended, if possible, even to debar a subsequent suit on any ground of jurisdiction.

MR. CHAIRMAN: This amendment is in addition to existing Section which remains as it is. After Section 21 of the Act, this Section shall be inserted.

SHRI PANDIT: By the proposed amendment, no suit shall lie for the purpose of challenging the validity of a decree passed in a former suit on the ground of territorial jurisdiction. In other words, if a court has passed a decree, a party to that decree cannot subsequently file another suit and say that the previous court did not have a territorial jurisdiction to pass that decree. We agree with the principle. What we want to submit is that not only the party should be debarred from filing a suit on the ground of territorial jurisdiction of the previous court but a party should also be debarred from filing a suit to challenge the previous decree on any ground as to jurisdiction.

MR. CHAIRMAN: You want to enlarge the scope of the amendment.

SHRI PANDIT: We may add the words "on any ground as to the want of jurisdiction of the court. which passed a decree"—territorial, pecuniary and inherent jurisdiction.

MR. CHAIRMAN: Suppose we say only, "on any ground".

SHRI PANDIT: It should be confined to jurisdiction.

MR. CHAIRMAN: Territorial jurisdiction is there.

SHRI PANDIT: If you say, "on any ground", it will mean anything, such as "fraud". It will be too wide a scope. It should be confined to jurisdiction only, territorial, pecuniary and inherent jurisdiction.

Clause 14 is with regard to granting of interest by a court. Our submission is that the rate of interest may be allowed having regard to the conditioins which are prevailing today. A court should have the power to grant interest at the rate of 12 per cent and, for special reasons to be recorded in writing upto 15 per cent We submit that discretion should be given to the courts. If the court finds that a party has acted *mala fide* with an intention to delay the proceedings, the court may grant a little higher rate of interest. No reasons may be recorded up to 12 per cent. If it is beyond 12 per cent the court shall record the reasons. The maximum rate should be 15 per cent. I submit that the proposed amendment might give rise to some complications. The bank rate might go on fluctuating. It may not be possible for the courts to find out what the banks are giving from time to time. It should be left to the discretion of the courts.

MR. CHAIRMAN: You want "6 per cent" be deleted.

SHRI PANDIT: It should be deleted. It should be up to 12 per cent and maximum 15 per cent wth reasons.

In the original Section 34, there are three types of interest. There is interest up to the date of filing a suit. That remains as it is even by this amendment. That is the contractual rate as between the parties. Then, there is interest from the date of suit till the date of decree. That is the second type of interest. The third type of interest is from the date of decree till the realisation. As regards the second and the third type of interest, it may be awarded up to 12 per cent and, for special reasons to be recorded, upto the maximum of 15 per cent.

Clause 16 *on page* 5. Today, the practice in most of the courts is that whenever a court finds that a party to the suit is delaying a litigation, even at an interim stage, the court puts the cost on the party. Therefore, the power the court exercises is very liberal. That provision being there, I think 25(6) may not be included, because then it will be impracticable at the end of a suit to find out the costs. We will submit this suggestion in writing, if this is accepted.

MR. CHAIRMAN: You are welcome to make any suggestion. We will consider it.

SHRI PANDIT: *Clause* 19. In our view, if the decree is to be transferred to another court, that might create complications and inconvenience to the party concerned.

Clause 22. Here, instead of the words "lawful excuse", we suggest the words "reasonable excuse." The word lawful is too wide.

MR. CHAIRMAN: If an excuse has to be lawful, it must be shown under a certain law. But an excuse which is now governed under any law can yet be reasonable. So, a distinction perhaps lies between reasonable excuse and lawful excuse.

SHRI PANDIT: We feel the word "lawful" is very wide though not the word "reasonable".

MR. CHAIRMAN: We will examine it.

SHRI PANDIT: *Clause* 60 *on page* 8. regarding granting of exemption or to widen it in the case of agricultural labourers, domestic servants. In our submission, there is no logic behind it as it is sought to be defined here. No doubt an exemption should be granted to a labourer, but it should be upto a certain salary. If a skilled labourer who is getting Rs. 700 per month is completely exempted by this clause and a clerk who may be working in a public institution getting Rs. 300 is not exempted by this clause, I don't think there is any justification. I would submit that a minimum salary should be the criterion for exemption from execution or attachment and not any particular category of workman as such.

SHRI NITIRAJ SINGH CHAUDHARY: Exemption is only limited to the residential houses. I think you are on clause 8.

SHRI PANDIT: I am on sub-clause (c) of the present amendment. For the proviso, the following provisions shall be substituted:

SHRI NITIRAJ SINGH CHAUDHARY: But the provision is that "salary to the extent of Rs. 200 and $\frac{1}{2}$ remainder."

This is the original provision. What is the provision in the Code? Clause 24 refers to Section 60, sub-section (1)(i). Under Clause 24(i)(c) the words "two hundred rupees and one-half the remainder" should be substituted by the words two hundred and fifty rupees and two-thirds of the remainder".

SHRI PANDIT: Somebody has referred to Clause 60 sub-section (h).

SHRI NITI RAJ SINGH CHAUDHARY: No amendment is suggested to it.

SHRI PANDIT: Here, it is a complete exemption, irrespective of how much he earns. A minimum amount of salary should be the sole criterion for all categories of persons.

MR. CHAIRMAN: Through the amendment being proposed to Section 60 also, certain other categories are being included. At page 9, Explanation V says that—

> "... "agriculturist" shall include every person who depends for his livelihood mainly on income from agricultural land, whether as owner, tenant, partner or agricultural labourer."

You have also said that some subsistence allowance should be left out of attachment so that a certain percentage should be excluded from his income.

SHRI PANDIT: Certainly. Sir, because the Explanation which is suggested includes skilled labourers also.

MR. CHAIRMAN: You may kindly send a note on this. The idea is that people belonging to the low income group should not be thrown on the street. If any category is not included therein, we should include them. You can suggest them to us.

SHRI PANDIT: Coming to page 12, clause 34, a new Explanation is sought to be added in the proposed bill. We would say that the scope of such an appeal should be limited, and the finding must be specified as a finding on an issue. Even though he has got a decree, he can go on appeal.

MR. CHAIRMAN: In the course of the findings, there might be some adverse remarks. What should be done if they remain there, although the ultimate result is in favour. The suggestion is that it should be allowed.

SHRI PANDIT: We agree with it. Otherwise, every observation of the court might be taken as a finding. Things should be defined; otherwise, the word "finding" would be too broad. Moreover, I would like to add the words "incorporated in a decree" in the 4th line of the Explanation, after the words, "of the finding of the Court".

SHRI NITI RAJ SINGH CHAUDHARY: You are suggesting a redrafting of the definition.

SHRI PANDIT: We now come to Clause 39 *i. e.* Section 100 which deals with second appeals. We are of the view that the present Section 100 is sufficient to limit the scope of second appeals, because it is confined only to the decision on questions of law. If we narrow down its scope further, it will be unjust to the parties. A "substantial question of law" has very limited scope. A party may feel that it involves such a question. The court may not agree.

SHRI SYED NIZAM-UD-DIN: What about (a) and (b) under Clause 39(4)?

SHRI PANDIT: I think that they are not reasonable. We feel that the present provision meets substantially the ends of justice, and I feel that no amendment is needed. There is one more reason. If the propsed amendment is put into effect, we might find that in practice, it would become more strict and narrow down the scope very much, because the High Court is required to grant a certificate and give reasons. If the High Court were to do so at the time of every second appeal, there will be a little more reluctance in admitting second appeals. The second appeal is not always a luxury; it may become a necessity. A party may feel that there is scope for going in for second appeal on the finding of a district court. Again, in sub-section (5) of Section 100, it is suggested that the appeal shall be heard on a certificate of fitness. Suppose a High Court feels that there is a substantial question of law; it may say that it has been admitted only on a question of law. The hands of the High Court should not be tied down, that the High Court should go only into that question of law on which it is admitted and no others. I feel that will not serve the purpose.

MR. CHAIRMAN: You want the whole Section to be redrafted.

SHRI PANDIT: Yes, Sir, this clause should be dropped.

Similarly, as regards the next clause *i. e.* clause 40, the amendment, that is proposed will very substantially take away the rights of the members of the public especially in this city for second appeal. That is available in Bombay city, against the order of the single judge of the High Court, to go to the two judges of the same High Court. Clause 40 seeks to delete that.

SHRI S. K. MAITRA: That is not confined to original court. This will apply only where second appeal has been heard by a single judge.

SHRI PANDIT: The only course is to go to the Supreme Court if it is permissible. The Supreme Court is beyond the reach of an ordinary man. We have got a remedy available in Bombay for a second appeal. At least, we have a chance to go to the same High Court, before two Judges. If this is done away with, we will be deprived of the second appeal. So, clause 40 should be dropped.

MR. CHAIRMAN: We will examine that.

Do you feel that the time has come when in different cities, like Bombay, Calcutta, Madras, etc. wherever small courts are there, there should be a uniform system of law?

SHRI PANDIT: We agree to that. We have passed a resolution saying that the same procedure may be applied to all metropolitan cities.

MR. CHAIRMAN: Would you send us a copy of the resolution?

SHRI PANDIT: Yes. Sir.

Then, I come to Clause 53, insertion of Section 148A, regarding a new system of filing caveat. Our submission is that this system of filing caveat may be confined only to appellate proceedings, not to original actions. It will lead to tremendous complications. It may also give rise to some kind of mischief. If a party wants to do something wrong, it may go to the court to file a caveat in anticipation to forestall a lawful action.

There are a number or *ex parte* applications every day. A number of them are genuine for *ex-parte* injunctions. If you say, "You will not get an injunction if there is a caveat filed in the court", the ends of justice will be defeated. It should be confined only to appeals.

MR. CHAIRMAN: The party can go to an appellate court and raise objection to the issue of a caveat.

SHRI PANDIT: There may be a number of genuine cases where a person wants protection against the high-handedness of a person who is physically strong. He comes to the court to get the protection. If the other party has filed a caveat because he has got some bad designs in his mind, as soon as he gets a notice, he will change the *status quo*. In civil courts in Bombay, there is a provision that if an injunction is granted to a party and if the other party who is served with an injunction order is affected, the other party can go to the court in 48 hours. The court, while grating an *ex parte* injunction gives an opportunity to the other side to go before the court within 48 hours to get the injunction modified. That is the practice adopted by civil courts in Bombay. Before granting an *ex-parte* injunction, the court in deserving cases also gives a notice to the other side. That system is very reasonable. When we come to Order XXXIX *ex parte* injunctions, giving a notice in advance may be deleted. There is a provision in the Civil Procedure Code, as it is, that the court may direct a notice to be given. That is already there. The court exercises that power in fit cases. Therefore, I would submit that though it is a good idea of filing the caveat, it should be confined to the appeals. In the original trial, if the caveat is inserted, there is a possibility of changing the *status quo* before a party comes to the court by sheer filing a caveat.

Clause 55 on page 18 of the Bill, sub-clauses 4 and 6.

Before a suit is withdrawn, the court shall again publish an advertisement in the paper. Under subclause 6, when a decree is passed, the same shall be binding on all persons. According to me, this will have a far-reaching effect and the persons may be bound by injunction even though they are not aware of the litigation.

Clause 57 dealing with wakalatnama filed by an advocate.

According to the existing rule, it is extended even to appeal proceedings. Our submission is that it should be dropped. That amendment is not there; it should be made. Because many times, the party goes away after the trial court matter is over.

MR. CHAIRMAN: That may affect the party also.

SHRI PANDIT: Yes, Sir. It may extend only to the same court when *vakalatnama is* filed.

MR. CHAIRMAN: It involves cost and certain responsibilities also.

SHRI PANDIT: If the party has a confidence in the lawyer, it will be always welcome.

MR. CHAIRMAN: Anyway, we will examine it.

SHRI PANDIT: *Kindly see page 23, last five lines.* This is very reasonable. We agree with it. But the reverse of it may happen which also should be provided in the amendment. The court may not have jurisdiction to try a particular suit. An amendment is sought to be suggested by us so that the suit pending with the court remains there by amendment.

MR. CHAIRMAN: We will examine the matter.

SHRI PANDIT: Sub-clause 6 makes a new provision. We would only submit that it gives rise to a little confusion as to what decision a court has to be intimated about. This is on page 24, last ten lines. This decision cannot be arrived at, unless the plaintiff is heard. Its intention may be intimated and he may be called upon to make his submission. Now we come to page 25, rule 10B(vii). This provision limits the power of the court to extend the time for the purpose of paying the stamps. There should be no such restriction for the purpose of correcting the valuation. It should be left to the discretion of the court. There may be many good or bad reasons due to which the party may not pay the stamps.

SHRI SYED NIZAM-UD-DIN: The words, "unless the Court, for reasons to be recorded" are used.

SHRI PANDIT: It is correct, Sir. The court might feel that the facilities are abused. The court gives its reasons for its action. Now we come to page 26, amending Order VIII, rule 5, i.e. at line 40. In the next line it is said:

> "(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability,. . .".

This is very necesary and we are very happy to come across this. It is something which will save unnecessary wastage of time. But instead of the words, "on the basis of the facts", we can have "on the basis of statement of facts" or "on the basis of allegations of facts". It is a matter of drafting. Now about rule 6C mentioned in the middle of page 27 of the bill. I feel that between the time the court applies its mind and the time when the case is ready for taking up, 3 or 4 years might already have elapsed—which happens especially in Bombay. If the court comes to the conclusion that the counter-claim is to be excluded, then it should be tried as a separate claim there and then instead of excluding it completely and driving the party to the necessity of filing another suit.

MR. CHAIRMAN: It is there in the first part of 6C, wherein it is said:

> "Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit,"

If that is done,

> "the plaintiff may, at any time before issues are settled in relation

to the counter-claim, apply to the Court for an order that such counter-claim may be excluded."

SHRI PANDIT: It may be excluded; but it may be treated as a separate claim by the same court.

MR. CHAIRMAN: That power is given to the court which may "make such order as it thinks fit", if it finds it suitable. Anyway, your point will be examined.

SHRI DINESH JOARDER: The question of exclusion cannot be decided unless it is heard. So, hearing by the judge, of the issues viz. whether they should be excluded or not, will take time.

SHRI PANDIT: He would have to pay the court fee again.

MR. CHAIRMAN: Before the court gives any order, it will hear it. The point is whether it will be included among the issues framed for the appropriate hearing.

SHRI PANDIT: This point, along with the one of treating it as a separate issue, may be clarified by the court in a manner that it may think fit.

MR. CHAIRMAN: It may be treated as presumptuous. If a re-thinking is necessary, Government will examine it.

SHRI PANDIT: Now we come to clause 62(v). The period of 3 months, which is given, would be reasonable. The previous summons might have come back for various reasons. The party's address might be wrong; or he might be avoiding the service of the summons. It takes time to serve the summons. It is a small point; but in practice, we find that it is important.

I now come to two remedies open to persons, p. 29, order 9, rule 13—the following Explanation shall be inserted:

"Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of, no application shall lie under this rule for setting aside that *ex-parte* decree."

If a party has already resorted to two remedies simultaneously, if he has filed an appeal in the High Court as well as he has filed an application under this rule, in that case, his application should not be dismissed merely because his appeal is dismissed. The scope of the two remedies is quite different.

SHRI S. K. MAITRA: If an appeal is dismissed, you cannot proceed with an application.

MR. CHAIRMAN: Mr. Pandit, certainly, there should be a remedy available. One may go in for appeal or make an application. If he goes to file an appeal and his appeal is dismissed, should he get the other remedy of filing an application?

SHRI PANDIT: The scope of the two remedies is different.

MR. CHAIRMAN: Anyway, we will examine it.

SHRI PANDIT: Now coming to clause 63 of the Amendment Bill about introducing a new procedure of pre-trial proceedings, we must say that we are opposing it for the simple reason that in a civil litigation, the scope of litigation should be left to the parties. We find a similar provision in the amended Criminal Procedure Code. But there it is essentially a matter between a State and a party. Here, by examining the party on the very first occasion, we feel, the purpose of avoiding delay may not serve at all. It will, on the contrary add to another procedure which is not there today and, perhaps, it might increase the delay. When the parties file a suit, the feelings are very strong in the beginning. The parties are in a mood to compromise at a later stage. I quite appreciate the intention. The intention is to cut

down the scope of litigation. I do not think that will be possible. It should be left to the parties concerned. This will only lead to more delay.

Clause 65, p, 30. If that provision has to go, then this also will have to go. In line 20, clause 65, the word "orally" will go. It is consequential. Even otherwise, there cannot be an oral admission in a court of law. The admission is made in writing which may be produced in evidence. There cannot be an "oral admission" in the court, except in oral evidence.

MR. CHAIRMAN: We will examine it.

SHRI PANDIT: Coming to Clause 69, page 32, regarding the list of witnesses and summons to witnesses, it says:

> "On or before such date as the Court may appoint and not later than ten days after the date on which the issues are settled, the parties shall present in Court a list of witnesses..."

Our submission is that a time-limit of 10 days will not be workable and practicable. Firstly, the list of witnesses itself in a civil case may depend upon various circumstances. Giving a list of witnesses in a civil case is not exactly the same thing as giving a list of witnesses in a criminal case. If the defendant has to give a list of witnesses, it will be very difficult for him to do so in 10 days' time. Many times, the defendant witnesses depend upon the plaintiff's witnesses. In a civil trial, many times, the witnesses are not available; they are called from some other places. If a party is asked to give a list of witnesses within a particular time after the issue is settled, that might lead to some kind of inconvenience after a trial starts. Today we do not give any list as such. We bring the witnesses when the trial starts. Therefore, that does not involve any waste of time and by giving the list in advance, I don't think any purpose will be served. In civil trials on a number of occasions examining witnesses depend upon the course of trial.

MR. CHAIRMAN: To avoid delay in the proceedings in a civil suit, the defendant is bound to say something through a written statement. Why it is not possible for the defendant to submit a list also? What is your suggestion in this regard?

SHRI PANDIT: According to the present practice in a civil court, it should be left open to a party to bring witnesses so long as they do not ask for adjournment on that ground. At the most it may be provided that no adjournment will be granted on that ground.

MR. CHAIRMAN: *Clause 71 on page* 36. What is your opinion regarding c, d and e?

SHRI PANDIT: We oppose this clause c, d and e to clause 71. I think it should be left to the discretion of the court. Today, if an attempt is being made to delay the trial, the court not only refuses adjournment, but it also grants costs. It may not be necessary to include (c) and (d). Whenever an advocate accepts the cases, he cannot foresee that on a particular date two or three cases will come up for hearing. Whenever an advocate accepts a case, he works out his brief; he takes into account the interest of the party; he has to work very hard on that particular brief. All these things develop a confidence between an advocate and the client If a party engages another lawyer, I think it is not only an injustce to the Advocate concerned, but it is also a great injustice to the party concerned. I would feel that it will not serve any purpose. Secondly if one Advocate is busy, the next can always proceed. The court has many cases every day.

MR. CHAIRMAN: We will examine this point.

SHRI DINESH JOARDER: If this provision is put into practice, will it help all those lawyers who are not able to appear before a court on a particular date?

SHRI PANDIT: I quite appreciate your point of view. But if a court finds that a particular lawyer is not attending continuously, it can give a warning to that lawyer by saying that no further adjournment in that case will be given. Secondly, there is always an element of personal skill ability, knowledge and labour which is peculiar for a lawyer.

SHRI DINESH JOARDER: For example, a few years after the enforcement of this law, it may create some inconvenience to the clients and the lawyers. The lawyers should also think that they should not take too much time in a particular case.

SHRI PANDIT: The relationship between the two is a relationship of confidence. It is just like a doctor.

MR. CHAIRMAN: After all, there is an adjournment. You may call it this way or that way. That is why the Government has come forward with this proposal.

SHRI PANDIT: If anything is to be done in that direction, it may be done in a very much modified manner and not this.

MR. CHAIRMAN: You suggest that it may be dropped.

SHRI PANDIT: A balance has to be struck.

MR. CHAIRMAN: One has to look into the interest of the party concerned also. All the same, we must also see how far we can plug the loopholes and reduce delays and costs. Please, therefore, examine it in all aspects.

SHRI PANDIT: We will certainly assist you in this work, Sir. Now, with regard to clause 73, sub-clause 6A at page 38, our Association very much appreciates the provision sought to be made, to file an appeal without a decree. In Bombay, as elsewhere, it is perhaps a nightmare to get a certified copy of the decree from the court due to staff inadequacy etc. It takes about 6 months or even a year. You need not wait under this provision for a certified copy, but can proceed on the basis of the last para of the Judgment. I suggest that as in the case of a decree, a similar provision may also be extended to orders which are interlocutory and appealable in nature. We do not find this now. When the interim Applications are disposed of, in the case of interlocutory orders, appeals are filed, on the basis of the latter. In regard to rule 11 mentioned at page 39, I suggest an amendment which is not given here. In this case, instalments of extensions of time may be given, even though the other party may not agree. Under the present Section as well as under the amendment suggested, the court is not empowered to give instalments except at the time of the passing of the decree, or after it, provided the other party consents. To a limited extent, this extension of time may be permitted, since parties have sometime genuine difficulties in making payment. If there are genuine, difficulties, one or two instalments may be given, even though the other party does not agree. One application may be accepted by the court after passing of the decree, irrespective of the opinion of the other parties. Many times, decrees are passed *ex-parte*. Parties come to know of, this; but they want instalments. Power may be given to the courts in this regard. Now we come to the question of fees to be included in the decree. They should be included, as mentioned at the end of page 40 of the bill viz.:

"2. In calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader or a certificate in writing signed by him and stating the amo-

amt. received has been filed in Court."

There is no harm in giving and taking receipt; but at the time at which the decree is passed, the fees may not even have been discussed. The fees may depend on the volume of the case. Due to cross-examination and other reasons, the case might get prolonged. On the contrary, suppose the case goes on for 10 days, the fees might depend on the work done by the advocate. In such cases, it would not be possible to give the receipt in advance. Secondly, certain kinds of fees are charged in advance but they are not granted by the court. To-day the official rate of the fees prescribed is Rs. 125 for the entire suit. This rate was fixed more than 40 years back. But nobody charges fees at this rate. Even if the lawyer charges something more or substantially more, the court does not give the fees which are charged from the client. It gives only the scheduled scale of fees. So what is the point in producing a receipt.

MR. CHAIRMAN: Do you suggest that whatever is actually charged—whether according to, above or below the schedule—the amount entered in the decree should be according to the Civil Code?

SHRI PANDIT: Yes. Sir. Now about rule 1 of Order XXI. We very much appreciate the various amendments proposed for the purpose of minimizing delays and avoiding multiplicity of suits. At the same time, we will give some suggestions. Now about rule 58 of Order XXI mentioned at page 48. These are the claims and objections raised by parties in execution. We appreciate that it may not be decided as a separate suit which might just delay the execution. It is already implied here that in deciding such applications, the court may take evidence, if necessary.

MR. CHAIRMAN: Do you want it to be made explicit?

SHRI PANDIT: Yes, Sir; because it bars another suit. There should be no doubt about it. One point however must be noted. If a separate suit is barred here or by an obstructionist and all issues between obstructionist and a decree holder are decided by executive court then in every matter of execution of a decree there will be a fresh trial between obstructionist and decree holder. This will further burden civil courts and exucution of decrees will be further delayed. On the other hand under existing procedure all obstructionists do not file separate suits. We also appreciate that the appeal is provided for.

Similarly, the same wording should be adopted in obstruction proceedings. Another thing that I would like to mention here is that in obstruction proceedings, very often, the question arises where the obstructionist comes to the court and takes up a convention and the court has no jurisdiction to decide that contention. Suppose I do not execute the decree of possession from a civil court. The obstructionist comes forward and makes an application, "I am a tenant or I am a sub-tenant." The question whether he is a tenant or a sub-tenant cannot be decided by the civil court. Therefore, this should be clarified in the Section that the executing court may also entertain an application of such an obstructionist and decide all issues. Otherwise, the whole purpose will be defeated. That court should have the jurisdiction to decide all the issues.

In the case of suits against firms, that is, Order XXX, p. 60 of the Bill, we suggest that the service of a process on a partner who is an admitted partner should be taken as the service on the entire firm. Today, unless the partner says that he represents the firm, there is no such provision. Under the Partnership Act, a partner is an agent of the firm for all practical purposes. If a partner betrays a firm or other parthers, there is a remedy available for other

partners to take action against that partner. In a majority of cases, a partner usually represents the firm and takes interest and care of the entire firm. We feel that it will be reasonable to provide that the service on any one of the partners of the firm should be taken as the service on entire firm.

Coming to the settlement of a suit filed by a minor, clause 18, p. 62 of the Bill, the proposed amendment requires an advocate to certify that the agreement is, in his opinion, for the benefit of a minor. I would submit that this will be an embarrassing thing for an advocate to certify. The court is there to protect the interest of the minor. Even today, no compromise or settlement is effected unless the court satisfied and certifies. When the court is there to have its own satisfaction, it is not necessary that an advocate does it. Suppose an advocate believes that it is in the interest of the minor and, later on, some party may advise the minor that this was not in the interest of the minor. They may involve even an advocate where the advocate has no protection. Certainly, the care of the minor has to be taken. But I do not think that one more certificate of an advocate is going to give more protection to the minor.

Further, on p. 66 of the Bill, it is stated:

> "No suit shall be entertained unless the applicant pays the costs (if any) incurred by the State Government and by the opposite party in opposing the application for leave to sue as an indigent person; and where such costs are not paid at the time of the institution of the suit or within such period thereafter as the Court may allow, the plaint shall be rejected."

This imposes a condition of cost to be paid by a person whose pauperism is not granted. It might result in injustice to certain person who genuinely want to come as paupers but on account of certain reasons, their pauperism is not granted. If it is abused and misused, then it is a different thing. Merely because pauperism is not granted, a might result in injustice to really poor people. The other provision is also drastic. It may not be so drastic against a person who may be genuinely a poor person. We appreciate that the scope of pauperism is wider.

Order 47. We would submit that the scope of summary suit may be further widened, if possible, for claims for price of goods sold and delivered, when prices are not paid.

On page 71 *under sub-clause* (b). Today this provision does no include the cases where goods are sold by a party under bills which are sent to the party who receives the goods. There are number of litigations, suits, in Bombay. In commercial suits where goods are sent to other parties under bills, but there is no written contract to pay. Sencondly, there is no dispute with regard to the amount. This is not within the scope of the present Bill also. I would submit that an amendment be extended to include even those suits where the price of goods sold and delivered to other parties is sought to be recovered.

Order 39. The present interlocutory scope of granting *ex-parte* order may be retained, because the court asks, as it is, about the advance notice to be given to other side, if it suspects *any mala fides*. Therfore, that should not be made use of.

On page 74, clause (iv) may be deleted. The rule, at present, is a sufficient one.

On page 79, Order 43, sub-clause (b) shall be omitted. There are some of the clauses of the appealable orders which are sought to be omitted. I would submit on behalf of my Association that an appeal from order may be provided there. In a summary suit

leave to defend is granted or defused. Sometimes otherwise, it is refused or even after the degree is passed. But many time the Order says: "deposit a certain amount of money in the court." In genuine cases, party may be allowed to go in for an appeal. This does not involve further wastage of the time of the suit, the suit is already pending.

Therefore, there is no remedy against any order for which a party may be allowed to go in for an appeal. So, an appeal may be provided for. I think the scope of the present Order be retained. On behalf of the Bombay City Civil & Sessions Court Bar Association. we are very much obliged to the learned Members of this Sub-Committee and we submit that we may be allowed to send a written memorandum giving detailed suggestions which we propose to make and they may be considered sympathetically.

MR. CHAIRMAN: I thank you and your learned colleagues for extending full co-operation to this Sub-Committee. The main objectives of this Bill are to reduce the cost and to give justice to the poor litigants.

At the end, I would request you to have a fresh look in the light of our discussion on the various points raised by the hon. Members and to submit us your considered views, as far as possible, on the clauses of the Bill. Your considered views on the various clauses would certainly help this Sub-Committee. Those Sections in the Code which are not in the bill, but about which you very strongly feel, should also be improved upon. On them also, we would like to have your views, as early as possible say in about a month.

SHRI PANDIT: Yes, Sir.

MR. CHAIRMAN: May I thank you and your colleagues once again on behalf of the Committee for the trouble you have taken?

Thank you very much.

SHRI PANDIT: We are also thankful to you, Sir.

[The Committee adjourned at 14.10 hours and reassembled at 15.00 hours]

III. Shri Ramrao Adik, Advocate General of Maharashtra, Bombay.

[The witness was called in and he took his seat]

MR. CHAIRMAN: Mr. Ramrao Adik, I welcome you to give evidence before the Committee. I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha, which governs the evidence before the Committee. Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI RAMRAO ADIK: I have already noted it.

MR. CHAIRMAN: We have not received any written memorandum from you on the Bill. That does not matter. You may give your views on the various clauses of the Bill for the consideration of the Committee.

SHRI RAMRAO ADIK: Regarding Section 34 of the Principal Act about the rate of interest, what is suggested by the amendment is that the rate of interest may exceed 6 per cent per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

The experience of civil litigations in the city of Bombay and elsewhere has been that all sorts of frivolous defences are raised. The suits are kept pending for 5 to 10 years in the

High Courts and other Courts. Now, after getting a decree, you have to pay 4 or 5 per cent when the market rate is 18 per cent or even 24 per cent. That is why the people raise frivolous pleas and, ultimately, they are benefited. If the rate of interest is fixed at the market rate or even at the nationalised banks' rate, in that case, there will be some sort of a check and frivolous defences may not be raised. You cannot get any amount at 6 or 9 per cent rate of interest. The market rate is 24 per cent. So, the person will say, it is better to delay the matter. It is a premium on the dishonest people.

MR CHAIRMAN: What is your suggestion?

SHRI RAMRAO ADIK: The rate of interest should be the market rate or the rate fixed by the nationalised banks. Don't leave it to the discretion of the court.

As regards the provision of second appeal, Clause 39, I would suggest that there should be no provision of second appeal at all. Though it is to be certified by the Judge and all that, there will always be a tendency to file a second appeal. It will be just adding to the number of cases in the High Court. My submission is that Section 100 should be deleted altogether.

MR. CHAIRMAN: Even the original one.

SHRI RAMRAO ADIK: Even the amended one is not necessary.

MR. CHAIRMAN: You do want even the proposed amendment.

SHRI RAMRAO ADIK: It is not necessary. If there is any point of law to be decided, under article 227, it can be done.

Clause 34, Section 96, p. 12. Sub-clause (4) says:

"No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

That is, regarding money suit, a provision is made. Similar provision will have to be made regarding other type of litigation. Take for example immovable property. Suppose it is worth Rs. 3000 and the claim is Rs. 3000. There should be no provision for appeal. In petty cases, there should no provision for even first appeal. The limit of Rs. 3000 should not be confined only to money claim but to any claim. It should be extended to all suits. An amount of Rs. 3000 is nothing taking the rupee value today. In petty cases, there should be no first appeal even.

Similarly, the distinction that is now existing in regard to Courts of Small Causes should be done away with and a uniform civil law should apply to all the suits.

SHRI NITIRAJ SINGH CHAUDHARY: You say that Section 115 should be deleted.

SHRI RAMRAO ADIK: It should be deleted. It has already become infructuous and unnecessary.

Coming to Order XX, rule 12, a person who is in wrongful possession of the property can merely pay to the decree-holder what he has in fact received. Actually, the decree-holder should be awarded what he could have got from the property during the period the property was in wrongful possession. The point is that I was deprived of my property. I could have got more income out of it. I would have developed it. Suppose it is an agricultural land, an irrigated land. Person in wrongful possession may have been taken at a very low income. But I could have developed it during the period it was in wrongful possession and got more income out of it. It will have its own effect.

Because that fear is there in the mind of that person that he will have to pay heavily. Some amendment should be made to rule 12 itself.

Order 21, *rule* 22. This provision is wholly unnecessary. It only adds to the number and delay.

Page 43 *of the Bill.* Here one year should be substituted by two years Why this extra proceedings? A question can be raised in the execution proceedings itself. In Bombay, it results in hardship and delay.

MR. CHAIRMAN: What about rule 22 under this order?

SHRI ADIK: Rule 22 itself should be deleted.

Rule 98 *on page* 52 *of the Bill.* While dealing with the same order, in practice, the difficulty is that there are obstructions in the proceedings. One obstruction is for removal of obstructions; then second obstruction and this goes on. In Bombay, our experience shows that there are one or two obstructions. In undertaking should be taken from him that he will not part with his possession. In that case, there is a fear of the contempt of court. In most of the suits where there is an undertaking, it will bind on him. Otherwise, he will be guilty under the contempt of Court Act.

Some provision should be made that whenever a suit relating to recovery of possession is filed, as soon as a defendent appears before the court, an undertaking should be taken from him that he will not part with his possession. Then there will be no further obstruction, no further difficulty in the way of execution. A similar under-taking should also be taken from him that he will not part with his possession without the leave of the court.

MR. CHAIRMAN: So far as this order is concerned, you will find that there are rules 98 and 103. They are being substituted by the new rules. What is your actual suggestion?

SHRI ADIK: An undertaking should be taken from him that he will not part with his possession so that there should be no further obstruction. The rest of the rule is all right.

Order 37, *rule* 2. This does not include commercial causes and transactions. For example, goods sold and delivered. You just do not pay. A suit is filed and the matter is taken up after ten years and appeal later on. All this encourages dishonest traders to indulge in dishonest practices. Why not extend it to the commercial litigations? In that case, at least some amount is secured. We submit that this order should be extended to all commercial transactions.

MR. CHAIRMAN: That is not covered by page 71.

SHRI ADIK: You place an order. You get goods sold and delivered by the other party. There is no written contract on this.

MR. CHAIRMAN: You want this provision to be extended to commercial transactions. Do you want it to be made more explicit?

SHRI ADIK: Yes, Sir. Let the court apply its mind in every case and see whether a particular man deserves leave. These are the main points which I wanted to bring to your notice. The rest of the provisions are quite all right.

SHRI MAITRA (Ministry of Law): As the law stands now, what is the difference between the amounts received and the amounts that might have been received with due diligence? I know it would be a subjective assessment. Anyway, would it be possible to assess it?

SHRI ADIK: It is very easy. For example, I had referred to a project earlier. In that case, there was also a possibility of getting irrigation, canal water could have been obtained and land could have been irrigated. Cash crops could have been raised.

SHRI NITI RAJ SINGH CHAUDHARY: Even without irrigation, a particular crop would give more to persons e.g. to those who grow ground-nut than to those who grow millet. Yet one can say that he has cultivated the land.

SHRI ADIK: It exactly fits the case for which I had appeared this morning. A person had committed certain breaches and canal block was lot. He said that it was a Jirayat land and that he would pay only keeping this fact as the basis.

MR. CHAIRMAN: Do we take it that you are in general agreement with the objectives of the bill?

SHRI ADIK: Yes, Sir.

MR. CHAIRMAN: You have suggested some more improvements, in order to avoid delay and to reduce the costs. It would be more helpful if you could kindly concretise your suggestions in this regard and pin point the provisions to be incorporated. We may consider them, so that at an appropriate stage they may be useful to us. You may also send written replies both to our questionnaire and on how to help the indigent litigants.

SHRI ADIK: Yes, Sir; I would submit a note even on those points which I have referred to here, so that they may be on record.

MR. CHAIRMAN: We will consider your suggestions very carefully. May I then thank you on behalf of myself and my colleagues?

SHRI ADIK: I am thankful to you, Sir.

MR. CHAIRMAN: We have requested the representatives of the Government of Maharashtra also to give something in writing, which they had not done earlier. Your views are also welcome to us.

SHRI ADIK: I am grateful to you. Sir and to your Members.

(*The witness then withdrew*).

IV. Witness: Shri C. R. Dalvi, Advocate

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Dalvi, before we go into the evidence, may I draw your attention to the Direction that governs your evidence?

SHRI DALVI: I have read it Sir,

MR. CHAIRMAN: Even then it is necessary to put this on record. Whatever evidence you give before us will be public and is liable to be published. But in case you desire that all or any part of your evidence be treated as confidential, we will do so, but even such evidence will be made available to the Members of Parliament.

Now, you have not submitted any written memorandum to us on the bill.

SHRI DALVI: I will do it, Sir, if you so desire.

MR. CHAIRMAN: We will come to it later. You are now welcome to make your suggestions and submissions on any clause of the bill.

SHRI DALVI: Though it is not directly germane to the issue. I may point out, in the first instance, 2 or 3 things which have been very emphatically mentioned by the Law Commission in its 54th Report, viz. about judicial officers. The object of the Procedure is to see that there is a fair trial and expeditious justice.

The success of the procedure will depend on the personnel who man the whole system. They include lawyers; they include judges. So far as Judges are concerned—I am not saying about the Judges of the High Courts but of the subordinate judiciary—I would like to say that three or four things may be noted.

Firstly, their service conditions. Their emoluments practically throughout the country are utterly inadequate. Steps have to be taken to see that their emoluments are increased. Secondly, so far as the subordinate

judges are concerned, they must invariably be provided with residential accommodation. Thirdly, the court houses particularly in taluk places and in district places should be provided for. The court houses should be big enough and airy. There have been instances in the city of Bombay when a city Magistrate has fainted in the court room because there was no air. Such things should not happen. Fourthly, all the court houses should be provided with up-to-date libraries. Very often, the judge does not have the latest Act, the latest Commentary on the Act, the latest Law Report and all that. If all that had been made available to him, possibly his judgement could have been otherwise. This is as important as providing legal aid, possibly, more important. After all, we want that there is a fair trial and it is done as quickly as posisble. Therefore, it is of utmost importance that all the court houses should be provided with up-to-date libraries.

SHRI RAJDEO SINGH: What is the position today?

SHRI C. R. DALVI: Today, the court houses are not provided with up-to-date libraries. What is provided is the Indian Law Reports. The Indian Law Reports, in the first place, care delayed. In the second place, they report cases which had been decided by High Courts a year back or so. So far as the Supreme Court is concerned, there is the A.I.R. which reports cases which had been decided three or four months back. We have got the Bombay Law Reporter. If it is provided to him and if the Judge is provided with all the up-to-date commentaries and the latest amendments to the Acts, possibly, he will not commit mistakes which ought not to have been committed for which an appeal is required.

Then, however good a procedure may be, the success of that procedure will depend on the personnel which mans it.

These are some of the things which ought to be looked into by the Committee.

MR. CHAIRMAN: Before you take up other points, I would like to say one thing. You are making these suggestions regarding Judges of subordinate courts, about giving better emoluments, better service condition, residential accommodation up-to-date libraries, etc. Do you feel that these things are necessary and essential with a view to achieving the object of efficiency and avoiding delays? Do you mean to say that delays take place because of these deficiencies?

SHRI C. R. DALVI: If you do not have proper service conditions for the judges, then you do not attract good lawyers to become judges. Then, you may have judges who may not be as good as you could like them.

MR. CHAIRMAN: I appreciate all that. You need not go into the details. You go to other points now.

SHRI C. R. DALVI: To some extent, it is due to the inefficiency of the personnel also.

Lastly, there should be training given to the judicial officers. The Law Commission has devoted a separate Chapter on training to be given to the judicial officers. That is also important. This is one aspect.

Another aspect is about the court fees. To my mind it appears, the tendancy is to increase the court fees not only to meet the cost of the staff but also to meet the emoluments and salaries of the judges That is not desirable. In some cases, the collection is even more than what is actually spent on the administration.

MR. CHAIRMAN: What is your suggestion?

SHRI C. R. DALVI: The court fees should be reduced and they should be uniform, as far as possible and practicable.

SHRI RAJDEO SINGH: The court fees should not be a source of revenue.

SHRI NITIRAJ SINGH CHAUDHARY: It is a fee, not a tax.

MR. CHAIRMAN: The object of the Bill is to see that the cost of the suit is reduced. What do you think should be the reasonable court fee? What percentage should be the court fee of the total cost of the suit?

SHRI C. R. DALVI : It should be a certain percentage of the claim that the party wants to make, 10 per cent or so. As far as possible, it should be a fixed fee. It should be uniform. It should be a fixed fee except in the case of money claims.

SHRI RAJDEO SINGH: Do you think that by reducing the court fee litigations will be increased many-fold?

SHRI DALVI: I don't think so.

MR. CHAIRMAN: Do you want that there should be a uniform law for court fee?

SHRI DALVI: It may be desirable to have a uniform law. What the Law Commission has said should be the guiding principle. It is dealt with in Chapter 19 of the 54th Report of the Law Commission.

Proposed amendment to Section 2, clause 8. To my mind, it is not entirely correct. All the preliminary decrees are not done away with. In partnership suits, preliminary decrees will have to be there. Therefore, the defiintion of a decree has to be there as it was before; it should continue to be the same.

There is Section 9A in the State of Maharashtra. It provides that in case of interlocutory applications, if the question of jurisdiction is raised, then the question of jurisdiction should be decided at that stage. It is a wholesome provision. Otherwise, sometimes it may happen that when you file a suit, ask for injunction and you get it. Then the suit may come up after two or three years. Till that time, the injunction continues and then the question of jurisdiction is raised. But the court may hold that it has no jurisdiction. In the city of Bombay, this problem is very acute. Suits about ten-year old are pending in the city of Bombay Court. When the suits come up for hearing, the court may hold that it has no jurisdiction in such cases. Therefore, a provision may be incorporated to say that at the interlocutory stage itself, the question of jurisdiction, if raised, should be decided.

Section 11 is sought to be amended by incorporation of Section 24(a). It is a very controversial section.

I welcome Clause 6; it is a very wholesome provision.

SHRI NITIRAJ SINGH CHAUDHARY : Would you like to apply summary cases to 11(a)?

SHRI DALVI : So far as this section is concerned, there are two ways of meeting the problem of making a decree final. (1) In Section 11, last clause, that is, after "in a court competent, etc. etc." that part may be deleted. All the trouble has arisen because of the finality. The other way as has been suggested by the proposed amendment is Clause 11(24A), that is, a judge makes a reference to the District Judge and then he sends it to other judge and then a decision is taken. I may prefer, irrespective of the competence of the court, to decide it, if it is a suit, by a court. It should be given a finality whether the court was competent to decide or not. If a Civil Court has decided a question and given a decree, then it should be made binding irrespective of whether in a subsequent suit that court has jurisdiction or not. That is one way of giving the finality to it That is also one of the ways. Now, turning to Clause 12 i.e. the proposed amendment to Section 25, there are 2 or 3 things which may be considered. One is, whether a provision should be made for an application direct to the Supreme Court. It may be desirable that if a party to a suit, appeal or proceeding pending in any court appeals, the court may send it up to the High Court; and if the latter is satisfied that there are reasonable

grounds therefor and that the ends of justice require it, the High Court may make a report to the Supreme Court; the Superme Court may send it to the other court for a decision. I think that due to the proposed amendment, the work of the Supreme Court is likely to increase. Therefore, the Supreme Court can ascertain the views of the High Court; and on the basis of the opinion of the latter, the Supreme Court will decide whether to send it to the High court or not. This would be more conducive to eliminating unnecessary or frivolous applications.

MR. CHAIRMAN: What would happen if the iHgh Court does not forward it?

SHRI DALVI: The decision should be taken mainly at the level of the High Court. I do not say that it should be given the power, to transfer; but it should make a report to the Supreme Court. It should go to the Supreme Court as a matter of course.

MR. CHAIRMAN: We will look into this.

SHRI DALVI: So far as Clause 15 i.e. Section 35A is concerned, my submission is that appeals should not be excluded. Compensatory costs should be there both for the appeals and the suits. I would now say something about Section 80. It was meant to enable the State to settle claims. As luck would have it, they have made it a condition precedent to the filing of a suit. I feel that Section 80 need not be deleted fully; but it should not be made a condition precedent for the filing of a suit. A provision should be made in Section 80 to the effect that a party which desires to file a suit may give an appropriate notice to the State Government or the corporation, of his intention to do so, so that the State Goverment would be in a position to look into the matter. If a suit is filed and in the suit if the court records a finding that the State or the officer or the statutory corporation has no defence, then the compensatory costs ought to be awarded. That should be there not only in the suit, but also in the apepal. A question may be raised as to why should the State be put on a higher pedestal than a citizen. As a matter of jurisprudence, it is correct that the State is not on a higher pedestal; but in litigation where the State is involved, public finances also come into the picture. If we consider this, the provision of a notice may be desirable. if the plaintiff has not given a notice, he may not be entitled to a special costs; but if he has done it and if the judge records that the State or the corporation has no defence, then special costs may be provided for under Section 35C. Those costs should be in adidtion to the normal costs payable to the party, say about Rs. 3000/-. It may, in the long run, have a salutary effect on the officers of the government. I have a little experience of having appeared for the State Government. In some proportion of the cases, the State had really no case in appeal or in the suit. For example, a person who had been dismissed from service, might file a suit contending that the statutory notices were not given, or that the first notice was given but the second one was not given. It is apparent that the dismissal was bad. The stipulation regarding notice under Section 80 is there. In spite of it, the State has not done it. There is no defence to the suit. It is bound to be decreed. If compensatory costs are awarded against the State Government or against the corporation in such cases, there may be a change in their attitudes and they may act before a suit is filed. It is mainly for the purpose of saving public finances. So, is the case with insurance claims against the LIC. In many cases, that corporation has no defence. But suits have to be filed even in such cases. I, therefore, suggest that Section 80 may not be deleted wholly and that Section 35C should be enacted. Statutory corporations and banking companies should be included in this.

SHRI NITIRAJ SINGH CHAUDHARY: In that eventuality, would

you like that notice under Section 80 should be there as it is at present or that it should be in some other form, so that these objections are not there?

SHRI C. R. DALVI: A normal notice as any other client will give. It should not mention what is the cause of action and all that.

SHRI NITIRAJ SINGH CHAUDHARY: The plaintiff who given a notice is to give within two months. Suppose a person does not give notice. Suppose it is not made obilgatory. What will be the position about two months' period?

SHRI C. R. DELVI: The period may not be mentioned. It need not be made obligatory. Even if the period of two motnhs is mentioned, in many cases, the suit is filed after the period of limitation is over. Even if the period of two months is there it should not be mandatory.

SHRI NITIRAJ SINGH CHAUDHARY: It should be just a notice.

SHRI C. R. DELVI: Yes, Sir.

So far as clause 21 is concerned, I may suggest that another explanation may be added which should provide that a question as to whether a decree or order sought to be executed is nullity on any ground whatsoever shall be deemed to be a question relating to the execution of the order. Therefore, a separate suit is not necessary. An explanation to this effect may be made.

Then, Section 54 provides for sending of decrees to the Collector for execution. The experience is that the court does not send a decree. Somebody else sends it. Once it is sent, it remains for months and months, may be for years and years. What I propose to suggest is, in the first place, that the court which passes a decree should forward it to the Collector of the district in which the decree is passed or the district where a substantial portion of the land is situated. Secondly, on receipt of a decree, the Collector should be called upon to issue notices to the parties to come for either partition or possession of land on a specified date. Then, the Collector should be asked to complete all the proceedings within a period of six months. Lastly, the order passed by the Collector should be treated as an order made under Section 47.

Now, the difficulty is this. The civil court says that it has no jurisdiction once it goes to the Collector. Under the relevant provisions of land revenue, the matter goes to the commissioner in appeal. In stead of that, if it is stated that it is an order under Section 47, then the consequences of appeal should be there. A specific provision should be made that the duty is cast on the court to forward it; the duty should be cast on the Collector to fix a date for completing the proceedings. They should be completed wthin six months. The order that the Collector makes should be an order which is deemed to be made under Section 47.

As regards Clause 23, the proposed amendment is just a formal one.

Coming to Clause 29, the proposed amendment, in Section 82, subclauses (4) and (5) are sought to be added. It may be considered whether they are really very necessary. No change may be made. It is not desirable either one way or other.

About Section 94, I do not see the propriety of the words "if it is so prescribed". It may be considered whether it is necessary.

As regards the controversial provision of appeals in Clause 34, the explanation is sought to be added enabling appeal against findings. I do not think that it is desirable to provide for appeals against findings. That will increase the number of appeals.

MR. CHAIRMAN: It is not all findings. It is only when it is adverse to a party.

SHRI C. R. DALVI: I follow that. A decree may be in favour of the

party but the findings may be against him. It is to enable that party, even though the decree is in his favour, to prefer an appeal against the finding. It is not desirable to provide for appeals against such findings also. It will increase the number of appeals.

I do not agree with sub-section (4) of Section 96 which says that there should not be even first appeal in respect of many claims.

Clause 39 proposed amendment to Section 100—I am of the view that the proposed amendment is not called for. The position in law is now very settled in regard to the scope of Section 100. I personally do not like the proposed amendment confining second appeal on a substantial question of law. So far as our State is concerned, between 1961—65, the cases of institution of second appeal were about 2200 to 2300; between 1965—70, they were about 1800 and during the last two-three years, they had come down to 1600. It is a substantial fall. People are realising that second appeal is not admitted. If you take the average, you will find that not more than 50 per cent of the cases are admitted. Even in the appeals which are admitted in our High Court, the decree are not stayed. As a matter of fact, we have to make a separate application. So, the admission of an appeal does not, *ipso facto*, operate as a stay. Money decreases are never stayed unless money is deposited. To my mind, if this clause is added, it will open the flood gate of litigations; it should remain as it is.

SHRI SAWAI SINGH SISODIA: Why do they not make it express?

SHRI DALVI: Section 100 as it stands itself, is very clear.

SHRI SAWAI SINGH SISODIA. What about (c)?

SHRI DALVI: It may be that ever if the finding is recorded, you are in a position to tell the judge that the finding is recorded is perverse and the learned judge has failed to consider the evidence on the records before giving the finding. If it is to be a "substantial question of "law" to my mind, even the Supreme Court may come down to the same interpretation. So far as second appeal is concerned, the proposed amendment Section 100, to my mind, is also not correct.

Interlocutory stages in our High Court:

What I suggest is that these should not be deleted; these should be retained. The High Courts are aware of their powers. Scope of Section 100 is also well settled.

Section 137 regarding the language of the subordinate court.

To my mind, it is desirable that it is left to the High Court and an amendment may be made in sub-clause 1 and 2. What should be the language of the court, I suggest that it should not be left to the State Government, it should be left to the High Court.

Clause 50 regarding the proposed amendment to Section 141.

Now, what is sought to be done is this. So far as the proceedings under Order IX are concerned, the answer is 'yes'. But applications under Article 226 are excluded from civil proceedings. I suggest that they should also be included and the explanation should be "Proceedings in this Section include proceedings under all Sections in this Code and proceedings under Articles 226 and 227 of the Constitution." To-day the procedure provided in this Code would not provide for this and it is specifically sought to be excluded. Proceedings under Articles 226 and 227 should be included; and things should not be left to the rules of the High Court. One of the wholesome provisions to which I will come later is one in regard to registered address etc.

MR. CHAIRMAN: The explanation is there because of execution.

SHRI DALVI: Not so, Sir; but because of the conflict of decisions as to whether it would be applicable to Order IX. That is why the proposed amendment mentions this specifically. This Procedure includes cases of service of summons also. One of the provisions relates to registered addresses. I would now say something about the Orders.

MR. CHAIRMAN: It appears that you have studied the Orders in detail. We welcome all the suggestions relating to Clauses, Sections, Orders and rules. Kindly send them on to us, so that we will be able to pin-point them. Whatever you have said is on record. You may add some more suggestions and send them in writing within a month. We have another witness to examine to-day.

SHRI DALVI: Practically all the rules which were made by the Bombay high court may be accepted. It is one of my main suggestions. As it is, many such rules are incorporated in the proposed amendment; but I do not understand why some of them have not been incorporated.

MR. CHAIRMAN: Are we to understand that you are in agreement with whatever have been included?

SHRI DALVI: With some of them, Sir. I am in agreement with almost all of them. I may not agree with some. I will send a note about it. The rules of Bombay provide that at the time of institution of the suit itself, the plaintiff should be required to file, along with the claim, copies of the plaint and also make payments, so that delay could be avoided to some extent. So far as the registered address is concerned, I feel that it should be slightly reformulated. We should state that the person should be required to give his registered address. along with the plaint; and intimate any change in it as soon as possible. A provision should also be there to the effect that if the registered address is found to be incorrect, false or fictitious, the consequence of striking him out of defence should not follow immediately. He should be asked to give the correct registered address; if he does not give it, the plaint may be rejected and the defence struck out. As soon as he gives the address, the plaint may be revived. This address should be treated as registered address for the purpose of suit, appeal etc. and for a period of 2 years or more. One of the bottlenecks for delay in litigation occurs in the service of summons. The responsibility for the service should in no case be on the pleader. Each party should be bound by it. The other major suggestion is in regard to Order XXII which is the second bottleneck in litigation. Who should bring in the record if a person dies? As the Order XXII stands to-day, the responsibility is cast on the plaintiff or the applicant. I feel that it is desirable to consider whether the duty should not be cast on the heirs of the deceased, irrespective of whether he is the plaintiff or the appellant. To that extent, it may not create delay. A lot of time is lost because the appellant does not know the heirs of the respondent. If the duty is cast on the respondent to bring things on record, time may be saved to that extent. This also causes hardship, particularly to the States and to the statutory corporations, because it is very difficult to find the heirs of the deceased respondent or of the defendant. In my experience, I have found that a good number of cases are lost by the State because of the delay in bringing the heirs records. As a result, applications were lost or dismissed, though they were good cases. This is not there in the proposed amendment because the latter does not say anything about Order XXII; but it may be considered whether the responsibility should be cast on the plaintiff or the appellant.

There are several other things. But the major thing is about Order XXXXI, particularly in regard to stay. There, it is not very clear today as to how the stay is to be granted. It should be clearly stated that filing of an appeal would not

ipso facto operate as a stay and it should also be stated that it is only on admission of an appeal and on an application made that the court may consider it. Then, all these applications for stay and also for review to the Supreme Court should be supported by affidavits.

These are some of the major things. If you so desire, I will send you my further views in about a month's time.

MR. CHAIRMAN: You are welcome to do it. You can forward your suggestions to the Committee later on. The Committee will give its due consideration to them.

SHRI S. K. MAITRA: You have said that filing of an appeal should not *ipso facto* operate as a stay. It will not *ipso facto* operate as a stay order.

SHRI C. R. DELVI: It is not very clearly stated. A detailed provision should be made in regard to stay. For example, it should be made clear that filing of an appeal will not *ipso facto* operate as a stay order but it will be only on admission. Though our High Court does not grant stay pending admission of applications, I am told, in other High Courts, even prior to admission of appeals, the stay is granted. This was the position in our High Court some 15 years ago. Unless the matter goes to the learned judge, the stay is not granted. It should be made clear.

Then, there is an amendment that the affidavit should be of a pleader. That is not a welcome one. How could a pleader at a *taluk* place know whether the stay has been obtained from the High Court?

SHRI S. K. MAITRA: It is on the basis of his personal knowledge. That is all.

SHRI C. R. DELVI: It may create hardship. With the postal efficiency as it is today, it will be difficult.

MR. CHAIRMAN: Mr. Delvi, I thank you on behalf of myself and on behalf of the Committee for coming before the Committee and giving your evidence. You can send us a comprehensive memorandum containing your suggestions later on for the consideration of the Committee.

SHRI C. R. DELVI: Yes, Sir. I will do it within a month's time.

Thank you, Sir.

(*The witness then withdrew*).

V. Shri D. M. Rane, Advocate.

[*The witness was called in and he took his seats*]

MR. CHAIRMAN: Mr. Rane, before you give your evidence, I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha, which governs the evidence before the Committee. Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI D. M. RANE: Yes, Sir. I have already noted it.

MR. CHAIRMAN: You have not given us any written memorandum. You are welcome to give your suggestions on any of the Clauses of the Bill that you like for the consideration of the Committee.

SHRI RANE: This amendment Bill is mainly for the purpose of minimising the cost of litigation. From that point of view, I find that Section 10 deserves some consideration. In order to remedy the stay orders which are obtained by certain litigants, in my humble opinion it may be desirable to consider amendment of this Section 10. May I read out a small note which I have prepared in this behalf?

MR. CHAIRMAN: May I just suggest for you and for the convenience of this Sub-Committee that you can send us a detailed note later on. We will consider every aspect of what you will send to us. But since this is an oral evidence, you can make your suggestions on the various clauses of this Bill and highlight those points which you like the Committee to consider them specifically.

SHRI RANE: In fact, the earlier witness who had already appeared before you, he and I have worked out certain points about this particular amendment and we will forward them to you in due course. Just now he had told me that we should prepare exhaustive notes and then send them to you. Now I would mention only a few salient points in this short time.

In respect of Section 10, I was mentioning that sometimes when stay orders are given in respect of pending suits, so that they should not be proceeded with. The basis is some fictitious suit which has been filed earlier. I will send you a detailed note on this. But the main point is that if a suit is genuine, then only a stay order may be granted. I may first give you Bombay High Court reference, that is, AIR 1954 Bombay 176 and Supreme Court reference is AIR 1962 Supreme Court 527.

MR. CHAIRMAN: At any rate, in this section, you suggest that this section should be amended in the light of Supreme Court judgment.

SHRI RANE: Now that the High Court has interpreted the section as it stands, it does not serve the purpose of arresting the stay orders that have to be given by the High Court. If, at all, granting of stay orders pursuant to the provision of Section 10 is to be arrested reasonably, this interpretation which the High Court had placed on Section 10 should be accepted. Once it has been reversed by the Supreme Court, the only way out may be the amendment of the Section.

So far as Section 11 is concerned, a new Section 11(a) has been inserted and a very happy development that has been made is that the principle of *res judicata* has been made applicable to execution proceedings and to other civil proceedings. It is a welcome change.

Amendment of Section 20, Explanations 1 and 2. The original explanations have been replaced by fresh explanations 1 and 2. Now, by Explanation 1, a corporation can file a suit irrespective of the place of its call of action at the head office where it is situated. This may cause some kind of hardship to the defendant. For example, the City of Bombay is the Head Office of the State Transport Corporation. If any accident in respect of the vehicle belonging to that corporation takes place in the district, a suit can be filed under Explanation 1 even in the City of Bombay being the place of a principal office. Now the position is that a litigant will have to come here to file a suit. If possible, Explanation 1 has to be eliminated. There may be good reasons for that particular Explanation 1 which has been mentioned here. But then this results in a little hardship that is caused to a defendant. In order to obviate that hardship, if possible, this may be eliminated.

SHRI S. K. MAITRA (*Ministry of Law*): The operations are determined by the residence. In this case, if the corporation is the defendant, there are two alternatives, one of which concerns the location of the head office. So far as Section 20 which concerns the defendant is concerned, there are 3 clauses. Clause (a) says that a defendant might voluntarily reside in a particular place. If the office of the defendant were in Bombay, he is affected by the Explanation.

MR. CHAIRMAN: The witness does not seem to have any objection to it; but there is some ambiguity in his mind. If so, he can tell us.

SHRI RANE: Now about Section 34. The maximum interest which has been fixed at 6 per cent, all these years, has created some hardship for the plaintiff's decree-holders, with the result that a person who is a defendant and who owes thousands of rupees to the plaintiff, uses this amount at the rate of 6 per cent throughout the period whereas it would not be possible to get the amount from the open market even at the rate of 12 per cent or 15 per cent. As such, that kind of difficulty has been removed by giving the right to the court to award a higher rate of interest. I would suggest that a maximum rate may be indicated. There would otherwise be no rational limit to the higher rate of interest. Secondly, the amounts spoken of as coming under this particular rate are those over Rs. 15,000|-. Even with this amount, a certain benefit may be given to amounts between Rs. 5,000|- and Rs. 10,000|-.

SHRI S. K. MAITRA (*Ministry of Law*): The maximum rate of interest which you wanted, is there. If there is a contract, the contractual rate is applicable. If there is no rate stipulated the maximum rate which is charged by the nationalized banks, would be chargeable.

SHRI RANE: I would suggest that the maximum, in terms of the figure, may be mentioned. It would otherwise be fluctuating always. It should not be so, when we are concerned with a procedure which is of a fundamental nature. The precise minimum rate may be fixed. But the award may be at a higher rate.

SHRI S. K. MAITRA (*Ministry of Law*): It is difficult. This Code might prevail for 60 years or more. We would not be able to visualize the economic condition of the country then. Whatever might prevail as the rate of interest from time to time, the rate may go on changing accordingly.

SHRI RANE: No doubt it is a sound consideration; but it leaves things vague. But it is good if you say that it should be equal to the bank rate. Now about Clause 35A, which is a compensatory one. The amendment to it has excluded cases of revision applications, in addition to others. Secondly, in the amendment to sub-section (2), the limit has been raised from Rs. 1,000|- to Rs. 2,000|-. I suggest that it may be raised to Rs. 3,000/-, so that it may have some deterrent effect.

MR. CHAIRMAN: We will examine this.

SHRI RANE: One more suggestion. Wherever such false and vexatious contentions are detected—whether in the matter of a suit, appeal, revision application or any other proceeding arising out of a suit, at every stage thereof—action may be taken under Section 35A.

SHRI S. K. MAITRA: Will not Section 41 take care of it?

SHRI RANE: Yes, Sir; if that is the interpretation. I would now refer to Section 47. I have not much to differ on. So far as Section 60 is concerned, dealing with the property liable to attachment in execution of a decree, the position is again the same. I would next refer to Section 80 regarding notice. This Section has been removed altogether by the new amendment. It was doing some useful function, *viz.* that if 100 notices were issued against the Government or public bodies for filing suits or claiming benefits against government officers, practically hardly half of them were alive after the notice period had expired. This is the estimate that I have made. I do not have any official figures to support this estimate; but many of the suits were compromised before filing. If that were so, it would be more convenient if we can save the cost of defending a suit which has been filed. The reason given is that the ordinary litigant and the State should be treated on

par; but ultimately, the ordinary citizen has also got something to do with the expenditure which would be incurred ultimately by the State in defending such a suit. If it is possible to find out a via media whereby an opportunity to settle a claim before a suit is required to be filed—instead of completely removing Section 80—it should be considered.

SHRI NITI RAJ SINGH CHAUDHARY: Would you like the limitation of 2 months to remain? Would you also like that the notice should continue to be in the present form or in the ordinary form?

SHRI RANE: In that case, it may not be in the ordinary form.

SHRI NITI RAJ SINGH CHAUDHARY: Generally, when the Government deals with cases, they raise objection when the notice is not in proper form. Cases are lost on such technical grounds. Would you like the notice to indicate that such-and-such a suit was likely to be filed and that if the party so desired, it might be settled without having recourse to it?

SHRI RANE: Such an opportunity to run away should not be given to the defendant.

Section 96 refers to the filing of appeals against decrees. One good thing has been done here. If there is an adverse finding against a person who has succeeded in the suit he has been given a right to file an appeal. That is welcome. However, there is a provision that in respect of cases where the claim is below Rs. 3000, there should not be an appeal at all, even a first appeal. An appeal should be only on a point of law. That provision is a little irksome. The Small Causes jurisdiction will normally have a majority of suits of this nature i.e. below Rs. 3000. They are being denied of the right of filing an appeal. The Law Commission, in their Report, says that in civil litigation, the litigant should have an opportunity of litigating in two courts, the trial court as well as the appellate court. This will be a deviation from that. If the right of first appeal is available in respect of cases involving Rs. 3001 and above, there is no justification why others should be deprived of the first appeal in cases below Rs. 3000.

MR. CHAIRMAN: You want that it should be applicable in all cases.

SHRI RANE: In that case, the lower limit may be reduced to a very insignificant figure of Rs. 500 or so. There should be no appeal in respect of cases below Rs. 500. If the amount involved is Rs. 2999 and you say that there should be not right to appeal, that will be a little hard on the poor people.

Regarding the second appeal, Section 100, in the first place, the admission of second appeals has been made stricter. There is a provision of giving a certificate. In my submission, that provision coupled with a provision that the court should make out a point and admit such matters giving reasons at that time is something would discourage admission of second appeals.

SHRI S. K. MAITRA: The court will have to give reasons not only for admitting appeals but also for dismissing appeals. It is not there. Supposing we modify it, you will agree with it.

SHRI RANE: Now, you take the statistics of filing second appeals. Yesterday, I had a talk with the Deputy Registrar of the High Court dealing with these matters. He told me—I do not have the figures now; I may submit them later on—that the number of second appeals in the High Courts is going down every year. Secondly, second appeals which are ultimately filed but which are admitted are very few. Because Section 100 is amended, I do not think there will be much relief so far as the volume of work in courts is concerned.

Today, the position in respect of matters of second appeals which are filed has, more or less, crystalised. We as practitioners in the High Court have a daily experience that matters which really involve some point of law are admitted. Otherwise, the second appeals are not admitted. In view of this, there will not be much impact by this amendment.

There is another aspect also. In a matter where the first appeal is to be filed in the district court, an opportunity to a litigant to go to the highest court in the State on a point of law which hitherto has been given would be discontinued hereafter.

Lastly, Section 115 has been completely removed. The civil revision applications can be divided into two categories, interlocutory orders against which civil revision applications are filed and others where there is no right of appeal. So far as first category is concerned, such revision applications are discouraged in the High Courts today. So far as our High Court is concerned, today, it is practically an unwritten law that wherever there is a matter arising out of an interim order in which some very important point of law is involved, only then it is admitted. With this background, I think, it will not be very prudent to remove this provision completely from the statute book.

So far as civil revision applications arising out of other matters are concerned, where appeal provision is not available, we resort to filing of civil revision applications. The number of applications filed in this category will not be minimised because there is an alternative provision under Article 227 of the Constitution of India. If it is removed from the code, people will resort to Article 227.

The Criminal Procedure Code has been amended recently. That has made a provision for only one revision and no right of two revisions.

If an order has been passed by Judicial Magistrate, First Class, it is revisable by the Sessions Court. Now, beyond Session Court, you cannot file second revision application to the High Court. Now these right of revision has been taken away by amendment of C.P.C. But applications under Article 227 which are entertained where the scope for admission is still wider. So far as revision applications are concerned, what we require is to convince the court about a point of law touching the aspect of jurisdiction. Now that is the legal position. As far as Article 227 is concerned actually the scope of the relief is wider and any mistake apparent on the face of the record or any impropriety or illegality committed by the lower courts can be corrected under that jurisdiction. So, by removing this provision of Section 115, I don't feel it will make any impact on the reduction of the volume of the litigation in the High Court.

SHRI S. K. MAITRA: That is exactly what the law Commission has said.

SHRI RANE: I would say that this forum was there even before.

SHRI S. K. MAITRA: Therefore, the argument which you are advancing is practically what the Law Commission says.

SHRI RANE: The point is when revision applications were being filed, the scope was narrower. Now there is a wider scope; there would be more number of matters under Article 227.

MR. CHAIRMAN: Section 115 and Article 217 should be deleted from the Constitution.

SHRI RANE: It cannot be. I do not mean that Formerly, When revision applications were being filed, as a matter of fact, where the right of appeal was not available, we used to file very few matters under Article 227. So, where Section 115 could be resorted to, it was not necessary to resort to Article 227. Now,

Section 115 matter come under Article 227.

MR. CHAIRMAN: We appreciate that.

SHRI RANE: Even if 227 is available, we could not file it once we filed an application under 115. The scope of 115 is narrower.

MR. CHAIRMAN: We quite appreciate the points that you have advanced. As has been suggested by Mr. Dalvi, I am repeating it to you again. Both of you can work out certain points which you think are desirable and then send those points to us. We will be able to consider them.

SHRI RANE: I am obliged to the Chairman and the Members of this Sub-Committee for giving me this opportunity to place my views on the various clauses of this Bill.

MR. CHAIRMAN: I thank you on behalf of the Members of this Sub-Committee

SHRI RANE: I am obliged to you.

(*The Committee then adjourned*)

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE 'B' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Saturday, the 12th October, 1974 from 10.00 to 13.45 hours and again from 15.00 to 17.20 hours in Congress Party Hall, Council Hall, Bombay

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dinesh Joarder
3. Shri V. Mayavan
4. Shri D. K. Panda
5. Shri K. Pradhani
6. Shri Rajdeo Singh
7. Shri T. Sohan Lal
8. Shri Niti Raj Singh Chaudhary

Rajya Sabha

9. Shri Syed Nizam-ud-din
10. Shri V. C. Kesava Rao
11. Shri Awadheshwar Prasad Sinha
12. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Bombay Incorporated Law Society*

Spokesmen:

1. Shri P. M. Dandekar
2. Shri P. P. Hariani
3. Shri D. B. Engineer
4. Shri D. M. Popat

II. *Bombay Bar Association, Bombay*

Spokesmen:

1. Shri Hemendra Shah
2. Shri Mahendra Shah

3. Shrimati Sujata Manohar
4. Shri P. K. Thakor
5. Shri Ashok N. Vyas, Hon.-Secy.

III. Shri M. V. Paranjape, Advocate.

IV. Shri Porus A. Mehta, Advocate, High Court, Bombay.

V. Shri V. C. Kotwal, Advocate, High Court, Bombay.

VI. Shri D. S. Parikh, Advocate, High Court, Bombay.

I. *Bombay Incorporated Law Society, Bombay.*

Spokesmen:

1. Shri P. M. Dandekar
2. Shri P. P. Hariani
3. Shri D. B. Engineer
4. Shri D. M. Popat

(*The witness was called in and he took his seat.*)

MR. CHAIRMAN: Before we enter into the evidence, may I draw your attention to the direction that governs evidence before a committee like ours? It provides that such an evidence will be treated as public and as such will be liable to be published. In case, however, you desire that all or any part of your evidence is to be treated as confidential, we will do so. But even in that case, that evidence will be made available to the other Members of Parliament.

Mr. Engineer, you have not so far submitted any written memorandum to the sub-committee. Anyway, kindly be brief in your oral evidence. You may refer to the clauses and the objects of the bill, so that the hon. Members can follow. After you make your points, hon. Members would like to seek further clarifications.

SHRI D. B. ENGINEER: In the first instance we wish to point out that the amending Bill does contain some very welcome suggestions, keeping in mind the objects of the Bill and the amending Bill *viz.* that the litigant should have a fair trial; that every effort should be made to expedite the proceedings; and that the procedure should not be complicated. One of the main factors is the delay occurring in the civil courts all over the country. The causes therefor should be kept in view. Factors like erosion in the value of the rupee, population explosion, increase in the number of legislations passed, changes in the pattern of legislation, extension of the jurisdiction of the courts etc. contribute in some measure to this delay. It is not as if by simplifying the procedure, one would do away with all the ills. As a matter of fact, one has to be cautious in that respect. May I refer to the High Court Arrears Committee of 1972, presided over by the ex-Chief Justice of India Shri Shah and with Mr. Justice Veeraswami, the Chief Justice of Madras as a member? They have very aptly drawn attention to the fact that the court room is not a place for experiments of new-fangled ideas or efficiency experts. After all, the most important thing is the administration of justice. I would refer you to page 42 of their report wherein they have said:

"Administration of justice cannot be linked to the administration of business or even disposal of exe-

cutive government business. A court room is not a place for experiments of new-fangled ideas or efficency experts. A thorough and painstaking determination of facts relevant to the matter in issue and application of the appropriate legal princples to the facts to achieve a just decision are the primary functions of the court. Hurry and judicial behaviour go ill together."

Having said that and drawn the attention to the dangers of undue hurry in courts it cannot be denied that our procedures are cumbersome and they can be simplified to some extent. But one cannot expect a miracle. One cannot merely hope that by simplifying the procedure we can do away with all the delays in the courts. It is our experience as practitioners in Bombay and it is borne out by a number of our colleagues that a large majority of suits or civil proceedings are settled ultimately when they reach a final hearing after an inordinate length of time. In other words a suit is kept pending for 5 or 6 years and, when it actually goes to trial, it is very often settled. If the very suit could be settled in the first instance or at an earlier stage, we could in some measure do away with delay to that extent.

In the United States it has been estimated that 90 per cent of the suits are settled in the first instance and only 10 per cent go to trail. Therefore, the most important recommendation that we are making today is the introduction of a pre-trial procedure in India. It is not our intention to suggest that the American system which exists there should be immediately transplanted into this country. Our conditions are different; our system of jurisprudence is different. It should be adapted to suit our requirements.

How can we operate it in practice? After a suit is filed there should be a provision that summons should be served within 60 days. If it is not served it should be dismissed. Of course, there could be hard cases. The Judge should consider such case. This would ensure that if the summons is not served due to the default or negligence of the plaintiff or the pleader, then the suit is dismissed. After this, a a period of 60 days should be provided for filing a written statement. Again, if a written statement is not filed, the suit should be dismissed. Thereafter, there should be a provision of four weeks for filing affidavits, etc. Then, a period of two weeks should be provided for inspection. If this method is followed, the suit will get ready at least within a period of 180 days.

Here comes the most important stage of proceedings. It is at this stage that we suggest that there should be a regular pre-trial hearing before a Judge specially allocated for that purpose. It should not be a Registrar or an Officer of the Court. Then, the parties will not take the matter seriously. At this stage, the Judge can see whether all the procedures and requirements have been complied with.

We have an important innovation to suggest here. Now, the Judge is seized of the matter, whether all procedures and requirements have been complied with. It is at this stage that we strongly recommend the introduction of a very welcome feature in this Bill itself has been introduced in respect of suits relating to family matters. There should be a specific statutory provision that the Judge should make available his good offices for the settlement of the suit. We find, in respect of suits relating to family matters and also relating to Government, it has been provided that the courts shall assist the parties in arriving at a settlement. A large number of cases are ultimately settled when they reach a final hearing. If such a statutory provision is made we feel that commercial cases too will be disposed of earlier. Like family matters, they are between businessmen and traders who understand the difficulties of each other. Their purpose is not to fight each other in litigation but to settle the matter in the best possible terms. They have to wait

for 5 to 6 years. If these cases can be brought before the Judge at the earliest possible stage, he can use his good offices to settle the matter. One party knows the weakness of his own case and the strength of the other. The parties sometimes have wrong notions till they reach a final stage of hearing. When they see the difficulties that they are facing at the earliest possible stage, at least a fair percentage of suits will be settled at a very early stage, doing away with the delays which normally occur and also minimising the cost of proceedings. This is the most important suggestion we have to make so far as procedural amendments are concerned.

Then, adequate adjournments could be given at this stage for the parties to apply their mind. The adjournments would be very small considering the total length of time taken for disposal of suits which is 6 to 7 years in the courts of Bombay. If the negotiations for a settlement fail, it is at this stage that the Judge can say, "all right. I am giving directions for compilation of documents, framing of issues and all that, to be got ready for final hearing."

The Judge can see whether pleadings contain unnecessary material, like, evidence. The Judges should be strict about pleadings. They should not contain evidence; they should not contain citations of judgments. If there are any amendments to be made in the pleadings, they could be made at this stage, not at the final stage. More often than not, it is our experience that the parties would apply for amendments in the pleadings at a very late stage when the suit has ultimately come for a final hearing. If this pre-trial procedure is adopted, all these things could be done at this stage.

The great advantage of the pre-trial procedure will be, if matters are already covered by the judgment of the superior court, like, the Supreme Court, the Judge can straightway tell the parties that the matter is already covered and he is giving the judgment straightway. Another advantage will be that the Judge can see whether similar or identical issues are involved and he can group the matters together. He can dispose them of together. Sometimes, 20 to 30 cases can be disposed of at a time by a single Judge. He can say, "There are 20 cases. I am going to take one typical case and give my judgment. As to how the rest of the parties are affected, you can approach me." The parties can say, "This judgment will not apply to us." If it applies, the parties can say that it applies and there can be a decree given for a group of cases. So, these are all great advantages of having pre-trial procedure which will ensure that the suit would be got ready for hearing at a very early stage. In Bombay, a number of suits could be decided at an early stage. All those costs are saved if they are settled at an early date.

SHRI NITIRAJ SINGH CHAUDHARY: You are in agreement that the provisions that are proposed in Order 22(a) presently, according to your proposal, they are limited to family matters; they should be made applicable to all matters. You have also mentioned about pre-trial procedure I think the Bill itself has a proposal to amend order 10. It is just an attempt. Then the provisions of 22 Order (a) can be brought in Order 10. Would you be kind enough to take some trouble and send us your ideas on Order 22(a) for incorporation in 10(a) so that the procedure in 10(a) would, in fact, be a pre-trial procedure and it should be obligatory for every court to do that. That will help us a great deal? This may include cases where the Government is also a party.

SHRI ENGINEER: I particularly emphasised commercial matters.

SHRI NITIRAJ SINGH CHAUDHARY: I think Order 10 is the proper place.

SHRI D. K. PANDA: You have mentioned about pre-trial under

Order 10 and then other things. Normally, the court insists that both sides should file all their documents before though in practice everybody files after hundreds of adjournments at the time of trial or even after the trial has started to some extent. Now my apprehension is that once you say that it is a pre-trial, then the parties may also get ready with all their documents and witnesses; they cannot come to an end and taking advantage of the pre-trial, the parties may again take the matter upto the trials stage. Whether it will be an additional burden on the parties or the court, if I suggest that this is my apprehension?

MR. CHAIRMAN: Before you make your suggestion and all that for pre-trial, you have referred to a number of adjournments and they have taken note of them. Before a trial starts, this enquiry under Order 22(a) or (10) will take place and if a compromise is arrived at, then there should be no need for the actual trial.

SHRI D. K. PANDA: After having expressed by apprehension, if the judge and the lawyers of both the sides take interest and if it becomes binding on the judge that he should make an effort in the settlement of the dispute, will it be enough without even pre-trial?

SHRI ENGINEER: Let me again clarify it. It is exactly to do away with the cost of the producion of documents and framing of issue, etc., that we have to make a provision like this. All the documents are in the possession of the party and it is known to the other party what the case is. Let us not confuse ourselves with the words "pre-trial" here. Let us make a statutory provision; let us introduce 10(a) after Order 10. Let the judge apply his mind on what the issues are and whether there can be a settlement or not. If the matter is settled, there can be a decree by consent. So this will obviate the production of documents which are produced in practice at a very late stage of the proceedings. If this procedure is followed, there could be an informal examination of the parties within a period of a month or two subsequent to the expiry of 180 days. The parties need not appear before the judge. The latter could apply his mind and indicate it to the parties. The parties would feel satisfied that a judge of a competent court had given his ideas in the matter. I personally feel that we are on the same issue. Whatever form it takes, such a procedure should be followed.

MR. CHAIRMAN: Please submit a concrete proposal to the sub-committee containing your views on the suggestions made in the clauses. We would examine it and see whether we can accept it. Suppose the sitting judge enters into the discussion and brings about a settlement out of court and the same judge enters into re-conciliatory proposals. In case a settlement is not arrived at, it will be resented by one party or the other. While agreeing that such a step is necessary in regard both to family and commercial matters under dispute, we should consider whether a provision is necessary in the Code itself for this purpose. If they fail to arrive at a reconciliation, there will surely be a trial. You may consider these points and send us a note.

SHRI NITT RAJ SINGH CHAUDHARY: I would add something to what the Chairman had said. Probably, these Orders are amendable by the high courts. I would request you to consider whether a sanction should also not be added between Sections 29 and 39 providing for the trial procedure and conciliation which should come under Order X, so that when the high court does this, it would feel that it cannot be nullified.

SHRI ENGINEER: You are correct, Sir. Then, there are certain provisions which, we feel, do not contri-

bute to delay in the disposal or increase in costs. Our most important suggestion in that regard is this. A provision is now there in the bill regarding the summons for judgement under Order XXXVII. We are certainly in agreement with the suggestion that the scope and amplitude of Order XXXVII should be enlarged. We suggest that it should be enlarged even further. But a discouraging feature is the introduction of the summons for judgement. We, the solicitors in Bombay, are very well accustomed to the summons for judgement because here in the city civil courts we pursue the rules of the Bombay High Court. We very often find that in regard to the summons for judgement, several summons have been dismissed in the past merely on technical grounds and for very small mistakes. Unfortunately what is provided is that it should be supported by an affidavit verifying the cause of action. There are certain judgements to the effect that the cause of action should be very specifically set up. Sooner we do away with these small things, the better would it be. As soon as the writ of summons is served on the defendants along with a copy of the plaint, after the service has been effected, the plaintiff or the pleader should be at liberty to bring the matter before the court for orders on the summons, by a mere notice to the other side saying: "Please note that the hon. court will be approached on such-and-such date." The defendant should file his written statement within a certain period and the court should proceed on that basis. It is an unnecessary formality; I mean that the practice of giving the affidavit in support is a mere reiteration of the entire claim. In practice, we tell the clerk in our office to take the plaint and get it typed again, using first person. This involves typing of hundreds of pages. It is a sheer duplication of effort and work. What is the use of an affidavit in support, when the written statement is also there. verified and made solemnly before an officer of the court? The scope and amplitude of the summary suit should certainly be enlarged; but the consequence which follows in the bill, *viz.*, about summons for judgement, should be done away with. There should be a simple procedure.

SHRI NITI RAJ SINGH CHAUDHARY: I refer to page 62 *viz.*, below rule 3 of Order XXXII. It refers to the matter you are discussing. What specific changes would you suggest in regard to rule 3(2), 3(3) and 3(4)?

SHRI ENGINEER: My suggestions are in regard to rule 3(4). I suggest that the entire procedure for summons judgement should be dispend with. A summary suit, as the name itself signifies, is a summary procedure to be brought in befcre the court. It should be made as simple as possible.

SHRI NITI RAJ SINGH CHAUDHARY: It means that after sub-rule 3(3), sub-rule 3(5) should follow.

SHRI ENGINEER: My suggestion is that rule 3(4) should be deleted. My friends agree with you; but my suggestion is that the form for the summons for judgement—which is in Form 4b, which is appended—would be simplified considerably if the provision regarding the affidavit itself is removed. The affidavit is only a reiteration of the plaint.

MR. CHAIRMAN: May I suggest that as in the case of other provisions, you can take your time in this respect also and pin-point in writing as to how this draft rule in the bill should appear?

SHRI ENGINEER: We will do that.

Then there are certain features of the Bill which do not meet with our ideas. Coming to Clause 69, page 33 of the Bill, there is a provision made about examining the serving officer. What is the necessity of examining the serving officer in

court? Various reports have said that, as far as possible, do away with the personal examination in court. All that is necessary is an affidavit. Why have that man in the court? It is unnecessary. It will cause harassment to the witness, waiting for hours and hours in the court. Wherever possible, the examination in court of formal witnesses can be done away with. The affidavits can be substituted. This is another suggestion which will do away with delays.

Another suggestion is in regard to Order XVI, rule 1, Clause 69, page 32 of the Bill. Here, it is provided that the party applying for summons will also state the purpose for which the witness is to be called. This is a very unwelcome provision. If the purpose for which a witness is called is made known to the other side, it is violating the fundamental right. The other side is not entitled to know the purpose of calling a witness. He is entitled to know the nature of the case. not the nature of the evidence. Secondly, if the purpose for which the witness is called is made known to the other side, it will be a very unhealthy practice. The witness will be tampered with. The other side should not know what the witness is going to say. The other party can cross-examine him. This will certainly lead to an unhealthy practice and will lead to corrupt practices in the hands of dishonest litigants. This should be done away with.

About the practice in mofussil courts, a very strange practice has grown particularly in the north of filing what is known a replication. The pleadings are closed by filing a written statement in reply to the plaint. If the plaintiff in his plaint has made a claim and the defendant has filed a written statement and, if he has to make a counter plaint, the plaintiff is given a right to reply again. Particularly, in the north, this practice has grown, the plaintiff filing a reply to the written statement of the defendant. There is a plaint; there is a written statement of the defendant and there is a further reply by the plaintiff, what is known as replication.

It is nothing more than a repetition of what he has said in the plaint. Adequate measures should be taken to see that pleading are complete and no further pleadings are permitted after the defendant has filed a written statement.

MR. CHAIRMAN: Your point is, to avoid delay, after a written statement of the defendant, even the plantiff will not be allowed to make a counter statement?

SHRI ENGINEER: Yes, Sir. No further pleadings should be permitted.

SHRI RAJDEO SINGH: Suppose in the written reply of the defendant, there is a new point made by him. It becomes necessary for the plaintiff to reply to certain new points made there.

SHRI ENGINEER: One must understand what a new point is. The plaintiff will have a chance to reply to that at the evidence stage. If it is a point of law, it can be dealt with at the arguments stage. I am against repeating what he has said in the plaint. This should be avoided. Pleadings should be strictly completed merely by filing a written statement.

MR. CHAIRMAN: So, after the written statement of the defendant, no further pleadings should be allowed. This is your suggestion.

SHRI ENGINEER: Yes, Sir. If the defendant brings out a new point which is very vital, the plaintiff can apply for an amendment of the plaint. The court will permit it. The pleadings are complete.

MR. CHAIRMAN: Why should the plaint be allowed to be amended?

SHRI RAJDEO SINGH: Unless we put some restraint on the defendant

and on the plaintiff, making out new points will be a continuous process, arising out of this and that. The plaintiff thinks that he has raised a point and the reply of this point is essential to bring the case in his favour. If you do not restrict him at any stage, we have to decide at which stage, we have to restrict him. Otherwise, it will be a continuous process and there will be no end to it and it will delay the whole proceedings.

SHRI SYED NIZAM-UD-DIN: You have suggested that in case there is a new point in the statement, then the plaintiff will be there and so on. I think the amendment is necessary.

SHRI ENGINEER: Yes, Sir.

SHRI SYED NIZAM-UD-DIN: The result of this discussion is that you want to do away with the amendment.

SHRI ENGINEER: The amendment is something which is granted by the court; it is absolutely necessary to get that amendment. A number of amendments and the related amendments which actually take place in the court will be done away with, if the pretrial procedure is followed.

SHRI NITI RAJ SINGH CHAUDHARY: Order 10 itself is strictly complied with. Therefore, I say that a section should be put in so that it becomes obligatory on the judge to do it. You said about restricting the purpose for which a witness is summoned. The Law Commission, after considering the whole aspect has made this condition, because with this provision, a party may say that you must give in detail for what purpose a witness is being summoned. Suppose if this provision is retained after the word 'therein", the word generally" is added will that meet your objective?

SHRI ENGINEER: That will be just a formality.

SHRI NITI RAJ SINGH CHAUDHARY: By this provision, a number of witnesses could be reduced. That is what I believe.

SHRI ENGINEER: The word "generally" might be workable, but the main idea is that the actual purpose should not be made known to the other side. That would be a very unhealthy practice. In order to obviate the delay of processes, after an application has been filed, the responsibility should be on the pleader of the party and not the party concerned. After a summon is served, all subsequent services should be on the advocate or pleader or party except in one case where it is well recognised, namely, contempt proceedings.

The other point is regarding giving legal aid to individual persons. It is indeed a welcome change that the limit has been raised to Rs. 1000 in the present Bill. Our submission is that looking to the economic condition, it should further be stepped up. The criterion could be that a person's individual disposable income does not exceed Rs. 3,600 or having the disposable capital asset not exceeding Rs. 5,000. That should be made for an indigent person or a pauper. As you know, an indigent person or a pauper is required to file a petition in the court which sets aside a suit. Please imagine the difficulty of a man on the street if he does not possess all the means; if he does not satisfy the criterion of pauperism. Therefore, he gets it by an advocate who, first of all, takes money from him. First of all, that legal aid should be made available to the indigent person even before he files a petition in the court. In other words, there should be some simple procedure by which he can set out in a layman's language that he is in possession of so much property and his income is so much and that he wishes to take legal aid in a certain manner. After this, the Registrar should call him examine him and see whether it is a valid case or not and then immediately allocate an advocate to him, who, from that moment, starts his case.

Then it should be left to the various High Courts to frame their own rules for allocation of advocates in this respect. This allocation should be uniformally made and this should be provided in the Civil Procedure (Amendment) Bill itself. There should be a rotating panel of lawyers so that no lawyer should serve for more than a certain period. It should be made incumbent on the courts to have their own panels of lawyers who are normally practising in the courts to tender legal aid to the indigent persons.

MR. CHAIRMAN: Would you suggest that the Advocate Act should be modified accordingly to provide such legal aid to indigent persons?

SHRI ENGINEER: Certainly, Sir.

SHRI RAJDEO SINGH: You have stated that for getting legal aid an income of Rs. 300 should be provided. I want to know from you whether this limit will hold good for urban area or for rural area because in a city like Bombay, Rs. 300 is nothing. For people who are living in the villages, this amount is something.

SHRI ENGINEER: As a matter of fact, it was going to be one of our suggestions. A special provision should be made for such class of persons, say SC&ST. But there again, we find it difficult to work out, because in cities, you provide Rs. 300 and in the villages, you provide so much. It could be made on the basis of income and disposal of assets. The figure can be worked out, keeping the economic conditions in view.

SHRI NITI RAJ SINGH CHAUDHARY: You were just suggesting that a person who is indigent should get the assistance. Any indigent person who feels that he is entitled to assistance may approach the counsel and the latter may ascertain the facts and render assistance thereafter.

SHRI ENGINEER: These are excellent suggestions and more radical than our own. Now about furnishing the copies of documents and of statements to the other side. It will be an extremely healthy practice to furnish the statements of witnesses; but not of documents, unless the court orders so. A party may produce a huge document or a report of a committee or a voluminous contract, but rely only on one clause thereof. If it is incumbent on him to furnish a copy of such things, he may have to purchase another copy and furnish to the other side. It would lead to abuse by dishonest litigants. The other question is whether preliminary hearing should be there. It could be there if pre-trial is provided for. The preliminary procedure should be followed. We certainly agree that the provision regarding revision in Section 115 is unnecessary, in view of the provisions of Article 227 of the Constitution. Again, that is a very welcome change; but we strongly feel that the provision about review should not be done away with. After all, a review takes place when the court has an opportunity of rectifying an error. It is true, as stated in the notes on the clauses, that it is sometimes abused by having several proceedings; but the disadvantage would be greater if it is done away with.

SHRI NITI RAJ SINGH CHAUDHARY: How do you feel that the review is being done away with?

SHRI ENGINEER: It is not mentioned in the Bill; but it is one of the suggestions. We have been asked whether we feel that the proceedings of review are necessary. Our answer is 'yes'. No doubt the amplitude of summary suits has certainly been enlarged in the Bill; but we feel that it should be enlarged further. For instance, the proposed amendment refers merely to a written contract. We should not restrict it only to written ones but should apply it to any form of contract. It is consistent with Indian law that the contract need not necessarily be in writing. The summary procedure should be made available.

SHRI S. K. MAITRA: Can we put it thus, say "whether orally or in writing"?

SHRI ENGINEER: Yes, Sir. The other provision under the Bombay rules is that a summary procedure also covers cases where a landlord wants to have recovery claims from the tenant for irrepairable losses with or without a claim on rents, i.e. from a tenant whose tenancy has expired due to the issue of a notice to quit. The Bombay amendment, which has a much wider scope, should be accepted. This brings us to the next question viz. of injunctions. We do find in practice that in the courts in Bombay, an *ex-parte* injunction is snatched by a party, particularly in the Bombay city civil court, and the application—which we call a notice for motion—does not come up for another 5 to 6 months for hearing. It is true that this unfortunate state of affairs does exist; but as the saying goes in the criminal law, it is far better that 100 criminals go unpunished, rather than one innocent person be hanged; in the same manner, it would create difficulties if we were to restrict the jurisdiction of courts as has been suggested and grant injunctions only in exceptional cases which would mean fettering the powers of a court. The court issues injunctions only when it is satisfied that all facts favour it, or when there is a grave error or when an irrepairable loss is likely to be caused if the injunction is not granted. It is a cardinal, time-honoured principle that courts issue injunctions in appropriate cases and not in exceptional cases. Therefore, the discretion of the courts is something subjective, which the courts should exercise. There should be no fettering of its powers. There are two fetters here, which are not there under Order XXXIX, mentioned in page 74 of the Bill. The two amendments suggested, relate first of all to a proviso to rule 3 and to the addition of rule 31. The proviso to rule 3 is not at all clear. It says:

> "Provided that where an injunction is granted without notice to the opposite party, the Court shall before granting such injunction, require the party praying for the injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party or, where such delivery is not practicable, a copy of the application together with the documents and affidavit on which the application relies and a copy of the pleadings has been sent to the opposite party by registered post."

How can the re be an *ex-parte* injunction behind the back of the other party, when the copy of the application has already been sent to him? If it is delivered to him. he has notice of it. I do not follow this.

SHRI S. K. MAITRA: Either it is delivered, or it is not. It is sent by registered post; so there is no difficulty.

SHRI ENGINEER: What is the *raison d'etre* behind this?

SHRI S. K. MAITRA: A notice is to be given. It will reach the defendant and the defendent will come to know of it. He will come to the court as soon as possible for the vacation of the injunction.

SHRI ENGINEER: There is a grave danger. It is a fact in life that as soon as the other party knows that the plaintiff is going to approach the court for an injunction, it takes quick steps to set right a wrong action that has been taken. Suppose a demolition of the building is taking place. If the rule is followed that you are required to apply to the court and send a notice to the other side—perhaps, the injunction does not come up for days—he will set right the wrong which he is doing. It will cause hardship to the plaintiff.

Who not simplify the procedure by saying that every party shall approach the court for an *ex parte* injunction but, as soon as possible, the court shall direct that the notice of injunction together with relevant papers should be sent to the other side within a

specified time and an affidavit is filed that this has been done? If the idea is that dishonest litigants snatch *ex parte* injunctions, this can be simplified by providing that as soon as he makes an application, immediately the court hears it and he will serve the notice to other side.

SHRI S. K. MAITRA: You agree with the sending of a notice by registered post after the court has heard it.

SHRI ENGINEER: Also as regards the affidavit of service, a period of 30 days and 34 days has been provided for. In actual practice, the applications do not come within 30 or 45 days. A safety valve has been introduced, saying, it will be within a period of 30 or 45 days. Suppose due to pressure of work in court, the application for confirmation of injunction does not come up for hearing. There will be an endless procedure. He will come and say, "You have not been able to hear us. Please continue the injunction." Unless the other side agrees, it will continue for 45 days. Which party will agree to an injunction? A dishonest litigant will say, "He will not agree."

Of course, the word "ordinarily" has been inserted. It is a safety valve. The maximum is 45 days with the consent of other side. What happens if he is evading service? Again, the courts will be flooded with applications for continuation of injunctions. My suggestion is that courts should grant injunction at their discretion and they must be strict about it. I do agree that it will be a welcome change if the courts are required to set out reasons for granting injunctions. There is no case made out for these time limits. It will unnecessarily lead to complicated procedures, the parties applying over and over again for continuation of injunctions.

MR. CHAIRMAN: Would you agree that while this right is given to the plaintiff to get an injunction *ex parte* and an interim injunction should be there, the other party should be enabled to challenge the injunction? If he challenges the injunction, the matter should be heard and disposed of and, if the court is satisfied, the injunction should be vacated. Therefore, it is for the other party to take the earliest opportunity to come to the court and challenge it. The rules provide that.

SHRI ENGINEER: You are correct. in Bombay, it is working satisfactorily. As soon as an *ex parte* application is made, an officer of the court or the registrar of the court issues a certificate that the plaintiff has applied for injunction and it has been granted. Under the Bombay High Court rules, the advocate of the party or the solicitor of the party is required to give an undertaking to the court that if any damage or injury is caused to the defendant as a result of the *ex parte* injunction being wrongly obtained, the consequences will follow. That is second safety valve. Then, a reasonable date is given to the other side to give notice of application earlier for hearing with 48 hours notice to the other side.

MR. CHAIRMAN: While the plaintiff has the right to have an ex-parte injunction, the other party on whom the injunction is issued by the court should likewise be given the earliest opportunity to come and challenge the injunction and, if the court is satisfied, to vacate the injunction.

SHRI ENGINEER: Yes, Sir. We agree with you. As a matter of fact, this is our suggestion.

SHRI POPAT: In the Questionnaire, there is a pertinent and an important question as to what measures we would like to suggest to prevent landlords and other persons from instituting the suits to prevent distribution of land, etc. In our society, we are having certain social changes by legal reforms. It is quite likely that persons with vested interest are interested in using the machinery of administration of justice for delaying those reforms. This particular instance is just one illustration of that type of litigation where a landlord who is in possession of land wants to

retain his possession by avoiding timely distribution of land to other people. The same will be the case where the person holding a property wants to retain it even though there is a law relating to its acquistion and taking-over by the State. Such illustrations could be multiplied.

The crux of the matter is that persons with vested interest want to use the machinery of administration of justice for retaining the *status quo*. It is in this class of cases that different considerations regarding procedural formalities must be followed. When the writ jurisdiction was started in our courts, we had provisions in the rules which ensured speedy disposal of the writ proceedings. The writ petitions were admitted; they would be returnable in four weeks' time. In about 3-4 months, a writ petition was ready for final disposal. If one could see the normal procedure, after the pleading, there is a list of documents and so on. The same is bound to take too much time and it is not necessary as to why the same procedural formality should be followed in this sort of matters which are set type of cases which should either be tried as writ proceedings, if they are in High Courts or should be tried as summary proceedings, if they are in other courts. That is why we have suggested that the ambit of Order 37 which provides for summary proceedings should be made available not only to those litigations which are by their very nature susceptible to quick disposal, but also to those cases where we find that a particular person having vested interest wants to it. I will also send you a written note on this.

MR. CHAIRMAN: Whatever has taken place is recorded and you will get a copy of the minutes. But considering the points raised and the suggestions made during the course of our discussion, you can also supplement it by sending us a written memorandum on the various clauses of this Bill and we will consider it. You can send it within a month or eight weeks. Then we have also given you a questionnaire. You can send your comments on this also and, if possible, you can send 80—100 copies of your comments.

SHRI D. K. PANDA: I am a bit worried and it has been agitating my mind for a long time. Now a new social order is to be brought out. Not only in other States, but in my State also, there is a policy of *Pattaadikari*. There is a property and that is now vested in the Government and we are using it. So, there has been going on filing of innumerable civil suits showing tenants of the land since the time of their forefathers. Now, the moment, they go to the Civil Court, they are already armed with all the documents. Their title deeds stand in their names and everything is in their favour. The advantage is being taken under 155 of the Civil Court, because the court has inherent power. Now, there is a land measuring more than 7½ acres which could not be disposed of. Therefore, my point is that according to this social order whether we can dispense with 151? Because whenever a landless person files a suit, he is bound to describe the other side as a stranger. So, we always describe him to be a stranger. In such cases, if he tells that the other side has got property and possess some such thing, have you given some thought to this aspect also?

MR. CHAIRMAN: He has already covered that point.

SHRI D. K. PANDA: I am requesting the learned witness to reply.

SHRI POPAT: Since the point raised by the learned Member is very difficult, it will certainly require some time. If sufficient time is available, I am prepared to discuss it right from now. I have understood his point. Will it be proper if we include in our written replies that we are going to send to you?

MR. CHAIRMAN: Yes.

SHRI DINESH JOARDAR: We have already discussed regarding the proposed amendment. Apart from it, we want your opinion on this: whether we can have a provision in the Code providing for the cases in the civil courts to be disposed of at a very early stage, by effecting a compromise between the parties under the direction of the judge and with the consent of the lawyers of both the parties, by way of arbitration.

SHRI POPAT: We have already spoken about it.

SHRI ENGINEER: This is what exactly we have touched upon. It is about pre-trial proceedings. There should be a specific proposal for it.

MR. CHAIRMAN: Now, Mr. Engineer, I thank you and your colleagues and express our deep appreciation of the very valuable suggestions which you and your colleagues have made.

SHRI ENGINEER: We are very thankful for the very patient hearing that you had given us.

MR. CHAIRMAN: I can assure you on behalf of the Sub-Committee that your written suggestions would receive careful examination. This is an amending bill to a Procedure which is very old. Several Law Commissions have gone into the Code. You are on the practising side of the Bar. We are examining others, including State Governments and individuals. A lot of suggestions has come.

SHRI ENGINEER: How long do you think, would this work of gathering evidence take?

MR. CHAIRMAN: We propose to conclude it by February next. By the end of the Budget session, if all the processes are completed, the idea is to submit our report to the Parliament by the end of the monsoon session, so that during the life-time of the present Lok Sabha we can make it a law, if it so desires. There are so many procedures. The bill will go to the Rajya Sabha from the Lok Sabha.

SHRI ENGINEER: Will you hold another sitting in Delhi? Perhaps after we give our written submissions, we may be able to appear before you again at Delhi, if you permit us.

MR. CHAIRMAN: You are most welcome. But our Sub-Committee will not be able to come to Bombay again. Along with your written notes, you can indicate when you would be able to come to Delhi and appear before us. We would make some time available to you.

SHRI NITI RAJ SINGH CHAUDHARY: Some days between the 24th December and 15th March may be suitable.

MR. CHAIRMAN: Before then, kindly give us your written notes, so that we can study them.

SHRI ENGINEER: We will do it, Sir. May we now have your permission to withdraw? Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Engineer.

(The witnesses then withdrew)

II. Bombay Bar Association, Bombay.

Spokesmen:

1. Shri Hemendra Shah
2. Shri Mahendra Shah
3. Mrs. Sujata Manohar
4. Shri P. K. Thakor
5. Shri Ashok Vyas

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: I welcome you to give evidence before the Committee. I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha governing the evidence before the Committee. Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is

to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI MAHENDRA SHAH: Yes, Sir. We have already noted it.

MR. CHAIRMAN: We have not received any written memorandum from you. You are welcome to make your submissions on whatever clauses of the Bill you like for the consideration of the Committee. You are also welcome to submit a written memorandum to the Committee. We have a Questionnaire also. On that also, we welcome your views. You can send your considered views within a month or so.

SHRI HEMENDRA SHAH: We would like to go clause by clause. We will make general remarks at the end.

Clause 3 abolishes the distinction between a preliminary decree and a final decree. Our apprehension is that in certain suits, like partition suits, partnership suits, and administration suits apart from mortgage suits, the real effective part is the working out the profits and dividends between the parties concerned—a preliminary decree merely determines the rights of the parties in regard to property; that will be decided by the Commissioner—whether it is investigated by the open court or by the Commissioner, if there is no final decree, how will that be decided?

MR. CHAIRMAN: You suggest that it should be retained.

SHRI HEMENDRA SHAH: Yes; it should be retained.

SHRI MAHENDRA SHAH: We submit that the original pattern may be retained. It should not lead to more litigation.

MR. CHAIRMAN: We will examine that.

SHRI HEMENDRA SHAH: As regards clause 7, Section 20, we would suggest an addition that were concerned, the Government Department has got an office in that city, that place should also be considered as a part of the cause of action or residence for the purpose of bringing a suit. Suppose there is a Passport Office or an Immigration Office and there is some grievance against it. The Government has got so many activities and there are bound to be numerous offices at various places. One need not go to Delhi or to a far off place. Wherever there is a concerned branch office, that place should be considered as a part of the cause of action or residence. A party can choose a place where the Department of the Government has got its concerned office.

SHRI S. K. MAITRA: If the amendment is accepted, that irrespective of the place of cause of action, the suits can be filed against the Government throughout the length and breadth of the country, that will not be a desirable state of affairs. After due consideration, this was not accepted.

MR. CHAIRMAN: Anyway, we will consider it.

SHRI HEMENDRA SHAH: For example, where the Corporation has got a registered office, or where there is a Passport office or an Immigration Office connected with the suit that is filed.

SHRI S. K. MAITRA: In the Bill, it is provided that the Corporation shall be deemed to carry on business at the sole or the principal office. The branch office is not mentioned. In the case of Corporation also, you file a suit either at the sole or the principal office or where the cause of action has arisen.

MR. CHAIRMAN: Their suggestion is, whether it is the Central Government or the State Government, wherever they have got concerned offices, that place should also

be considered as a place of residence. That is a point for consideration. We will examine that.

SHRI S. K. MAITRA: This question arises because there was one difficulty under article 226 of the Constitution, which has to be amended. The constitutional amendment provides that a writ petition can be filed at the place where the office of the Government is located or at the place of the cause of action. The same principle applies here also.

SHRI MAHENDRA SHAH: Suppose an order is passed by an officer sitting at one place on a person who is sitting at another place. Whether it constitutes a part of the cause of action, that should be clarified.

MR. CHAIRMAN: We will examine it.

SHRI HEMENDRA SHAH: We accept clause 14 of Section 34. Why this advantage is being denied to people below with claims Rs. 10,000|-. It may be argued that people with claims below Rs. 10,000 require more financial help than those who have got more claims for than Rs. 10,000|-.

MR. CHAIRMAN: That limitation should be applicable to all cases.

SHRI HEMENDRA SHAH: Rs. 10,000 should be omitted.

SHRI MAHENDRA SHAH: You have not defined the expression "commercial transactions" to include various things. Would it include simple loans advanced? Would it include only the prices for goods sold and delivered? It will cause further litigation. Therefore, whatever is decided, the ambit of this expression should be clearly laid down so that there is no further litigation.

SHRI S. K. MAITRA: That can be done.

SHRI ASHOK VYAS: Section 34 confers a discretion on the court to award interest. Now what is sought by this amendment is to put some kind of hinderance or fetter on the discretion of the court and empower it to award higher interest in respect of commercial transaction from the date of the decree till payment. I feel that this section, be amended so that wide discretion is conferred on court to award interest, without limiting it in respect of commercial transaction. We need not limit it but allow it to operate in respect of money decree. Secondly, whenever, a court is dealing with the question of awarding interest, it has to consider two aspects. The first aspect is whether there is a stipulation in a contract for payment of interest or whether the contract is silent in respect of payment of interest. Where there is contract for payment of interest, the court usually awards interest at contract rate prior to the date of the suit till the date of the suit and at the same rate on the principal amount till the date of judgment. The court awards interest from the date of judgment till payment, as may be deemed reasonable by the court, which is usually 6 per cent, what is visualised in the proposed amendment is that in respect of this 6 per cent, the court may be empowered to award a higher rate of interest in respect of commercial transactions.

Section 34 should be so worded that whether there is an agreement to pay interest or not, the discretion should be conferred on the court, to award interest, for the period prior to suit till payment. The court should be empowered to award interest at its discretion at the higher rate or at the rate at which loans are given by the Nationalised Banks in respect of commercial transactions.

SHRI NITI RAJ SINGH CHAUDHARY: The Law Commission has defined the commercial transactions as those transactions which are connected with industry, trade or business. Suppose we leave the words "commercial transactions". Will it satisfy?

SHRI MAHENDRA SHAH: Again, it is too wide; again it leads to litigations.

SHRI NITIRAJ SINGH CHAUDHARY: I request you to kindly give us in writing as to how they should be defined.

MRS. SUJATA MANOHAR: We have got a definition of "Commercial causes" in the Bombay High Court Rules (O.S.). In the Negotiable Instrument Act, a specific rate of interest is provided at 6 per cent. I think a wider rate of interest should apply to negotiable instruments also.

SHRI S. K. MAITRA: The Court has been given the discretion to go high; but the higher limit is put so that it may not go higher than this limit.

SHRI HEMENDRA SHAH: I have got a small suggestion to make. The interest which the Nationalised Banks charge is not known to the people who are living in *taluka*. The rates may vary from month to month. Would it not be better for the Government to issue a notification mentioning that such and such rates of interest are fixed by these banks?

SHRI S. K. MAITRA: Then there will be no difficulty.

SHRI HEMENDRA SHAH: Many people from the middle-classes are advancing money to limited companies nowadays in order to secure old age security. Those commercial banks make money out of such moneys. We should also cover cases where they do not pay properly to people who deposit moneys with them. Anyway we will discuss this in detail in our written submissions. This should apply to all money deposits.

MR. CHAIRMAN: We have noted that suggestion.

SHRI HEMENDRA SHAH: Under Clause 16, a provison has been made that at the final hearing of the suit, a court may require the payment of costs commensurate with the delay. We are against this provision for two reasons. If the conduct of a party is such that he is dishonest, you can deprive him of the cost. Secondly, there may be many adjournments which may be unjustifiable. This would be a redundant provision. Sometimes, the judges themselves may be to blame for the delay and the poor party may have to suffer for it. It is better not to have this. It would unnecessarily increase the cost of litigation, especially when a party goes in for appeal.

MR. CHAIRMAN: This provision is qualified by the phrase "reasonable excuse." This provision will apply only where the delay is caused without any reasonable excuse therefor.

MRS. SUJATA MANOHAR: The difficulty is not with the principle; but with the question *viz*. how the delays caused by so many considerations are to be accounted for; and how those delays are to be converted in terms of money. This itself might lead to litigations. Opinions relating to the conversion of period of delay in terms of money would vary from judge to judge.

SHRI NITI RAJ SINGH CHAUDHARY: We cannot have any regular yardsticks in such matters.

MRS. SUJATA MANOHAR: The word 'commensurate' should be removed, since it would lead to a lot of difficulty. Costs may be awarded for delay. Its "commensurate" nature is extremely difficult to decide.

SHRI S. K. MAITRA: It is for the judge to decide what is commensurate. As a matter of fact, I had done it, on several occasions, after ascertaining from the party about the expenses that he had incurred.

SHRI MAHENDRA SHAH: That action does not amount to deciding the commensurate nature. It has nothing to do with delay.

MRS. SUJATA MANOHAR: Moreover, one case might be adjourned just for one day; and another for 3 months. Yet the expenditure incurred might be the same.

SHRI S. K. MAITRA: We will have to leave it to the judge to decide.

SHRI HEMENDRA SHAH: Sometimes the delay occurs, since we do not have enough judges. Why should the litigants suffer for this inadequacy?

MR. CHAIRMAN: Anyway, we will examine this point.

SHRI HEMENDRA SHAH: Now about clause 24, section 60, at page 8 of the bill. In the proviso to subsection (1)(kb) where it is said:

> "the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rerts and accommodation apply;"

we feel that some monetary limit should be provided for. Otherwise, the house of a poor man of the value of Rs. 500 can be attached and tenanted flat in a posh building may not oe. There must be a limit. The residence should be protected but it should be applied uniformly. The fact whether the affected person is an owner or a tenant, should not matter.

SHRI ASHOK VYAS: Instead of using the words 'lessee of a residential building', we can use the words 'lessee of a residential premises.' A person may be a lessee of a building containing ten premises. The idea is to protect a lease of a person who is actually residing, in the premises.

MR. CHAIRMAN: Your apprehension is that the residents of the building should be protected and not the gates and the compound of the building.

SHRI HEMENDRA SHAH: It would be a matter of policy, no doubt; but the person should not oe thrown out of the premises where he resides. The other properties should be available to the creditors. He may be residing in any capacity. This is a restrictive and discriminatory provision. The word "lessee" relates to a very limited category. For example, if a person has got 10 rooms and has given five rooms to others, those other rooms can be taken away. If there is a big agriculturist, his whole property need not be protected. You cannot take people's money and not pay. You cannot say, "This is all my property. I am the owner of it. It cannot be taken away."

SHRI NITI RAJ SINGH CHAUDHARY: The position in big metropolitan towns is that, generally, there are multi-storeyed flats. They belong to cooperatives. If my information is correct, the Bombay High Court has held that persons occupying a flat belonging to any cooperative are entitled to occupy it till eternity and that flat will not be attachable. In that event, will these flats not be exempted from being attached?

SHRI HEMENDRA SHAH: You are making a central legislation which will override everything. It will apply to everybody.

MR. CHAIRMAN: We will examine that.

SHRI HEMENDRA SHAH: Clause 60(c)—offices and other buildings belonging to an agriculturist and occupied by him. Today, there are agriculturists and agriculturists. You are putting an unlimited exemption. You could put a limit of Rs. 50,000 income or whatever it is.

SHRI NITI RAJ SINGH CHAUDHARY: You suggest that an Explanation should be added, that a person whose income is so much should be exempted.

SHRI HEMENDRA SHAH: Yes.

Clause 60(h)—the wages of labourers and domestic servants are exempted. You have exempted the salary of Rs. 250 plus two-thirds of the remaining balance. Today, the labourers get D.A. also. There should be no distinction between a labourer and a salaried person. You can say, "Any person whose salary including D.A." and you can put whatever limit you like. You make it equally applicable to labourers as well as salaried persons whose salary is above Rs. 300 plus two-thirds of the remaining

balance. This distinction should go. The textile workers get a higher salary; the Life Insurance workers get a higher salary.

SHRI V. MAYAVAN: What about an agricultural labourer? They are not getting any salary at all. In respect of those who are employed in factories and in other industries and also agricultural labourer, only this sort of thing will apply.

SHRI HEMENDRA SHAH: You put whatever limit you like. It should apply to all the employees.

In regard to attachment of salary, when you try to execute it, it takes two months' time and the salary is already taken away. The attachment can be there even before the salary is due. In England, when the alimony is granted, the court issues an order to the employer that hereafter, every month, you should deposit so much amount with the court unless the court changes that order. There need not be attachment every month. You can issue an order to the employer, saying this is the order of the court and this much amount will be deposited in the court. That will be much better.

MRS. SUJATA MANOHAR: What happens is that when the wife has to claim the maintenance, every time, every month, when the salary becomes due, she has to apply to the court for attachment of the salary. What we suggest is that the court may issue an order to the employer, saying that this much amount is to be paid to the wife every month and the amount may be directly paid to the wife or deposited in the court.

SHRI NITI RAJ SINGH CHAUDHARY: Section 60 deals with attachments and properties. You want an explanation to be added that in case where the amount is attached as alimony or maintenance, it should not be necessary for the spouse to get it executed every month but it should be obligatory for the employer to pay the money every month or deposit in the court. Will this be the proper place to provide that?

SHRI MAHENDRA SHAH: A separate provision may be made.

SHRI NITI RAJ SINGH CHAUDHARY: Section 60 will not be the proper place. Order XX will be the proper place.

SHRI MAHENDRA SHAH: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: Then, there is sub-section (k) in regard to compulsory deposits in the Provident Fund. Besides the Provident Fund Act, we have the Public Provident Fund Act also. Would you like that also to be included there?

SHRI HEMENDRA SHAH: Yes.

SHRI NITI RAJ SINGH CHAUDHARY: Then, it also says about moneys payable from the insurance policies. One may have a policy of Rs. 1 lakh; somebody may have a policy of Rs. 5,000 or whatever it is. Would you like any limit to be put on the policies or you do not want any limit to be put on them?

SHRI MAHENDRA SHAH: Those amounts become due on maturity. After maturity, it will be a long process and the execution will remain pending for all the time. It is better to get funds which are available then than to depend on the funds which may accrue in future.

MR. CHAIRMAN: The Order itself should provide whether the payment will be made in one lot or by monthly instalments. If it prescribes that it will be by monthly instalments. then no Order is necessary under Rule 48.

MRS. SUJATA MANOHAR: That will be the proper place where it can be provided.

MR. CHAIRMAN: It is already there.

SHRI HEMENDRA SHAH: Our point is that it will apply to all employers. In Clause 27, we want to add "scientific or technical or expert investigation." In Section 80, we want that only a designation should be mentioned and not the name.

SHRI S. K. MAITRA: The Bill proposes the deletion of Section 80.

SHRI MAHENDRA SHAH: No suit should be rejected only on the ground that an individual person has not been named or another section may be introduced.

SHRI S. K. MAITRA: Suppose one officer goes away and another officer comes in, that will create difficulty for the public.

SHRI MAHENDRA SHAH: Everything should be done in his official capacity.

MRS. SUJATA MANOHAR: Because the practice varies from court to court.

SHRI HEMENDRA SHAH: If you mention the name that such and such party or association in the Bombay High Court, it does not accept it.

SHRI THAKOR: Where the presence of a particular officer is required then that very officer should be addressed by name. In all other cases, he may be addressed in his official capacity.

SHRI MAHENDRA SHAH: Clause 29. This is liable to be abused. There must be a definite time limit not exceeding six months. There should be no further excuse.

SHRI HEMENDRA SHAH: Section 87(B) should also be omitted.

SHRI S. K. MAITRA: This is already amended.

SHRI HEMENDRA SHAH: In Section 90 and the Order 36 of the Code of Civil Procedure, the provison is by consent. In the Bombay High Court, in the original suit, there is a provision that any party may approach a court of law for construction about a provision in a deed etc. where no evidence is required and it saves much litigation. Rules 247—250 of Bombay High Court original side Rules, provide that any party may approach a court of law for construction of a clause in a document where no evidence is required. The originating summon procedure is in Chapter 14 of the High Court.

SHRI MAHENDRA SHAH: It says that the jurisdiction is given to the judge. He might even admit the appeal partly or do so only on a particular question. It would mean whittling down the right of the litigant. Very often, judges do not have even the time to go through the arguments. It amounts to a denial of justice. Everybody should have a right to first appeal, because no judge is infallible. So, Order XLI, rule 12A should be deleted. In sub-section (4) of Section 96, i.e. clause 34, it is provided:

> "No appeal shall lie except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

As you are aware, in the Acts of Bombay and various other States, jurisdiction is given to the various small cause courts. That provision gives room for appeal. They should not come in the way of an appeal being made merely on the ground that it does not exceed Rs. 3,000. I personally think that it should not remain—I mean the amount of Rs. 3,000—since every one must have one right of appeal even in regard to the amount of Rs. 3,000.

MR. CHAIRMAN: I understand your point.

SHRI MAHENDRA SHAH: Even if this is retained, care should be taken to see that appeals under special Acts are not affected. No appeal where the value is less than Rs. 3,000 should be excepted in a case of tenants and occupants. It is very important to them. Exception should be made in favour of appeals, provided under Rent Act and special laws. Clause 34, sub-section (1) provides an Explanation. The position so far has been that if a person succeeds on one issue and does not succeed on the other, the latter issue does not become *res judicata*. By this Explanation you are compelled to file an appeal, although you are successful in one aspect. This would lead to more litigation. It may not be filed otherwise. It may be decided subsequently or got resolved somehow.

MR. CHAIRMAN: It is not compulsory, but optional.

SHRI MAHENDRA SHAH: The net effect is that it is compulsory. The moment you make this provision. it will become *res judicata* if no appeal is filed. This consequence has been lost sight of. The law should be left as it is.

SHRI ASHOK VYAS: It can also lead to real hardship because one cannot anticipate the type of actions which may be filed against a party.

SHRI S. K. MAITRA: It is a presumption; nothing has been lost sight of.

SHRI MAHENDRA SHAH: Nevertheless it requires further scrutiny. A person may succeed in appeal. But he may not have filed an appeal, because one cannot anticipate how an issue might crop up in future. Now about Clause 52. It enables the court to execute a decree. 'Security' means 'security by means of a letter' etc. There are cases where a third party has stood guarantee. Therefore, the words used should be 'has furnished security', or 'if any person has agreed to stand guarantee'. My suggestion is that it should also include the words 'where any person has agreed to stand guarantee for.' That is a practical approach. People settle matters if security is given. Next comes clause 53, which provides for giving notice to people when *ex-parte* applications are made. It also indicates that a person might enter a caveat when somebody constructs a building, he might know that a suit will be filed against him. He might then enter a caveat and carry on with the building work in the meantime. One cannot, by a simple strategem of filing a caveat prevent any orders being passed. There should be a further proviso added, to the effect that nothing contained therein shall preclude the court from passing an appropriate order on an application. By the mere strategem of filing a caveat you prevent an interim order from being made; by this provision, you are preventing the court from giving an interim injunction.

MR. CHAIRMAN: What is the present position? Without the notice being made obligatory, the plaintiff goes to the court and argues for injunction. Suppose the other affected party smells somehow that some suit is being filed. He might come and appear before the court.

SHRI MAHENDRA SHAH: A party has a right to be heard; but there are several cases where it is essential that instant interim relief should be given.

MR. CHAIRMAN: We understand it; but the point is that a party may come in at any time thereafter and oppose the injunction; and get the order vacated. Before the court actually passes the order *ex-parte*. the other party might come in and appear before the court.

SHRI HEMENDRA SHAH: In many cases, the caveat is useful.

MR. CHAIRMAN: You are opposed to the notice being made obligatory. Anyway, we will examine it.

SHRI HEMENDRA SHAH: Clause 55; p. 17. There is a provision:

"(a) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise."

What we are suggesting is that you may also add, where a common question of plaintiff's title or right arises.

In a city like Bombay, many persons go and occupy the land. You have to file a suit against, say, 20 persons. The occupants may be the owners or not. It will be open to the plaintiff to file a suit even if there are various people occupying that land. You may also add one more thing. that is, where a common question of plaintiff's title or right arises.

Clause 59, page 22. We suggest that in the pleadings where a person is filing a suit, a copy of the power of attorney, must be annexed to it. When a suit is filed with the power of attorney, a copy of the power of attorney must be enclosed. When a suit is filed by a firm, they must annex a certificate of registration and they must also give the names of partners and the addresses of partners. Because it may happen that, later on, the same firm may be there but the partners may be different. It must be made obligatory that they must give a certificate of registration, the names of partners. when they joined as the partners and their addresses. If it is a company, the names of directors, when they became directors and the addresses of directors; if it is a joint family firm, there should be a mention as to who is a karta and who are the other co-partners.

SHRI MAHENDRA SHAH: Clause 65, p. 30. This deals with notice to admit documents. There is no time-limit provided for the admission of documents. That is essential. There should be a time-limit fixed.

MR. CHAIRMAN: What will you suggest?

SHRI MAHENDRA SHAH: It may be either 30 days or something like that. Some time-limit must be prescribed.

In that notice to admit facts, if you see the original provision, the party may admit facts and may be asked to admit facts save just exceptions. For example, there is a privileged document. Supposing some individual has a talk with the lawyer, those things are not to be disclosed. The original provision provides for "save just exceptions". It is not mentioned here. Care may be taken to include that in clause 65.

SHRI HEMENDRA SHAH: Clause 69, p. 32. What we want is that a witness may be given a fixed date. A witness is not heard for several days and months. Many witnesses come from labour class. Many of them are wage-earners. They lose their wages. Some people come from abroad also There should be a fixed date given to the witness and he must be heard on that day. He must not be expected to come every day to the court.

SHRI MAHENDRA SHAH: Clause 69, p. 32. It prescribes that a list of witnesses should be given to the court. In civil litigation, it becomes very difficult. Apart from the matter of principle, if you disclose the names of witnesses, the other party is likely to get at them. Which witness to call and when is a matter of strategy. Long before the trial, you need not give a list of witnesses. That is liable to a great abuse. It should not be made obligatory to give list of witnesses.

Then, it should be left to the choice of the party itself to call witnesses. For example, you assume that a document will be proved and you believe that it is a public document. The court rules that it is not a public document but a private document.

For instance, income-tax returns are not public documents. The assessment orders are public documents. All those things arise at the trial stage. If you have not included in the list and if some judge says, "I will not allow and the matter has been delayed", that will lead to an injustice. The provision of giving a list of witnesses should be taken out altogether.

The other provision is that the plaintiff shall be examined first. It is a matter of strategy and tactics. Why should the plaintiff be examined first? Take, for example, a divorce case. Now, you say, the lady shall be examined first. An illiterate lady does not make a good witness. You should be entitled to examine, say her brother first about the case. Why should you not be entitled to do that? You say, the lady shall be examined first. This is a matter which should be left to the discretion of the conducting counsel.

SHRI HEMENDRA SHAH: I do not agree with that. The plaintiff goes to a court of law and the defendant defends. They both must be examined first. This is my opinion.

MR. CHAIRMAN: We will examine both the points of view.

SHRI MAHENDRA SHAH: Clause 71. Here it puts a fetter on the power of the court to grant adjournment, by making it very strict, for any good reason. You should not put a fetter on the power of the court to say that the adjournments shall not be granted. You should say that they should be granted at their discretion. This provision about 81(a) for exceptional reasons to be recorded etc. should be omitted. You should leave it to the discretion of the judge when the trial is actually progressing. To my mind, it is not within the power of the litigant to get his pleader at a proper time. You should not convert this provision into a sort of punishment.

SHRI HEMENDRA SHAH: Clause 75, sub-clause (b) on page 14. It should be like this: "decree or order for payment of money."

On page 85, under 16A, you should also provide for a firm and a company.

SHRI MAHENDRA SHAH: I would like to add the word "firm" a co-operative society and a registered society.

SHRI HEMENDRA SHAH: On page 71, sub-clause 2(b), here the words "written contact" should go.

SHRI MAHENDRA SHAH: The words "inclusive of" should be there. The problem can be solved by saying inclusive of a written contract. Then the word "really" should come after clause 7 on page 72.

Clause 3 on page 71. Really the proper place for this clause is after clause 7. It may create difficulties if it is kept at this place.

SHRI HEMENDRA SHAH: There is no provision under Order 45 for a stay during preferring appeal to the Supreme Court pending the reference. It should be provided. The Calcutta High Court has got the power; but the Madras High Court has no power under this Order. Two orders should be provided here. After Order 45, one order may be there that in a suit relating to partnership, partition and administration, there should be a provision for an interim decree of division of assets if the court comes to a conclusion that there is no liability or very few liability; it may not wait till the final decree is passed.

MR. CHAIRMAN: You send your suggestions regarding the proposed new order.

SHRI HEMENDRA SHAH: There should be a specific or a separate

order wherein if there is a dispute relating to property, the court may pass an interim order for deposit or payment of compensation, etc. There should be a provision which enables the court to pass an order for compensation or any payment for taxes or complying with the notices and other things.

On this also, there should be a specific, separate provision. For example, when a wife sues for maintenance, there is no provision for awarding an interim maintenance. One court might take a particular view in this case and another court, a different view.

MR. CHAIRMAN: I understand your point; we will be able to examine it if you present your views in writing to us in detail.

SHRI THAKOR: The primary purpose of this sub-committee might be to cut out the delay in procedural matters. Suits do not come up for hearing both in the city courts and High Courts for a number of years. In the United States, a procedure known as the Pre-Trial Procedure is followed. We can consider whether we can follow it here, with suitable adaptations. The primary reason for suits not coming up for hearing for long is that the matter does not become ripe for it for various reasons When the suit actually comes up for hearing after an adjournment or two, the parties realize the difficulties in their way; and the matter is settled. If right from the stage of serving the suits etc. we can crowd them together by adopting some method and can see that the suit comes up at least for a preliminary hearing within six months of the filing of the suit, matters can be thrashed out before the court. Experience in the American Congress is that 73 per cent to 77 per cent of the cases were settled in this manner, because the parties had realized the difficulty in proving their points. I had read out a paper at the lawyers' conference; but, unfortunately, I do not have a copy of it now.

MR. CHAIRMAN: You may kindly send a copy to us later.

SHRI THAKOR: I do not know whether my next suggestion can be implemented, we had appeared before the first parliamentary committee. In America, the power for making rules has been given to the Supreme Court, because the court knows the difficulties. Parliament in India might also consider whether things can be implemented more expeditiously if that power is transferred to the High Courts and the Supreme Court.

MR. CHAIRMAN: We will consider both the suggestions.

SHRI MAHENDRA SHAH: In page 74, sub-clause (IV) dealing with injunctions, the following proviso to rule 3 is proposed:

> "Provided that where an injunction is granted without notice to the opposite party, the Court shall, before granting such injunction, require the party praying for the injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party..."

I want this to be deleted:

MR. CHAIRMAN: This matter is before us.

SHRI MAHENDRA SHAH: Now about Order XLII at clause 91. This of course, deals with second appeals. I refer to rule 2(1) and (2) proposed to be inserted therein. It is provided that the appeal would only be on a substantial question of law. Reasons should, therefore, be given so that the minds of the parties are directed towards the whole thing. Again, the work-load on the courts is very high. One way to tackle this problem is through arbitration. Suppose the

arbitration proceedings are completed in one year. A petition is filed to set aside the award. The courts do not have the time even to take evidence. No special judges are appointed by the courts. The process of taking evidence itself takes about 3 years. There is an appeal thereafter. The whole purpose of arbitration is lost because it takes a lot of time to determine whether the award was given correctly. It should be possible to request each Chief Justice to nominate one or two justices wholly to continue to take interest in such awards. The parties should know their rights. If they knew that within a year or so after the award the court will take up the case, they would be more ready to go in for arbitration. Now they avoid arbitration.

MR. CHAIRMAN: Provided the number can justify this.

SHRI DINESH JOARDAR: Why should there be an appeal against the arbitration?

SHRI MAHENDRA SHAH: Some times the arbitrators themselves are biassed and they do not conduct the proceedings properly.

MR. CHAIRMAN: We will consider whether it comes within our purview.

SHRI MAHENDRA SHAH: The appeal will provide a check; *i.e.* for somebody to consider it again.

MR. CHAIRMAN: We will keep it in mind.

SHRI HEMENDRA SHAH: Incidentally, I would add one point. The civil court in the city of Bombay makes a profit of Rs. 8 lakhs. Government utilizes that profit in other areas. You should recommend that the profits from the civil suits should be channelized within that set-up. We should have better buildings and more facilities for the judges and the litigants. We should have good libraries. At present, witnesses do not even have urinals or drinking water facilities. All these facilities should be provided from out of the income derived from court fees.

SHRI S. K. MAITRA: The administration of justice being in the States, field, these matters cannot be provided for in the Code of Civil Procedure Code. Certainly, when the Committee submits its report, the Committee will take them into consideration.

MR. CHAIRMAN: If it is germane to the causes of delay or inefficiency in the administration of justice. surely, it will be taken note of. We will see how recommendations can be made. You can send your suggestions in the written memorandum later on. We will consider them.

I thank you on my behalf and on behalf of the Members of the Committee for coming before the Committee and giving your valuable suggestions. We will give our earnest consideration to all the suggestions you have made and the recommendations you will be making later on in your written memorandum.

SHRI MAHENDRA SHAH: I also thank you on my behalf and on behalf of my colleagues here for a patient hearing given to us.

The witnesses then withdrew.

III. Shri M. V. Paranjape, Advocate.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Paranjape, may I draw your attention to Direction 58 of the Speaker, Lok Sabha, which governs the evidence before the Committee? Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

You have not submitted any written memorandum to us. Therefore, you can make your points on whatever clauses of the Bill you like for the consideration of the Committee.

SHRI M. V. PARANJAPE: Sir, I would like to deal with three, four aspects of the matter. The first aspect to about the right to file an appeal against the findings, which may be in favour of the plaintiff or defendant as the case may be and rending such findings correspondingly "*res judicata.*". This relates to clause 34. Before this amendment is accepted, we must bear in mind three factors— (1) competence of our judges, (2) capacity for mischief of our lawyers and (3) voluminous litigation that is still pending and is expected in future.

When I say that we must take into account the capacity of our Judges, I do not want to cast any aspersions on the judiciary. During the course of my experience for the last 25 years, I find that the standard of judiciary is going down and we have to be content with such material as we get particularly at the junior division level or at the senior division level. I also do not want to blame the bar as a whole, when I say that the capacity for mischief of lawyers should be taken account. I am referring to that class of black sheep which is mischievous enough to introduce in their pleadings matters which are thoroughly irrelevant. Such introduction of irrelevant matter is made with an idea of getting admissions from the other side with a view to use such admissions for future purpose. If a finding is given on an issue which is not strictly relevant to the subject matter of that suit, then such finding is made as *res judicata* as is sought to be done, then serious consequences will flow in view of the factors mentioned above and the consequences which are in my mind are as follows:—

The lawyers of the parties would be tempted to introduce irrelevant matter in the pleadings and if the Judge is not in a position to appreciate the relevancy of the pleadings at that stage, then the issue will be framed on the basis of such irrelevant pleadings. The natural tendency of any straightforward lawyer would be to concentrate on the real subject matter of the dispute and he may not pay that attention to those irrelevant issues which will be framed in the suit. Thus there would not be a fair trial of such issue and the proposed legislation intends to make the finding on such issue in such state of affairs as *res judicata* for the future which, in my opinion, is not desirable. It may be argued that irrelevant material introduced in the pleadings can be separated by the Judge or the lawyer should help the Court in separating such material and if that is done no injustice will likely to result. This argument ignores the natural human tendency which is not to bother about what is irrelevant. The matter may be looked at from the point of the Presiding Judge also. The Presiding Judge will concentrate his attention on the proper subject matter of the suit and he will not deal with irrelevant issues that seriously. That will also introduce an element of unfairness in the ultimate decision. Thus the trial will suffer at the hands of litigants, lawyers and Judges. If a finding is made *res judicata* in such circumstances it is likely to result in injustice and therefore I am not in favour of making such findings *res judicata* nor any right of appeal should be given against such a finding only.

Another aspect of the matter is that this will result in filing appeals where it is not necessary so far as the proper subject matter of the suit is concerned and this will lead to multiplicity of proceedings.

During the course of my experience of the last 25 years on the Appellate Side of the Bombay High Court. I have not come across very many cases where the question of *res judicata* arose on issues which were not necessary for determination of the

suit. Such cases may not be even ½ per cent of the litigation. In my opinion, therefore, no useful purpose will be served by introducing this kind of innovation. When a litigant is told that he has succeeded in the suit, but still he must file an appeal there are certain findings which are against him. He may not be inclined to go in appeal for variety of reasons (*Viz.* his poverty, his ignorance) and in such cases if such a finding is rendered *res judicata* for future litigation instead of serving the cause of justice such amendment will defeat the cause of justice.

In this context we cannot ignore the facts that 90 per cent of our litigants are poor litigants.

Now so far as another aspect of the matter on which I want to deal with is making it compulsory for giving reasons while dismissing the Second Appeal summarily. Here what I would like to say is that as stated earlier 90 per cent of our litigants are poor and illiterate. Very often they do not possess all the copies of the proceedings before the Court below and on such scanty information which is placed in the hands of the lawyer in the High Court the lawyer has to file Second Appeal. It is only at the stage of final hearing that the lawyer will be in a position to go through the entire record when it is called for to do full justice to the case. The new provision which is intended to restrict the scope of appeal to the questions argued at the time of admission and on the basis of which the appeal is admitted alone, will result in injustice and therefore I am opposed to this provision. Besides it will be easier for the Judge to dismiss appeals summarily if he is not to give reasons for dismissal, the Judge will be more inclined to dismiss appeals. Judges are also human beings. I am therefore opposed to this amendment being introduced in the Civil Procedure Code. In fact in my opinion the provision should be that if a Judge wants to dismiss Second Appeal summarily, it should be compulsory for him to give reasons.

The other point on which I would like to give evidence is with regard to the amendment to Section 115 of the Code of Civil Procedure. It is proposed to delete the provisions of Section 115 because as the statement of objects and reasons says the power is already conferred on the High Court under Article 227 of the Constitution of India. But I would like to point out that all cases that fall under 115 of the Code of Civil Procedure do not fall under Article 227 of the constitution. Thus those cases which do not fall under Art. 227 will be excluded from the jurisdiction of the High Court and therefore according to me this power under Section 115 should be retained.

MR. CHAIRMAN: These are very important clauses which you have referred to and we will consider your suggestions and give our earnest thought to them.

SHRI PARANJAPE: I will also give you a written memorandum.

MR. CHAIRMAN: Apart from these three clauses to which you have drawn our attention, if you so feel, you can also include in your memorandum other points which you may like to highlight. We have also given you our questionnaire. You do not go into it just now. What I suggest is that you take your own time and send us your considered views and we will consider them. I thank you for your cooperation.

SHRI PARANJAPE: Thank you.

[*The Committee adjourned at* 13.45 *hours and reassembled at* 15.00 *hours*].

1. Shri Porus A. Mehta, Advocate, Bombay.

[*The witness was called in and he took his seat.*]

MR. CHAIRMAN: Mr. Mehta, we welcome you to our midst; but before we begin to hear your evidence, I would draw your attention to the Direction which governs your evidence to a committee like ours. The evidence you give before us would be treated as public and as such will also be published; but if you desire that the whole or any part of your evidence should be treated as confidential, we can do so. Even then that evidence will be made available to the other Members of Parliament. I suppose you have already noted it.

SHRI MEHTA Yes, Sir; and I have perused the bill as well.

MR. CHAIRMAN: You have not drawn up any written memorandum so far.

SHRI MEHTA: I was not required to do it, Sir.

MR. CHAIRMAN: I would request you to start giving your oral evidence.

SHRI MEHTA: There are only two comments which I wanted to make. I find that the bill deletes Section 80 of the CPC. I commend it as a salutary amendment. This Section has been working against the interests of litigants, particularly when some immediate steps were to be taken as when a person was threatened to be rejected or was transferred or removed from service. Other persons might have told you something to the contrary. I feel that the need for doing away with the notice under this Section was a long-felt one. My second point is with regard to the objects of the bill, *viz.* that delays should be curtailed and that there should be speedier remedy available. I have one suggestion to make in this regard; but it requires some careful drafting. I have often felt that a great deal of time is wasted by the examination-in-chief in the courts. The party has got a witness and he knows what he has to get out of him. His advocate knows what he has to say. As such, merely putting him in the box and asking him questions would in no way help promote justice or its administration. Very often, it is a game between the lawyer and the witness on the other side. The witness may not, very often, be able to express himself clearly. What is required is getting at the truth; and when the witness already knows what he has to say and his advocate and the other party also know, if I do not understand why we should have prolonged examination-in-chief. I think we should provide in the CPC that the examination-in-chief should not be oral but that it should be submitted to the court in the form of a written statement. The witness is then open for cross-examination where the other side has an ample opportunity. Even if he is regarded as a tutored witness in the sense that the statement is already prepared—and the usual complaint against the witnesses is that it is possible to get at the truth by cross examination. The examination-in-chief serves no useful purpose. Apart from it, it also defeats the ends of justice. Very often, honest witnesses either forget to say something or are confused and as such are not able to express themselves. The Evidence Act provides that Advocate cannot ask witnesses loading questions when they are under examination-in-chief. This is a kind of an absolutely redundant provision which only defeats justice to some extent and it certainly delays justice considerably. We should not hesitate to bring about this reform which will curtail the length of the trial to a great extent. If the witness has a lawyer, the witness can be exposed during cross-examination.

I may also say this. I had an opportunity to make this suggestion once to the former Attorney General, Mr. M. C. Setalvad. He had accepted the suggestion. He was very much in favour of it. The view of the former Attorney-General of India may influence your mind. Of course, it will require careful drafting.

MR. CHAIRMAN: I would like to seek a clarification. You have enunciated a principle to cut down delays and, you say, the examination-in-chief should be done away with. The issue starts with a plaint; the defendant submits a written statement: thereafter, the issues are framed and the trial begins. When the trial begins, the examination of the plaintiff witnesses and the defendant witnesses begins. Do you suggest that once the trial starts, the plaintiff and his witnesses and so also the defendant and his witnesses should not only be examined but at that stage cross-examined also? Will that be feasible?

SHRI MEHTA: Yes; it is very much feasible. All that is required is, you just hand over a copy of the witnesses written statement to the advocate. It can be read out in the court. This provision will require careful drafting. When there is no advocate and the party appears in person, then there is a different situation. But the law should be the same in all cases.

MR. CHAIRMAN: Whether the advocate appears or the party itself represents the case.

SHRI MEHTA: The advocate prepares the statement. What he can do is to read out the statement. What should be provided is that the witness submits a written statement to the court. When the witness goes into the witness box, after he finishes, the cross-examination begins at once. The other side is, in no way, prejudiced. You just hand over a copy of the written statement to the court. It can be read out in the court itself. It is an open court.

MR. CHAIRMAN: We will examine it.

SHRI MEHTA: Clause 74, p. 40, Order XXA. I am referring to sub-clause (2):

> "In calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader or a certificate in writing signed by him and stating the amount received has been filed in Court."

I am wondering whether this is a good amendment. Very often, clients may not afford to pay the lawyers immediately. They pay the lawyer long after the case is over. To ask them to immediately pay the pleader may prove harsh to them. You can provide for receipt of the fees already paid, if you so desire. In actual practice, the fees are sometimes paid in advance. But a great deal of balance remains. I have been paid several times. The Government owe me more than Rs. 50,000 or so. In respect of many cases from 1959 the amounts have not been paid to me. I have given them up. If they do not pay, I will not do anything.

MR. CHAIRMAN: This relates to the fees of the lawyer which should form a part of the decree. The decree is a decree. You can calculate the total value of the decree. Here, it is provided that it should be supported by the receipt of the lawyer's fees. Supposing that is dispensed with, in your opinion, what amount on this head, the pleader's fee, should be included.

SHRI MEHTA: The pleaders' fee should be determined either by the rules of the court or the scheduled and the various provisions in the law. Usually, it is fixed by the court—it is decree with costs. The costs are fixed either by the Registrar or according to the Schedule which is fixed. In Bombay city civil courts, a Judicial pleader gets about 10 per cent or 15 per cent. Similarly, in the mofussil courts also, a certain percentage is fixed. In the Supreme Court also, you have to file a detailed bill and that is gone into.

There, unless you produce a receipt, the amount will not be passed. If a person has not actually paid, the advocate cannot recover it. I know in one election petition case in which I appeared, we had won the case, but the candidate was unable to pay my fee which came to about Rs. 10,000. Till today, that fee remains unpaid. This is a matter to be considered. I

am sure, many pleaders will probably not approve of this. When the Government is not able to pay it, how can you expect a private citizen to pay?

MR. CHAIRMAN: We will consider your point. If you kindly send us in writing, that will help this Sub-Committee.

SHRI NITIRAJ SINGH CHAUDHARY: You had mentioned that this is provided in the Evidence Act.

SHRI MEHTA: That is Section 117 of the Evidence Act. It says: "The witnesses, they shall be first examined-in-chief." I don't think strictly that Evidence Act requires to be amended. But even if it does, you may recommend consequential amendments. I don't think it is required, if it is clarified in the Civil Procedure Court itself, that examination-in-chief of a witness shall be taken by his submitting a statement to the court and a copy to the other side.

SHRI NITIRAJ SINGH CHAUDHARY: Order 18 provides that evidence of witnesses shall be taken orally in the open court.

SHRI MEHTA: You will have to amend it to some extent. You may even provide that a statement should be read out by the witness. There will be no difficulty about it. If you accept this suggestion, you will have to provide for it by suitable amendment.

MR. CHAIRMAN: A copy of your suggestions that you have just now made will be sent to you. Besides this, whatever you want to supplement, you can send us in writing and we will consider it. Thank you very much.

(The witness then withdrew)

V. Shri V. C. Kotwal, Advocate, Bombay.

(The witness was called in and he took his seat)

MR. CHAIRMAN: At the very outset, I would like to point out to you, Mr. Kotwal, that the evidence you give before us will be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. This sub-committee of the Joint Committee of both the Houses of Parliament welcomes you and hopes that you would enlighten us on the clauses which strike you as significant in any respect. The time at our disposal is about half-an-hour. If you are unable to complete your evidence by then, we would request you to submit a written memo within six weeks from to-day and the whole Joint Committee will have the benefit of going through it.

SHRI KOTWAL: The main object of this bill has been to expedite the hearing of the suits and to avoid any delays in prosecuting them. I would first deal with the clause making provision for the payment of interest in respect of commercial transactions, *viz.* clause 14, at Bank rate on sums decreed, *viz.* those exceeding Rs. 10,000/-. There is no reason why it should be limited to such amounts because normally the majority of suits are for amounts less than that figure. Moreover, the rate of interest should be higher than the bank rate. The latter normally is the rate at which amounts are advanced and lent. If a person were to be penalized, the rate of interest should be higher than bank rate. The discretion should be left to the judge to specify a rate higher, upto a maximum of 4 per cent more or so. This is also confined to commercial transactions. The phrase 'commercial transaction' has not been defined; but it can be well understood. There are rules of the High Court regarding the hearing of suits of a commercial nature. If such a definition is added, it would help avoid confusion.

SHRI NITI RAJ SINGH CHAUDHARY: Would it serve the purpose if, after the words 'commercial transaction, we add the words 'viz.,

those transactions connected with industry, trade or business'?

SHRI KOTWAL: That would serve the purpose; but if the words, "*viz.* dealing with negotiated instruments, contracts relating to sale and purchase of goods and suits relating to carriage of goods", are added, it would simplify the problem to a great extent. Some sort of a definition is needed. Secondly, I find that Section 115 has been deleted. It deals with revisional jurisdiction. Various clauses of the bill still contain the words 'revision application' and 'revisional courts.' Even in the correction slips, that phrase has not been deleted. For example, in clause 15 sub-section (1), the words 'excluding an appeal or revision' are used. This is a mere matter of detail. That word should be deleted. For example there is a regulation in Bombay which confers a revisional jurisdiction on the Bombay High Court and it is still followed there. This word would lead to confusion *viz.* as to whether it saves the jurisdiction conferred on the Bombay High Court. The whole thing should be scrutinized, unless there is any particular reason why it has been retained. I do not see any reason for it.

SHRI NITI RAJ SINGH CHAUDHARY: You would find that the word 'revision' also comes in, in the provision relating to small cause courts.

SHRI KOTWAL: That is not covered under revisional jurisdiction.

SHRI NITI RAJ SINGH CHAUDHARY: It is a revision specifically relating the small cause courts.

SHRI KOTWAL: It should then be made clear as to what revisional jurisdiction it would apply to.

Section 115 is being deleted. That will result in complications.

Then, there is a provision to penalise the poor party who has caused delay by instituting vexatious suits. So far as vexatious suits are concerned, the provision is being made in Clause 15 to increase the amount from Rs. 1000 to Rs. 2000. It is still open for a party to institute a suit for claiming damages.

Likewise, Section 95 of the present Civil Procedure Code also enables a party to obtain damages for wrongfully obtaining an injunction or attachment on insufficient grounds. There also, the amount is being increased to Rs. 2000. Various courts take undertakings from the parties for reimbursing a party who has sustained damages by reason of obtaining an injunction. There, the amounts awarded are much more than Rs. 2000. If these provisions are correlated, that will simplify matters.

The party should not be given an option to institute a separate suit for recovering damages. At the most, the pecuniary limit can be laid down. If you leave the matter open, an option to a party to institute a fresh suit, the judge has before him all the evidence and he has noted the behaviour of the witnesses. Therefore, there is no need for institution of a fresh suit. If a fresh suit is barred and a composite provision is made for awarding compensation for vexatious suits or for obtaining injunctions on insufficient grounds, that will curtail the litigation itself. This is so far as litigation is concerned.

There is one provision which is being added in Section 96, Clause 34, There, if a party succeeds but some issue is decided against it, the successful party is being given a right to go in appeal. Normally, it so happens that a successful party will not like to go in for appeal. Therefore, if a provision is made that even if there is a finding at the party, such a finding need not be incorporated in a decree, then it shall not operate. No appeal is binding unless the finding is incorporated in the decree. The successful party will otherwise be compelled to go in for appeal.

Order XLI, rule 22 gives a right to a successful party who has not gone in appeal to sustain the judgment on the basis of issues decided in his favour. There is no need

for providing that he should go in for appeal. That is really giving a fresh chance to go in for appeal against a certain finding when there is no need for it. In Bombay, a large number of citizenship suits are instituted. The courts have come to a conclusion that the suits are barred. But nevertheless, the courts have held that a person is a citizen of India. The State of Maharashtra is faced with the problem what to do in such cases. If that person goes in for appeal, well and good. Otherwise, they will have to file a fresh appeal against it because it is incorporated in the decree. If that is to be avoided, the best thing would be that such a finding should not be incorporated in the decree.

Clause 59, p. 23, rule 16 is being amended.

> "The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading...."

This is a reproduction of Order XVIII, rule 19 of the English Supreme Court Rules. There, the words used are, "any pleading or any matter in any pleading." You could strike off whole of the pleading or any part of the pleading. The idea is that you should be able to strike off whole pleading and not a part of the pleading. This will avoid any complications of it being said that you cannot reject whole pleading itself; you can reject only a part of it.

Also, the English law says that the pleading could be rejected apart from the grounds mentioned here. The other ground is, if the pleading discloses no cause of action or no defence. So far as it discloses no cause of action, we have Order VII, rule 11, sub-clause (a). We have no corresponding rule to strike off pleading if it discloses no defence. A provision should be made in respect of this because many times frivolous defences are made. It will simply be said that the plaintiff's firm is a registered firm and the defendant will say, "I do not admit that the plaintiff's firm is a registered firm." The suit is barred by limitation. No opportunities are given. Such frivolous defences are made out. It takes about 5 to 6 years to decide a suit. It discloses no defence. A provision should be made that if a pleading does not disclose a defence, it should be struck off.

In this connection, I may also point out one thing more. There is no amendment suggested on behalf of the addresses or the order of speeches which is provided by Order XVIII of the Civil Procedure Code. What happens is, the plaintiff makes an allegation; he goes into the witness box and the case is proved to be false or wrong. Nevertheless, the defendants cannot take a chance that they will not step into the box. They have got to go into the box. They will be subjected to cross examination. The trial will be prolonged by a number of days. At this stage, after the plaintiff closes his evidence, the discretion should be given to the judge to rule that no case has been made out and that he does not want to hear the defence. There is no such provision in our Civil Procedure Code nor in the English one. It is provided in the American law.

A suit is going on in the Bombay High Court for the last 27 years. The plaintiff says that he has been wrongly dismissed by the Government of India. He has made two defendants of the Department a party to the suit. Now, everything that they have done is being taken up is taken into consideration. What was their behaviour and all that. It is apparent that the man has no case. He has charged the two officers with a conspiracy. They have got to go in the box. For the last 27 years the trial has been going on. There is no power with the court to say. "We do not want to hear the defence."

SHRI S. K. MAITRA: In the Criminal Procedure Code, there is a provision for the disposal of the complaint if, after hearing the complaint, they find that there is no case. In the

Civil Procedure Code, there is no such provision. If we introduce it, will it not practically deny the defendant's right of the plaintiff's right?

SHRI KOTWAL: It is true that there are cases where genuine evidence may throw some light on the subject.

SHRI S. K. MAITRA: If you want it on the line of 203, all right, we may consider it.

SHRI KOTWAL: That would curtail the time of the court. This is absolutely an important cause of Government servant.

The necessity of passing a preliminary decree and a final decree has been delayed. That is particularly applicable in the case of mortgages. On several occasions, a question arose as to whether two decrees could be passed at two stages in one suit or not. Although there is an amount which has been due, but the same cannot be recovered unless the whole suit is decided and the reference is made. Therefore, a provision is made that where there is a necessity for passing two decrees, the same could be passed.

Section 201 is being introduced by Clause 9 of the Bill. What is contemplated here is that there will be minimum possible litigations or challenges to judgments. There should be a compulsory clause saying that on what ground the judgment should be challenged? Otherwise, the words "that in case the judgment is challenged on any other ground than the place of issuing the judgment" may be open to challenge.

Sections 22 and 23 of the present CPC—They confer a right on the party to a court saying that a suit will be instituted in more than two jurisdictions. But 25 is being introduced; it gives a right to the Supreme Court to say that suit should be instituted in the court. There may be a conflict. A man may make an application under Section 253. Here, anyone can apply not necessarily on the ground that jurisdiction will not be there. But even if Sections 22 and 23 are not applicable, he can straight go to the Supreme Court. So, here a provision should be made that 25 will apply where 22 and 23 will not apply.

Clause 89, sub-clause 4 on page 74—Here, a proviso is being added regarding *ex-parte* order, etc. There are many cases in which the very idea of obtaining an *ex-parte* injunction is frustrated. This will not help anyone; it would create more complications.

Order 39—Here, the enforcement of injunctions is provided. A prohibitory order is granted saying that an employee shall not, within a particular area, do a particular thing. It is a prohibitory order. A question arises as to whether it should be enforced under Order XXI, rule 32, sub-rule (5) or not. How do you enforce a prohibitory order, except by taking the assistance of the police? The Calcutta High Court had said that it cannot be done because, under the CPC there is no provision whatsoever. Somebody else says that it can be done under Section 181. This is more necessary in a commercial suit where employees stage *dharna* before a business premises. A provision is being made in clause 27 where sub-clause (f) to Section 75 is provided. There is a rule which confers such a power. Therefore, this is really not necessary. The rule which says that if a party fails to issue it, he cannot institute another suit for the same purpose except with the leave of the court, has not been touched. The courts hold that if the two suits are instituted on the same day, it can be done. Leave can be obtained at a particular time. just as at the time of the institution of the suits. Otherwise the provision would render it infructuous.

SHRI B. N. LOKUR (MINISTRY OF LAW): Are you suggesting an amendment to Order II, rule (2)?

SHRI KOTWAL: It relates to that order, but I am not proposing any amendment. If we want to curtail the proceedings, merely saying that he can obtain the leave at any point would not help. If you have to institute a suit, you will have to obtain the leave at the time itself, just as it is in the case of the High Court. If the two suits are instituted on the same day, they do not constitue two suits; they can be consolidated and the proceedings can be carried on. Now about Section 141, clause 50. The rules contained therein will not apply to proceedings under Article 226. The same should be true in the case of Article 227 also, because there is an advantage viz. that you can go before a division bench in Bombay, by quoting both. If it does not apply in the case of Article 226 but applies under Article 227, it will create confusion. At page 109 of the bill, an amendment is suggested to rule 10 of Order I. Actually, one does not find that particular provision in that clause. Something is missing there. The particular clause is found at pages 18 and 19. In page 109 of the bill, it is said:

> "Sub-clause (vii)—Sub-rule (2) of rule 10 is being substituted to make the rule comprehensive by providing that....."

But I have not actually come across this provision at all in the main body of the bill.

SHRI B. N. LOKUR: There is some drafting error.

SHRI KOTWAL: It is important because it relates to transposition of clauses. Likewise, there is no provision in the code relating to consolidation of suits. Two suits can be taken up together, or one after the other, but there is no provision for consolidation. But powers are there under Section 151.

SHRI B. N. LOKUR: Instead of putting certain particular conditions, would it not be better to leave it to the court? Section 151 is quite clear.

SHRI KOTWAL: It would save a number of appeals. The judge may sometimes say, "I would take up one suit after the other."

SHRI B. N. LOKUR: Would you kindly give a note on it?

SHRI KOTWAL: Yes, Sir. Now, a provision is made in Order XXXIX that if the injunction is not served on a party, it stands vacated. But they are not sometimes served for a considerably long time. There is a provision to the effect that unless a good cause is shown, the same should not be permitted again. A person might wait till the period of limitation and keeps on postponing it, so that a man's claim becomes barred. This abuse of the provision should be stopped by limiting the time within which a writ should be served on a party.

SHRI B. N. LOKUR: If it is not served, it is automatically vacated.

SHRI KOTWAL: One can make a fresh application and get it done.

SHRI B. N. LOKUR: It is a matter of service.

SHRI KOTWAL: If it is not served within a particular period, it should be vacated; and unless a good cause is shown, it should not be permi ted. So far as compromise is concerned, it is being provided that compromise must be made in Writing and then only it can be enforced. This will rather hamper the settlement of the matter. Sometimes, the counsels between themselves agree to a formula that this and that shall be done. Writing is a mere formality. They agree upon everything. If it is provided that it must be in writing then the chances of settlement taking place are very remote.

With these suggestions, I have finished.

MR. CHAIRMAN: Mr. Kotwal, I thank you on my behalf and on be-

half of other Members of the Committee. I assure you that the suggestions you have made will have due consideration of the Committee. I would request you to send a detailed memorandum to he Committee later on.

SHRI KOTWAL: Yes, Sir. Thank you.

[*The witness then withdrew.*]

VI. SHRI D. S. PARIKH, ADVOCATE, BOMBAY

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Mr. Parikh, I would like to draw your attention to Direction 58 of the Speaker, Lok Sabha, governing the evidence before the Committee.

The evidence that you give shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, you can make your comments on the various clauses pf the Bill that you like the Committee to consider.

SHRI PARIKH: Sir, there are a few clauses on which I would like to make my comments.

Firstly, with regard to Clause 51, p. 50 that relates to Sectioin 144 of the Civil Procedure Code. With regard to restitution, there are several decisions of the High Court. There is a conflict of opinion as to whether, in case an *ex parte* decree is set aside, the provisions of restitution under Section 144 should apply or not. On that, a specific provision may be contained in the amendment which is proposed in Section 144 of the Civil Procedure Code. The amendment which is proposed in Clause 51 is:

> "(a) for the words 'varied or reversed, the Court of first instance', the words 'varied or reversed in any appeal, revision or other proceeding. .. .."

My suggestion is that you may specifically clarify that it applied also to setting aside a decree on account of an *ex parte* decree being passed. If an *ex parte* decree is set aside by court, Section 144 should be made specifically applicable.

Then, with regard to Clause 63, p. 29, I welcome the provision. I suggest, after the procedure of filing the written statement, inspection, service of notices, admission of facts and documents is gone through, a fixed date may be prescribed for the court to ascertain the real matters of controversy between the parties. What I suggest is that instead of waiting till the first hearing is taken up in the normal course, a specific provision may be made whereby a date may be fixed for a pre-trial hearing in order that the nature of controversies between the parties may be crystalised. If any steps are missing, the court may give directions at that stage. That may be a stage also when the parties may be made to realise that the controversies between them may not be worth fighting for. Apart from giving a chance or an opportunity to the parties to consider the respective merits and demerits of the case, it would also be a stage where an effective step is taken to crystalise the controversies between the parties. It will be a stage which may bring about a settlement of more than 50-60 per cent of the suits. Therefore, my suggestion is that after the service of notices of admission of facts and documents is completed, the parties know at that stage what evidence is necessary to be arranged. If any amendment is required to be made, it should be made. All those things may be considered at that stage, and it is quite possible that at that stage, the parties may realise that they should not proceed with the hearing; because

once the procedure of admission of facts and documents is gone through, it should be possible for the court to assess the merits of each party's case. I think, it will be very useful if that stage is introduced before the trial and after Order 12.

Under clause 65 on page 30, that is, Order 12—I suggest that instead of leaving it to the party to serve a notice to admit facts and documents, a specific provision may be made, making it obligatory on the parties to serve such notices to admit facts and documents. We can avoid a lot of inconvenience to the parties if this notice is made obligatory on them and a certain time limit is fixed. We should also provide that replies should be filed within a certain time. So, these notices to admit facts and documents should be made a necessary part of the procedure for proceeding with the trial That would apply to both rules 2 and 4 of Order 12.

SHRI B. N. LOKUR: The whole idea is that it should be made obligatory and the time limit should be fixed.

SHRI PARIKH: Yes.

Clause 67 on page 31—I suggest that the question of limitation may be added there. We may also add regarding maintenance of the suit on the ground of non-joinder or mis-joinder of a party.

We may also introduce a provision similar to Section 9 (A) of the Bombay Amendment which prescribes that a question of jurisdiction may be decided at the first hearing of the suit.

On page 44, Order 21, Rule 41 and Clause 17—The way it is put, we may find it impossible to get any custodian of such property. Nobody would be ready to accept the custody of such property. A provision may be made for paying to such custodian storage charges, watchman charges, etc. Otherwise, no respectable person would come forward to accept it.

SHRI B. N. LOKUR: Who will bear the cost?

SHRI PARIKH: The attaching Party.

On page 45, Clause 18—I suggest that instead of leaving it to the judgement-creditor, or the decree-holder to serve a notice on the garnishee, it should be made obligatory on the part of the garnishee to pay if he accepts the amount payable by him. The experience shows that this is really a duplication.

46A on page 45—My submission is that it would not be a practicable proposition for this reason that if this process is adopted, it will be possible for the defendant to get his claim against the garnishee adjudicated upon without any institution fee or any suit of his own. It is really an assistance rendered to the judgment-debtor in getting the case decided Secondly, this procedure would make it a conclusive decision as a decree, as between the plaintiff and the defendant, and as between the defendant and the garnishee. If the plaintiff or the decree-holder is called upon to prove this claim against the garnishee, he would obviously not be having the materials to prove it. All the materials would be available only to the defendant. If the garnishee is served with a warrant of attachment and if he does not come to dispute it, the order may be passed. It may be treated as a decree against him as provided for under clause 46B, mentioned at page 43 of the bill. If the garnishee comes forward to dispute it, since there would be an attachment already levied which would be to the extent of the amount of the decree, an enquiry held under the rules, would result in all further pro-

ceedings in execution to be stopped, since the decree-holder would not be able to execute it in any other manner. There would be an automatic stay of execution. I submit, therefore, that this should be treated as a summary procedure, as it is under the existing Code. The provision on the issue of notice to the garnishee says that the latter should submit an application. The same thing applies to clause 46C on that page, where the disputes relating to the third parties have been provided for.

Now about Clause 20 which provides for the attachment of salary or allowances in the hands of private employers. I suggest that those private employees who have been served with a warrant of attachment, should also be put on the same footing as garnishees, so that if a private employer wants to contest the amount or the rate of salary payable by him, he should be made to make an application to the court contesting it. If he does not make it within a certain period, it should be deemed to have been admitted by him and any order against him should be treated as a decree in favour of the decree-holder. Then, in Clause 21, sub-clause (b), there is an amendment proposed by the addition of sub-rule 5. Rule 5 is mentioned under Order XXI. My submission is that it should be made to apply. If a suit is failed against a garnishee-firm, Order XXJ, rule 50 provides for adjudication of a suit *qua* partner. Similarly, if a decree is passed against a Hindu undivided family, the rights of any person who is sought to be made liable under that decree should also be executed. There is no reason why it should not be done. A suit may be passed against an undivided family, but it may still not be possible to determine it. It would mean that a separate suit will have to be filed for that purpose. This provision should, in fact, be deleted. Perhaps sub-rule 5 should be made affirmative.

Now about Rules 58 to 63 of Order XXI. I believe that the procedure which is sought to be prescribed would really be a handle in the hands of the judgement-debtor. He will be in a more advantageous position to avoid execution of a decree. At present all claims made by the third parties are decided on affidavits, under the present Code. According to our experience more than 80 per cent or 85 per cent of the claimants who fail in those proceedings do not take any action by way of filling regular suits to establish their rights, with the result that in most cases, the decree-holder are in a position to proceed to execute those decrees against third parties.

SHRI B. N. LOKUR: Even after these objections are settled, the idea is that we should settle things once for all, instead of having two rounds.

SHRI PARIKH: It is no doubt true that the object is to prevent double litigation.

SHRI B. N. LOKUR: Having a summary procedure does not mean the end of the whole matter.

SHRI PARIKH: But, practically speaking, how many would choose to file regular suits? More than 80 per cent do not. And the decrees are executed. In about 20 per cent or 25 per cent of cases, people go to the Court for establishing their title. If the proposed procedure is accepted, the claimants would have the right to get their claims decided without paying court fees. The claimant is now required to file a regular suit and apply for an interim relief. He has to satisfy the court in such a suit that there is a *prima facie* case for granting it. The court is normally reluctant to grant it. If the proposed procedure is adopted, the claimant would not be bound to ask for interim relief. He would merely file a claim which will have to be adjudicated upon, I believe, on the basis of oral evidence, apart from affidavits, because this will be treated as a decree. Pending that claim, the entire execution would be stayed. It would mean that there will be a regular suit which will be

tried as one between the decree-holder and the claimant at the stage of execution. It will be possible for the claimants to delay the execution proceedings for several years by making false claims.

Then, under rule 58, there is a proviso:

> "Provided no such claim shall be entertained or unnecessarily delayed...."

My suggestion is that a claimant should be asked to prefer a claim within a certain time of the attachment of the property being made. It should not be left to the claimant to prefer a claim at any time. In the absence of any time-limit, while the execution proceedings go along, even when you reach the final stage, the claimant does not come forward. The claimant should prefer a claim within a certain time limit. Then, it will not be necessary to have a similar provision in rule 59.

Further, the provision made in sub-rule (5) puts a premium on a person who delays the proceedings. Suppose a claimant does not come for a year and the court refuses to entertain his claim. He is not put at a disadvantage. If the court refuses to entertain such a case on account of delay, it actually puts a premium on the delay on the part of the claimant. That should be deleted. A diligent claimant is deprived of a right of filing a regular suit. A person who deliberately delays to prefer his claim and gets his application rejected by the Court on the ground that he did not come in time, is entitled to a better right of filing a suit.

Coming to p. 52, there is a provision relating to removal of obstruction to execution of decrees. My comments are similar to those relating to claimants. One point that I want to stress is that we must prescribe, if a warrant of possession of property is obstructed, and it cannot be executed, that warrant should be directed to be pasted on the property which is the subject-matter of the warrant. All persons who claim a right in that property should be made to file their applications for making their claim to the property within a specified time-limit.

Today, our experience is that there is a chain of obstruction proceedings. To avoid that, all persons who claim any interest in such a property should be asked to prefer their claims within a prescribed time-limit. Anyone who does not do it should be debarred from making a claim subsequently. He should be debarred from filing a suit also. The Court should proceed to pass an order on the expiry of such a time-limit.

As regards rule 102, p. 53, my suggestion is that such transfer notices should be made compulsorily registrable. Otherwise, it will jeopardise a third party who may have got no notice of the litigation at all. It will put the defendant to a double advantage. The defendant will be able to defeat a decree of the possession by saying, "I have transferred the property". The third party who purchases the property will be put at a great disadvantage. In the case of all transfers, in order that that may be subject to execution, such notices should be registered.

SHRI B. N. LOKUR: Have you seen the Fifty-fourth Report of the Law Commission on that?

SHRI PARIKH: I have not seen that.

SHRI B. N. LOKUR: You better read that.

SHRI PARIKH: As regards Rule 10' which is proposed, my submission is that it will defeat the whole purpose of what is sought to be provided by the new rules. It provides:

> "Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement

of the proceeding in which such order is made...."

As soon as a decree for possession is passed, the defendant normally makes arrangements to see that the decree cannot be executed. If this rule remains, it will mean that a person has merely to file a suit in anticipation of the warrant of possession being issued for recovery of property. If such a suit is filed, such a suit has to be decided first before any execution proceedings can be started or orders can be passed. It will really defeat the whole purpose of the new procedure which is sought to be prescribed. Therefore, my suggestion is that all the proceedings should be treated as summary proceedings. A person who is vigilant enough or shrewd enough to file a plaint one day before a warrant of possession is issued is protected. His suit must be decided first.

SHRI B. N. LOKUR: Unless the whole idea is changed, this will have to remain.

SHRI PARIKH: *On page* 56, *Clause* 77, *Explanation D.*

My suggestion is that it should be specifically clarified that it does not apply to a partnership firm.

Clause (c) *on page* 57.

My submission is that it should be deleted. The whole object of filing a suit against a joint family would be defeated if the court has to call for all the members of the joint family and it is bound to ascertain their wishes. Today, it is possible to compromise a suit of the joint family without doing any such thing. If this is there, it will throw open the gates of further litigations.

On page 58, *Clause* 78(4).

I suggest that a specific provision may be made for appointment of Commissioners for doing acts under Order 21, Rule 32(5). A lot of difficulty is experienced in executing decrees for specific performance of certain acts, where the defendant does not choose to carry them out. There is no specific procedure which is provided for that purpose.

Order 27.

I believe that the proviso to rule 3 which is proposed on page 74 is a contradiction in terms. The defendant would be placed strictly in an advantageous position. It should be suitably modified.

MR. CHAIRMAN: I, on behalf of my colleagues, thank you for taking the trouble of coming over here and giving us your valuable suggestions. In addition to this, if you have got more points to make, you can send us in the form of a memorandum and we will give due consideration to them. Then we have given you a questionnaire. You can send us your considered views on those questions also. I, once again, thank you.

SHRI PARIKH: I thank you for giving me this opportunity to appear before this Sub-Committee and express my views on the various clauses of this Bill. Thank you, Sir.

(The Committee then adjourned)

RECORD OF EVIDENC TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Thursday, the 31st October, 1974 from 10.00 to 12.45 hours

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Sardar Mohinder Singh Gill
4. Shri Dinesh Joarder
5. Shrimati T. Lakshmikanthamma
6. Shri Debendra Nath Mahata
7. Shri Mohammad Tahir
8. Shri Surendra Mohanty
9. Shri Noorul Huda
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shrimati Savitri Shyam
13. Shri R. N. Sharma
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal

Rajya Sabha

16. Shri Bir Chandra Deb Barman
17. Shri Krishnarao Narayan Dhulap
18. Shri Kanchi Kalyanasundaram
19. Shri Nawal Kishore
20. Shri Syed Nimaz-ud-din
21. Shri D. Y. Pawar
22. Shri V. C. Kesava Rao
23. Shri Virendra Kumar Sakhalecha
24. Shri Dwijendralal Sen Gupta
25. Shri M. P. Shukla
26. Shri Awadheshwar Prasad Sinha
27. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Additional Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

WITNESSES EXAMINED

I. Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.

II. *High Court Bar Association, Delhi.*

Spokesman:

Shri P. N. Lekhi.

I. Shri Milap Chandra Jain, Officer on Special Duty, Rajasthan High Court, Jodhpur.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Jain, I welcome you to this Committee.

You may kindly note that the evidence you give, would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, you have submitted your memorandum and you have also submitted your written replies to the questionnaire that we circulated. You may explain any of the points that you have raised in your memorandum, and after you make your submissions, hon. Members would like to seek further clarifications.

SHRI JAIN: I will first take up Clause 58. I am mentioning only those points in regard to which I have brought some additional material. In regard to Clause 58. I submit that the publication of a summons as given in Form 2 of Appendix B of CPC, will cost very much. I have obtained quotations from *Times of India* and *Amar Ujala*, Agra. The *Times of India's* quotation is Rs. 316.80 and *Amar Ujala's* quotation is Rs. 75. For the summary which I have suggested in my memorandum, *Times of India's* quotation is Rs. 198 and *Amar Ujala's* quotation is Rs. 50 If this is adopted, then, justice will be cheaper. Publication of the summons will cheaper. The litigant is imputed knowledge of all laws. Ignorance of law is no excuse. He can very well be supposed to know the contents of the summons. If he is given notice that such and such date is fixed for settlement of issues or for final disposal, he can contest or otherwise it will be *ex-parte*. Instead of mentioning all that is contained in Form 2 of Appendix B of CPC, we can mention only the summary of it.

MR. CHAIRMAN: We will consider it.

SHRI JAIN: Now, I will take up Clause 69.—Page 32 of the Bill. I feel that if the option is given to the party, as is provided in the Bill. no party who is interested in delaying the disposal of the case would like to move such an application, as is contemplated in the proposed clause.

MR. CHAIRMAN: Therefore, you are suggesting...

SHRI JAIN: I suggest that powers should be given to the Court. If the Court finds that a party is interested in delaying the case, it should direct the party to serve the summons himself. But, as the clause stands in the

Bill, it is only on the application of the party that, the Court will get jurisdiction and can order the service of summons. My submission is that discretion should be given to the Court. If the Court finds that a party is indulging in dilatory tactics, it may direct the party or it may, even on the application of the other party, who is interested in the early disposal of the case, direct the party who is delaying the case to take the summons himself and serve upon the witness. I have seen such type of delays in my 14 or 15 years of judicial career. I see that summonses are thrown in the Court just like letters are thrown in the letter box. They do not see whether they are served or not. They simply discharge their functions or their statutory duty. They do not take any interest because they are interested in delaying the case. One party is definitely interested in delaying the case.

MR. CHAIRMAN: Mr. Jain, would you not foresee the difficulty in this? The Court, on the application of the party may order the service of summons. Your suggestion is that discretion should be left to the Court and the Court at its discretion may order the service of summons. But, if the witness is not willing to have the summons and wants the party to serve the summons, what will happen? Your suggestion is, even without application, the Court can *suo moto*....

SHRI JAIN: ...or on the application of the other party, who is interested in the early disposal of the case.

MR. CHAIRMAN: We will consider your suggestion. But, I am pointing out the difficulty in actual implementation of your suggestion.

SHRI JAIN: The Court may direct the party to take the summons and that party can post it by Registered A.D.

SHRI MOHAMMAD TAHIR: The party can personally hand over the summons to the other party.

SHRI JAIN: When the witness comes to depose in favour of a party, how can the party not serve the summons? When parties are interested in delaying the case, they do not adopt the procedure. This is my practical experience.

SHRI S. K. MAITRA: May I draw your attention to the proposed Rule 1(1)—Page 32 of the Bill? It says:

> "... and not later than ten days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they..."

So, the list of witnesses will be before the Court and unless the party wants them to be summoned through Court, when the Court issues summones, they will be Court witnesses only. Is it the idea of the witness that the witnesses should be Court witnesses or should they be summoned through the Court?

SHRI JAIN: The list is being provided. The intention behind this clause is that the other party may know who are appearing against him. For this purpose, this clause is being added. This is entirely different. The matter of summoning is entirely different from the filing of the list.

SHRI S. K. MAITRA: If the party does not apply for summoning of the witnesses and the court still issues a summons to the witness, he becomes a court witness. Do you want these witnesses to be court witnesses?

SHRI JAIN: No. When the party mentions the names of witnesses in a list and wants to summon them, then naturally they will be the witnesses of the party. But when the party does not do so and the court in the interest of justice issues a summons,

he will be the witness of the court. But the difficulty is that despite his name being mentioned in the list and the party ostensibly showing interest that he is interested in producing him. in order to create delay, he does not. In such cases, steps should be taken. I have one experience. A party wrote to the witness: 'I do not want that the case should be tried by this Munsif magistrate. If you have received the summons, you need not come and if it is henceforth tendered, please don't take it or at least cause delay'. He was simply interested in seeing that the Munsif magistrate was transferred before his case came to a final stage. Only in those cases, the court sees that the party is interested in delaying cases, this procedure should be adopted by the court.

Cl. 71. One good provision is inserted in Order XVII. This provides that the court will proceed with the case even if the counsel is not present. In that case, the party will be obliged to engage another lawyer. Who will pay the fee, the party or the previous counsel? A new order is being inserted. I have explained this in p. 3 of the memorandum.

MR. CHAIRMAN: Is it not usually done? If the pleader who has accepted a brief on a particular day could not appear on that day and some other lawyer appears, your suggestion is that the original pleader should pay him.

SHRI JAIN: New counsel will not appear unless he is paid.

SHRI SATYENDRA NARAYAN SINHA: According to him, if the lawyer is unable to appear in a court on account of his engagement elsewhere and the court is not prepared to grant adjournment. the lawyer is required to refund the fee already charged.

SHRI JAIN: Not the entire fee, but proportionate fee.

SHRI SATYENDRA NARAYAN SINHA: Is it not the practice now?

SHRI JAIN: May be in the High Courts and the Supreme Court, but not so in the subordinate courts.

SHRI DWIJENDRALAL SEN GUPTA: The presumption is that the fee is being paid either for his appearing or for pleading or for acting or for both. The point is that for the day he could not appear. there is no earning for the lawyer. So the question of payment of fee does not arise

SHRI JAIN: The client pays the lawyer to conduct the case from the stage he is engaged.

SHRI DWIJENDRALAL SEN GUPTA: Is it a contract?

SHRI JAIN: Definitely.

SHRI DWIJENDRALAL SEN GUPTA: Is it a lump sum or daily fee?

SHRI JAIN: There are two ways. Some lawyers charge on daily basis and others on a case basis. If they charge on daily basis, there is no need for this. If they charge on the basis of a case and if the counsel does not appear on a day and the court does not grant adjournment, the client will be obliged to pay to the second counsel and the first lawyer should reimburse him for it.

SHRI MOHAMMAD TAHIR: What is the proof that the client has paid the money and the lawyer has received it? Should there be any proof?

MR. CHAIRMAN: He is asking how do you enforce it.

SHRI DWIJENDRALAL SEN GUPTA: If a lawyer works on contract and does not appear and thereby causes any difficulty to the client and does not make alternative arrangements to defend the case, that will mean professional misconduct

and the matter can be taken up in the Bar Council without any such provision. Of course, I appreciate the pirit underlying this..

MR. CHAIRMAN: It may also be a breach of contract.

SHRI S. K. MAITRA: Suppose the lawyer does not reimburse, the remedy is to file a suit and the suit will be based on a contract. So this provision in any case will be redundant.

SHRI JAIN: Sir, I have simply placed the difficulty which the litigant will be facing after the coming into force of the Act. Here it is provided that the court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not engage another pleader in time. The party would be obliged to pay another counsel.

SHRI S. K. MAITRA: So far as the provision in the Bill is concerned. it can be done by the court straightway. So far as the suggested provision is concerned, it must be enforced by the court. For that a separate litigation will be necessary and that will be based on a contract. So in any case the suggested provison is redundant.

MR. CHAIRMAN: The difficulty you point out is appreciated by us. But how to enforce it? We will examine it.

SHRI DWIJENDRALAL SEN GUPTA: I think the only remedy is to nationalise the legal profession.

SHRI JAIN: Another suggestion. This is on p. 4. A date should be fixed after which the judgment will come into force. It is our common experience that the party winning a case rushes to the court for execution. The party which intends to file an appeal has to incur a lot of expenditure to obtain stay order etc. This could be done by amending Order XX R 3.

MR. CHAIRMAN: Would you suggest that in all cases the final order should be given effect to after a period of time?

SHRI JAIN: Yes.

MR. CHAIRMAN: Would it not frustrate the purpose of justice?

SHRI JAIN: When the court takes years to decide a case, a month's delay in enforcing it is not much.

MR. CHAIRMAN: You are also pleading that delay should be avoided.

SHRI JAIN: 10 or 15 days, at the most one month. This will reduce corruption.

SHRI S. K. MAITRA: If the intention is that the party defeated should be enabled to obtain a stay, the provision exists in Order 41. What is the purpose of this?

SHRI JAIN: Our experience is that the party losing the case has to file an appeal. He has to rush to the court. The poor litigant has to approach the trial court. We know all the difficulties.

MR. CHAIRMAN: Would you not consider it the right of the winning party to get the benefit of the judgment immediately? As far as the defeated party wanting to appeal, it is provided already. So will it not frustrate justice if the winning party is forced to wait for a certain period? This is presupposing that the defeated party would go in appeal and a stay would be necessary.

SHRI JAIN: It simply postpones the taking effect of the judgment by at the most one month.

SHRI NOORUL HUDA: In some cases. the contention of Shri Jain is quite sound because the defeated party will appeal and it will take some time. The chance of corruption is there. This will reduce that.

SHRI JAIN: Then another difficulty felt about ascertaining the names and addresses. Order XXII sub-rule 4 The court may direct the, defendant to disclose the names and addresses of the relatives of the deceased defendant. How is the plaintiff supposed to know the members of the family, small children etc.?

SHRI S. K. MAITRA: What will happen if the defendant himself is dead?

SHRI JAIN: This applies when there is more than one defendant.

MR. CHAIRMAN: Your suggestion is that the surviving defendants should report to the court giving the names of the heirs of the deceased co-defendant. How to enforce it? Suppose he deliberately does not do it.

SHRI JAIN: Then the plaintiff will get the substitution of the LR which can be ascertained by him. Thereafter the defendant cannot create difficulty. He cannot say that some of the LRs have been omitted.

SHRI DWIJENDRALAL SEN GUPTA: The defendant may not, but the person affected by the omission may come in at any stage and say, the person whose interest may be affected.

MR. CHAIRMAN : Mr. Jain's suggestion seems to be a safeguard for the plaintiff against any plea being taken up by the surviving defendant.

SHRI JAIN: I have one more suggestion about the examination of witnesses on commission. This has been introduced in Rajasthan. The examination of witnesses on commission will reduce the court work and that time can be devoted to writing judgments and hearing arguments. It is a common experience now that almost all the courts are over-worked. This will also provide some remuneration to young lawyers.

SHRI DWIJENDRALAL SEN GUPTA: At whose cost?

SHRI JAIN : At the cost of the litigant.

SHRI DWIJENDRALAL SEN GUPTA: Making the litigation more expensive.

SHRI JAIN: The litigant will get the justice speedier.

SHRI DWIJENDRALAL SEN GUPTA: Let the Government pay, I don't mind. The cost of the commission should be borne out by the Government.

SHRI JAIN: I can say about Rajasthan that we have no finances to bear the expenditure. It is not mandatory. An option is given to the litigant. Suppose the defendant is interested in delaying the case; he does not get the summons served upon the witnesses. The other party may move an application that his witnesses may be examined on commission saying that he is willing to bear the expenses.

MR. CHAIRMAN: There is a provision that if the court wants. it can examine witnesses on commission in certain cases. You want it in all cases. What will remain for the courts so far as hearing is concerned? No oral evidence will be there; no witness will appear before the court.

SHRI DWIJENDRALAL SEN GUPTA: Not only the evidence but also the examination of the witnesses is important. It is important to consider the demeanour of the witnesses while deposing before the court. That link will be lost. To meet the ends of justice, that is also important.

SHRI JAIN: My own experience about Rajasthan and U.P. is that hardly 10 per cent of the cases are decided by the same Judge. The cases take so much time and the number of cases is so much that the

cases are not decided by the same Judge. As a matter of fact, the demeanour of the witnesses is not noted.

MR. CHAIRMAN: I think, in criminal cases, when a trying Magistrate is transferred, the entire case is tried *de novo*.

SHRI JAIN: This is confined to civil cases.

MR. CHAIRMAN: Even in civil suits, whether a witness has lied, whether he has been purchased, whether he has been influenced, etc., it can be determined by the court if the Judge sees the deposition of the witness before the court. If he reads only the written evidence taken by a commission, would you not think that that will, to some extent, vitiate the appreciation of the actual case by the court?

SHRI JAIN: In practice, hardly 10 per cent cases are decided like that.

MR. CHAIRMAN: Is it a healthy practice that during the trial, the trying Judge is transferred and the new Judge comes and proceeds with the case? Does it not affect the proper administration of justice?

SHRI JAIN: It does.

MR. CHAIRMAN: Would you suggest that the Judge should not be transferred unless he concludes the case?

SHRI JAIN: In the new Cr. P.C. Bill, there was a provision that *de novo* trial will not apply to Sessions Judge. But when the Act was passed, it was deleted. The Sessions Judge will conclude the case before he is transferred. It is not applicable to civil cases.

MR. CHAIRMAN: Do you suggest it should apply in this case also?

SHRI JAIN: This is all I have suggested in my memorandum.

MR. CHAIRMAN: We will carefully examine the suggestions made in the memorandum. So far as your replies to the questionnaire are concerned, we have gone through them. You have taken great pains. You have not only given replies but you have made very concrete suggestions also.

SHRI JAIN: They are all based on my personal experience.

MR. CHAIRMAN: I can assure you that we will consider your suggestions seriously.

SHRI RAJ DEO SINGH: As regards your reply No. 11 to Q. No. 1, I want to know whether you recommend a yearly refresher course for a week or two weeks for lawyers and pleaders practising and working in subordinate courts.

SHRI JAIN: It will be better to use the word "refresher course".

SHRI S. K. MAITRA: With regard to service of summons, p. 21 of the Bill where rule 19(A) has been suggested, don't you think that simultaneous service of summons by registered post which has already been provided in the Bill will be sufficient?

SHRI JAIN: Yes.

MR. CHAIRMAN: No more questions.

Mr. Jain, I thank you on my behalf and on behalf of the Committee for the cooperation you have given to us. I can assure you, once again, that the Committee will give its earnest consideration to the suggestions made by you both in the memorandum and in the replies to the questionnaire.

SHRI JAIN: Thank you, Sir.

(*The witness then withdrew*).

II. Shri P. N. Lekhi, High Court Bar Association, Delhi

(The witness was called in and he took his seat).

MR. CHAIRMAN: Shri Lekhi, we welcome you because you have come here to give evidence before this Committee. Before we proceed, I would like to read out a particular Direction of the hon. Speaker which governs your evidence. The witnesses

may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI P. N. LEKHI: I have got no objection if it is made public.

MR. CHAIRMAN: You have not submitted your memorandum.

SHRI P. N. LEKHI: Yes, Sir.

MR. CHAIRMAN: Now you can start your oral evidence.

SHRI P. N. LEKHI: Clause 80 on page 60 of the Bill. Here an explanation is added after rule 4. This, in my view, has not taken into cognizance the great advance in law that has been made in practically all the Commonwealth countries; particularly when the instrument is to be statutory, an enactment is not at all a condition precedent. If you make an enactment as a condition precedent for a statutory instrument, you will be injuring most of the litigants who have to contest against the executive order of the State, which in the nature of the power, nullifies any enactment. Likewise, we have a number of circulars issued or memoranda made under the rules of business by a competent Secretary which have been considered as having the binding effect of law and there is no enactment which was the basis of that instrument. So, if you add any enactment, you would be doing a lot of injustice and pulling back the law from a very good and healthy practice which has existed without this explanation. The amendment should be such as would give something more to facilitate procedure. This would be shackling the procedure. So, in my view, the explanation should be without the words 'made under any enactment'. These words should not be there. This is the present state of law of which no notice has been taken.

Then, I would like to refer to Rule 4 of proposed new Order 32A, in Clause 83—Page 64. An eminent jurist, Mr. Duncan has said 'A modern law administered by conservative judges is causing the whole problem'. Now, you are giving a statutory recognition by introducing a half-hearted measure in this new Order 32A. If you turn to Page 64 of the Bill, the marginal note of proposed Rule 4 is 'Assistance of welfare expert'. We know that under the Matrimonial Causes Act, the Maintenance Act and various other enactments, which probably have inspired this particular provision, in regard to family disputes, assistance of some experts would certainly be sought to resolve them, without the long drawn out procedure. Now, we see that in those enactments, it is not just one line written there. They have a definite scheme under which the matter would be referred to an expert. Sometimes he may be a psychologist, sometimes he may be an expert in matrimonial affairs or guardianship matters. He may be an expert in his own line and he tries to treat the dispute from a mental angle. Now, in regard to this bland assistance of welfare experts in every suit or proceeding, it would be open to the Court to secure the services of such persons, preferably women where available. I do not understand at least these words 'a woman where available', because they are available. Fifty per cent of our population consists of women. This is the proportion. Women are available. I am not at all on the sex dispute. I treat both of them alike. After all, we are enacting a new procedure. The present law has lasted for 66 years and these amendments, probably, for a couple of decades. Therefore, this

particular reference 'preferably a woman where available' stipulates the non-availability of women. This is what I am submitting to you. What type of woman? This is a question which will vex the Courts. After all, you are going to lay down procedural guidelines. This is not like a political manifesto which can be twisted at convenience. This is what I am saying. When we are dealing with the letter of law, we are dealing with it not like a slogan, but, in a very serious way. So, what exactly is the intention of this Rule 4? The marginal note says 'Assistance of welfare expert'. As a matter of interpretation, marginal notes mean nothing. There is no reference to a welfare expert in the substantive rule itself. There is no guidance given to the Court for the induction of this expert. I am a little wondering about this drafting.

SHRI S. K. MAITRA: Kindly see the words 'including a person professionally engaged'.

SHRI P. N. LEKHI: It is stated here 'professionally engaged in promoting the welfare of the family...' This is entirely different when you read the marginal note. You are first saying 'professionally engaged'. The difficulty that would arise in the Court is, whether the person who is appointed is professionally engaged or not. This particular aspect of introducing a sort of welfare legislation in a procedural code is very much welcome. But, it should be a complete and not an attempted measure. The Court should be given some guidelines that if a matter relates to such types of family disputes, the matter would be referred to persons with such and such qualifications etc. The word 'professional expert' is an absolutely vague expression. It is only the vagueness of law which is the reason for multi-farious litigations. A clear law is never litigated. What you are doing here is, introducing a kind of vagueness, which ultimately would be open to this challenge, is such and such person a professional expert? Any amount of case laws will have to be developed on this. As I read this particular provision...

MR. CHAIRMAN: May I draw your attention. Mr. Lekhi, to the wording in the fifth line, regarding the point that you are making? The wording is 'as the Court may think fit'. The question of deciding whether a person is a professional expert or not, is left to the Court.

SHRI AWADHESHWAR PRASAD SINHA: You have said that this is vague. May I know, have you any alternative draft which is not vague and which can help us?

MR. CHAIRMAN: In other words, what modification would you suggest in this vague clause?

SHRI AWADHESHWAR PRASAD SINHA: Will you send us an alternative draft?

SHRI P. N. LEKHI: Our Civil Procedure Code is not a original work done by us. This is more particularly similar to the Procedure Codes available in the United Kingdom. If you see Dryden's Law of Divorce, for the purpose of such experts, a full chapter enacted by the British Parliament is available. I can send that. Books, of course, are available. If that particular aspect is also looked into, perhaps, we shall, when enacting this Code, be able to give to the Courts full guidance.

MR. CHAIRMAN: We will look into it.

SHRI SATYENDRA NARAYAN SINHA: The witness said that this does not bring out the real intention of the framers of law. That is why, Mr. Sinha wanted to know whether he would be able to suggest a draft, which will make the position clear.

MR. CHAIRMAN: He has referred to the British law.

SHRI P. N. LEKHI: It will be possible for me to give a note.

MR. CHAIRMAN: We welcome that. Kindly sent it later on.

SHRI RAJDEO SINGH: The arguments put forward by the witness regarding the welfare expert, to my mind, have some weight. So, before we proceed further. Government should come forward with some statement just now regarding Rule 4.

SHRI S. K. MAITRA: As I have already submitted, these provisions are based on the recommendations made by the Law Commission in their 54th Report. While giving effect to these recommendations, Government had, as far as possible, accepted the recommendations as they are. It is now for the Committee to consider whether these recommendations are adequate or not. The recommendation in regard to the provision about which the learned witness has said will be found on page 236 of the 54th Report of the Law Commission. It is on this basis that this provision has been made.

SHRI P. N. LEKHI: I have read the argument given by the Law Commismission. Section 23 (2) of the Hindu Marriage Act says that before proceding with the trial of a matrimonial dispute, the court shall try to bring about an amicable settlement between the parties. But our experience of the last 20 years is that absolutely no attempt has been made. If the report of the Law Commission is the guideline, the Law Commission has very emphatically said that adversary procedure, which is the foundation of the court is not fit for family disputes. If family disputes are to be taken out of the adversary procedure, the best thing would be to have a separate code for family disputes and not to keep it a part and parcel of the C.P.C. The very fact that it is part of the adversary procedure is an argument against this very limping provision.

MR. CHAIRMAN: You have agreed to submit to the committee the form in which you would like this rule to be amended.

SHRI MOHAMMED TAHIR: Will it not be possible to have a definition of welfare expert?

MR. CHAIRMAN: That is for us to consider amongst ourselves.

SHRI MOHAMMED TAHIR: Preference has been given to a woman expert. I think the Law Commission has not mentioned that preference should be given to a woman.

MR. CHAIRMAN: We are not bound by the Law Commission's report. We will be guided by the Law Commission's advice, the draft Bill and the evidence given before us and ultimately come to our conclusions.

SHRI P. N. LEKHI: My next point is about the amendment being sought to be made to Order VI, Rule 17—page 23, last two lines. I am afraid this particular amendment is going to assist certain litigants who in the present scheme of law would not be permitted to drag on the proceedings indefinitely. All he has to do is to make an amendment which that particular court is not able to try and the matter goes to another court. By some machination which is not unknown to lawyers, it is not difficult to make an amendment that particular court may not be able to try and thus drag on the proceedings. This tendency would be harmful to the very basis of cheap justice, for which purpose the code is being amended in some provisions. By allowing a person to amend and change the court—a process which is not available to him now—you will be achieving precisely the opposite result. I feel this particular amendment has to go lock, stock and barrel. It has no place where the basic idea is to expedite the proceedings. This is the considered view of the Bar. Some of my friends were very happy because they said, we can drag on the proceedings for any number of years without any impediment from the court or from the party. I feel there

is no necessity for this particular amendment because the party has to choose not only the remedy but also the forum. If he has chosen the wrong forum, law should not help him for his negligence. This is a very retrograde step.

MR. CHAIRMAN: Are you opposed to the continuance of the original rule?

SHRI P. N. LEKHI: No.

MR. CHAIRMAN: Under the original rule, the power to amend is there. What is sought to be added now is that as a result of that amendment, if the court finds that it no longer has jurisdiction to try the suit, in that case the suit will be returned. What is your objection to that?

SHRI P. N. LEKHI: As I said, it is for the litigant to choose both his forum and remedy . If he chooses a wrong forum or asks for a wrong remedy,there is asolutely no reason why he should not suffer the consequences. To give a practical illustration,we have in Delhi original jurisdiction confered on the High Court. After Rs. 50,000 any orginal suit will lie to the High Court. If it is less than Rs. 50,000, it lies to the District Court Most of the litigants choose the District Court because it does not take more than a year for a suit to be disposed of. In the High Court, it may take a decade. Now, after choosing the District Court, the litigant finds that something has intervened and it would be more profitable for him to keep the matter hanging. The other party also has gone to the District Court in anticipation that within one year, the matter will be over. Now, the litigant makes an amendment saying, "I forgot this. The property was under-valued. Now I have got it revalued. The value is Rs. 1 lakh and here is the valuation certificate." The District Court will allow the valuation to be amended and the suit will have to be transferred to the High Court. When we are creating a multifarious jurisdiction which in itself has a wheel within a wheel, causing a lot of confusion, efforts should be made to lessen the coaxial wheels rather than to permit a person to jump over from one circle to another and keep the whole agitational approach of the courts continuing for years at an end. Why should a person who has chosen the wrong forum be given any legal handle to choose a different court?

MR. CHAIRMAN: You agree to the original rule. Suppose after allowing the amendment under the original rule, the court finds that it has no jurisdiction to try the suit after the amendment, what is to be done?

SHRI M. P. SHUKLA: Original rule 17 contemplates only amendments within the power of the court and not beyond the powers of the court.

SHRI S. K. MAITRA: This provision has been made to remove a divergence of judicial opinion. This has been dealt with in the 27th report of the Law Commission. I quote:

> "Order VI Rule 17 deals with amendment of pleadings. A question has arisen whether the court can allow an amendment of a plaint where the effect of the amendment would be to render that court incompetent to try the suit. One view is that the court cannot grant such an amendment. Another view is that the court can grant such an amendment. There is divergance of judicial opinion on this. ...."

To resolve this, the Law Commission has recommended:

> "We proposed that statutory effect should be given to the later view by a suitable amendment of Order VI Rule 17."

Based on this recommendation, this amendment is being suggested.

MR. CHAIRMAN: In such exceptional cases, what should be done?

SHRI P. N. LEKHI: The limitation is positively to bar a particular type of remedy. It does not alter but bar the remedy. Under our Limitation Act

if an amendment to a claim is made, and that amendment is barred by limitation, the matter cannot be agitated. Under the present Code, if it is beyond the jurisdiction of the court, the court cannot try it but it can return the plaint. Then the litigant can go to the proper court. This particular amendment tries to find favour with one or the other view under the garb of settling the controversy. But what about the limitation period? What about the litigant himself going to the other court?- Here the amendment is allowed by a court not competent to deal with it. Without allowing the amendment the court is definitely looking to certain legal principles. If the Court has not got pecuniary or territorial jurisdiction to be seized of that matter, I simply cannot understand how it has got the power to allow the amendment, which is permission granted by the judiciary to agitate the matter over which it has no jurisdiction at all.

SHRI S. K. MAITRA: I think there is some confusion. This will arise only when initially the court has jurisdiction and not otherwise.

SHRI SAWAISINGH SISODIA: As far as the question of limitation is concerned, the court is bound to examine it before allowing the amendment whether that particular item is within the limitation or not. Therefore, this fear that that particular item may be out of limitation cannot arise. Whenever an application for amendment is moved, the court will examine whether that particular item which he wants to add in the plaint is within limitation or without limitation. Therefore, I think this fear is not proper that some such amendments may be allowed which may be out of limitation and such controversies may come.

SHRI P. N. LEKHI: I am not referring only to what is added by the amendment. If a suit is presented in a wrong court, in a wrong forum, by the strategem of amendment under the present law, when the plaint is returned for filing before the appropriate court it would contain the date of filing the original suit. Under very limited circumstances you are permitted to prove a *bona fide* mistake so that the time consumed in the wrong forum may also be credited to him. By this particular amendment that difficulty would be overcome and it would be possible under certain circumstances to agitate the time-bar plaints which is not possible now I am not referring to that one particular item introduced by the amendment. I am referring to the entire subject matter of the suit. This is a point which I hope you will be pleased to consider.

MR. CHAIRMAN: We will examine that. Are there any other points?

SHRI P. N. LEKHI: 50 per cent of the litigation now is between the citizen and the State. By introducing judicial definition of statutory instrument you are putting shackles on the citizen. We have travelled much far ahead of this definition and so this will drag us back to very unhealthy situations. It is a very serious matter. It will also affect the interpretation of the constitutional law. This is for the first time we are having a definition of statutory instrument. Here again I find measures adopted by those responsible for legislating these laws extremely half-hearted; I hope I will be excused for using this expression. As the Law Secretary is aware, there was the Statutory Instruments legislation of 1948 in UK and in USA they have amended their law in 1972 in order to give a definite type of protection to the citizens from the administrative acts of the executive. In our country, without having this enactment and without having a definition, fortunately our administrative law and constitutional law have definitely been making very healthy progress. Now by this one line or one sentence explanation you are whittling down the entire procedure of constitutional interpretation. It would not just be an amendment of the Civil Procedure Code: it would be throttling of the progress which administrative law has registered thus

far with out this definition. It is a very serious matter.

SHRI S. K. MAITRA: If you want to leave the position as it is, would it not be better to omit the explanation?

SHRI P. N. LEKHI: If you omit the term "any other enactment" it would be beter. Then the whole thing can be salvaged and saved. Otherwise, this very innocuous explanation would introduce consequences which would be of very tremendous significance for the entire administration of justice in this country.

SHRI M. P. SHUKLA: Have you received our questionnaire?

SHRI P. N. LEKHI: We received those documents only two ways back. Even though we have spent the whole night we could not prepare ourselves for them.

MR. CHAIRMAN: You can take your time to consider the questionnaire and give your views in writing in a month or two., say before the end of December.

SHRI M. P. SHUKLA: Have you anything to say about amendment to Section 115?

SHRI P. N. LEKHI: 115 going out of the field is very healthy because quite a bit of litigation and revision with conflicting decisions from the Supreme Court and High Courts have been causing a bit of difficulty. It is also in keeping with the recent amendment to the Code of Criminal Procedure, where the power of revision has ben taken out. 115 is going to definitely reduce the workload of unnecessary litigation by 10 to 15 per cent. This is very healthy. Further, article 227 is there.

SHRI M. P. SHUKLA: One argument is that article 227 involves more cost to the litigant. It is costlier whereas the object of the amendment is to make justice cheaper.

SHRI. P. N. LEKHI: I can tell you from personal experience that cheap justice is a very misleading slogan. I will give you an example. Some 1,453 employees of the Haryana State Electricity Board courted arrest. Ultimately, it was found that these was no order promulgated under section 144 and so all the arrests were illegal. By some clear brain-wave the Chairman of the Haryana State Electricity Board dismissed each one of them. I filed a writ petition and I said that if each one of these 1,453 persons who have a common grievance against a common order have to come before the court for appeal for reinstatement in service, under article 226, according to the Chandigarh High Court Fees Rules they will have to spend Rs. 175 lakhs as court fees, I will have to point their writ petitions which will consume one tonne of valuable paper and each of them will have to engage a lawer to argue which on the current rate of payment will come to Rs. 15 lakhs. But the High Court said that according to our rules there is only an individual cause of action although it is against a common order. So, though you are certainly very much concerned about cheap justice, you do not exercise proper amount of legal and administrative control in order to really make justice cheap. Threfore, whenever I hear the term "cheap justice" from any quarter it makes me laugh.

My positive suggestion in this direction is that you should make a law called the Administrative Procedure Law like the Administrative Procedure Act in the United Kingdom and in the United States and put all these things there. Because, civil litigation is only for a man with property. A poor man always goes to a magistrate's court; he never goes to the Supreme Court. When you are suggesting amendment to 133, you have to see how many poor people actually want to go to the Supreme Court. A poor man would be benfitted if you have something like Administrative Tribunals Act, really making the whole thing cheaper. The Civil Pro-

cedure Code is not a remedy for a poor man, because a poor man has no property to litigate.

SHRIMATI LAKSHMIKANTHAMMA: What about 32A?

SHRI P. M. LEKHI: I will give a note on that.

MR. CHAIRMAN: On behalf of the Committee and myself I thank you for your cooperation. We are now looking forward to your reply to our questionnaire where you may give your concrete suggestions so that our task may become easier. I can assure you that your suggestions would be carefully considered by the Committee.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Friday, the 1st November, 1974 from 10.00 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri Chandrika Prasad
4. Shri A. M. Chellachami
5. Sardar Mohinder Singh Gill
6. Shri Dinesh Joarder
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Madhu Limaye
10. Shri Debendra Nath Mahata
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Surendra Mohanty
14. Shri Noorul Huda
15. Shri K. Pradhani
16. Shri Rajdeo Singh
17. Shri M. Satyanarayan Rao
18. Shrimati Savitri Shyam
19. Shri Satyendra Narayan Sinha
20. Shri T. Sohan Lal.

Rajya Sabha

21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri Nawal Kishore
25. Shri Syed Nizam-ud-din
26. Shri D. Y. Pawar
27. Shri V. C. Kesava Rao
28. Shri Virendra Kumar Sakhalecha

29. Shri Dwijendralal Sen Gupta

30. Shri M. P. Shukla

31. Shri Awadheshwar Prasad Sinha

32. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Council*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

WITNESS EXAMINED

Spokesman.

Shri D. B. Bal, Bar Association of Supreme Court of India, New Delhi.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Bal, I welcome you on behalf of myself and the Committee. Before you give your evidence, you may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI B. D. BAL: I have no objection.

MR. CHAIRMAN: You are welcome to submit your oral evidence on any of the clauses of the Bill. You have not submitted any written memorandum.

SHRI B. D. BAL: The object of the Bill as given is to secure expedition of proceedings, cut down delays consistently with fair trial and principles of natudal justice and also to give a fair deal to poor litigants and to simlify the procedure. For securing these objects, it is really not necessary to have so many amendments in the pdocedure. The procedure, as it is, is quite good, what is lacking is the proper implementation. That cannot be secured by amendments. Even then there are a few amendments which will achieve these objects to some extent. They are, of course, few.

To give just one instance, there are new rules substituted for rules 58 to 63 and 98 to 103 of order 21 which deals with execution proceedings. As the law stands today, rule 58 deals with objections to attachment in execution proceedings or claims to attached property. The proceedings under execution are summar·· at present. There is no appeal and the unsuccessful party has to file a suit. A suit means again a second round of litigation. The stages are, suit, then decision, first appeal, second appeal and so on. There would be so much loss of time.

The other set of rules 98 to 103 also has one same scheme, but it relates to properties sold in execution or properties of which possession has been ordered and the possession is

sought to be given in execution proceedings. There also, it is summary procedure under he existing law. But the substituted new rules make it an elaborate enquiry in the execution proceeding itself. The decision is appealable and then second appeal also lies, but no second round of litigation. Therefore, to that extent, there would be expedition. Such provisions are few.

Taking the idea of giving a fair deal to poor litigants, there are some provisions which, of course, will achieve this objective, particularly section 60, which gives a list of properties which cannot be attached in execution. That is liberalised. But there are other provisions which will produce entirely the opposite effect, e.g. Order for appeals, Order 41. Sub-rule (IA) of rule 3 provides, (as is sought to be added) that if the decree is a money decree, then the judgment debtor has to deposit the amount or furnish security within a certain period If that is not done, the appeal shall be dismissed without hearing on merits. If the judgment-debtor is poor, though he may have a good case in appeal and the decree may be quite wrong, if on account of poverty, he cannot either deposit the amount, or can find nobody who will stand surety for him, the result would be that the decree would be confirmed against him without a hearing. Thus a right of appeal is, in effect, taken away from him. Similar is the provision in case of orders in execution under section 47 in the same order, Order 41. If it is an appeal from an order is execution, which is appealable under section 47 of the Civil Procedure Code, what will happen is, if even after admission, he does not deposit the amount, the admission will be cancelled and the appeal will be dismissed. Normally, inability to deposit the amount or to give security will be because of poverty. Here the amended law will be punishing the poor for his poverty.

There are some other provisions where also injustice will be done though the person to whom it is done may not necessarily be poor. Just to give one instance, there is the new proviso to rule 10 of order 34 and the new rule 10(Ai) of that very Order. Order 34 relates to mortgages. Some amount is due to the mortgagee on his mortgage and let us assume that he makes a proper claim. Now the proviso and the new rule provide that if the mortgager has, before or at the time of the institution of the suit, deposited the sum due on the mortgage or a sum not substantially deficient, the court shall direct the mortgager in a foreclosure suit to pay to the mortgager mesne profits for the period beginning with the institution of the suit. If the deposit is deficient, then if the court thinks ultimately that the deficiency is not substantial, then also the mortgagee, who is the creditor shall be deprived of costs. He shall not get his costs and shall have to pay the costs of the other side,... that is the mortgagor. In the case, where he is in possession, he will pay mean profits. Now, the deposit or tender has got to be accepted by the mortgagee in full satisfaction of the claim. Section 83 of the Transfer of Property Act provides for that and it says that he must apply to the Court saying that he will accept the amount deposited as full amount and surrender the mortgage deed and all other documents and also hand over the possession back, if he is in possession. That means he cannot file a suit thereafter for the deficency. This is against all universally accepted principles of law and justice| A mortgagee, even though he is a creditor, need not necessarily be a professional money lender. It may be his single transaction and if he loses in it and if he wants to file a suit for the balance, he will be saddled with at his own, costs and the costs of the opposite side, i.e., the debtor, are also cast on him. This would obviously be unjust.

Similar is the provision in the new Rule 10A which relates to mean pro-

fits—that is, he has to give to the debtor, the income he receives from the date of the tender or deposit till he hands over possession. Both these are unjust.

There are some provsions in the Bill, as it is, which are obviously unnecessary. I can give just one instance. Section 103 applies to the High Court and it says that if the District Court has not decided an issue of fact, it has to be decided or disposed of by the High Court and if there is evidence on record the High Court may decide on that basis. There is nothing wrong in this, but the provision is there already. What is sought to be added in the Section to be substituted, is quite unnecessary.

Then, another instance of such unnecessary amendments would be Order 34 of the Civil Procedure Code. So far as the present law goes, in mortgage suits, the Court decides the mutual rights and passes what is known as a Preliminary Decree. After the amounts are calculated and the decree is finalised, it becomes what is known as the Final Decree. That is the present position. Now, what is sought to be done is to remove these terms 'Preliminary Decree' and 'Final Decree'. But with what advantage? It is easy to see that there is no advantage in that and the amendment is unnecesseary. The definitions of 'Preliminary' and 'Final' decrees are given in Section 2(2). The distinction is very clear; it is that the Preliminary Decree only declares the rights but the Final Decree actually says what is due to whom from whom. What is now sought to be done is that the Preliminary Decree is now to be styled as a 'Decree' and the 'Final Decree' is now to be called an 'Order' or 'Order in execution' according to the context. But the entire procedure remains the same. So, what is the use of simply changing names? And these amendments take up quite a number of clauses here. The forms of the decree also remain the same; only the names change. There is no advantage to be gained by this because, where the procedure remains the same, what they are called makes no difference. The Final Decree which is now to be called "Order in Execution" still conforms to the definition in Section 2, as also the Preliminary Decree or the 'Decree' as it is now to be called.

So, all these amendments are of no consequence and they are unnecessarily being done.

Now, the note to these clauses mentions that the preliminary decree and the final decree are being dispensed with in all suits. It is not so, because there are other suits in which there will still have to be a preliminary decree and a final decree. Order 20 gives the form and contents of decrees in other suits. In some cases it is obligatory on the Court to pass a preliminary decree and then make a final dcree after further investigation while in some cases it is discretionary; but it has always been done as a matter of convenience.

Rules like Rule 12 relating to suits where the future mesne profits are asked for—that is, the future income—and administration suits (which are governed by Rule 13) and A court suits (under Rule 18) are not being amended. Then, there are other Rules relating to partnership suits etc. whch also remain the same. So, these amendments will not secure any of the objectives of the Bill.

In the very order there is another amendment—and quite an extensive one—which would also be unnecessary. After Rule 12 there are new rules proposed to be added—Rules 12A and 12B and according to this, the provision is for the execution of a decree for specific performance. But this provision is there already in Order 21, Rule 34 which provides for this. Only one thing can possibly be added that a decree for specific performance shall fix the date before which the purchaser has to deposit

the money. A short amendment in a couple of lines can be made in Order 20 itself. But otherwise, the amendment is of no consequence and would be unnecessary.

Another thing is that a number of provisions in the amendments which are sought to be brought in, would become unnecessary with a little different drafting. For instance, in several amendments it is said "this will also apply to execution proceedings". There are at least half a dozen places where it occurs. Instead, a simple definition can be inserted in Section 2 (it might probably come in between sub-section 16 and 17) namely... That "proceeding includes proceeding in execution". Then all these six would go away. All these are unnecesseary.

Again after a court hears the case, a judgement is delivered. Now, Section 33 deals with that and says after a case is heard, the court shall pronounce judgement and according to such judgement a decree shall follow Now, according to Order XX, the decree shall bear the same date as the one on which the Court pronounces its judgement. If it is prepared afterwards, it is not taken as of the date on which the judge signs it actually.

Now, there are a number of other cases where judgements can be pronounced without a hearing and that is where the hearing becomes unnecessary for some reason. Supposing an order is made for the defendant to file a written statement and the defendant does not file it, then there is a sort of default on his part. For that default he can be penalised by debarring him from taking part in the further proceeding and judgment can be pronounced against him immediately. Now, after this, in the new scheme, a rule is added that the judgment shall be followed by a decree and the decree shall bear the same date as the judgement. But if to Section 33 which speaks about the judgement, one more clause is added so that the section reads: "(a) the court after the case is heard, shall pronounce a judgement, (b) Where a hearing becomes unnecessary on account of some default of the defendant the court may, if it is so provided, pronounce a judgement"; (because that is discretionary) and then we add a third clause after the clauses (a) and (b), which may read as "(c) upon every such judgement a decree shall follow.", all these half a dozen amendments would go.

There are several other things which are similarly unnecessary. Then there are some amendments which will definitely defeat the object. I may just give you a few instances. Let us take Section 24A which is not sought to be introduced. It relates to the transfer of a suit. Now the position is this. A suit is filed in the court of a junior judge whose jurisdiction extends to some amount. Of course, this may vary from State to State. Now, an issue might arise as to titles if the suit in relating to immovable property....I will presently give a concrete instance as to now it works. But let us assume the question is of title—title concerning the property involved in the suit. Section 24A has the object of making everything which may be decided in the suit, *res judicata* and thus give finality to the adjudication. That is what is intended. Now, as it is, at the level of the junior judge, title to only a small portion of the property is involved, but though the actual property concerned is a small part of a big property, title to the whole property will have to be established in the suit. Now, if a second suit had had to be filed at all for the whole property, then it would go to the court having a higher jurisdiction and the decision here, whatever it is, will not be *res judicata* for the suit. Therefore, if the court thinks that this issue should be decided by a higher court, it may report the matter to the District Court. The District Court may issue notices to the parties, hear them and transfer the suit to the higher court, so that that issue is decided by the court of higher jurisdiction and becomes *res judicata* between the parties.

Now, what are we doing here, if the amendment is to be made? Trying to simplify a future suit which might be filed or might not be filed there may be no occasion to file that suit. But the present suit will be prolonged by all these procedures. The procedure of the first court is to consider after hearing the parties, whether such question will arise, whether that question will be such that it may be made the basis of the main relief in a possible future suit, and if so, whether that suit would lie in the higher court then after the report the District Court is to issue notices, hear the parties and after all that the District court may say 'no' 'no' nothing is necessary. Even if the suit is transferred what do we gain? It will all be defeating the object and of expediting the pending suit the suit which is not in existence but which on speculation we assume might be filed in future, may never in fact be filed. Now, I will give an instance where such a thing may easily happen. Suppose, a person dies leaving a large property by a will to be acquired by his two sons. Suppose one of the two sons has got some of the property which is very valuable—it is an open property —and if a suit for possession of this whole property had to be filed, it would definitely go to the higher court; but some individual has encroached upon a small corner of this property and the owner wants to take possession of it; for that he files a suit showing the value of the property actually in suit, which may be a few hundred rupees, and therefore it will go to the lower court. Now if that court has to follow all these procedures, imagine what will happen to the case which could otherwise have been quickly disposed of. So, all these things will defeat one of the objects of the bill. That is what will happen.

About injustice to poor people, I may give one more example. For Amendments to Section 20, two Explanations are sought to be substituted. for the Explanations as they are. There are two explanations but they are sought to be substituted by new ones. Now, the two Explanations to Section 20 relate to: where the suit can be filed or place of suing or territorial jurisdiction, as one may say in legal terms. The provision, as it is, is this, that a suit can be filed where a part or whole of the cause of action arises in the court of that place or where the defendant resides or works for gain. The plaintiff may say that we would file is suit at any of these places. Now, the first concession which I would at once make is that the present Explanations have to be deleted; nothing wrong in it. They actually do not convey any sense. Even the Law Commission has said likewise. But one of the new Explanations relates to is given: there a Corporation can be sued ("corporation" is not necessarily a Municipal Corporation. It may be any registered company or Insurance Company, etc.) In this Explanation it is provided that if a person wants to file a suit, against a Corporation then for the purposes of jurisdiction the Corporation shall be deemed to reside at the place where it has its principal office. It is quite all right but a Corporation may not have only one office but many offices; one principal Office and other subordinate ones. Supposing with this amendment a person in one corner of the country has to file a suit against a Corporation which has its principal office at the other end, but a subordinate office at a nearer place, it would be very hard on him. Therefore, the recommendation of the Law Commission was for an amendment to the effect "that a Corporation shall deemed also to reside at all places where it has its subordinate offices." That is quite just because a person wanting to file a suit would ordinarily have less means. One can easily understand if the suit is to be filed in any place where the Corporation has its subordinate office because then there will be no hardship to either party. That should be added which has not been added here. The next explanation 2 is still more important. In such cases, one can easily see that the creditor will be the stron-

ger party and the debtor will generally be the weaker party. Even as the present law stands, a creditor can file a suit at any place where the cause of action arises. What is sought to be added by this explanation is that the cause of action shall be deemed to arise at the place of the creditor if there is nothing else in the contract. All these contracts are one-sided generally. Now, the debtor will have to run to the place of the creditor. So, this explanation 2 would be undesirable altogether.

Section 100. It seeks to replace the porvision relating to second appeals. At present, as the law stands, second appeal can be filed only on a question of law. But what is a question of law is left to the court to decide, according to the circumstances, and which court is meant for that? One can safely rely on the High Court to decide what is fair in the circumstances of the case. Now, what is sought to be done is that several other restrictions are being put. One restriction is that the High Court must certify that there is a substantial point of law. Certifying means duplication of procedure. Then what is a substantial question of law will be a debatable point. Then again it is sought that an appeal may be confined to a few points at the time of admission. All these restrictions will lead to injustice. The High Courts know what their jurisdiction is. As I said, if they find in exceptional cases that there is serious injustice which requires a law to be liberally interpreted, they do it. Can anything be said against it? Therefore, Section 100 as it is, should remain.

Section 96. If there is a case of a nature which is triable (though not tried) by the court of Small Causes, then there will be no appeal on facts. The appeal will be only on a question of law and no second appeal. I think this is unjustifiable. I am sorry to say that experience shows that standards are falling at the lower level of the judiciary. It is a fact acknowledged on all parts. It is the experience of the High Court judges. Therefore, a case triable by a court of Small Causes cannot be tried summarily by a junior judge. When a case is actually tried by a Court of Small Causes, there is a guarantee that its judgement will generally not be wrong, because of the ability of a particular judge due to his long experience and all that. But that guarantee is absent at least in the present condiions in the case of the lower judiciary. If this restriction of upto Rs. 3000 is put, then several cases of injustice may be there.

Section 115. Now, it is said that it is not necessary and should be deleted, because Art. 227 of the Constitution will serve its purpose. That is not quite correct. There may be over lapping but the provisions of these two are not identical. Take for instance clause c of Section 115. The matter will not fall under 227 and it is only the High Court which can exercise this jurisdiction and do justice where it is necessary. When we are bringing in hundreds of amendment, if this small section remains, no harm will be done. On the contrary there will be a guarantee that in proper cases, power will be exercised and justice will be done.

MR. CHAIRMAN: Now, I request the Secretary of the Law Department to make his comments on the observations of the hon. witness.

SHRI S. K. MAITRA: Regarding preliminary decrees and final decrees, the learned witness has said that these amendments which have been made are necessary. While considering this point, the Law Commission as confined itself only to mortgage decrees. If it is omitted for mortgage decrees, then it has to be omitted for all decrees. On this point, there is ruling of the Privy Council. Preliminary decree is the "decree", but final decree is really what is called the orders on further consideration.

If you describe them as decrees or as orders, it comes to the same thing. Then, the question of appeal has to be considered. It was considered by the Law Commission and the Law Commission said that if it is a decree,

it becomes automatically appealable, but, if it is an order, it will be appealable, only if it relates to execution, discharge or satisfaction of the decree; otherwise, that won't fall within section 47 and it will not come within the definition of decree. That distinction was drawn by the Law Commission. In pursuance of that recommendation of the Law Commission, these amendments have been made. Now, it will be for the consideration of the Committee whether these amendments should be confined only to mortgage decrees or they should be extended to other decrees, such as administration suits, partition suits, account suits to. In that case, exhaustive amendments will have to be made. The other alternative would be to omit these amendments so that the existing position remains. This will be for the consideration of the Committee. But, so far as the point raised by the hon. witness is concerned that it does not go far enough, that it goes only half-way, it is correct because the Law Commission did not consider this aspect. This Bill is based on the recommendations of the Law Commission; this point will require consideration.

MR. CHAIRMAN: Hon. Members may seek clarifications from the witness, if they so desire.

SHRI RAJDEO SINGH: We agree that these amendments should give some relief to poor litigants. The poor litigants mostly cannot go beyond the level of lower courts and financially it is beyond their means to go to High Courts and Supreme Court. So, to make things better for him, will it not be advisable to have some compromise, during the proceedings in the lower Court? If there should be compromise, then, at what stage? Secondly, in the beginning of your evidence, you said that generally amendments are not implemented. Here, to some extent, we agree with you. But, by only saying this much that amendments are not implemented, the purpose will not be served. Therefore, I would like to know from your noble self, what remedy you suggest what process you suggest so that these amendments are implemented most earnestly.

SHRI B. D. BAL: As for your first question, poor litigants may not be able to go to the High Courts. Compromise, if possible, should be tried. It should be tried at the very early stage. But, it is for the parties to agree. The Court may make an attempt, but, it cannot compel a compromise. So, it is for the lawyers to see the merits of the case. If a lawyer finds that there is not much merit in his case or defence, he should frankly tell his client. In that case, compromise will be possible. I do not suppose that it would be proper for the lawyers to advise that we should go on fighting. That should never be done. The lawyer will be in a much better position to see where justice lies or where according to law, relief would or would not be available. If he properly advises, compromise would be possible. Compromise can be tried at every stage. But if effected in the trial Court, it would save cost and time. Further amendments or any change in law, would not help that. I suppose that is all I could say on this. As for the next question, I did not say, about implementation of amendments. I was saying, implementation of the procedure as it is. If this is done, these amendments would be unnecessary. The present Civil Procedure Code has been with us for more than 60 years and the earlier Civil Procedure Codes, which were on a similar scheme, for a number of years. Therefore, there is nothing fundamentally wrong with the procedure. Implementation again depends upon the lawyers and the judges. It is only stricter supervision from the High Courts which can do the job to a certain extent. The Law Commission has said in one of the last Chapters, I suppose, that there should be training for the judges. It should not be that any one who is appointed immediately starts deciding cases.

They should be trained properly. As I said, the falling standards have become scandalous and the standards have fallen so low that the procedure is not even correctly appreciated. Therefore, previous training will improve the position. This is what I would like to say.

SHRI RAJDEO SINGH: You say that there should be some training.

SHRI B. D. BAL: Not some training, but proper training.

SHRI RAJDEO SINGH: You are for training. If, instead of training, we have a refresher course yearly for the lawyers as well as the judges, what is your opinion about it?

SHRI B. D. BAL: For lawyers, the question how it should be enforced will be difficult. This is one thing. So far as procedure is concerned, it has been neglected so long. In old days, when we went through the course, procedure was taught in college. Thereafter, it was taken out. I am told, it has again been introduced. But, it is not seriously considered as a subject for examination. This should be done. Training can only be in the college. In the college, we can have moot courts. This is possible. For judges, it is not necessary to have a refresher course as such. If it is there, it is all right. A good course, intensive course, in the beginning should be enough. In Nagpur, they have started a college or an academy, whatever you call it. This sort of thing can be done.

SHRI SAWAISINGH SISODIA: While giving your views on Section 100, which is sought to be substituted by Clause 39, you have said that the difficulty is in formulating the law. I would like to know whether you want that this section should be re-considered or there should be some easy procedure for this. In your opinion, the provisions of section 100 are sufficient to limit the scope of second appeal.

SHRI B. D. BAL: I feel that the present Section 100 is sufficiently restrictive. No amendment is really necessary. If the procedure is stricter and it is not flexible, Courts will not be in a position to do justice in different sets of circumstances. No law, howsover well made, can provide for all possible contingencies. Contingencies arise, which are not provided for. If the law is very strict and rigid, rigid would be the word, no discretion is left. One has only to apply the law and if a case comes which requires a little different consideration, nothing can be done. Injustice must be perpetuated. Instead, I think, one can rely on the High Courts to see justice on either side and apply Section 100 properly. That is what is done generally. It is only rarely that Section 100 is interpreted liberally, so as to apply it to a case about which it is felt that if it was not brought within the jurisdiction given by Section 100, injustice would be done. It is, therefore, only for that purpose that High Courts go outside it; but that is done only in the interests of justice and in exceptional cases. That liberty should be there. We always find that if a case comes to the Supreme Court where the High Court has gone outside Section 100, the Supreme Court sees to it that justice is done. I think that should be the real attitude.

SHRI SAWAISINGH SISODIA: You have just said that there are some persons who come before the Supreme Court to point out that the High Court has not acted properly in considering the second appeal. How many such cases come before the Supreme Court in a year?

SHRI B. D. BAL: Very large number of cases are brought. We have to see how many are justified. The total number is useless. Only in a very few cases can one find that the High Court has actually gone beyond Section 100.

SHRI SAWAISINGH SISODIA: In how many cases has the Supreme Court admitted such petitions?

SHRI B. D. BAL: Very rarely. The reported cases are only two, so far as I know, on this point. There may be a few more which I do not know about; but it is a very small number. It is difficult to say anything off-hand. If I remember correctly, it was in 1964 that the Supreme Court has said that even if the District Court's judgement was perverse, the High Court cannot interfere, unless it fell within the ambit of Section 100.

SHRI SATYENDRA NARAYAN SINHA: You say that the Supreme Court has said that even if the judgement of the District Court is perverse, the High Court would not interfere, if it does not involve any question of law.

SHRI B. D. BAL: Yes.

SHRI SATYENDRA NARAYAN SINHA: From that point of view, the present amendment goes further to make it specific and clear—and not to leave any misunderstanding in the mind of the litigant—public or the practising lawyer that there is a scope for preferring a second appeal and burden the High Court with a number of appeals on a mixed question of law and fact; or create the impression sometimes that the trial court has failed to place the facts before itself. We then try to make out a seemingly legal point for the purpose of preferring second appeals before the court; this results ultimately in burdening the High Courts and in a lot of backlog. The purpose of this amendment is also to cut it down.

SHRI B. D. BAL: The cases where the Supreme Court has made the observations I had referred to, are those where there was no injustice. That is the one thing which is important. Wherever justice has been done, the Supreme Court has never interfered even though the High Court may have gone a little outside Section 100. These were cases where there was no justice done.

SHRI SATYENDRA NARAYAN SINHA: How will you decide that justice has not been done?

SHRI B. D. BAL: It should be left to the judges to decide.

SHRI SATYENDRA NARAYAN SINHA: Would it not leave the door open for re-opening the cases? Miscarriage of justice or non-proper-utilization of facts has been dealt with by the High Courts.

SHRI B. D. BAL: The High Courts have gone outside Section 100 in some cases; but those are cases, barring exceptions perhaps, where one can clearly see that unless they interfere in this manner, injustice will be perpetuated. That is what they have said. The High Court could not interfere, barring some exceptions; and exceptions will be there every time. The High Court does not interfere with facts, except where there is injustice. I have not known of such a case.

SHRI SATYENDRA NARAYAN SINHA: I have not been able to understand the point made out by you with regard to Section 24A, because the object of this amendment is to bring about finality of judgement and to make the doctrine of *res judicata* more effective. By introducing Section 24A, what would happen is that a court of competent jurisdiction will alone try the case and will not leave it to the losing party.

SHRI B. D. BAL: Section 15 of the CPC says that every suit shall be filed in the lowest court competent to try it. Therefore, the litigant must first file it there. The question will arise thereafter whether an issue which that court can try, should still be sent to a higher court because there may not be a dispute on the same point later. That is the point of *res judicata;* but as I said, here, we are having a suit which will be prolonged because of this procedure; and the question which is decided may never have to be adjudicated again because no further suit may be filed. That

is a speculative suit. Ultimately, whether such a suit is filed or not, is a matter for speculation. The party may not have to file a suit for the whole property at all.

SHRI SATYENDRA NARAYAN SINHA: Do you want this Section 24A to go?

SHRI B. D. BAL: That is what I mean.

SHRI MOHAMMAD TAHIR: I also gather from the report of the Law Commission that they want to economize the expenses on litigation, because the poor litigants are in a very bad condition. There is the question of final decree and the preliminary decree. After hearing all the evidences, the judge passes an order—preliminary and final. Is it not possible for the judge, after going through all the evidences in one sitting, to pass one order to cover the final as well as the preliminary decrees? As a lawyer, I may like that there should be two orders so that I may have engagements in both. But so far as litigants are concerned, there will be heavy expenses.

SHRI B. D. BAL: The position is this. A preliminary decree, as understood at present, declares the rights of the parties. Suppose it is a partnership suit. It decides first whether there is a partnership, whether it is dissolved or has to be dissolved by the court, what are the shares of the partners etc. This is the basic thing which has to be decided first. And when this is decided, the further question of taking accounts and finding out what is due from one party to the other will arise afterwards. We might say this, that if a preliminary decree is not desired, do not pass it at all. But let the findings be recorded and accounts taken. It will be the same thing. But I do not think there is any difficulty about the appeal because the scope of the appeal against the preliminary decree and final decree is entirely different. What is decided in the preliminary decree, the appeal will either confirm or the decree will be set aside. If it is set aside, there is no question of final decree at all because the whole suit will be dismissed. But if it is confirmed, then what remains is only the accounting. The question settled by the preliminary decree cannot be reagitated. Therefore, there is no difficulty. The scope is entirely different. If only one decree is desired instead of drawing up the decree, the judge might record his findings, because he must know first of all what he has to hold, whether the partnership is there, whether it is dissolved or he has to dissolve it by his own order, and what are the shares of the partners. All this must be recorded at least as a basis for the further accounting. Otherwise, it will not be possible to be done.

SHRI MOHAMMAD TAHIR: This should be recorded on the first day and final decree passed.

SHRI B. D. BAL: That can be done, if that is desired. All questions can be agitated in the final decree in that case.

MR. CHAIRMAN: Is it your evidence that the provision of preliminary decree, if retained, might also eliminate unnecessary or prolonged litigation for final decree. If the appeal against the preliminary decree is allowed...

SHRI B. D. BAL: If it is allowed, the cumbersome procedure of going into the accounts will not arise. On appeal from the preliminary decree, further proceedings are stayed till the decision. Therefore, nothing further is done.

SHRI NOORUL HUDA: You represent the Supreme Court Bar Association.

SHRI B. D. BAL: They have deputed me.

SHRI NOORUL HUDA: I wanted to know whether you had time to prepare a memorandum because we have

not received any memorandum from your Association. Considering the importance of all these amendments, would you not think what your Association should have time to submit a memorandum. Whether these amendments are finally accepted or not will depend on our deliberations.

SHRI B. D. BAL: I think it should have. The first thing I enquired when the matter was referred to me was that. But what has been done, I cannot undo. If any memorandum is hereafter desired, I will convey it to them.

MR. CHAIRMAN: I have already made a note of that. At the end of the evidence, I would make a concrete suggestion to the learned witness and seek his co-operation. You may leave it to me.

SHRI NOORUL HUDA: Witness has already said that many of these amendments are not at all necessary. The objects of the Bill are clear, to afford fair trials, cut down delays, help poor litigants etc., in so far as it is possible under present circumstances. These are very laudable objectives. At the same time, under present circumstances, the learned witness will also agree that these are very difficult to achieve. In any case, we must try. Since you are representing the Bar Association of the highest court in the land, I would urge your Association to send us a memorandum. We have circulated a questionnaire and this should also be replied to so that we may consider these and come to proper decisions.

MR. CHAIRMAN: I have got several suggestions to make in that connection at the end.

SHRI DWIJENDRALAL SEN GUPTA: In the course of your evidence you observed that the quality of the judges at the lower level is not as it should be. I fully agree, but according to you has the quality of the judges in the High Courts and Supreme Court also deteriorated to the same extent now-a-days?

SHRI B. D. BAL: I do not think I should give any opinion on that.

SHRI DWIJENDRALAL SEN GUPTA: You have already given your opinion about Judges at the lower level. It is from that level that Judges come up to the High Courts and the Supreme Court. If you feel embarrassed in answering it, I will not pursue it. But this question comes. Take sec. 100 of the CPC. You have said that the amendment is not necessary. You have gone so far as to say that things should be left to the sense of justice of the judges of the High Courts and the Supreme Court. For the purpose of sec. 100, it is High Court Judges who are in the picture. Unless we inquire about their quality, how can we leave the section to be interpreted? According to your own evidence, the Supreme Court has said that it will not interfere even if the judgment is perverse provided there has been no denial of justice. Comes the question, what should be the test of applying the law. Is it to apply the law or there should be a different yardstick to see whether the law is observed or not, the standard of justice has been maintained or not. Put it the other way round. If there is no law to hold, but justice is being denied, can the High Court/Supreme Court say 'In the interest of justice, though I am not permitted by law, I am going to do it?' You are a well known lawyer. There is a perverse finding. The Supreme Court says: 'The finding is perverse. The High Court did not interfere under s 100. So we also do not interfere because no justice has been denied.' The law enjoins upon the High Court to interfere. But the High Court did not interfere. The matter came to the Supreme Court. The Supreme Court also did not interfere. Was it not a butchery of law? If you say, justice is more im-

portant than the law, can you put it the other way round and say, the law does not permit but the justice demands it and therefore, the Judges should have absolute powers irrespective of the law?

SHRI B. D. BAL: As regards the first part, I can only say about judiciary at the lower level because I have had to deal with their judgements in some cases. About High Court judges and Supreme Court judges, it will not be proper for me to say anything about them or judge them. As regards the other question, I should make one thing clear. When the Supreme Court says "We do not want to interfere", that is at the admission stage where no judgments are delivered. I can tell you from my personal experience that this is what they say. When the appeal is admitted, then only the question of writing something comes in. Otherwise, at the stage of admission or, as we call, granting special leave under article 136 of the Constitution, nothing is written except "dismissed"—one-word order. Therefore, all this will not be found although some observations will be found in decided cases.

As regards the other point, if I have understood right, whether justice can be done by the courts even if the law is against, the first thing is that when a party comes to the court, there must be a cause of action and a cause of action pre-supposes some legal right of his which is encroached or broken. Otherwise, at the very earliest stage, Order VII, rule 11 says that if the plaint does not show a cause of action, there is nothing further to be done; it is to be rejected straightway. Therefore, the law must be there. But how to interpret the law is the question. Should it be interpreted so as to be in consonance with justice or can it be allowed to be interpreted rigidly in spite of whatever may happen to justice?

What the courts have done is to interpret it as far as possible not by actually going against the law directly but interpreting it, if it is possible, in consonance with justice.

SHRI DWIJENDRALAL SEN GUPTA: I am also a member of the Supreme Court Bar Association. I have not any intention to put questions at cross purposes. I want to get facts. I know what happens at the admission stage. That was not my point. You yourself said, there are two decisions of the Supreme Court, one of 1964, and when a question on perverse finding was put, still the Supreme Court did not interfere because substance of justice was done. You referred to two reported cases. In one such case, you said that the Supreme Court held that though the finding was perverse, still they did not like to interfere as there had been no denial of justice.

What is the yardstick? Will you allow the Judges to be subjective or objective in the administration of justice? If it is a perverse finding, obviously, the whole judgment should go. I am not asking about what the Judges say in the open court at the admission stage. I know, sometimes, They are very arbitrary; they are impatient; they do not like to hear. They do not even say that they are rejecting it. They form a certain opinion. Unless the lawyers are very persuasive, they will not be prepared to hear. I have quoted the word "perverse" from the two reported cases where Section 100 has been interpreted.

I ask you: Will you allow the judges to be subjective or objective?

SHRI B. D. BAL: Neither fully subjective nor fully objective also. One has to interpret the law as it is but with the sense of justice. Therefore, it cannot be subjective wholly because "subjective" will mean that you ignore the law and do what you feel is just. That cannot be done. It

should be interpreting the law, as far as possible, in consonance with the justice of the case. That is, I think, what the courts mostly do. There may be exceptions. About Section 100, even from the Privy Council, there are decisions saying, "We cannot interfere on facts howsoever wrong or howsoever perverse the decision may be." They do not interfere in every case. They interfere only where there is injustice. Not otherwise.

SHRI DWIJENDRALAL SEN GUPTA: So far as Section 100 and Section 96 are concerned, much depends on the mental attitude of the judge. A person may feel, "He is a ereditor; he has lost money." Another person may feel, "Here is a debtor; he is a poor man." He may have sympathy for the poor man. As regards Section 100 and Section 96 are concerned, the law as it is now is very much subjective. They are capable of being misused if they are applied by improper Judges.

SHRI B. D. BAL: Not only Section 100 or Section 96, any provision of law can be misapplied if the Judge is not a proper Judge.

SHRI DWIJENDRALAL SEN GUPTA: More so in respect of Section 100 and Section 96.

SHRI B. D. BAL: I cannot say. There can be several provisions like that. So long as the law has to be administered by a human agency, the subjective element must come in. It cannot be avoided. That is no fault. It is incidental to the System itself. If the law is made very rigid, it might lead to injustice. That is what I say. It should be left in such a condition that it can be interpreted by a competent and honest judge so as to do justice.

SHRI DWIJENDRALAL SEN GUPTA: The purpose of the amendment not only to these Sections but to all the Sections put together is to have justice ensured and, at the same time, to eliminate delay and to reduce the cost. You have got a long experience. From your experience, do you think that no perfection is possible, no improvement is possible? Obviously, there is a scope for improvement. Have you any suggestions to make in this reagrd?

SHRI B. D. BAL: Perfection and improvement are entirely different things. As regards perfection, I can say that we can never achieve perfection. There will always be some lacunae left. But so far as improvement is concerned, yes, we can make improvement.

So far as the present Bill is concerned, I find, it does not have the object of reducing the cost. At least, it is not mentioned in the Objects and Reasons.

For example, the most important item of expenses is, the court fees. It is for the States to provide for that. Therefore, to reduce the cost is not the objective here. As regards the improvements to be suggested, we can do that. I have in mind one suggestion that if a second appeal is to be dismissed, the reasons should be given. If it is admitted, they need not be given because they will come at the final hearing.

There are so many things that all of them cannot be said here. Therefore, I chose only an instance of each one of the aspects of the Bill. It will be better, while dismissing a second appeal, if reasons are given so that it will not be a casual decision. It will be a considered decision and the appellate court, if it is to come to the Supreme Court, for example, the Supreme Court can see what is the approach of the court and what are the reasons given. For admitting an appeal, it is not necessary to give reasons because they will come at the final stage.

SHRI DWIJENDRALAL SEN GUPTA: When you say, perfection and

improvement are different things, we all know that. But improvement is towards perfecton. Perfection is the goal. By making improvements, we should try to reach perfection. Can you suggest any improvements?

MR. CHAIRMAN: We will come to that at the end of the evidence.

SHRI DWIJENDRALAL SEN GUPTA: Coming to Section 115, you will agree with me that there are more cases under Section 115 than the number of suits. What would you suggest to avoid that? How many revision applications should be allowed to be filed?

SHRI B. D. BAL: Neither the courts nor the State has any control over it, as how many should be filed.

SHRI DWIJENDRALAL SEN GUPTA: Under Section 115, there are more revision petitions than the number of suits. Revision petitions arise out of suits. This is what we want to eliminate. Have you got any suggestion for that?

SHRI B. D. BAL: I think, it was a slip to say, review petitions. It is, revision applications. How many revisions are there, one cannot say. But there are quite a lot. There is no doubt about it. But most of them are dismissed at the admission stage because they do not fall even distantly within Section 115. If a case has some point of jurisdiction which can fall under Section 115, then only it is admitted. In cases where there is an appeal, there is no question of revision. Thereforee, applications under Section 115 come in only from interim matters and, sometimes, from final decisions where there is no appeal. Quite a lot of them are there. But very few are admitted and very few succeed.

SHRI MOHAMMAD TAHIR: Suppose there is a litigant against whom an invalid decree has been passed. Now, he is asked to deposit a certain amount failing which the case is dismissed. If that person is not in a position to deposit the amount, what is the remedy left to him?

SHRI B. D. BAL: That is why I suggested that this amendment should not be there at all. A decree-holder may execute his decree but the other man's appeal should be heard.

SHRI MOHAMMAD TAHIR: Even if he is not able to deposit the amount, the appeal should be heard.

SHRI B. D. BAL: Yes.

SHRI V. K. SAKHALECHA: You have said about Section 100. You have not said about Section 115 regarding revision applications,

SHRI B. D. BAL: Section 115 should not be dropped.

SHRI V. K. SAKHALECHA: By eliminating Section 115 and Section 100, perhaps it will lead to a position that lower courts will have a feeling that there is no remedy against their decisions.

SHRI B. D. BAL: That will be a suggestion which I would like to make Because of the falling standards of judiciary and even otherwise, if the lower judiciary knows that they are secure, that their judgments will not be touched, human nature being what it is, there will be a tendency to pass arbitrary judgments. Therefore, both these provisions should remain.

One more provision that I was going to suggest was that if Section 100 is amended, as it is proposed to be amended, the High Court has to certify that there is a substantial point of law. It is easier to dismiss appeals than to give reasons for this. Human nature being what is is, more appeals will be dismissed even if they have merit in them. Therefore, the law should not be made rigid; it should be kept flexible.

SHRI M. P. SHUKLA: Don't you think that amendment to Section 100 involves duplication of proceedings?

It will not avoid delay; rather, it will cause delay. Once an appeal is filed to decide whether a point of law is there, second time, the Judges will have to hear the case. Instead of avoiding delay, it will delay the proceedings further.

SHRI B. D. BAL: Yes; that is what I am exactly saying. Formulating a point of law mean spending time again.

SHRI S. K. MAITRA: About Section 20, Exaplanation 2, you said, if the Corporation has a branch office, even then the litigant will have to go only to the head office. Explanation 2 is to sub-cluase (a) and (b). But sub-clause (c) is also there. If the cause of action arises in the branch office, will it not be covered by sub-clause (c) of Section 20?

SHRI B. D. BAL: The difficulty will be: Where has the cause of action arisen? It may be that the dealing is with the head office. A person who files a suit may be at a distant place. It will be a hardship to him to go there and file a suit. But the Corporations having their subordinate offices will be in a position to contest the suits where they have the subordinate offices.

SHRI S. K. MAITRA: My point is this. As you are aware, in a suit for contract case, causes of action arises where the contract was made, where the contract was to be performed or where the breach takes place. As far as the breach of contract is concerned, would it not be better for the plaintiff to file a suit where he resides?

SHRI B. D. BAL: What I said was that if the cause of action arises where the plaintiff resides, then no difficulty arises. The question is that though the cause of action does not arise, it may be that the contract may have some provision or it may be that the contract has taken place somewhere also and the performance is at that place. The breach will be where the performance of contract has to take place. In such cases, the cause of action does not arise where the plaintiff resides. This is the only case which we will have to consider.

SHRI S. K. MAITRA: About the Order 41, as per the provision in the Bill, there will be no decree unless the amount is deposited or security is furnished. The appeal will be dismissed if this is not deposited. Suppose we have a provision in the Bill that no stay of operation of the decree will be granted but an appeal will be heard. Will that be sufficient?

SHRI B. D. BAL: I think that is quite enough. I mentioned that just now. That is the present practice. And no amendment is necessary at all.

What the High courts or other courts do, is this. They ask the person concerned to deposit the whole amount—not even the security is taken. No stay is granted if he does not deposit the whole amount. The stay (on deposit) will be granted to the extent that no further harrasment will be made against him. But, this is the practice at present and nothing also is necessary.

SHRI MOHAMMAD TAHIR: The courts dismiss these cases.

SHRI B. D. BAL: That should not be done.

SHRI S. K. MAITRA: May I draw your kind attention to the recommendation of the Law Commission with regard to the recovery of the amount?

SHRI B. D. BAL: Though the Law Commission has recommended that, I do not agree with it.

SHRI S. K. MAITRA: As regards the second appeal, the procedure that has been followed is to ask the

appellate court to give the reasons or to formulate the points on which the appeal is admitted. There may be a tendency to dismiss the appeal *in limine*. So, if we provide that for both reasons will have to be given. Will that be sufficient?

SHRI B. D. BAL: That at least should be done. Individual discretion as it is should not be restricted. That is my feeling—the feeling of my association. I am speaking for the Association.

MR. CHAIRMAN: Now, I must straightway express on behalf of the Committee our sincere appreciation for the very lucid manner in which you have placed your views before our Committee. That reflects the amount of study that you have made on this Bill. You have applied your mind and your experience in the administration of this law—the Civil Procedure Code—in your evidence. Nevertheless, I fell that some more study and labour would perhaps help our Committee if we examine and consider your position before this Committee which you have made so objectively and so pointedly. I have formulated my suggestions on behalf of this Committee on the basis of the questions put to you by several hon. Members. Before I take them up I would like to make one point more clear on behalf of this Committee. So far as this Committee is concerned, our mind is quite open. As the Law Secretary explained, this Bill as placed before us is based mainly on the recommendations or the reports made by the eminent body like the Law Commission. The Government has applied its mind on this and has appropriately brought before us this Bill. It is for this Committee to examine the bill carefully and than come to some conclusions regarding the various clauses of the Bill. Here we seek your cooperation and your experience. I am very glad that a body like your Association has made it possible to come before us and give us their considered views. Even though you have not submitted a written memorandum—it would have been very helpful for the Members to study it if you had done it—none-the-less in your oral evidence you have placed your views so well. As I said you had explained your views in a lucid manner. Based on your evidence which is on record, we shall examine and come to our conclusions.

As I said in the beginning, if you will kindly formulate your views point by point with regard to the specific clauses, specific orders and rules thereunder where you would like the Committee to apply their mind, it would be helpful to us. I think this can be divided into two parts—first one dealing with the Bill as such and then your views. Our Committee's main task is to examine the Bill as it is based on the documents and various reports that also become relevant for our examination. Though the Law Commission has suggested like this, you may not agree with a particular recommendation of the Law Commission, the Government might not have accepted all the recommendations. Therefore, this Committee will be free to accept or not to accept or to accept them with certain modifications. In your evidence you have made certain suggestions. As I said our mind is open and your suggestions would enable us to examine the Bill more pointedly so as to come to definite conclusions. That is why I am dividing this into two parts—the first part is strictly relating to the Bill and the clauses therein, and on the other part, though it is not strictly within our jurisdiction, it would be perhaps helpful if you could suggest to the Committee your views—the views of your Association—regarding the other provisions of the Bill which might not have been dealt with in this Bill. There are certain sections, orders rules etc. You have said in the course of your evidence that there is still some scope for improvement. That is why I say that it would be relevant for this Committee

to recommend to Parliament that although certain provisions are not germane to the Bill, we feel that certain other provisions require reconsideration and re-examination. Perhaps, the Government might take action thedein. May I say that this Bill has got its history behind it? The previous Bill came up before the Joint Committee of Parliament, They submitted their report and recommended that various sections in the Bill required further examination.

Regarding the other provisions which did not come under the purview of the previous Bill they were referred by the Government to the Law Commission. Therefore, the latest report of the Law Commission is with us and this Bill is based on this report. The Bill, as has now been drafted, is before us. I am suggesting for your consideration that if you so desire or if your Association so desires that some of the provisions of this Bill would require improvement, you are free to suggest. The third point to which I would like to draw your attention is to the questionnaire that we have formulated. This was sent to all the Bar Associations. I am sending a copy of the same to you right now so that you may apply your mind on it. I would suggest that by the end of December at the latest you will kindly send your views on some of the questions that have been framed. What comments, do you think, you would like to make or you would like the Committee to consider? Therefore, those are the three categories of suggestions which I am making on behalf of the Committee.

SHRI B. D. BAL: What we are required to do is to give our views on the Bill as it is. Secondly, if we have suggestions regarding the Civil Procedure Code within the ambit of this Bill and thirdly replies to the questionnaire. I will convey this to the Association.

MR. CHAIRMAN: Mr. Bal, on behalf of myself and on behalf of the Committee we extend sincere thanks to you for the cooperation and straightforward replies we got from you. Please convey our thanks to the Association also. Thank you very much.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Saturday, the 2nd November, 1974 from 10.00 to 12.10 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri T. Balakrishniah
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Sardar Mohinder Singh Gill
8. Shri Dinesh Joarder
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri Debendra Nath Mahata
12. Shri Mohammad Tahir
13. Shri Noorul Huda
14. Shri K. Pradhani
15. Shri Rajdeo Singh
16. Shri M. Satyanarayan Rao
17. Shrimati Savitri Shyam
18. Shri Satyendra Narayan Sinha
19. Shri T. Sohan Lal

Rajya Sabha

20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalayanasundaram
23. Shri Nawal Kishore
24. Shri Syed Nizam-ud-din
25. Shri D. Y. Pawar
26. Shri V. C. Kesava Rao
27. Shri Virendra Kumar Sakhalecha
28. Shri Dwijendralal Sen Gupta
29. Shri M. P. Shukla
30. Shri Awadheshwar Prasad Sinha
31. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Section Officer.*

WITNESSES EXAMINED

Bar Council of Delhi, Delhi

Spokesman :

Shri Radhe Mohan Lai

(*The witness was called in and he took his seat.*)

MR. CHAIRMAN: Mr. Radhe Mohan Lal, before we begin, I would like to draw your attention to Direction 58 of the Directions by the Speaker that your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI RADHE MOHAN LAL: I have noted it. I have no objection to my evidence being treated as public.

MR. CHAIRMAN: Your Bar Council has not sent any written memorandum to us. Therefore, you are welcome to give your evidence on any clauses of the Bill, on whatever matters you like the Committee to consider.

SHRI RADHE MOHAN LAL: From the various provisions which have been proposed in the Bill, I find, mostly they are based on the various amendments which have been existing in the various States in the country. Under the original Civil Procedure Code there is a power under Section 122 of the C.P.C. given to the High Courts in the country to make amendments. A large number of amendments have been existing for the last many years in the various States. Most of these amendments have now been incorporated in the C.P.C. Bill which is before the Committee.

My submission is that one of the amendments which has been made in Punjab some 30 years ago which is in force in Delhi could also be incorporated in this Bill and that is that a residential house of the judgment-debtor is not liable to attachment. In Punjab, they have the Punjab Money-Lenders Act and the Punjab Relief of Indebtedness Act. Under those Acts, they have made a provision amending Section 60 of the C.P.C. It prescribes what property of a judgement-debtor is attachable and what prpoerty is not attachable and is exempted. In Punjab, in 1936, they made this rule by way of an amendment of Section 60 that a residential house of a judgment-debtor will not be attachable. That applies to Delhi also because all Punjab amendments apply to Delhi.

In the present Bill, there is a little reference to that. Under Section 60, it says that the tenancy rights of a judgment debtor in a residential house will not be attachable. My submission is that following the same pattern as we are having in Punjab and Delhi, it should apply to the whole country, that as far as a judgment-debtor is concerned for the sake of money decree, his residential house will not be allowed to be attached. I find that this has worked very well for the last more than 30 years in Punjab and Delhi. I suggest that it should apply to the whole country.

Here, in clause 24, p. 8, it says :

"(ka) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kb) the interest of a lessee of a resdential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;"

MR. CHAIRMAN: You will see that under the original Section 60 and also under this clause, certain exemptions have been made. Do we understand that your suggestion is that all judgment-debtors should be exempted in respect of residential houses?

SHRI RADHE MOHAN LAL: Yes. Secondly, I would submit, this clause is not, in fact, according to law. It says:

> "the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;"

My view, as a lawyer, is that the tenancy rights are not attachable at all. As long as there is no rent control, the tenant has no right. As long as rent control is there, the tenancy rights are not attachable. If I own a property but I have no right of transfer, it is no property of mine. Anything which can be attached must be owned by me. If it is not owned by me, how can it be attached? It says, "the interest of a lessee" but he has no interest barring the right of occupation or the right of continuity.

There are many such cases in many High Courts.

MR. CHAIRMAN: What is the provision that is obtaining today in the two Punjab Acts?

SHRI RADHE MOHAN LAL: Section 35 of the Punjab Relief of Indebtedness Act makes an amendment in Section 60 of the C.P.C. In Section 60, as applicable now to Punjab and Delhi, there is a sub-clause (ccc) which says:

> "One rented residential house and other buildings attached to it with the material and the sites thereof and the land immediately apparent thereto and necessary for their employment belonging to a judgment-debtor other than an agriculturist and occupied by him."

As far as an agriculturist is concerned, the main provision of the Civil Procedure Code includes that. The house of an agriculturist is not attachable. Now, the question arises, in regard to an urban man living in Punjab or Delhi. Whether that house is attachable or not. This amendment was made in 1936.

MR. CHAIRMAN: That means it covered all the residential houses of a judgment-debtor, be he an agriculturist or a labourer or even a millionnaire.

SHRI RADHE MOHAN LAL: I may bring to your notice one more thing. Lately we had a case in which there is a judgment of the Supreme Court. Where in a residential house there is a small portion being let out for a shop by the owner, the Supreme Court has laid down that after letting out a portion of a residential house for a business premises that house is not attachable.

MR. CHAIRMAN: You mean that rented portion is exempted from attachment.

SHRI RADHE MOHAN LAL: Suppose a house has five or ten rooms and a courtyard. If a small portion is let out for the purpose of making money, the Supreme Court, in their recent judgment, said that is not attachable. There are various cases of this type. There may be divergence of opinion obviously.

MR. CHAIRMAN: What is the date of the judgment of the Supreme Court?

SHRI RADHE MOHAN LAL: I am not able to tell you. Only two months back it was given. It was a judgement delivered in 1974. Under the law, the Supreme Court says that if in a residential house, a small portion is let out for business purposes—the house cannot be divided and partitioned—it is a residential house. There may be many houses in the towns where some portions might be let out for small shops. By letting out the

same for shop purposes if it is said that that is a residential house and that is not attachable. My submission is this. I shall refer you to the latest edition of Mr. Chitale, C.P.C., Volume I, page 829 wherein you will find the concerned section 60 under (ccc). Here that particular section is applied. As far as masses are concerned, they are residential houses. Why should the same law be applied not only in Punjab and Delhi but in other parts of the country as well?

This is precisely what is done on page 8 of the Bill which is not sound. That is my submission. And that is to be decided by you. I was a person dealing with such cases. The Supreme Court says that even in a controlling situation the interest is only to continue in a house. The tenant cannot be evicted as long as he does not contravene any of the provisions of the Rent Control Act.

MR. CHAIRMAN: Regarding the judgment of the Supreme Court, you will later on send us a copy of the same for the reference of this Secretariat so that we can consider that aspect.

SHRI RADHE MOHAN LAL: Oh, yes.

SHRI MOHAMMAD TAHIR: Suppose 'A' has a house having ten rooms. He lives in one or two rooms and lets out all the other rooms to the shopkeepers. Will that house be attachable?

SHRI RADHE MOHAN LAL: It will be attachable.

MR. CHAIRMAN: He is explaining it.

SHRI RADHE MOHAN LAL: Suppose if a house has got 10 rooms. The man is living in 9 rooms and lets out one room for a shop. The Supreme Court says it is a residential house. If out of 10 rooms, 9 rooms are let out to make money out of rents, then that is not a residential house. It is attachable.

SHRI DWIJENDRALAL SEN GUPTA: You say that the object of the Bill—Punjab legislation—was definitely to see that the poor man is not ousted from his residential building because of this reason. The Supreme Court does not obviously say that this will be applied or will not be applied. Take a case where a man has a multi-storeyed building. He indulges in the luxurious living by keeping the rooms vacant and using them in a princely manner. That building costs about Rs. 10 crores but the judgment-debtor has a debt of only Rs. 1 lakh. The judgment creditor incidentally is not as much cruel as he is. Will that case be covered by this judgment? Is that the intention of the law?

SHRI RADHE MOHAN LAL: My submission to this question is this. A man is having a multi-storeyed building for residential purpose. But, if he is keeping it vacant, that is not a residential house. The Government has another mode of seeing that this building is occupied by the people. The property can be requisitioned and can be given to a man. The man having so many rooms in a multi-storeyed building is not entitled to keep them vacant. Therefore, I submit that if a man has got only four or five rooms in a house or a reasonable accommodation therein, that should not be liable to be attached.

SHRI DWIJENDRALAL SEN GUPTA: May I put it this way? It will amount to this that he should not be divested of the legitimate portion of his house for the residential purpose?

SHRI RADHE MOHAN LAL: That is a good suggestion.

SHRI DWIJENDRALAL SEN GUPTA: That is subject to the condition that if the portion is necessary for his accommodation, then it should not be attached.

SHRI RADHE MOHAN LAL: I think that is a good suggestion.

Suppose a judgment-debtor has a palace. He cannot even maintain that. But, he is living in three rooms in a small corner of that palace. The whole palace should not be exempted. I entirely agree with you. I know such types of cases also.

MR. CHAIRMAN: Whatever may be the Supreme Court's judgment, what do you think to be a reasonable assumption from the judgment for the purpose of exemption of a residential accommodation from attachment? If he is an agriculturist, then should that judgment debtor be exempted from attachement of the residential house? Suppose that is a residential house and it happens to be a building or a palace comprising not only of residential portions but also apartments. So much so, is that your suggestion that a portion of that should actually be exempted from the attachement?

SHRI RADHE MOHAN LAL: My submission is this. If there is a big building having several units of residences, then he may be living in one or two units at the most. They should be exempted and not the rest of it. Under the present laws, they are also not exempted.

MR. CHAIRMAN: You also explained that if a particular owner of a residential house has got several rooms in it and if some portion is rented out, that may come within the purview of exclusion. If it is more, then that portion should not be exempted from attachment.

SHRI RADHE MOHAN LAL: That is right.

MR. CHAIRMAN: Therefore, your suggestion is that it should be clarified properly as to what should be the exemption. Your idea is that the legitimate portion of a building or a residential accommodation that is necessary for a citizen who happens to be a judgment-debtor, should be exempted from attachement. That should be clearly laid down is that the point?

SHRI RADHE MOHAN LAL: My submission was that if this matter were left to the courts, in that case, there is bound to be a lot of unnecessary litigation. So, a better course would be to define that portion which is actually occupied by him should be exempted from attachement. Suppose a man has a house having 10 units. He is living in one or two units. That is no attachable. It is not possible to live in all the 10 units of a house. If that house is kept vacant and only one unit of that house is occupied, then also he cannot have the house like a palace.

MR. CHAIRMAN: Having agreed to this, would you kindly help the Committee with your idea as to how to define that so that we can examine that and make use of your suggestion at the appropriate time?

SHRI RAJ DEO SINGH: Suppose there is a religious family having residential houses in Banaras, Mathura and other religious places. The family may be having a modest house in a village because they are religious. In other houses in places like Banaras, Mathura, Hardwar etc. they may spend some of their time. Can those houses be termed as residential houses?

SHRI RADHE MOHAN LAL: They cannot be exempted. My submission will be this. There are people living in places like Banaras etc. We have come cross all types of people as lawyers. There are persons having houses in Delhi, Simla, Mussoorie and Calcutta. That does not mean that all houses should be exempted.

SHRI RAJDEO SINGH: It should be qualified according to you.

SHRI RADHE MOHAN LAL: It should not be left to the whims of the Courts. But, the residential house should be qualified for this purpose.

SMT. T. LAKSHMIKANTHAMMA: Your idea is that poor people or poor agriculturists should not suffer because of this clause.

SHRI RADHE MOHAN LAL: My submission is either rich or poor, he is entitled to a reasonable type of accommodation to live in.

This particular suggestion which I made does not refer to agriculturist house because that is exempted under the Act.

These days people have big houses but they do not rent it out.

SHRI T. BALAKRISHNIAH: Do you like this Committee to amend the powers of the High Court which are not vested with the High Court under Section 122 of the CPC not to amend this CPC?

SHRI RADHE MOHAN LAL: As far as Section 151 CPC is concerned it is not essential for the courts. Many points arise which are not covered by any other section.

SHRI T. BALAKRISHNIAH: Do you think this kind of amendment sometimes is inconsistent from one another?

SHRI RADHE MOHAN LAL: Inconsistency will always remain. There are reported cases where you find in the same month on similar cases two different opinions have been taken.

SHRI T. BALAKRISHNIAH: Do you know the High Court and the courts below adhere to what we enact and do not go a step further? They should confine to the law.

SHRI RADHE MOHAN LAL: Every judge is a human being. Some judges are always pro-women. Any woman who says anything in the court is always right. That is a bent of mind. I do not think it could be fixed on the civil procedure code.

SHRI T. BALAKRISHNIAH: At present it depends on the earning capacity of the husband as to how much amount has to be fixed for the maintenance of the wife.

MR. CHAIRMAN: I think the learned witness has covered all the aspects and clarified the position. He has also agreed to send to us his considered views and concrete suggestions on this point.

SHRI RADHE MOHAN LAL: Another point I wish to bring to your notice is that we had a case of this type in the High Court. Supposing there is a judgment debtor in Delhi and there is a decree against him for 2 lakhs of rupees. His residential house cannot be attached as far as Delhi law is concerned. If there is a decree obtained by a decree holder in Bombay, we have to exceute decree according to Bombay Law. Procedure has to be of Delhi Law but the substantive law has to be of Bombay Law because it is Bombay decree.

SHRI T. BALAKRISHNIAH: If the judgement debtor has a residential house and no other property, what is your suggestion about the realisation of the amount?

SHRI RADHE MOHAN LAL: He must forget his money.

If the judgement debtor has several decree against his and he has only one residential house, he can quitely walk in the insolvency court. Insolvency court cannot attach the house. Anything which is attachable will go to the insolvency court receiver for distribution.

MR. CHAIRMAN: You have suggested that if C.P.C. is uniformally applicable to all States, those difficulties will be taken care of.

SHRI RADHE MOHAN LAL: C.P.C. is meant for the whole country and not for any particular State.

Powers have been given to the High Court to make amendments.

Order 37—it does not apply in Meerut.

'Suit on promissory note will not be decreed unless there is good ground for which permission has been given to the defendant.' There is no such law in Meerut or any part of U.P.

My suggestion is that it should not apply to smaller places. Originally it was applicable to Bombay, Calcutta, Madras. Then it was applicable in Lahore. It applied to Delhi also.

This has been amended on the basis of the amendments which were already existing in the Bombay area. Bombay High Court had amended Order 37 C.P.C. to apply not only to negotiable instruments but also to other types of cases—suit for the recovery of price of goods sold. If the goods had been sold, received by the purchaser, Order 37 will apply. I understand here Bombay pattern had been adopted.

As far as Section 42 is concerned, I submit some clarification should be made. Although it has a word already there,—but from my experience I am speaking,—it seldom arises, but clarification may be made. My suggestion is that the following may be added:

"That the execution will take place at the transferee court only according to the law prevalent there"

Supposing Delhi Decree holder goes to Madras, he can execute the decree only according to the Madras Law.

The original Section 42 has been lately interpreted by Delhi High Court—we will apply procedural law and not substantive law. Substantive law may be Bombay law. Then the difficulty arises on the question of exemption of attached property. As I submitted Delhi property is exempted from residential property, it is not exempted in Bombay.

In Mussoorie no property can be transferred without permission.

Some clarification should be made.

MR. CHAIRMAN: We will consider. Your suggestion has been noted. So far as other clauses of the Bill are concerned, we take it that you have no comments and you generally agree with them.

SHRI T. BALAKRISHNIAH: This present amendment Bill deals with two important aspects:

1. How to reduce the expenditure in litigation.

2. How we can expedite the disposal of civil matter.

What is your suggestion in regard to these?

MR. CHAIRMAN: Before you answer that question, I would like to tell you that our Committee has framed certain questions on the various clauses of the Bill. We sent it to you already and we are passing just another copy to you. We request you to consider all these questions and submit your views on any of the clauses before 31st December.

SHRI RADHE MOHAN LAL: We will do that within a week or two.

MR. CHAIRMAN: May I extend our sincere appreciation of the cooperation that you have given to this Committee? We would look forward to your concrete suggestions and replies to the questionnaire. I thank you once again.

SHRI RADHE MOHAN LAL: I am much obliged to you, Sir.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'C' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Monday, the 30th December, 1974 from 14.30 to 17.40 hours in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotaki— *Chairman*

MEMBERS

Lok Sabha

2. Shri Mohammad Tahir
3. Shri Noorul Huda
4. Shrimati Savitri Shyam
5. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

6. Shri Bir Chandra Deb Barman
7. Shri Krishnarao Narayan Dhulap
8. Shri Kanchi Kalyanasundaram
9. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Council.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

WITNESSES EXAMINED

I. *Government of West Bengal (Judicial Department)*

Spokesmen:

Shri P. K. Banerji—*Joint Secretary*

†II. *High Court Bar Association, Calcutta*

Spokesmen

1. Shri Hirendra Chunder Ghose—*Acting President*
3. Shri S. C. Mittra—*Member*
3. Shri Binode Bhusan Roy—*Advocate, High Court*

†III. Shri P. K. Sen Gupta—*Government Pleader, West Bengal Government, Calcutta.*

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†Appeared jointly.

I. Government of West Bengal (Judicial Department)

Spokesman

Shri P. K. Banerji—*Joint Secretary.*

(The witness was called in and he he took his seat)

MR. CHAIRMAN: Mr. Banerjee, before we take your evidence on the Bill I would like to invite your attention to the direction which governs the taking of evidence and that is, that the evidence that you tender before us will be treated as public and as such is liable to be published but in case you desire all or any part of your evidence to be treated as confidential it will be so done but even in that case your evidence should be made available to other Members of the Parliament.

Now, you have not submitted any written memorandum before us. Therefore, I would invite you to make your submissions on any clause of the Bill or any general principles that you would like the committee to consider.

SHRI BANERJI: On behalf of the State Government I beg to submit that we are in general agreement with the principles which promoted this amendment. But we beg to submit on three clauses of the Bills. Our first submission relates to clause 28 which seeks to do away with section 80 of the principal Act. The proposal is to omit this section altogether. We believe that it would be more beneficial to retain this section because litigation against a State involves expenditure of public money and the object of the notice under section 80 CPC is to afford the State an opportunity to settle the claim without litigation. In fact, it is our experience that very often government departments wake up only on receipt of this notice under section 80 of the current CPC. In our view public money may be unnecessarily wasted if no such opportunity is given to the State or its officials by this notice.

MR. CHAIRMAN: That is your only submission regarding clause 28.

SHRI BANERJI: Yes.

MR. CHAIRMAN: Will it be possible for you to submit to this Committee a statement regarding the action taken by the State Government on receipt of the notice under section 80 to justify the suggestion that you have made that retention of this section is necessary to avoid litigation so that on receipt of the notice under section 80 Government may settle the case actual institution of the suit. That is your suggestion.

SHRI BANERJI: Yes, we think that after the notice the department concerned may start working to assess the justifiability of the claim or otherwise.

MR. CHAIRMAN: That is the intention of this notice but the Committee would like to know as to whether this section has served the actual purpose that after receipt of the notice under section 80 Government and Government officials have in fact settled the liabilities, avoided the actual institution of the suit. That is my limited question.

SHRI BANERJI: In our experience we have found that in some cases suits proposed to be instituted are compromised on receipt of section 80 notices. That is our practical experience in courts.

MR. CHAIRMAN: The Law Commission's and also our information may not be the case with West Bengal but with other States that this obligation of notice being served within two months' time to government means delay of actual institution of the suit and no action is taken under this section. You have said that your experience is that this section is necessary but to make this claim appreciable to us could you substantiate it by some factual data pertaining to your State.

SHRI BANERJI: I am afraid I have no factual data before me.

MR. CHAIRMAN: Later on—within a month will it be possible for you to submit that?

SHRI BANERJI: We may try but we have to obtain the data from subordinate courts.

SHRI NOORUL HUDA: Mr. Banerji, the question is that the whole purpose behind these amendments is to minimise delays of litigation and according to my experience it has been found that even after service of notice under section 80 of CPC the government or the authorities concerned do not respond. It may be that in certain cases—in one case out of, say, 5 or 8 or 10 cases, governments may respond to the notice given and a compromise might be possible. But in most cases we have found that there is no response of the government. That is why my question would be to you as to whether you can generally say—you said just now that you have no factual data before you—that in large number of cases after receipt of these notices under section 80 CPC the governments or the authorities concerned do respond and compromises or settlements are made possible.

SHRI BANERJI: As I have already stated that there are no factual data before me and this has to be obtained from our subordinate courts. I do not know whether it will be permissible for me to introduce my own experience as a judicial officer. I have in my experience in courts found some beneficial effects of notice under section 80 CPC, particularly in railway claim cases.

MR. CHAIRMAN: Do we understand that even though it may not be possible for you—for the State Government—to furnish any statistical data, the Government still feels that this section should be retained.

MR. CHAIRMAN: In that case would you still suggest that this time limit of two months would suffice, though my honourable colleague has pointed out that the main purpose of the Bill is to reduce delay?

SHRI BANERJI: I would suggest that period may be somewhat reduced, but some time should be given to the Government before the actual suit is instituted.

I would next refer to clause 39 of the Amendment Bill, regarding section 100. This relates to second appeals. The proposed provision to which I am referring is, where the High Court certifies that a substantial question of law is involved in any case it shall, at the time of granting the certificate—(a) formulate the question and (b) state its reasons for so certifying the new provision is for grant of certificates before the second appeals are filed. In our humble view, this may lead to increased litigation. There will be another proceeding which was not there in the old Act. This will have to be fought out by the parties before the actual appeal is heard and decided. So, our suggestion is that this provision for certification may not be introduced.

MR. CHAIRMAN: Do we understand that you want the section to be retained as it is in the Code?

SHRI BANERJI: That is so, Sir. We want that the present section 100 of C.P. Code be left undisturbed.

MR. CHAIRMAN: West Bengal Government wants that the old provision should be retained and they are opposed to this new clause.

SHRI BANERJI: May I be permitted to give my reasons?

MR. CHAIRMAN: Yes.

SHRI BANERJI: We think that sub-section (4) of the proposed section 100 of the Amendment Act imposes much too heavy a burden and responsibility on the High Court. If the High Court is to state the reasons for certifying that a substantial question of law is involved it will have to write out a fulfledged judgment. It is not clear from the proposed section whether it will be necessary for the High Court to give reasons for the certificate. These are our objections to clause 39 of the Amendment Bill.

Lastly, we want to refer to Order XXXIII, which is clause 84 of the amendment Act. Clause 84 provides for insertion of rule 9A under rule 9, Order XXXIII. This provides—where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him. If the courts are free to assign pleaders to persons suing *forma pauperis* that would be a heavy burden on the State Exchequer. Of course justice ought to be free and fair as far as practicable. Even so, our Government thinks that it would be risky to allow all indigent persons to have pleader at State cost. We find that persons suing *forma pauperis* in our country (although they are exempted from payment of court fees), engage lawyers. If the courts freely assign pleaders to them there may be misuse of this facility and impose quite a heavy burden on the State Exchequer.

MR. CHAIRMAN: But what is the main principle If he cannot appoint a lawyer, will he go unrepresented by a lawyer?

SHRI BANERJI: I have already mentioned, Sir, that the basic principle must be that justice must be free. But in this country that has not yet been possible to the fullest extent. We have exemption of court fees already but not appointment of lawyers in every case.

MR. CHAIRMAN: If you concede exemption of court-fees, does it not also mean a loss to the Government? This is an indirect aid given to indigent persons by way of concession, etc. Similarly, if the party is indigent and cannot afford to be represented by a lawyer, as he is given exemption of court-fees, he also deserves the help of a lawyer. That is why this provision is sought to be made. Your complaint is only the inability of the State Government to pay for the pleader appointed—by court.

SHRI BANERJI: It is somewhat inconsistent, Sir I concede that an indigent litigant will be allowed exemption of court-fees, but will not be given a pleader of his choice free of cost.

MR. CHAIRMAN: You may kindly go through clause 2 where details are also given as to how pleaders would be selected and so on and the necessary amplifications are provided under sub-clause 2. Indigence must be proved to the satisfaction of the court. Only then this burden will fall on the State Government. The only point is, whether you agree in principle to this proposition that the party which is indigent and which in the opinion of the court is required to be provided with a lawyer should be given such assistance. You may go through sub-clause 2 and after that whether you would agree that this provision is necessary.

SHRI BANERJI: I have already made my submission in this respect. I have nothing to add.

SHRI NOORUL HUDA: You admit that the administration of justice should be made free as far as possible. But what we find in our country just now is that the poor litigants, specially in the countryside who have got no means, who own very small plots of land—one to two or three acres—when an attack is made to evict such indigent persons from their possessions, would you not agree that the State Government should come forward to assist them against those who have got better means and who can always go to court and engage very good and competent lawyers? Don't you not agree that in such cases poor should be protected by the State Government?

SHRI BANERJI: I am in full agreement with you in this respect. In our State. We have formulated a scheme of legal aid for indigent persons. We have formed legal-aid committees in every district. We have formed rules under which such persons are entitled to get relief by way of engagement of lawyers and other things. We have done some thing in this State in this regard.

SHRI NOORUL HUDA: I do not know what is your experience as far as West Bengal is concerned because I have got very little concern about this State; but as far as Assam is concerned, Mr. Chairman would, perhaps,. agree with me that there Government generally have not come forward to assist the poor litigants. So do you not think that these amendments should be made applicable all over the country?

SHRI BANERJI: In principle I have no objection to the provisions but in West Bengal it would be a duplication because we have already a scheme of legal aid for indigent persons.

SMT. SAVITRI SHYAM: Do you think that some sort of ceiling should be placed on the fees of the lawyers?

SHRI BANERJI: That is a matter perhaps, for the Bar Council and the High Courts to decide—not for us. It is beyond our competence.

MR. CHAIRMAN: Have you got any other suggestions to make?

SHRI BANERJI: No, Sir.

MR. CHAIRMAN: So, I myself and on behalf of the Committee thank you very much and through you to the State Government for cooperating with us.

[*The witness then withdrew*]

***II. High Court Bar Association, Calcutta**

Spokesmen:

1. Shri Hirendra Chunder Ghose, Acting President.
2. Shri Shyam Chunder Mitter.
3. Shri Binode Bhushan Roy.

*III. Shri P. K. Sen Gupta—*Government Pleader—Government of West Bengal.*

[*The witnesseswere called in and they took their seats*]

MR. CHAIRMAN: Before we enter into evidence may I draw your attention to one direction? The evidence that you will tender before this Committee will be treated as public and is liable to be published also. But if you so desire that all or any part of your evidence is to be treated as confidential we will do so but even then your evidence is liable to be made available to the Members of Parliament. I think you have no objection.

First of all, we will hear the evidence of High Court Bar Association and thereafter Mr. Sen Gupta. Government Pleader will give his evidence.

Now, Mr. Ghose, you are free to highlight on any of the clauses of points that you like this Committee to consider. I assure you that we will look into all the suggestions made in your written memorandum submitted to us and we will give our careful thought to it. In your oral evidence you are welcome to explain your suggestions.

SHRI GHOSE: On behalf of the Bar Association and myself we want to emphasise on 3 points at the outset. We have gone through the proposed amendments. Regarding the proposed Section 100 of the C.P. Code, Sec. 115, revisional powers of the High Court and thirdly about further appeal after second appeal, i.e. Letters Patent Appeals under clause 15 we think we are against the proposed amendments. In my statement as the Acting President of the Bar Association I have adopted the views expressed in the memorandum of the High Court Bar Association and I have added paragraphs 1, 2 and 3 regarding Sections 100, 115 of Civil Procedure Code and

*Appeared jointly.

the Letters Patent Appeal. Sec. 100 in my view and the view of the Bar Association, as it exists, is sufficient for the ends of justice. The proposal amendment, I submit, will neither expedite nor ensure justice. The first hearing, as you know, Sir, is under order 41 rule 67 of the C. P. Code. In that preliminary hearing it is decided whether any point of law or any error on a point of law is there in the judgments of the Courts below. A division Bench of the High Court consisting of 2 judges hear and decide at the outset whether the appeal should be admitted or not. If they dismiss straightway the appeal goes out but in cases where the Judges find point of law or any error on points of law they admit the appeal. But under the proposed amendment on the first hearing when the records of the lower courts have not come they will have to certify on the point of law involved and give reasons. Regarding this point you may refer to amendment as proposed, clause 39, of your amendment. I first read Section 100 of the existing C. P. Code to show how there will be injustice if the proposed amendment is effected, and the proposed amendment, I respectfully submit, is wholly unnecessary, and it will not introduce expediency but is liable to end in failure of justice. Section 100 is this:

> "Save where otherwise expressly provided in the body of this Code or by any other Law for the time being in force, an appeal shall lie to the High court from every decree passed in appeal by any court subordinate to a High Court, on any of the following grounds, namely:—
>
> (a) The decision being contrary to law or some usage having the force of law;
>
> (b) The decision having failed to determine some material issue of law or usage have the force of law;
>
> (c) A substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits."

If upon the merits of the case on the ground of any error of law in the judgment the appeal is admitted than it goes to final hearing. Both sides are heard in final hearing. In the preliminary hearing full-fledged judgment case not expected from the Judges, in under Order 41, Rule 11, C.P. Code. Sir, I am not hearing the entire section proposed. But subsection 4 of the proposed amendment is very important. It reads thus, "Where the High Court certifies that a substantial question of law is involved in any case, it shall, at the time of granting the certificate,—

> (a) formulate that question; and
> (b) state its reasons for so certifying."

Sir, if this section is passed then Judges will have to work both as Judges and lawyers for formulating and for stating the reasons for so certifying the cases. This will again be lost because this will have to be argued once again in the presence of other side at the time of final hearing. This is duplication of labour far from expediting the hearing which is very much sought for in the proposed amendment. This proposed amendment of Section 100 will not achieve its purpose. This is our experience and I think the lawyer friends in this Committee will also agree with me, that in hearing under order 41, Rule 11 C.P.C. cases of hearing are disposed summarily because 30/40 cases are heard per day and the lawyer appearing at the first hearing will have to state what is the error of the law, what is wrong in the Judgment pointing out relevant paragraph and how it has been transgressed by the lower court. The only judgment that is given in these cases is either 'admitted' or 'dismissed'. But granting certificate formulating the substantial question of law stating reasons for so certifying implies a fullfledged judgment by the High Court on hearing only one side. That will take time and instead of 30/40 cases only 3 cases per day at the maximum will

be disposed of. This will not achieve expedition and on the other hand it will deny the appellants, in some cases, the chance of their cases being heard by the High Court in second appeal by summary dismissal. So, I submit that this section should go and it will not achieve expedition. Disposal of cases will be delayed and there will be duplication of work in the final hearing. The present practice of summary admission or summary dismissal is enough.

MR. CHAIRMAN: May I draw your attention to sub-section (1) of this proposed section 100. It relates only to substantial question of law. But in the original section it was only the question of law but in addition to it there was the question of usage. So, in the proposed section the appeal shall lie if it is a substantial question of law.

SHRI GHOSE: Certainly, question of law means substantial question of law. There is nothing like unsubstantial question of law. In the original section the question of usage is also there. But that will make no difference. The question of law, I repeat, is substantial question of law and any unsubstantial or unread or fascinating or imaginary law is no point of law. So far as the question of usage and custom is concerned my submission is that usages certainly form a part of law. There are instances of it in Hindu Law, in Mohammadan Law and in other laws.

SHRI NOORUL HUDA: You have stated just now that Section 100 of the Civil Procedure Code as it exists now it sufficient to take care of every eventuality and you do not think that this can in now way be improved upon. Shall we take it that way?

SHRI GHOSE: I just said that that the proposed amendment is not in the interest of justice and will not achieve expedition.

SHRI NOORUL HUDA: Shall we take it that it is your view that High Court is sufficient to take care of all the eventualities and that this section cannot be improved upon in any way?

SHRI GHOSE: We are concerned with the proposed amendment, and our views are confined to the amendments proposed. We have stated that we are not in favour of the proposed amendment. Comparing the proposed amendment with the existing law whether there can be any further improvement or not is perhaps beyond the scope of reference made to us.

MR. CHAIRMAN: Kindly refer to page 106 of the Bill *i.e.* notes on Clause 39. You will find that Clauses (a), (b) and (c) of section 100 are very wide in effect and clauses (b) and (c) have led to plethora of conflicting judgments. In dealing with second appeals, the Courts have devised and successfully adopted, several concepts, such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the Court below. This has created confusion in the minds of the public as to the legitimate scope of the second appeal under section 100 and has burdened the High Courts with an unnecessarily large number of second appeals. Section 100, is, therefore, being amended to provide that the right of second appeal should be confined to cases where a question of law is involved and such question of law is a substantial one.

This is the objective with which Government have, on the basis of the recommendations of the Law Commission, proposed this amendment of Section 100. On this point do you have any comments to make?

SHRI GHOSE: There will be two High Court Judges in the first hearing. If they find that no point of law is involved then they will not admit the case. If there is any point of law they will admit the second appeal. So, we do not agree with the apprehensions as contemplated with regard this section.

SHRIMATI SAVITRI SHYAM: You are afraid of the discretion of the judges.

SHRI GHOSE: Not afraid of, but if the proposed amendment of the section is accepted then the provision will become rigid, hard and cumbrous. I have stated in our memorandum that the proposed insertion of the new section 100 will make it very rigid, and the exparte preliminary hearing for admission of Second Appeal will become cumbrous and dilatory in grating certificates formulating questions of law and stating reasons for so certifying, as required in the proposed new Section.

SHRI GHOSE: The judges themselves are to formulate the question of law and they have got to find out the reasons of certifying on full fledged judgment. But when they have not got the records from the lower courts how they can decide to hear any of the contesting parties? So, I think this proposed amendment is rigid, cumbrous and dilatory. There will be duplication of work because the same question of law will be scrutinised at the final hearing also. My submission is, this is unnecessary and we should not introduce any amendment which will lead to duplication of work.

MR. CHAIRMAN: Our Mr. Maitra Law Secretary, will ask you something.

SHRI S. K. MAITRA: This is based on the Law Commission's recommendations. The Law Commission came here and the Bar Association represented before the Law Commission. This is the considered view of the Law Commission that most of the second appeals which are admitted after hearing under Rule 11 of Order XLI are dismissed. Will you kindly give us the statistics as to what are the percentage of admission of appeal i.e. which are ultimately allowed by the High Court?

SHRI GHOSE: In the order for rule 11, it may be that some judges dismiss 75 per cent, some judges, 50 per cent and some judges dismiss 40 per cent of the cases. So, the rate of hearing is about 30 to 40 per cent of the cases. It varies from judge to judge. But even if half of the cases are admitted in a day only 25 per cent of them can be heard, i.e., 50 per cent in the first hearing.

SHRI S. K. MAITRA: (Joint Secretary, Ministry of Law): So, only 25 per cent of the second appeals are ultimately allowed, and 75 per cent of them go out. What is the difficulty in the Bench which makes the admission certifying all these as soon as the judge admits the second appeal?

SHRI GHOSE: The percentage of 25 may not be taken as rigid. In some cases it may be 30 per cent or 40 per cent or even 50 per cent. This is upto the judge who admits it. I have just given you a rough idea which I have gathered in course of my experience. But, for the second question as to why the judges cannot certify, my submission is, the judges are to get the records from the lower courts. They are to check the rules for both the sides which make the task of the judges cumbrous and sometimes impossible. Both sides are to be heard and naturally they reserve the judgement and the progress of the cases will be still lower. So, the question of giving certificate cannot come that way particularly the reasons therefor are, they have not got the records on the basis of which they have to give reasons for their full fledged judgment. It will take time. I think, the Law Commission is not contemplating of giving certificate in the form which this proposed amendment prescribes. Even if it contemplates our present view is we are against this.

SHRI S. K. MAITRA: Joint Secretary, (Ministry of Law); Supposing we omit this provision of giving reasons, then will the amendment be accepted by the Bar Association?

SHRI GHOSE: No Sir. Three reasons of these are, firstly the propo-

sed amendment removes the question of heritage, custom, etc. But the existing clause has got wider scope of it. Secondly, the judges are to give a certificate which implies to formulate of giving reasons. If the Bench or the judge has to give reasons they have to put their attention deep into the matter which naturally calls for intellectual observation of the law. This may not be done of the way when 30 to 40 cases are there to be heard. I think, in Patna High Court they do it more liberally. So, this certificate will lead to difficulty. Actually, hearing takes long time. The final hearing takes half a hour a day. So, for expeditious disposal of the cases it is not feasible.

SHRI S. K MAITRA: Do I understand that although after the admission of an appeal under rule 11, there will be difficulty in certifying that the appeal involves questions of Law and reason for so certifying?

SHRI GHOSE: Sir, simply to chalk out some arguable and presentable point of the law on the *ex-parte* hearing of the appellation, is one thing and to formulate the point of law himself is there. To give a certificate in that form is something different. If admission of appeal implies certificate then why not it is in the interest of justice when the appeal is being dismissed or rejected. In this process the purpose of expedition will not be achieved. I understand from the proposed Bill that the objects as stated, Sir, are to expedite and; to remove the delay in hearing. Will it be effected if they dismiss the appeal? No Sir. So, I submit that the proposed amendment will not achieve the objectives of the Bill.

SHRI S. K. MAITRA: I noticed it when I was also a struggling practitioner before the bar, Mr. Justice Nasin Ali used to dismiss second appeals on the grounds that the appeal is concluded by findings of fact. What is your opinion?

SHRI GHOSE: That is also done even to-day. The question is that any point of law within the section of 100 of Civil Procedure Code—even wrong finding of fact—is sought to be corrected in the second appeal. The question is that in the final appeal the matter of judgement will conclude. The object is to expedite the matter. So, many cases will go out. Why we should introduce further difficulties in cases where the question of law is involved.

SHRI S. K. MAITRA: So, your point is that Section 100 should be retained in the present form.

SHRI GHOSE: Yes Sir. Section 115 (revision) of the principle has been proposed to be totally omitted, although that that is taking away the removal of power of Section 115. Your honour Sir, you may see that whenever an error is committed that is corrected under section 115 of the Civil Procedure Code. Now if this section 115 goes, the result will be that the matter of error grips into the judgement upto the end of decree and go again and challenge. The order of decree will be set aside and it will again go to the trial court for re-hearing. Now instead of expediting the hearing that is the principal objective of the Bill, delay will occur. That is why, section 115 has served a very useful purpose for all these years and its removal will not expedite the matter. Ultimately, the disposal of the suit will delay. In such cases it will send back to the arguing court and what will happen? Many witnesses died by that time. Many records would have vanished. A very useful purpose of Section 115 which has been doing all these years will be denied to the litigant public. It will neither achieve the objective nor it will achieve greater and better achievement of justice. I submit, Sir, the power of Section 115 should not be omitted.

Sir, I respectfully submit that Section 115 and Article 227 of the

Constitution are going for extending the power of superintendence of High Court. Section 107 of the Government of India Act, 1915 have contained the similar power. So my respectable submission is that section 115 should be allowed to remain in this Civil Procedure Code.

MR. CHAIRMAN: Mr. Ghose so far as Article 227 it is concerned with the matter of Civil Procedure Suit of Writ Petition—is not it?

SHRI GHOSE: Sir, my submission is that a Writ Petition under Article 227 is a constitutional remedy. Writ Petition under Article 227 is also for correcting the errors of the tribunals.

MR. CHAIRMAN: So you want to say that Article 227 and 115 of Code should remain as it is?

SHRI GHOSE: Yes Sir. Section 115 did good service and it shoud be allowed to continue.

MR. CHAIRMAN: You see the main purpose of this Bill is to avoid delay. Now, justice delayed is justice denied—so goes the adage. Now, the tea that is before you becomes useless if it gets cold. Similarly, in courts also the parties who seek redress, whether civil or criminal, if the disposal of the suits or the cases are not done expeditiously, then some parties might so suffer that they may be beyond redemption. Now, the main objective which the Law Commissin has snccessively given in its three or four reports is that it wanted to say whether this delay in the disposal of suits and civil proceedings could be somewhat reduced, if not totally eliminated by modifying the Code wherever it is needed and possible. In that exercise it has been seen that it is not that all the sections and rules and orders would be so formulated as to eliminate delay altogether but certainly perhaps it can be reduced to a considerable extent. That is the exercise we are in. Now, may I also explain as a matter of clarification that this Committee is examining this question and the Bill before us is a government Bill placed before Parliament which thought it fit to know the views and opinions of the lawyers and therefore attaches fundamental importance to questions relating to the Civil Procedure Code. This Committee has been appointed by Parliament to go into the details. We are seeking your cooperation also to help us as to whether the proposals need further improvement. In some cases you have suggested omissions, in other cases some people have suggested even some additions. And ultimately at the conclusion of these evidences we will apply our mind on the basis of information that we receive from you.

SHRI NOORUL HUDA: As the Chairman has just now stated Mr. Ghose, one of the main objectives beyond all these amendments of the C.P.C. is to do away with frivolous litagations and also to reduce delays as far as it is practicable. Now, you kindly see in page 107 of this amendment it is said under section 45 that according to the experience of the government high courts are flooded with applications for revision most of which are frivolous and are filed with a view to delaying the conclusion of the litigations, and it is also said, the provisions contained in section 115 are misused and the entertainment of applications for revision invariably results in stay of proceedings and other delays. These are the main objectives, these are the main purposes mentioned. Now, I would like to ask you whether as far as your experience is concerned in the High Court of Calcutta, one of the most important High Courts in our country, whether it is a fact that such entertainment of applications lead to great delays and a great many of these applications are frivolous and are filed with a view to delaying justice. What is your experience?

SHRI GHOSE: I would first answer the question from the Chairman and then I would answer the questions of Mr. Huda one by one. Now, to begin with the question of Mr.

Chairman, my first answer is that certainly the members of the Bar Association and myself agree and want that matters should be expedited. Justice delayed is justice denied we are conscious of it, we do not want delay in dispensing justice and we are also conscious that if expedition is good, justice is better. As for expediting the hearing, Sirs, my suggestion would be, plug the real sources of delay. The effort, the exertion as the Chairman very rightly puts it, is certainly to eliminate delay. My venture in answering on these three proposed amendments will not help expedition. That will lead to further delay. But there are sources which need to be plugged. That is not so much in the Civil Procedure Code, that is elsewhere—human. Conduct, where human nature plays its part. The process servers sitting in departmental proceedings, clerks are sitting over ready cases and so on—we cannot stop this. These are the real causes of delay and for removing these delays we are one with the Committee because if justice is put in a high pedestal, no one will be more happy than the members of the Bar and the judges. We all want it but the question is whether these three amendments on which I have laid my fingers will serve that purpose. My submission is that they will not. As for others, certainly, the process serving machinery should be pulled up, the real source of delay should be plugged—human nature where beings play their part and sometimes one party is interested in delaying matters. It may be that one party is interested in early disposal of the case and another party is interested in delaying it. These are the causes of delay. Of course, I am not going to indict on the whole nation by saying that all staff of the courts, all process servers are bad even if a few persons are bad, interested parties may exploit them. These are the real causes. The real course for expediting delays as Mr. Chairman rightly pointed out and we all agree, is administrative changes, not so much changes in the Civil Procedure Code by changing section 115 or amending section 100 of the Civil Procedure Code, but administrative changes, greater control over the staff, the peons, the process servers. Today I had a talk with Mr. Mitber, member of the Bar Association, and I am entirely in agreement with him and it is also my experience we have put in requirements of notice cost but it does not go out of the High Conrt building for one year.

SHRI GHOSE: As Mr. Sen Gupta says, more than that. These are the causes of delay. Plug these causes. It is not so much revising a section or omitting section but administrative changes are necessary.

As regards section 115, if any frivolous application is at all moved there is the Hon'ble Judge who will reject it straightaway. It does not take more than 3 or 4 minutes for a judge to reject such an application. But then people will have some consolation to know that he moved the High Court. But there is nothing in that for that section 115 should not be omitted altogether. If rule is issued, certainly, there is some point to convince him. That also does not take more than 15 minutes. The remedy suggested is section 227 will take its place. Same difficulty will arise there also. Article 226 will lie there also. So, how one can sub-plant or replace another? My Association will not agree.

SHRIMATI SAVITRI SHYAM: Service takes a lot of time in most of the cases. Can you make any suggestion as to how to reduce this?

SHRI GHOSE: One point has already been taken up by the department—processes will be served by the peons and another copy will be sent by registered post. I think that should be done invariably. That is one of the methods.

MR. CHAIRMAN: Now that the question of delay has been raised

and Mr. Ghose has referred to administration; may I know what is your experience in the Calcutta High Court and also other subordinate courts—considering the cases pending for a long time, even in the Supreme Court—it was placed before the Parliament that a huge number of cases are pending—question of adjournments—heaps of cases are pending before courts including High Court and Supreme Court—is it due to proportionate increase in the number of cases and on the contrary smaller strength in the Bench or courts?

SHRI GHOSE: We have new and old cases. Old cases bring bad name to courts. I will give one instance where an appeal was disposed of within 6 months, as the law was going to be overtaken by an Act which was coming in April. We successfully did the appeal case in a few months.

MR. CHAIRMAN: You did it because you had a target date. Otherwise, the new law would have overtaken it. That happens only in exceptional cases. What is your general experience? Are the courts overburdened with cases?

SHRI GHOSE: I may say, High Court seldom allows long adjournments.

MR. CHAIRMAN: That relates to adjournment only, but if the cases are listed fairly long enough because the courts cannot deal with, that also leads to delay.

SHRI GHOSE: Judges never rise for want of cases. High Court seldom gives long adjournment. All the delay is due to making the cases ready in the Department, process serving, bringing on record the heirs, getting the paper book prepared, all these things lead to delay. But then, there are cases which are disposed of early.

MR. CHAIRMAN: About the quality of the persons sitting in different courts and Benches, not only High Court, but subordinate courts, does it make any difference?

SHRI GHOSE: Certainly, the question of the judge ability is there. All judges are not Ashutos Mookerjee and Gurudas Banerjee, but then, that is an insignificant factor in the case of delay. It will be wrong to assume that all the judges are of same calibre.

MR. CHAIRMAN: It is not merely by amending the Code, as you have stated in answer to our lady member's question—sections 115 or 100—you have mentioned process serving and all that. These can be streamlined. The administrative quality is also there. This may also perhaps go a long way in expediting or quickly disposing of the cases. The question of litigant's co-operation is also there. One party wants expedition and other wants delay. One party may be affluent and he may have some influence and the other party may be a poor litigant. He can not afford to engage a lawyer; he can not afford to meet the requisite expenditure and so on. So these things are there. Now a particular lawyer takes a brief from his clients and it may so happen that on the same day he may have to appear in different courts. So an adjournment is necessary. Now what is your experience in this regard?

SHRI GHOSE: For personal convenience we do certainly ask for adjournment but it is granted for one or two days or for one to three hours. That is not responsible for any delay in hearing, because a lawyer may get an adjournment for one day for personal convenience but if he does not appear on the next day he loses his reputation and on the next occasion he does not get any adjournment. My submission is that this personal convenience or inconvenience of lawyers is never a cause of delay in disposal of cases in the High Courts.

MR. CHAIRMAN: As you have very rightly said about the temperament, all these things are relevant and therefore we all have to put our heads together to see that delays are reduced, if not totally eliminated, and the courts must have requisite strength.

SHRI GHOSE: We all certainly agree in expedition. But my submission is that these three points will not serve the purpose.

MR. CHAIRMAN: Now you can take your next point.

SHRI GHOSE: We now come to the third point i.e. the letter patent appeal which is going to be abolished altogether I respectfully submit that the Bar Association is definitely against the proposal. It is never a cause of delay in disposal of cases. The practice is that if the judge sitting singly himself grants a certificate or a leave under clause 15, then and then only can an appeal be heard—not that we get right of appeal against the second judgement rightaway. There are three points; first, when a judge has some doubt on the question of law he decides. In that case an application for leave is made to him and he grants a leave. Second, there may be conflicting decisions from one High Court to another or in the same High Court. In order to solve the difficulties he may grant leave for letter patent appeal. Third, if the point is not covered by any decision. In that case also a judge can grant leave. Letter patent appeal is giving very useful service. I may say that letter patent is granted very rarely. So that is not the cause of any delay in disposal of cases. Omission of that provision will not lead to any expedition but may lead to failure of justice.

SHRI S. K. MAITRA: The position is that this Committee is considering the question of changing the law. We would like to know whether instead of writing out the judgement and disposing of the particular case, a judge can refer it to a division bench.

SHRI GHOSE: If at the outset there are conflicting decisions he can. It is only after hearing if one party comes and says 'kindly give us letter patent appeal' then only he will grant leave. He cannot anticipate his doubt before hearing.

SHRI S. K. MAITRA: After hearing, suppose he entertains doubt and he thinks that larger bench should decide then what prevent him from, instead of delivering judment, referring the matter to full bench?

SHRI GHOSE: He can do that. In the judgment pronounced he gives his own opinion and then it goes to Division Bench.

SHRI S. K. MAITRA: Even while referring he can express his opinion, that since this is an important matter, this should be decided by a larger Bench.

SHRI GHOSE: That he can do but that will not cause expedition and so it makes no difference.

SHRI S. K. MAITRA: But it eliminates one appeal.

SHRI GHOSE: That will be done after the case goes in the list and not in the appeal. But after hearing both sides if he refers to division Bench it will make no difference.

SHRI S. K. MAITRA: Possibly I could not make myself clear. Now, Letters Patent appeal amount to a third appeal. If leave is allowed under clause 15 in second appeal then it amounts to third appeal. What the committee wants is to eliminate that. So, instead of delivering judgment if he refers to a larger Bench then 3rd appeal is eliminated.

SHRI GHOSE: If he gives opinion and refers to division Bench it makes no difference between 2nd appeal and

3rd appeal. In case of conflicting decision he will refer it at the outset instead of deciding himself. Some times both the parties pray for referring it to a division Bench saying, that the point is important then the judges sometime do it before hearing.

MR. CHAIRMAN: Have you anything to say about clause 41 on page 14 relating to section 102? You are opposed to new section 100 A regarding Letters Patent. What about this section?

SHRI GHOSE: This is more a question of policy on which the Bar Association do not venture an opinion. We are conscious about the value of money but at the time of evidence whether the amount should be fixed at 1 thousand or 3 thousand, we don't venture to give any opinion. Let the Parliament decide the point.

MR. CHAIRMAN: Supposing the other extreme view is taken that it should not be limited by any amount at all, would you like to reserve your comment? Existing section 102 says, "No second appeal shall lie in any suit of the nature cognisable by courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed 1 thousand rupees". By this amendment it is sought to raise to three thousand. But the people for smaller suits should not have the same right.

SHRI GHOSE: In case there is no second appeal they may go under revision and so there is alternative remedy as the High Courts have enough revisional powers. So, second appeal may or may not be necessary. As for the amount whether 1 thousand or 3 thousand our Association is silent—we leave it to Parliament.

MR. CHAIRMAN: There is another section which you have mentioned, *i.e.*, Section 80.

SHRI GHOSE: I have welcomed section 80 and I will mention three other more. Omission of section 80 will expedite matters. Reason is that State should not be favoured litigant—why should section 80 give special privilege to the State? Now section 80 gives the state an opportunity to settle the claim of original claimant but our experience is that after we give notice under section 80 it is seldom settled by Government. I appreciate the ground why it was maintained but in practice it is not maintained and so why retain it. Its omission will expedite matters. Our other objections are in the longer report and this section 80 of course it was made to serve useful purpose of giving Government an opportunity. If it is done, well and good but it is seldom done—Government officers seldom takes the responsibility to settle and my experience is that they think that let it be decided by the court of law. So, section 80 does not serve the purpose for which it was inserted. I think Mr. Sen Gupta, as a Government pleader and lawyer will differ from our views and he will advance his arguments in a better way. Any way, if any time is required by Government like any other litigant Government will ask for time.

MR. CHAIRMAN: Without holding any brief for the Government Pleader could you not make a distinction between an individual defendant and a Government? We know that for Government decision has to be taken at different levels. Somebody moves the file and somebody takes the decision. It is true not only in the matter of response ro compliance secured under section 80 out in all other administrative matters. This delay takes place at various levels of administration as it is to-day. The Administrative Reforms Commission has gone into it in detail and they have made a number of recommendations. Those apart, my pointed question is, and I seek your opinion on this, that whether it will be fair to equate any individual defendant with an institution, not necessarily

government institutions but other institutions?

SHRI GHOSE: I agree and appreciate your view. Government can never be equated to any individual. They have so many difficulties at different levels. I appreciate those difficulties. When the Government itself has introduced this Bill why should we stand in the way. Appearing for the Government I have myself felt many difficulties.

MR. CHAIRMAN: Whether there is any scope of reducing the time limit of two months to a lesser period?

SHRI GHOSE: Government machinery moves slowly. So, a period of 15 or 30 days will not practically be of much relief.

MR. CHAIRMAN: I was just seeking your opinion as to what are the various facets or implications of it. Whether it will be possible to equate government with an individual.

SHRI BIR CHANDRA DEB BARMAN: In section 82 power has been given to the Court so that it can extend the time. Then how the delay in execution proceeding against the government will be reduced?

SHRI GHOSE: We have given our observations in our memorandum. Provision of report has been omitted and approved. The period of three months should be reduced to or alternatively and in addition if not satisfied. No objection against execution will be enterained against the Decree holder.

SHRI BIR CHANDRA DEB BARMAN: The power has been given to the Court to extend time. We know the limitations and if the government wants the extension they will readily get it. Whether or not that will delay the execution?

SHRI GHOSE: Certainly it will delay.

SHRI BIR CHANDRA DEB BARMAN: So amended Section 82, in no way will help the litigants.

SHRI GHOSE: Yes.

SHRI BIR CHANDRA DEB BARMAN: If anybody wants the execution of the degree then he will have to depend upon the discretion of the Court.

SHRI GHOSE: There should be some curb on the court's power. I appreciate your point.

SHRI BIR CHANDRA DEB BARMAN: What is your opinion with regard to Section 96?

SHRI GHOSE: Any aggrieved party may prefer an appeal. Sometimes it so happens that some individuals have got the decree in their favour. Some are against them. The individuals are given a right of appeal. Then this will lead to prolific litigation. This will be lawyers' paradise but not much of expedition that you and I are asking for.

SHRI BIR CHANDRA DEB BARMAN: I think both the plaintiff and defendant will have to go for appeal.

SHRI GHOSE: In an appeal it is open to the decree holder to justify certain matters. He can certainly challenge that. The definition of resjeducata has been amened and this will lead to plethora of litigations.

SHRI GHOSE: This amendment as Hon'ble Members are advising will ordinarily be an academic discussion so far as relief is concerned. This amendment wants to give additional relief in the question of appeal. He has every right to challenge—the right as it stands today. This amendment—secti on 96—has also defineders *iudiacta* and (xi)(a) both should go because they will not certainly expedite hearing for which we are all trying. So the section 96 amend-

ment as framed will cause delay which we want to eliminate

Then Sir, regarding new clause 16, i.e. section 35 (b) some amendment is sought to be introduced and inserted. This is regarding costs for causing delay. I am afraid the language in which this section [Section 35 (a)] has been enacted is quite exemplary. The court may fix any amount of cost. I submit that in section 35 (b) there should be one addition. The delay must be punished. The addition is, "the cost will be not exceeding the cost payable in such suit or proceedings". These words will keep the court within their bound. Otherwise a party having a legitimate grievance comes to court but finds the judge is very much against him. I think we have missed this point.

SHRI S. K. MAITRA: So, you propose that there should be some limit.

SHRI GHOSE: I suppose that there should be legitimate cause for the delay. But I also propose that the penalty should not be exceeding the cost payable in such suit or proceeding. We have missed to insert these words in our memorandum. This may kindly be supplemented there.

MR. CHAIRMAN: In the same clause 35 (B), it is written "any step in such suit or proceeding, to pay such costs, commensurate with the delay so caused"—do these words not serve the purpose as you like to propose?

SHRI GHOSE: My submission is. the word 'commensurate' is vague. I would suggest, "cost not exceeding the cost payable in such suit or proceedings". This is a discretionary cost. So, this discretionary cost should not exceed the cost payable in such suit or proceedings. These are all additional cost irrespective of the results of the suit.

MR. CHAIRMAN: So, you suggest that it should not exceed the total cost which the court decree.

SHRI GHOSE: It is stated that this will not be added to the cost irrespective of the results of the suit. But even such discretionary cost should not exceed the cost payable in such suit or proceeding. This amendment to section as (B) relates to additional cost that may be imposed on a party when the court thinks that he is delaying without qualified reasons and the court awards some cost irrespective of the result of suit. That cost will not have any relation to the cost that is ordinarily awarded on the suit. That is why we call it an additional cost or penalty cost. My submission is, there must be some limit to the penal cost.

MR. CHAIRMAN: The words commensurate with the delay so caused" —are you not satisfied with these words?

SHRI GHOSE: Sir, 'commensurate' means deals in any case.

MR. CHAIRMAN: But you agreed to this principle that the delay is to be curbed — is not it?

SHRI GHOSE: Yes Sir, because there is another provision which we appreciate. In clause 76 (4) where it is defined that for ignorance of the death, etc,—we not stand in the way. We appreciate it. This is a good amendment and it is approved by our Association because very often it is not possible for the plaintiff or for the appellant to know about the death of a defendant or the respondent. Now cluase 88 is another proposed amendment which we approve. This is about suits relating to matter concerning the family. This is a new Chapter that has been proposed to be inserted. In 1908 this Civil Procedure Code was enacted in the from of dissolution. Now there are some cases of this type which may be enacted in the form in which it has been proposed.

MR. CHAIRMAN: Mr. Ghose, as I said, your written note on behalf of your Association is before us. You have given a very good evidence and you have also highlighted some points for which we have been benefited

very fruitfully on those points. I assure you that we will pay our careful attention to your note that you have placed and examine those points and place them at proper place at proper time. Is there any supplementary views from the other members of the Bar Association?

SHRI MITTER: We endorse the views that have been expressed by Ghose. It is not necessary for us to make any separate supplementary submission. But so far as section 100 is concerned there is one point that has struck me. In the existing section, you will find that far from being improvement, it is—rather I should say —a misery expression of the law because you find that in the existing section the ground on which the appeal be taken, are enumerated in the 3 cluases (a) (b) (c). But in the proposed amendment it is only said 'substantial question of law.' Of course, the question of law is also there. Now the word 'substantial' does not add anything to it. Mr. Ghose has already submitted it so far as decision is concerned. This decision is contrary to the law. Decision means ulimate conclusion affecting the judgement of the lower court as a whole. Therefore, I submit that so is as this concerned. this Cluase 3 should be retained. With regard to the usage, Mr. Ghose has covered it. If the court has omitted to frame any issue that arises on the case made by the parties, but is not taken before the judge then that may not be pointed out in the existing section. This is also a ground or reappearance in a second appeal. Third question is about substantial corror in the procedure. In our experience we have seen that on this ground 55 per cent of the appeals are allowed. When we have seen that 55 per cent appeal demanded, why should this provision be omitted. That is not a substantial question of law' is rather vague word that has been incorporated in the proposed amendment. It is better to retain the existing enumeration in (a) (b) (c).

In order 41 of Rule 1, it is referred that every appeal shall be preferred in the form of memorandum singed by an appellant and placed by the pleader before the Court. Such memorandum shall be accompanied by a decree. So, this Clause 3 of the proposed amendment is rather unnecessary. I think it is superfluous.

MR. CHAIRMAN: That has been inserted in the proposed section concerned. Now Article 133 of the Constiution as amended reads, "An appeal shall lie to the Supreme Court from any judgement decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

This is the only anology that has been provided in the constitution under Article 133 (as amended) make a particular case of appeal before the Supreme Court on the certificate given by the High Court, that is the case involves a substantial question of law of general importance. You oppose this new section or of whatever angle you give to the same question So do you want that Section 100 should be retained?

SHRI GHOSE: Sir, I want to add a few words to what Mr. Mitter has said. Regarding the system of appeals that we have in our land original suits can be decided on the question of facts, law and jurisdiction. The first appeal is also on these three. In the second appeal limitation is imposed and second appeals can be decided only on the question of law. When we go further up in the Supreme Court, a further limitation is imposed in the shape of leave under the present amended Article 133. These words have again been borrowed from Article 136 of the Constitution in case of special leave. So higher up we go more and more rigid provision are in-

troduced. Why introduce the rigid provisions of leave of Article 133? We may remember that now-a-days suits are heard by munsiffs and they are appointed subordinate judges with only seven to nine years. experience. Now, a nine years' munsiff being a subordinate judge will dispose of subordinate judge will dispose of appeals and that will be final if there be no substantial question of law and this is a position which we respectifully submit our Association is against.

MR. CHAIRMAN: Now, so far as MR. Ghose and his learned colleagues are concerned, we have heard your case and now we will like to hear Mr. Sen Gupta, and I request Mr. Ghose and his colleagues to allow Mr. Sen Gupta to make his submissions and you can hear him.

SHRI MITTER: May I just add one or two words? Mr. Ghose has explained the case so far as adjournments are concerned. Now, if you kindly consider the leave of an appeal after it is filed, how it travels to the final stage and you will be able to just ascertain where the delay is. As soon as an appeal is filed, it goes to the Stamp Reporter's Department— I am speaking of the High Court—and the Stamp Reporter certifies that the court fee that has been paid is sufficient and proper.

Second question he considers is the form in which the appeal has been presented, and third the question of limitation, if any. Now, so far as this matter is concerned, it takes some two to three months and even more than that. There the appeal stands to be registered after its filing —there is a delay of three or four months. Then in setting the appeal for hearing under Order 41 Rule 11, sometimes it takes one year, sometimes a year and a half. We understood that in the Patna High Court there was a rule that appeals under order 41 Rule 11 should have to be heard within a fortnight. Previously also the Calcutta High Court had such a practice. But so far as that is concerned, that is not now in vogue. From the lawyer's point of view he draws up the grounds of appeal and if within a short time the hearing under order 1 rule 11 is made then so far as his labour is concerned, he has not to go over the same ground, and there these delays can be eliminated. There may be a rule that so far as this is concerned, order 41 rule 11 cases shonld be heard within a specified time after the filing of the appeal and then after the appeal is admitted, the process free for sending not the written up notices of appeal are filed and these written up notices are not sent for service sometimes for one year, sometimes one and a half years, sometimes two years, and we are pasted with letters by the clients that so far as this is concerned, this has not been done, why no notice of appeal is not coming. There is the cause of delay. Then after the notice is served, a declaration is put in to prepare the paper book. Then the records are called for and the records come to the High Court. Then notice for intimating the arrival of the records from the lower court is not served upon the advocates. The records come and they are left there for checking. That is to say, that is about one year, sometimes more than that, sometimes of course less. There is the delay. Then the paper book notice is served. The paper book is filed within six weeks— that is under the rules of the Appellate Side— and after this is done the matter does not come or appear on the cause list for several months and years.

MR. CHAIRMAN: Mr. Mitter, now whatever you have analysed is quite germane to this question to ascertain what are the causes of delay and how to eliminate them and therefore I request you to just submit a note to us later on— you may take your own time—within a month by the end of January —the causes of these delays. You can indicate to us who can streamline the procedure. As you say some High Courts have done it; but we want to know from what reasonable time should there be between the various

stages and probably we will have to make references to the High Court. My suggestion will be that if it can be provided in the appropriate orders and rules then it will be within the competence of this Committee to suggest and also take into account while we consider the various order and rules. Any way about the technical competence. I will look into later on but we will very much welcome a note from you by the end of January and as a very valid point that you have taken that these are the causes of delay while in the ultimate analysis it may be that a case may require a long time for its final disposal. Mr. Ghose from your Association also you may submit a written note.

SHRI GHOSE: Sir, as I suggested in my evidence I say that these amendments of the Civil Procedure Code will not serve the purpose and solve the problem. The problem is more administrative than legal.

MR. CHAIRMAN: That is generally what you have submitted. That is already on record. But this is a particular point of procedure in the existing system which can be also streamlined and minimise the delay and there we will try to pin point out mind to that and see whatever changes are necessary, whether administrative or otherwise, and take congnisance of those things and put them in their proper perspective but the essential point is that I would very much like your Association to help us with the concrete suggestions on the particular procedure.

SHRI GHOSE: Sir, again the rules of the High Court are not bad but so far as the actual implementation of the rules is concerned, that causes delay.

MR. CHAIRMAN: The human element will always be there but so far as the rules orders are concerned, we will welcome your suggestions whatever goes to eliminate delay. I will draw your attention also to a questionnaire that we have issued from our Committe. That was sent to your Association earlier but we have not received your replies thereto. We are giving you another copy, you kindly examine it and on behalf of your Association whichever question you would like to comment on, you may please do it.

SHRI GHOSE: Our Association has not received any such questionnaire before. So far as the Civil Procedure Code and the High Court rules are concerned, there is no difficulty but where the human nature plays its part, therein come in all sorts of difficulties.

MR. CHAIRMAN: You may mention whatever your experience is. Now, shall we turn to Mr. Sen Gupta, if he has to say anything?

SHRI SEN GUPTA: Mr. Chairman and members of the Committee, I am very much thankful to the members of the Committee for asking me to depose before you on the proposed amendment.

As a member of the Bar Association I am bound by the decisions taken by the Association itself in its memorandum and I am one with Mr. Ghose and Mr. Mitter in what they have deposed before the Committee. But as Mr. Ghose has mentioned, I could not agree with the change so far as section 80 is concerned. The reason is not far to seek. With my experience at the Bar and working for the Government for the last 5 years I find it difficult to say that this provision should be deleted. I am faced with another difficulty also. This is a Government Bill and apparently it has the sanction and the approval of the State Government also, I cannot but point out that this has got a salutary effect so far as checking frivolous suits are concerned, suits which would be coming in large numbers if this provision of check of two months or 60 days' notice period is not there. I am apprehensive. if this check is taken away a very

large number of suits will be filed. Furthermore, the Government would require time to decide and also, in fact, to receive notice. All these things have been pointed out by the Chairman, I am thankful to him for having done so, that the State should be treated on a little bit different footing from an ordinary litigant. After all, the State is nothing but a Government of the people and for the people. Therefore, in order to decide a point whether the suit should be contested, or there should be a compromise, etc., for all these things a notice should be there. And that notice shall have to travel from one place to another—the file will move from the Secretary to the L.R. and this way the file will go round. It is not possible for the Government to determine the point at issue at a very early notice as a litigant is able to do in an ordinary suit. More so, notice will be served with regard to persons, or with regard to actions taken by particular officers who would be in a different place, or may probably not even be in service. Therefore, in that case also it shall require some time to find out whether the officer is there or not. Therefore, I was suggesting that section 80 should be retained and not omitted from the Civil Procedure Code. Moreover, it is public exchequer, it is we who contribute for the defence of these cases of the Government. Therefore. I would submit that this provision should be retained. If this provision is taken out of the Statute, I am sure a very large number of cases would be filed on frivolous grounds and consequently, it will delay all other matters. That is why I was suggesting that the Government require some protection and Government cannot be treated at par with an ordinary litigant because of its inherent difficulty.

MR. CHAIRMAN: You have rightly said that in a democracy when the Government is a people's Government it should be treated differently. But if it is a people's Government how is it that the Government does not fulfil its obligations relating to the legitimate claims of the people for which suite have to be filed at a huge cost and other difficulties and sufferings of the citizens? Here section 80 gives the Government two months notice. You will find from the notes on the clause and also from your experience that in spit of this notice Government have not responded. Government is callous—I will come to the other end also. Therefore, to judge this question dispassionately. Will you not agree that for this reason they want to omit this section 80. Why do you require this notice? Why not settle the claim even without waiting for a notice under this section? Government should not allow an opportunity for a notice to be served under Section 80. What is your experience in this regard, whether section 80 has been responded to in West Bengal.

SHRI NOORUL HUDA: I may add a few words here. We find that the State has the most powerful machinery in any country and if an individual, it is my own experience, after writing to the Government for months together, for one year to one and a half year does not get any response then only as a last resort he goes to a court. I would rather say that if that provision is done away with then the very deletion of this provision from the Code would bar a citizen to remove his legitimate grievances as a citizen.

SHRI SEN GUPTA: In my humble submission the question of two months time in the life of litigation is almost nothing. As Shri Noorul Huda says that it takes a litigant to file a suit after writing to Government for one and a half year therefore the question of two months time is of little importance. But therein I also bring the question of human factor. Can we know that human factor? A notice is served on a gentleman. That file

stays there for that very same human factor. Therefore it does not matter much when the period is only two months. It only gives a chance to the Government to find out whether there are causes to file a suit. I can understand that Government should settle all the disputes as quickly as possible and it is fit and proper for a peoples Govt., to satisfy the same people but at the same time, I once again repeat that the human factor, as it is now, cannot be avoided.

MR. CHAIRMAN: So far as the provision is concerned, let us not consider a particular point of time or a particular form of Government. When this Bill will take the shape of an Act it has to be followed by successive governments. We would like to know whether this two-months time is one of the factors of delay notwithstanding other factors.

SHRI SEN GUPTA: I have already said that two months time in the life of litigation is of little consequence.

MR. CHAIRMAN: This section postulates a particular form in which the notice has to be given which is more or less the plaint itself. We would like to know whether a simple letter, an ordinary letter, making a final claim on the Government should not be taken as the notice served u/s 80 and enable the aggrieved citizen to file a suit if the Government does not respond to it. Whether an ordinary letter stipulating a particular time making the ultimate claim that unless you satisfy then I will have to go to court should not be treated as a notice served under Section 80.

SHRI SEN GUPTA: Mr. Chairman, the difficulty would be only failing a letter. My submission is that a letter making the claim would not disclose the real cause of action.

MR. CHAIRMAN: No, no, substance of the claim will be there. As far as I know—I stand corrected whether a notice u/s. 80 requires to be formulated in a particular pro-forma like the nature of a plaint itself indicating all these things. It is more or less like a plaint.

SHRI GHOSE: It must disclose the cause of action. A prudent lawyer is to send the copy of the plaint. Difficulty is we cannot get interlocutory order within 2 months and in the meantime no injunction can be issued It so happens that within 2 months the suit becomes infructuous. It is question of not obtaining an interlocutory order at the time when the suit is filed and the notice given u/s. 80 when the suit is filed it is made infructuous. Why this? Why not the same privilege to firms and companies. So, I submit sec. 80 has not served any useful purpose.

MR. CHAIRMAN: That you have already stated. Difficulty pointed out by MR. Sen Gupta is also justified as to why it should be retained. In the Bill it has been proposed to be omitted and which has been supported by the Bar Association. Therefore, from anothor angle I am suggesting to you to consider whether the existing form of notice under section 80 can be simplified. To meet the objection raised by Mr. Huda my colleague, whether this formcan dispensed and a letter making a claim on Government in the last sentence be added to specify the claim; I think one should not take objection if we amend it in that way and whether that will meet the ends of justice.

SHRI SEN GUPTA: There can be no legitimate objection to such a procedure.

MR. CHAIRMAN: We may sum up this way. Appreciating the difficulty of the complicated machinery of the Government to give certain reasonable time for it to fulfil or satisfy the legitimate demand of the citizen who ultimately becomes the complainant and Government becomes the defendant and the Government takes shelter u/s. 80—to avoid delay and to give quick justice to the aggrieved parties whether these formalities u/s 80 apart from settlement Act can be simplified.

SHRI SEN GUPTA: It can be simplified—that means, retention of section 80 with amendment thereof. Not omission altogether.

SHRI GHOSE: The pinch in section 80 is not so much in 2 months as waiting period.. not in the cause of action but no interlocutory leave is obtained until the suit is filed. Mere giving notice will no be enough. So, this omission is salutary.

MR. CHAIRMAN: No, this 2 months waiting as introduced is not enough so far as complainant is concerned and that he will become a complainant after he actually files the suit.

SHRI GHOSE: Even if after giving notice complainant has to wait for two months the mischief will be there. All that the claimant wants to get is relief on interlocutory order at the time of institution of the suit—otherwise after 2 months it becomes infructuous.

MR. CHAIRMAN: Any way, we have heard both angles, we have discussed it enough. So far as the controversial question regarding omission or retention of section 80 is concerned we have heard others also elsewhere. Ultimately we will examine and discuss among ourselves when we take clause-by-clause. I think Mr. Sen Gupta is in agreement with his Association excepting in section 80.

MR. SEN GUPTA: Yes.

SHRI S. K. MAITRA: May I draw your attention to clause 79 of the Bill in which amendments have been proposed to order 27? What are your suggestions about this because they are linked with section 80?

SHRI GHOSE: Certainly some time must be given to the Government in suits by or against the Government to file their written statements. If they want time that shall be allowed. We must keep it in mind that in government cases the lawyers are to get instructions from the government officer and the officers generally do not want to take responsibility on themselves and they always consult their seniors. That is why this has been done. This a salutary change and we approve of it and that is why we are silent on this.

DR. (SMT.) SAROJINI MAHISHI: Mr. Chairman, Sir. I would like to says a few words. Knowing the weaknesses and the strong points of human beings, as they are, at different levels and at different spheres, we are here to do the best under the existing circumstances. Of course we cannot dispense with many of the weaknesses and strong points of human beings. But I know that being professional experts you can give more convincingly arguments for and against some points. But in to-day's evidence we have never, even for a minute, found that Mr. Sen Gupta was arguing for the government and that Mr. Ghose was arguing against the government. This Bill is now under the consideration of a Parliamentary Select Committee and its object is to find out the means for cutting down or reducing the delay that is involved in the administration of justice. Certain points may not be covered under the amendments that have been sought for in the Bill. The delay may be due to various other reasons, it may be involved in the procedure or in the other administrative spheres. Now, wherever may be the delay, in the light of your variety of experience, we would like to know from you where exactly you think is the cause of the delay. as it will not be covered by this Bill. Even then, your suggestions will be utilised at a proper place, at a proper time, if the suggestions are with regard to cut down the delay. I can assure you that our aim is to cut down the delay in the matter of administration of justice and expedite the proceedings. Therefore, I would like to request you to please give suggestions on behalf of the Bar Association of the Calcutta High Court. I am sure, those suggestions will be very much useful to us.

MR. CHAIRMAN: I would like to supplement the views of the law Minister. The Law Minister has come forward to invite suggestions from you one some points which are not under the scope or competence of the Committee. Even if the cause of dealy may not come under the Code itself. it may be due to other administrative reasons which is under the competence of the Government. We would like to have suggesetions from you as to the way in which the proceedings of the administration of justice is to be streamlined so that it becomes quick and at the same time fair, whether it is the citizen, whether is the affluent society, the most powerful as against the worker or the individuals, whether it is against the government as against the citizen etc. etc. Under the existing context of the society, nevertheless. these things will have to be tackled and, I think, government has come forward to examine these aspects. My view is that you can go a little wider than the scope of the Bill, and give us a detailed memorandum stating the specific achievements relating to the Code itself and other questions and other points which require other administrative machineries which, in your opinion. the Government may examine.

SHRIMATI SAVITRI SHYAM: You must also give your suggestions as to how to reduce the cost also.

MR. CHAIRMAN: I have already specifically mentioned about the question relating to the delay, the question relating to the cost, legal aid to the poor litigants, the indigents. All these are there.

SHRI MITTER: On behalf of our Association, I can assure you Mr. Chairman, that we would send a supplementary memorandum after consulting the questionnaire which you were please to hand over to us. by the end of January, 1975.

MR. CHAIRMAN: Mr. Ghose, Mr. Mitter, Mr. Roy and Mr. Sen Gupta, I on behalf of my colleagues, thank you for the keen interest that you have taken in studying this Bill and coming forward to give evidence here inspite of your busy days in Courts to help this Committee. There is no doubt about it that we have received a very valuable information. Let me once again offer our sincere thanks to you and through you to the other colleagues of your Bar Association. I can assure you that we will certainly examine your suggestions very carefully.

Thank you.

SHRI GHOSE: Mr. Chairman. Sir, on my behalf and on behalf of the Bar Association, I thank you all for the keen interest you have taken in going through our memorandum submitted by my Association and in the evidence that we have tendered here this afternoon. I also thank you for your kind expression to the Association for the work that we have done in support of this Bill. We are so grateful to you, Sir.

Thank you.

[*The Committee then adjourned*].

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'C' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Tuesday, the 31st December, 1974 from 10.00 to 13.00 hours in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachmi
3. Shri Mohammad Tahir
4. Shri Noorul Huda
5. Shrimati Savitri Shyam
6. Shri R. G. Tiwari
7. Dr. (Smt.) Sarojini Mahishi
8. Shri Bir Chandra Deb Barman

Rajya Sabha

9. Shri Krishnarao Narayan Dhulap
10. Shri Kanchi Kalyanasundaram
11. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

WITNESSES EXAMINED

I. *Bar Council of West Bengal, Calcutta.*

Spokesmen:

Shri Basanta Kumar Panda—*Chairman of Enrolment Committee of Bar Council.*

II. 1. Shri Prithwis Bagchi, Advocate, Calcutta High Court, Calcutta.

2. Shri Ranjit Kumar Banerjee, Senior Advocate, Calcutta High Court, Calcutta.

I. Bar Council of West Bengal

Spokesmen:

Shri Basanta Kumar Panda—Chair man, Emolument Committee of Bar Council.

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Mr. Panda, before we enter into the evidence I like to draw your attention to some direction. The evidence that will be given before us will be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even you desire all or any part of your evidence should be treated as confidential such evidence is liable to be made available to the Members of Parliament.

SHRI PANDA: There is nothing confidential that will be placed before you.

MR. CHAIRMAN: I welcome you for giving evidence before us. You have already sent us your written memorandum and it is before us. You are now welcome to place your oral evidence before us explaining whatever point you would like to do so.

SHRI PANDA: Sir, my written notes will speak explicitly for itself. I shall now give you some notes about the questionnaire. Your question was—according to you what are the causes of delay in civil litigations and what amendment do you suggest for the elimination of such causes of delay? On this, I have several items to say.

The parties unnecessarily takes several adjournment in interlocutory matters and sometime they prefer appeal for civil revision case against some inter locutory matters causing delay in the final disposal of the suits or appeals. There is one cause of delay in suits against the Government or public officer but the said time is now saved by deleting section 80 from the Code of Civil Procedure.

My second reason of the delay is the provisions of Orders 11 and 12 of the Code of Civil Procedure. Interrogatories discoveries and admissions need not be done by loss of time, but that can be done during the process of time. The third reason of delay is that the issuance of summons. The summons should be served at first and if such service is not satisfactory registered noticed are to be given. By the amendment, simultaneous provisions have been made for services of summons under Order 5 as also giving registered notices with acknowledgement due along with the issuance of the summons of the suit. Then there shall be strict provisions in the Code of Civil Procedure against the granting of several adjournments on applications of parties to complete their preparations for the disposal of the suits. The courts should be directed not to grant more than one adjournment for any purpose on very urgent grounds and such adjournments shall in no case be more than two weeks. The last point is, the parties praying for adjournment should be saddled with heavy costs which should be about 2 to 5 per cent, of the valuation of the suit. The said cost are to be paid irrespective of the result of the suit and before the next date fixed in the suit. This is my suggestion about the eradication of the causes of delay.

The next question of the questionnaire—question No. 2. It is, 'do you consider it desirable prompt service of process, etc."

SHRI NOORUL HUDA: Mr. Panda, you have already replied all these questions in your memorandum. I would request you to make your general observation regarding the proposed amendments which have been put in the Bill.

SHRI PANDA: The reply to the second question is that after the party has already appeared in a proceeding or in a suit he shall not be served with a further notice with regard to any proceeding in the suit or in the subsequent proceeding. He should be diligent about his case. But where a party has not appeared at all, but if the matter is of such importance that the process of the suit, i.e., the plaint in the suit does not contain same but the same has arisen in the process of the suit then only the party will be given fresh notice to meet the challenge if it does not come within the four corners of the plaint. This is the reply to the second question. it should also include the proceeding relating to preparation and publication of the record of rights within the jurisdiction of the Civil Court. Here something has arisen in West Bengal and also in other parts of the country where Civil Courts should be given power under the Code of Civil Procedure, which would be immune from attacking by any local legislation or by any local authority. Therefore, I have stated that now-a-days some State Legislatures including the West Bengal State Legislature has provided in West Bengal Land Reforms Act and West Bengal Estate Acquisition Act that no evidence should be given in Civil Courts to do away with the presumption in the finally published record of rights. The said record of rights have, therefore, been made immune from the jurisdiction of the Civil Courts and also from leading evidence to show that the presumption be avoided. So long the procedure, which is being adopted throughout the country and also codified by the previous land laws and the record of rights, may be prepared by the Revenue Authorities. But if any entry of record of rights is wrong then the Civil Court is to decide the jurisdiction under Section 9. Now if the Civil Court's power is curtailed in this way then the revenue authority will do whatever they like in the matter of preparation of record of rights and if the record is made sacrosanct then the people's right to challenge the record of rights through Civil Court or any other forum is vanished. So, the party loose his title. Therefore, the Civil Court must retain this jurisdiction under the proposed amendment of Section 9 of the Code of Civil Procedure irrespective of any other law made by the State Legislature is to the contrary; because you all know, the Civil Procedure Code is under the concurrent list and the State cannot make any law without the previous sanction of the Central Government.

MR. CHAIRMAN: Mr. Panda, may I enquire what is the position in West Bengal? Whether these Acts of West Bengal Government are *ultra vires*? Section 9 of the Code of Civil Procedue is under concurrent list and now you have said that the Civil Court must retain this authority to go into the question of title. So far as the West Bengal Acts are concerned, what is your own experience, if these Acts are being challenged in the High Court of Calcutta?

SHRI PANDA: Sir, the actual position here is that these are being challenged under Section 226 of the Civil Procedure in the High Court. Now the Estate Acquisition Act has been amended recently and it is included in West Bengal Act 38 of 1973 i.e., the West Bengal Estate Aquisition Act (Second Amendment) of 1973, which came into force on 12th July, 1973. Under section 57(B), which have been newly introduced therein, it is said that no Civil Court shall enter into any suit or application concerning any law or any right. If it relates to alteration of any entry in the record of right in the finally published, revised, corrected or modified under any provision of chapter 5 of the Estate Acquisition Act, Civil Court shall send the matter to the Revenue Officer to follow the decision on the point. This point was challenged. This has been finally decided by Mr. Justice P. K. Banerjee that this section 9 of Civil Code shall not do away, but a chance shoud be given to the plaintiff to amend the plaint and accordingly in that

case the suit will proceed, of course the State Government may also file an appeal against that.

MR. CHAIRMAN: That appeal of the State Government is still pending in the High Court.

SHRI PANDA: In the recent amendment of Land Reforms Act, West Bengal Act 33 of 1974, which came into operation on the 21st June, 1974, this has also been challenged and it is now *sub-judice*. 2 sections have been there, one is section 51A, which is about the preparation of record of right. According to the Land Reforms Act, there is a procedure for that, in section 51A and sub-section (9). It arises only when it is proved by evidence to be incorporated there. Unless it is proved that evidence to be according to the section 115 of the Evidence Act, presumption can be taken away before the Civil Procedure Code. But now they say that only it is proved by evidence to be incorporated that has been deleted. Both the purposes of evidence there are two provisions for appeal and now in the first appeal court before the subordinate judge and then to the High Court. And there is the end of the matter. So there are three forums to agitate about title. So by these Acts the revenue authorities who are only for the preparation of the record of rights, for collection of revenue and for recording the vesting and for recording distribution of land should not be given the power to decide the question of title.

MR. CHAIRMAN: It is not clear to us as to how the State Legislature could make amendments which violate the main Code. Now, your suggestion here is that we should consider as to whether section 9 of the Civil Code could be so modified and made water tight so that no legislature can be entitled to have a legislation taking away the jurisdiction of the civil court.

SHRI PANDA: I am not saying that. I am suggesting that the revenue courts will not perform all these functions but the civil court shall retain only the jurisdiction as to decide the title. You know the record of rights is a very good evidence of title. It carries a presumption and so long as it carried the title of possession it was all right but it did not carry any presumption as to title or ownership.

MR. CHAIRMAN: The point is if the State legislatures have overstepped their jurisdiction and infringed upon the authorities of the civil courts, they will be declared void by the courts.

SHRI PANDA: That can be done but as the State Legislatures have got the President's assent in the matter they have got the same character as if it is a central legislation.

MR. CHAIRMAN: I cannot venture to say anything about that. But my own impression is that mere President's assent will not give the State Legislature the validity if it violates the Constitution or the Code.

SHRI PANDA: I can only submit one thing before you. Why this allergy about the civil court?

MR. CHAIRMAN: What we can do is to make the Code more water tight so that it cannot be violated by the State Legislatures.

SHRI PANDA: You know that in such suits where record of rights are to be challenged, the State is always a party. Let the State come and support the action of its officers.

MR. CHAIRMAN: At page 2 of your memorandum you have stated this. "In the West Bengal Land Reforms Act it is also provided that no suit in the civil court can be filed in respect of the nature and character of the finally published record of rights. So I suggest that this time honoured jurisdiction of the civil courts should be preserved by suitably amending Section 9 of the Code of Civil Procedure providing there in that in spite of any legislation by a State to the

contrary the civil court shall have jurisdiction to decide the questions of title to property in spite of the finally published record of rights being to the contrary." Now, that is the point on which I wanted to get an explanation from you. Whether in spite of section 9 of the Code as it is the State Legislatures are entitled to have a legislation which violates or takes away or any way impinges upon the authority of the civil court to decide about the title and if they have overstepped then it is for the High Court and the Supreme Court to pull them up? I say the assent of the President by itself does not give a legal authority to the State Legislatures to enact a legislation which violates the Constitution. Now, in the Constitution there is an article 254(2) which reads like this: "Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or on existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State." Now, at any rate, Mr. Panda, without coming further into this question I would request you to submit to the Committee later on a draft which according to you would meet this question by amending section 9.

SHRI PANDA: I am much thankful to you Sir. To whom shall I send it?

MR. CHAIRMAN: You send it to the Secretary, Lok Sabha Secretariat, Parliament House, New Delhi, within January.

SHRI PANDA: Yes, I will do that.

SHRI R. G. TIWARI: Sir, If I may go back a little, Mr. Panda probably suggested that no notice would be necessary after the decree is passed. I think that would be too much. The party is not supposed to know when the execution has been made.

SHRI PANDA: If anything arises which is new, does not occur in the four corners of the plaint, then, a notice should be necessary. There are some suits where plaintiff has made prayers, but the decision may not be exactly in terms of the plaint, may be something different. In that case he must be given a notice.

SHRI R. G. TIWARI: Even if there is no variation, would you like that *ipso facto* the party should be vigilant and should follow it? If you want that the defendant should always be cautious, I think it would be too much.

SHRI PANDA: A party files an execution case one year after the passing of the decree, but the total time for execution is three years and in some cases 12 years. Then, if the decree holder is not vigilant to file execution suit within one year, he shall have to be given a notice. In an execution case notice is to be given. That is fairplay. I do not dispute that. But as you asked us for saving time, we have suggested this. I am taking only one minute in connection with amendment to section 9. The present section 9—the court shall subject to the provisions herein contained have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either explicit or implied. Here we are affected.

MR. CHAIRMAN: I have understood that point and the Constitution is also there.

SHRI MOHAMMAD TAHIR: You have said, record of rights gives a proof of possession and it is not title I entirely agree with. But, suppose there is a judgment in respect of some property and according to that judgment the party is in possession of the property. In respect of that property, if the Survey Officer entered the name of another person, what will be the position?

SHRI PANDA: On the date of passing of the judgment the court has found on evidence that this party is in possession of the property and he

has title to the property. After one or two years when the Revenue Officer goes and sees that the party in whose favour the decree has been passed is not in possession but the other party is in possession, he will record accordingly. Of course, in West Bengal there is a provision for unlawful possession. Then, another chance of filing suit comes only about possession. Title is already found.

SHRI MOHAMMAD TAHIR: In spite of the fact that judgement is given that is in possession—we know the Survey Officers are most corrupt people and some people in collusion with the Survey Officers gets his name entered—then, why unnecessarily should be go to the court? He has got the judgment.

SHRI PANDA: There are also hierarchy of appellate courts in the Revenue Department. There is Settlement Officer. Then there is Director of Land Records and Survey and above them there is the Board of Revenue. Even then, the civil court's powers have been retained all along.

SHRI MOHAMMAD TAHIR: Suppose there is final publication of record of rights and the man who has got actual possession has to go to the court and fight. As the Law Commission reported, they do not want that a party should go on fighting for so many years and spending so much money. They want that this should be decided speedily. Having the title and possession the survey record is finally published and he did not know about the change. After that unnecessarily he has to go to the court.

SHRI PANDA: I would submit that this possession is found on the date of passing of the decree, but if he is afterwards dispossessed adversely and remains so dispossessed for more than 12 years, then, his title is extinguished. The other party takes the title by adverse possession. Where record of right is prepared within 12 years of the date of decree there is no question of adverse possession. Therefore, if the Revenue Officer is to finally publish the record of rights, he should not be the authority to determine possession. It should be done by Civil Court. You all know how previously settlement was being conducted. Even ICS officers coming fresh from England or IAS officers were first of all placed just along with the Kanungos to go to the land, to see the nature of the land and they were to read the tenancy laws of the country. After attending such camps they were to appear for Kanungoship examination and thereafter on promotion they became assistant settlement officers. Now if anybody is appointed and even if persons from the surplus Department like the Food Department, as is done here, are appointed to these posts, if they are invested with any power without any experience of the working of the Department then a chaos is bound to come. The responsibility of the revenue officers are greater; they have got a grave responsibility but they are not so much equipped with the necessary knowledge. So this is just the time that the residuary powers should remain with the civil court.

SHRI S. K. MAITRA (JOINT SECRETARY, MINISTRY OF LAW): Regarding the finally published record of rights, there is a presumption attached to it that it is correct. But as all presumptions are rebutable by evidence that is why suits can be filed. Now you say that u/s. 9 jurisdiction of civil court is taken away. On this point of course residuary power always vests with the civil court. Starting from the Privy Council and the Supreme Court the decision is that the exclusive jurisdiction of the civil court is not to be readily inferred. It excludes the title suit. Similar provisions exist under the Bengal Tenancy Act also. That does not take away the civil court's right.

SHRI PANDA: This provision no doubt exists under the CPC. Inspite of this the necessity to file suits in the civil courts did not arise because record of rights were previously pre-

pared after two or three decades. Now in quick succession these are prepared. There are loopholes and taking advantage of these loopholes laws are being enacted in such a way that no suit shall be filed in civil courts and no evidence shall be given to take away that presumption and these have got the President's assent. Therefore there is the clash. Therefore as the new Code is being amended, in spite of it after the amendment if something is preserved in the CPC the President would not give his assent.

MR. CHAIRMAN: There must be a finality and the aggrieved person must have to seek redress of his grievances. As you have pointed out the changes of conflict, this conflict has to be resolved and that is why I have requested you to suggest to this Committee a concrete amendment of this section and we will examine it.

SHRI PANDA: You have kindly given me this indulgence I shall do that. One point follows from you is that the High Courts or the Supreme Court may decide finally in Article 226 matters through writ jurisdiction but you know that Estates Acquisition Act and some other Acts are now placed in the 9th Schedule of the Constitution, High Court has no jurisdiction to decide or say anything about the Acts of the 9th Schedule.

MR. CHAIRMAN: Whether the High Courts and the Supreme Court have adjudicated on this conflict that has taken place in the State of West Bengal. We are not bound by any decision of the Supreme Court, we are legislating and if we can provide that in the Code itself then in future even Supreme Court can go according to new provision that would be made in the Code resolving this conflict.

SHRI PANDA: I shall send you my suggestion and proposed amendment and also the copy of the judgement of the High Court. I appeared in that case.

MR. CHAIRMAN: All right, we are very eager to have your experience. Now next point.

SHRI PANDA: Then payment of compensation to the landlords. How to protect the persons who have been given land. With regard to that I have stated all powers of the Civil Courts should not be taken away because sometimes trespassers who do not get land through Government claim that afterwards that they have been given settlement by the Government. Civil Court should entertain suits when the courts will find that Government has given settlement. If the defendant satisfies the court that he has got settlement from Government then the court should entertain.

MR. CHAIRMAN: The jurisdiction of civil courts to enter into this aspect.

SHRI PANDA: This is not record of rights. Something is that when such claim comes the officer is to send it to Revenue Officer for ascertaining whether the man claiming the right have got rightful title from Government authority. If he can show then court shall entertain the suit. Then about cost of the litigations, in question 5, I have said that main cost is the court-fees and it is for the Government to say whether they will minimise or abolish it. because justice should not be sold. Another thing is payment to lawyers. It is the choice of the parties to engage costly lawyears or less costly lowyers—fee is a contractual affair and on that legislation cannot be made. You can make legislation fixing the rate of fee but costly lawyers won't accept that they will take money privately.

SHRIMATI SAVITRI SHYAM: Whether some ceiling of fees should be imposed.

SHRI PANDA: That can be done only for the purpose of violating the

same. How can it be detected? Is there any machinery? Long ago you passed an Act against dowry but has that been abolished?

SHRI R. G. TIWARI: You know, in the case of Nirmal Kanta Roy, no less a person than C. R. Das was engaged. So, it is not only for extortion but moral consideration is also there on the part of the lawyers.

SHRI PANDA: In Alipur Conspiracy Case also he appeared for Shri Aurobindo. Then another thing is, if the days are not numbered, if adjournments are not given or seldom given cost will be lesser. There should be deterrant measures against heavy cost—cost of litigation should be minimised to provide destitute litigants. To that I have suggested that if the Government desires to provide poor litigants then Government should set up machinery who will decide whether the case of the party is just. After examining if Government finds that he has got a good case but he has no money to proceed then only Government will take responsibility about payment of fee either wholly or partly. I can inform you that in West Bengal there is a lwyers' forum who have taken up the onerous job of defending cases of poor litigants without fee. But if the Government comes in they can do it. Then you have also suggested in one question about giving copies of deposition and other documents. I think that will delay the procedure. Government departments will take long time to prepare copies of deposition and other proceedings and the matter will be delayed. Against that my suggestion is that that should not be done. Lawyers of both parties should have easy access to records to take exhaustive notes and at the time of argument and hearing they can refer to them. So, my suggestion is that this provision should not be introduced.

SHRI R. G. TIWARI: But lawyers are supposed to help the court of justice and therefore is it not desirable for them to properly equip? And evidence is a necessary part for his equipments and so what is the harm if copies of depositions are supplied to lawyers—two copies for two sides can be prepared at a time and there will be no extra cost.

SRHI PANDA: I am also suggesting that—I am of the same opinion with you.

SHRI R. G. TIWARI: About fees, there is a practice in one of the countries that lawyers do not settle fees at all. It is the Bar Association or the Secretary to whom the litigant approaches. The Association understands the case and it fixes up the few and engages a lawyer for him—the lawyer may happen to be a senior lawyer but he has to appear at the fees fixed by the Bar Association. In that way extortion can be given a go by.

SHRI PANDA: That is a very good suggestion.

MR. CHAIRMAN: Mr. Tiwari has suggested that whether the Bar Councils or the Bar Associations in our country also would like to go into the question and examine its feasibility.

SHRI PANDA: Bar Council is a statutory body under the Advocates Act. They only enrol advocates and decide the cases of the advocates They can examine this or do this if that Act is giving them some power.

MR. CHAIRMAN: There are two aspects of this question. The question emerges from our eagerness as to how to reduce the cost of litigation. Now, as you know, fee of the lawyers is one of the heavy items. Of course, we know that fee is different to different lawyers and that it is not related to the value of the suit or to the capacity of a particular party to pay. That is the case to-day in our country. Now, Mr. Tiwari has drawn your attention to the fact that there are some countries where their Bar

Associations accept the briefs and then deliver the briefs to the senior or junior lawyers. There the fee of the lawyers is also determined by the Bar Associations and not by the lawyer concerned. Now, Mr. Tiwari's suggestion was that whether similar things could be done in this country also.

SHRI PANDA: It is a very good suggestion, Sir.

MR. CHAIRMAN: Now, whether Court can provide for it or prescribe it, we have to examine that. But whether the Bar Associations voluntarily would accept the practice which is accepted in other countries as pointed out by Mr. Tiwari and whether the Bar Councils also can prescribe certain norms in our country that we want to know from you. Can they do this or for this matter a legislation has to be brought in so that the fees of the lawyers can be prescribed.

SHRI R. G. TIWARI: You know that in the Presidency High Court or even in the Supreme Court the lawyer is not supposed to come in direct contact with the client. For this reason precisely solicitors are maintained so that the personal affinities are not established between the lawyer and the litigants and the lawyer is competent to put the case in an impersonal manner. That is the proper and fair approach and that should also be the case for the class of lawyers in this country also.

SHRI PANDA: Mr. Tiwari's suggestions are very good and very beneficial. First of all, nobody can differ in principles as has been enunciated by Mr. Tiwari. But there are practical difficulties. The Bar Councils cannot take up this responsibility because there are only 20 members in Calcutta Bar Council and in other Bar Councils there are 15 members. There are no Bar Councils where there are 25 members. You know that upto 5,000 qualified voters the Bar Council gets 15 seats and between 5,000 and 10,000 it gets 20 seats and for above 10,000 qualified voters it gets 25 seats. Sir, I am the Chairman of the Enrolment Committee here. and I am enrolling advocates for the last few years. There are, throughout West Bengal 103 Bar Associations. There are about 14,000 advocates but very very few of them are cautious to enrol their names in time. On the last occasion I have got 5,200 names. This year upto now we are going to have our election within two months we have received on 3,500 names. Everybody seems to be callous that is the position.

SHRI R. G. TIWARI: They should not be allowed to practise.

SHRI PANDA: Now, these advocates become President. Secretary and members of the Bar Council by votes of the members of the Association. Seniors do not interfere in this matter. They do not become members. Some of them are kept as Presidents in honorary capacity. But the Secretary and the members of the Council are elected from the junior and middle senior persons. Top senior persons would not listen to them. Another thing is this that the membears of the Bar Council are afraid to approach the Senior persons to say something. This is one position. Another position is, as Mr. Tiwari has said, about the solicitors. There are dual system in Bombay High Court, Calcutta High Court and Madras High Court. In Calcutta High Court this system is dwindling away as greater portion of the suits of Calcutta High Court Original Side has been taken by the City Civil Courts. So the solicitors' position is practically dwindling out. In Calcutta, we have very few senior advocates who are only to take briefs either from their juniors or from the solicitors. They have no right to sign a petition or to file a Vakalatnama etc. etc. There are about 1000 advocates and about 300 barristers in Calcutta High Court. Out of these only 60/70 are seniors. In the Supreme Court also, I think. the number would not exceed 100. Any-

body who signs a petition or this or that cannot be senior advocate. He will be junior member. Senior Advocates are very few. So if you put a limit to their fees they will welcome it because some of them pay income tax upto 2/3|4 lakhs of rupees, and now they will refer to the lower rate which the Government would be fixing.

SHRI R. G. TIWARI: Perhaps you know that very senior lawyers prefer cash instead of cheques.

SHRI PANDA: Yes, they say if you give me cheque I shall take 1,700 rupees and if you give me cash I will take one thousand rupees. This is the position.

MR. CHAIRMAN: Whatever may be existing situation, in order to reduce the cost of litigation on more particularly to help the poor litigants by providing them with the advice of able and competent lawyers. could not the Bar Associations prescribe certain norms or procedures so that the Bar Associations, and if necessary the Bar Councils, could come into the picture and see that the problems are solved. If necessary the Parliament can do it through a legislation by amending the Advocates Act. Shri Panda has said that even if we make laws it may be difficult to implement. I agree with him. But is it not happening in the cases of all the legislations? Do you think that the existing laws are required to be made more stringent and more fool proof so that they can operate?

SHRI PANDA: You have already made laws for fixing the high rate of fee. You know, Sir, the Criminal Procedure Code has been amended and a new section has been added after Section 420, (a), (b), (c), (d).

MR. CHAIRMAN: May I draw your attention to one provision? The Bar Council of the High Court are empowered to look into the misconduct and mismomer of the advocates enrolled under the Bar Council. If receipt of fees which is not receipted for, that is an instance that you do not accept such fees and so it does not come under the purview of income tax return and so on. Do you think that similar receipt of fees should be restrained by the Bar Council of the High Court. This is a matter which the advocates are to take about.

SHRI NOORUL HUDA: It is useless exercise to dilate all these points because of the simple fact that in our society today whether we like it or not we cannot curb the fees given by the private or big business men. Lawyers are professionals. If you want to curb the rates of their income by legislation it will not yield good result. It will lead to corruption and certain other unwholesome practices.

SHRI PANDA: One thing I can submit on this point. You know, Sir, that ceiling of fee has been prescribed. The Criminal Procedure Code has been amended last year. Certain new section has been introduced, i.e., 420(a), 420(b), 420(c), and so on. This is about the lawyers, doctors and others. This has been prescribed because of misconduct to their clients in this respect because whatever can be their account of money, it is the money taken and the money spent including their fee, which is to be given by their clients, counter-receipt should be signed by the clients. There is another provision in the conduct rules under the Advocates' Act. The advocates are to follow certain code of conduct by which they are to give receipt to their clients on different heads of fees. The only thing is, more vigilance is needed. The Magistrates and the Prosecutors and the Bar Council should be asked to be vigilant about it.

MR. CHAIRMAN: We have discussed enough so far as this point is concerned. So let us curtail our discussion on this point and we like to have your suggestion on other items.

SHRI PANDA: The main thing shall be the courts have to minimise its hearing. Another main question is there. This is about question number 9 i.e., about review. You know in all sorts of litigations the judges are not free from committing mistakes. There are some provisions where the number of mistakes may be higher. The court should also be given a chance of correcting the mistakes when it is detected. So, provision of fee revision under order 47, rule 122 should be maintained. That is why I submit with regard to question 9, that when the courts are liable to commit mistakes the parties should be relieved of higher cost in giving appeal. So this provision will be beneficial both to the parties and the courts—this should be retained.

Now I deal with question 10. It is in view of Article 227 of the Constitution, section 116 should be retained. You know I have replied before that section 115 of the Civil Procedure Code consists of three definite points. The Court has exercised its jurisdiction not vested in him. The court has failed to exercise its jurisdiction so vested in him and the court has in the exercise of its jurisdiction, acted materially irregularly. These are the three specific items under section 115 and Article 227 is not very specific. It simply says about power of superintendence. The power of superintendence is such that it is elastic. Some restrictive expressions are there. It is in the hands or under the desire or whims of any court which may say, 'no it does not come under my superintendence. I do not interfere'. In one sentence the matter can be dispensed with. So my submission is that 115 should be allowed to be remained in this Act. Either party will choose to come to the forum of Section 115 or to the forum of Article 227. He cannot choose both.

SHRI R. G. TIWARI: Do you like the idea of giving revisional jurisdiction between the subordinate court and the District court? Why do you like the revisional jurisdiction against the order of subordinate court and to the High Court?

SHRI PANDA: I am answering your point. First of all, if there is such irregularity in the appeal court, then the District Judge court rectify it. Another thing is that such revisional power should remain with a very experienced judge.

SHRI R. G. TIWARI: District Judges are also experienced judge—is not it?

SHRI PANDA: Half of the posts of the District Judges are filed up from the professionals and the rest are filled up by promotion. Sir, why have you entrusted the marriage divorce matter of the Hindu Laws from Munsiff court to the District Judges Court?

SHRI R. G. TIWARI: Because of the sanctity of relationship.

SHRI PANDA: Experience of age at least in local affairs are accepted every where. So, this power of revision should not be very sparingly used under Article 227 or 115 in the High Courts through out India. Generally, 25 per cent of the appeal applications are accepted and most of the petitions are summarily rejected. Therefore, this power should be given to a very experienced hand. This revisional power is exercised by a single judge of great sincerity. Sir, there should be one forum against such orders i.e., District Judges. In the proposed amendment there will be 2 forums—one is High Court and the other is District Judges Court. There should be a co-ordination of jurisdiction. There is least possible chance to commit mistake by an experienced hand.

MR. CHAIRMAN: Mr. Panda, I will draw your attention to Section 115 of the Bill.

SHRI PANDA: Sir, if a party moves his case to the High Court for revision it will delay the procedure.

MR. CHAIRMAN: Article 227 has given authority to every High Court which shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. I think this is your contemplation. Article 227(2) reads as "Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. I seek your clarification on this. Authority of superintendence is given under Article 227 to the High Court and this authority are of the nature of administration of the lower subordinate courts. So far as Section 115 is concerned, this is regarding proceedings of the civil suit or civil proceedings of any subordinate court where under these 3 clauses to have exercised jurisdiction and have vested in law. I am referring to the section 115 of the Code. Are these circumstances on which this superintendence or revision of the High Court under Article 227 or Section 115 of the Code analogous?

SHRI PANDA: I respectfully differ because the provision under the Civil Procedure Code has exercised jurisdiction not vested in it, whereas subarticle (2) says the High Court may call for returns from such courts. What return? Returns for disposal of cases or what returns. Then it says, make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts.

MR. CHAIRMAN: Mr. Panda, what I am drawing your attention to is that you please apprize this committee after a careful study and a comparative study of these things—this section 115 and the Article 227—and send to us a note as to whether this claim made here in this note that article 227 will take care of those things provided for by section 115.

SHRI PANDA: If you kindly allow me to read one paragraph of my note. Kindly read page 6 of my reply. I have said that the same question arose at the time of amending the Criminal Procedure Code.

MR. CHAIRMAN: I am not satisfied with a parallel being drawn with the Criminal Procedure Code. I would request you to put a little more labour. Study these two things—section 115 of the Code and Article 227 of the Constitution and to submit a note to us as to how in your consideration these two are quite different and why you have said that this should be retained. The Bill seeks to delete section 115 and therefore the claim made here in the note is that article 227 will take care of those requirements that are being now provided for in section 115.

SHRI PANDA: I shall do that and I shall also inform you of the rules that are being framed under article 227 by the High Court and I shall also request you to read my submissions on the amendment of the Criminal Procedure Code.

MR. CHAIRMAN: Now, as regards the second portion of your memorandum your specific suggestions are all there, we will examine them and take note of all the suggestions but if you desire to highlight any of the points, you can do so.

SHRI PANDA: You kindly take all of them to be my evidence.

MR. CHAIRMAN: I may say that you have so nicely put it that it is easy for us to put our finger on it. Every clause is very brief and your suggestions are also very specific.

SHRI PANDA: You know, Sir, in any council I was the President of the Lawyers' Council for five years and only this year I have relinquished. In the Bar Council the man who does these things, every burden falls upon him. I had to labour on this Bill for about fifteen days at the cost of my practice and I had jotted down everything and I have told all my juniors and friends that when these things will be incorporated in the Code, you shall have to re-read it and so be very cautious from this time onwards. Read the Act and read the sections and don't be so much hankering after the money of the clients.

MR. CHAIRMAN: Now, Mr. Panda, kindly look to the second part of your memorandum. I refer you to paragraph No. 9. It relates to the obligations sought to be placed on a pleader. You have said that with regard to clause 76 sub-clause (v), in rule 10A sub-rule (2) the pleader has been penalised to pay costs occasioned by his failure to inform the court about the death of his client.

MR. CHAIRMAN: Mr Panda, the pleader gets his authority on behalf of the client on the basis of a vokalatnama, which is nothing but power of attorney to act on behalf of the client. What happens to the power of attorney, i. e. vokalatnama on the death of the executant? As soon as the elient is dead, does the authoriy given to him ceases?

SHRI PANDA Yes..

MR. CHAIRMAN: I am trying te understand the legal position. The pleader does not have any legal obligation, nor any legal right to appear before the court on behalf of the client provided he knows that the client is dead.

SHRI PANDA: Legally, the pleader is an agent of the client. With the death of the principal authority ceases. A duty is cast upon the pleader to inform the court, if he knows, the death of the client.

MR. CHAIRMAN: When in a particular suit the client dies and the heir approaches the pleader to continue to take interest on behalf of him also. Can he do that on the basis of the same vokalatnama?

SHRI PANDA: No.

MR. CHAIRMAN: On the occasior of the death of the client the authority of the pleader ceases. Therefore, this clause which impose an obligation on the pleader to be penalised because of his failure to give notice to the court of the death of the client seems to be without any legal obligation. Is that the correct position?

SHRI PANDA: Yes. Usual practice is that if the pleader comes to know that the client is dead and 90 days have elapsed, he will simply inform the court that I have information that the client died on such and such date and I have no other instruction or information.

MR. CHAIRMAN: Mr. Panda, as I said, your note is very informative. In addition, you have agreed to my request to my request also to give us a concrete suggestion regarding other section.

SHRI PANDA: I will send my suggestions to you by middle of January.

MR. CHAIRMAN: That will be welcome.

SHRI PANDA: I am thankful to the Chairman and to the members of the Committee for treating me very kindly and I am also enligtened by the different questions put to me on different subjects by Mr. Barman, specially by Mr. Tiwari. I think Mr. Tiwari is a very able lawyer. Tiwaris are our relations. In Bengal they are called Trivedis. My son's father-in-law is

a Trivedi. and Tiwari are same thing as Panda, Pandey, etc., are same things.

MR. CHAIRMAN: Mr. Panda, before we end may I on my own behalf and on behalf of the other members of the Committee extend our sincere thanks for the valuable evidence that you have given and we will look forward to the notes that you have agreed to send to us. I can assure you that our Committee will give careful consideration to the various suggestions that you have made. That will surely help us to come to our findings. Through you we extend our thank to the members of your Association.

SHRI PANDA: I would like to make one request. A law is prevailing in the country for more than a century and which has done a very good service, in any change—change is necessary in law there is no doubt—with the change of time law has to be changed—in any change, I am sure not the haves, but also the have nots will also get justice at your hands.

[*The witness then withdrew*]

II. 1. Shri Prithwis Bagchi, *Advocate Calcutta High Court, Calcutta.*

2. Shri Ranjit Kumar Banerjee, *Advocate Calcutta High Court, Calcutta.*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Witnesses please note that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of their evidence is to be treated as confidential. Even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now you are welcome to give oral evidence on any principle of the Bill or on any clauses.

SHRI RANJIT KUMAR BANERJEE: First of all I would say that it is very difficult to go through all the details of the provisions of the Bill in a few minutes. I shall, however, preface my evidence by stating that I fully endorse the anxiety about the question of delay. I am aware of the fact that Parliament will respect the right of a poorest citizen living in his hamlet and I also expect of the Parliament to treat the rights of the poorest citizen, say, owner of a thatched cottage equally sancred as the right of the bigger personalities. Equal opportunity must be given to an ordinary, common citizen to approach the highest court of the land and impediments in this regard must be removed. Now regarding the question of delay unfortunately there has not been any definition. If you go through the Anglo-Sexon jurisprudence of America and England you are bound to have the delay. You cannot avoid this I will hand over an important passage wherein the Chief Justice Marshall of America (he was not then the Chief Justice) in 1789, stated that there were 13 colonies and so many suits were pending, that even if the judges did not retire and more judges were appointed all the suits would not be heard. It is inherent in the system itself. I started from the lowest rank. How do you expect a judge of five to six years standing to command mastery of the fact? Therefore give them more pay, more pension. get better judges and have cases disposed of as quickly as possible. Take for instance, the High Court. I have practised before the judges who use to dispose of 6-8 cases a day at least and there has not been a single complaint. Why? This was because of their efficiency.

MR. CHAIRMAN: Your point is that some of the delays are inherent in the present system but some of them are attributable to the poor quality of the people who chair the va-

rious courts. If the quality is adequately improved then much of the delay would be avoided.

SHRI RANJIT KUMAR BANERJEE: I belong to that class of people who think that Independence has been ushered in for the benefit of the masters. The bigger the claim the bigger the value, the bigger the man bigger the court; the poorer the man he will not be able to go to the highest court.

SHRI R. G. TIWARI: Will a good lawyer in a High Court or in a mufassil court accept the case of a poor man who has one thatched cottage and who is not in a position to pay proper fees to the lawyer?

SHRI RANJIT KUMAR BANERJEE: Most certainly. So long I was the President of our Association whenever there was an approach we accepted it.

MR. CHAIRMAN: Would it be correct to assume the position as the Hon'ble Member, Mr. Tiwari also says that in the present context of our society both the extremes are there—general practice is that client has to pay certain fees to his lawyers. There are certain lawyers who charge heavy fees whereas even some senior lawyers do without fees. Would you like that certain measures should be thought of by which the fees of lawyers in different courts would also be prescribed.

SHRI RANJIT KUMAR BANERJEE: Why do you put the burden upon lawyers? Is it not the duty of the State to see that he is properly remunerated as in other countries? Secondly, it is a question of personal attitude whether he will accept fee or not—there are public spirited men who work without fees. But another thing is that income tax deptt. will not spare—they will charge tax. So, we shall have to create an atmosphere. You know in Supreme Court and High Courts there is a table of maximum fees to be charged, that is already there. Now it is upto you how much you will reduce.

MR. CHAIRMAN: While these things are there in our society when we make laws we make them for next generation. This particular Code was enacted in 1908 and it is now being examined afresh after successive reports of the Law Commission. Therefore, our endeavour here would be, on behalf of the Parliament to see how to plug the loopholes and to streamline the procedure, to minimise delays and also to make provision whereby cost can be reduced. In order to appreciate all these things what other extraneous things are there which should also be taken proper care of so that the objective of the Bill can be achieved. You kindly help this committee by pin-pointing some of the provisions which are there which according to you may require further modification, or some of the provisions about which you might perhaps like this committee to consider whether they should be there at all. So, on specific clause we request you to give your comments.

SHRI BAGCHI: Let us start with clause 5 which adds an explanation to Sec. 9 re: suit of civil nature. This is the jurisdiction of the civil courts. I propose inclusion of the words, "or involving civil consequence."

MR. CHAIRMAN: So far as clause 5 is concerned it does not touch the main section. Your suggestion is that the original section 9, main section requires a modification and which is that addition of the words, "or involving civil consequence".

SHRI BAGCHI: Administrative orders having civil consequence, i.e. taking away money of taking away any other kind of property or effecting status, should be brought within the scope of section 9. Administrative law is of recent origin.

MR. CHAIRMAN: If at the end of the section it is added, "or involving civil consequence" would it not come under the phraseology of a suit of a civil nature. You seem to think that

the suit of civil nature does not include it.

SHRI BAGCHI: Administrative orders which will cause civil consequence are not ordinarily accepted to be a dispute of a civil nature.

MR. CHAIRMAN: Whether that would not be construed as a matter of civil nature.

SHRI BAGCHI: It cannot be because administrative orders are not subject to the review of the courts of law.

MR. CHAIRMAN: Your suggestion is that after the words 'civil nature' you want to add the word 'involving civil consequences'.

SHRI S. K. MAITRA: Could you kindly illustrate a case which will lead the consequence to fall within the ambit of suit of a civil nature?

SHRI BAGCHI: This is exactlv the case. A record was selected from H.M.V. Company for being broadcast by the A.I.R. But the screening committee went out of the way for private grudge and said that this record should not be listened to by the public. They made this report even without testing the record. Now, it is absolutely within the screening committee's jurisdiction to exhibit or to play the record or not. This type of things does ordinarily come within the purview of civil dispute.

SHRI S. K. MAITRA: What right is infringed?

SHRI BAGCHI: By not giving publicity to the record, the record owner suffered pecuniary loss. Because of the collateral or private grudge or private motive of the screening committee my record was not published and consequently I suffered pecuniary also.

MR. CHAIRMAN: What will be the cause of action?

SHRI BAGCHI: It will be discrimination against me to cause an injury for collateral purpose. Without applying its mind and without discharging its obligations which are inherent duty of the Screening Committee, it refused to play the record.

SHRI S. K. MAITRA: Can you make it a basis for a claim.

SHRI BAGCHI: My right would have been covered by the world "civil nature'. By the rejection of the screening committee to play my record I am ultimately losing financially. That is to be adjudicated.

MR. CHAIRMAN: Mr. Bagchi. it is a very delicate and fine question of law. Now, you visualise that the court ultimately allows that particular aggrieved person to file application, petition or a suit whatever you call it, but what will happen? We are trying to understand as to how that contingency may arise. Perhaps it is not covered by any section of the civil procedure code. That is your apprehension, I think.

SHRI BAGCHI: Civil nature presupposes the existing right as has been expressed by the learned Secretary. But I am speaking of administrative act which does not ordinarily come within the purview of the civil courts and are not ordinarily taken to be subject to the jurisdiction of civil court.

SHRI RANJIT KUMAR BANERJEE: Mr. Chairman: Sir, I also appreciate the anxiety of my learned friend. Mr. Bagchi. As Mr. Secretary has pointed out rightly that there must be a right and then the question will arise whether the right is civil right or otherwise. Then the question of implementation and taking advantage of the procedural law comes in. So we must create a right, and if we can create a right and declare it as civil consequence then it

ultimately affects us either financially or otherwise.

MR. CHAIRMAN: Has there been any occasion when such an aggrieved person has not been able to file a suit or proceedings in any civil court to get such redress under Section 9 of this Act?

SHRI BAGCHI: Exactly that was my case referred to. The screening committee without applying its mind just broke that 'record' and gave a report that it was played and it was not selected. But in the course of evidence it was found the screening committee broke the 'record' without playing it at all and without applying its mind rejected it.

MR. CHAIRMAN: Does it not come under the malafide exercise by the Executive Authority, the Secreening Committee here? It can be challenged in a court of law, I think, not under Section 9 of the Civil Procedure Code but may be by other appropriate articles of the Constitution.

SHRI BAGCHI: Exactly that is right. Declaratory actions should be made coextensive with actions covered by prerogative writs.

MR. CHAIRMAN: Anyway, you have given your suggestion. It is on record and we will examine those points. Next point?

SHRI RANJIT KUMAR BANERJEE: Next is Clause 6 of the Bill whereby Section 11A is amended. Well, these are established rules and what is the use of bringing in new rules? If this is accepted another class of litigants will come up. These principles had already been recognised judicially so far back from the last century right upto 1960.

MR. CHAIRMAN: So your suggestion is that it will lead to difficulty and cumberous?

SHRI RANJIT KUMAR BANERJEE: Certainly Sir.

SHRI BAGCHI: I may give one suggestion. In the original section you will find "in the suits in which such issue has been subsequently raised." If there is any decision by the Munsiff's court, the decision will not be *res judicata* in a suit tried in the subordinate Judge's Court, though some issues in the latter suit may be the same as in the former suit. There is no finality of the decision of the Munsiff's court then. Suppose in deciding question of title to one item of property an issue is raised whether 'X' is the son of 'Y'. In the subsequent litigation a number of points arise regarding that property and many other properties and it is sent to or filed by a superior court. This court raises another issue in which relationship of 'Y' and 'X' comes into the picture and it is to be tried *de novo*. So, my suggestion in altering section 11. is that an issue itself triable and tried by a subsequent court should be *res judicata*.

SHRI S. K. MAITRA: In the Law Commission's recommendation you will find that if the case is sent to the lower court from the District Judge the decision of the court may operate a *res judicata* in the second case. It is already there. The Law Commission is aware of it.

MR. CHAIRMAN: What are your concrete suggestions about clause 24?

SHRI BAGCHI: I suggest that the parent section should not be changed. Only a sub-clause 24(A) should be added.

SHRI RANJIT KUMAR BANERJEE: So far as this is concerned let it rest where it exists now.

MR. CHAIRMAN: We will consider your suggestion along with the new section suggested as 24(A).

SHRI RANJIT KUMAR BANERJEE: In explanation 1, the corporation shall be deemed to carry on its work in the whole of India. Do you mean that people from one part will have

to go to another part? The object of the Bill should be to minimise the difficulties. But in the existing provisions of the Act there is no such difficulty. I suggest that old thing should be retained.

SHRI S. K. MAITRA (JOINT SECRETARY MINISTRY OF LAW): Will you kindly refer to the Law Commission's 54th Report, at page 30?

MR. CHAIRMAN: Now we deal with the second explanation. The first part of the explanation is no doubt useful. Since where a corporation has its main office at any place in India it is to be deemed to carry on its business there irrespective of nature of work that is actually carried on there. But the latter part of the second explanation is otiose. If no part of the cause of action arises at the place of the branch office, the corporation cannot, as the wording now stands, be said to transact business at the place. In the presence of clause (c), the purpose of the second part of the Explanation 2 is obscure. Where the suit is instituted at a place where a corporation has a subordinate office, the court cannot dispense with the requirement that the course of action arises at a branch office of the corporation, a suit is not maintainable in the court of that place. The latter part of the second Explanation therefore serves no useful purpose. This is what the Law Commission said.

SHRI RANJIT KUMAR BANERJEE: My approach is this. If you think, at later stage the existing provisions are such that this is an impediment in the administration of justice or that the existing provisions are not sufficient you may improve upon it. But why do you make it unless you have a grievance that this particular improvement in the provision has created much '*golmal*' in the administration of justice?

MR. CHAIRMAN: I would like to explain the position. As the Law Secretary pointed out that this amendment as proposed in the Bill is on the basis of the recommendation of the Law Commission. This Commission went into the matter and took evidence of several eminent lawyers. Their finding was that this explanation requires some modification. That is why these proposed explanations 1 & 2 under clause 7 we have made reference to. Now your difficulty is that when our country is vast and the head office of a corporation is at one place and they have the business at another then how the corporation shall be deemed to carry on business at its sole or principal office in India. Here the cause of action arises.

SHRI RANJIT KUMAR BANERJEE: Sir, take for instance a Corporation, which has some branches somewhere. He puts on labourers or make payment of something in some distant part of the country. In that case if litigation arises it will be more disadvantageous. My submission is that in the existing law we have faced no difficulty.

SHRI S. K. MAITRA (JOINT SECRETARY, MINISTRY OF LAW): Suppose a person is residing at a distant place for his personal work. If litigation arises what will be the position? But so far as the company or a corporation is concerned, domicile clause will be treated where the head office is situated at a distant place. Where is the cause of action arisen? A head office of a company is situated in the eastern part of India, in Delhi but the cause of action has arisen in Shillong. The suit can be filed either at Delhi or at Shillong.

SHRI RANJIT KUMAR BANERJEE: Sir, I can tell you at present regarding the amendment of Section 80 of Railways Act and the cases are pending.

MR. CHAIRMAN: We will examine.

SHRI BAGCHI: Explanation 2 is definitely needed.

MR. CHAIRMAN: So. you want that explanation 2 should be retained.

SHRI BAGCHI: Sir, I propose for an amendment.

SHRI RANJIT KUMAR BANERJEE: Under Section 99 of the provision of the Civil Procedure Code, it is practically on the same line that the objection of jurisdiction cannot be raised in the appellate court. I suggest that the people can get it at a less cost as the learned members have rightly pointed out that the lawyers are getting higher fees.

MR. CHAIRMAN: Both the learned witnesses at this stage suggest that whenever you agree to the provision of the Bill, you need not reiterate I will request you to make any other suggestion so that we can consider it.

SHRI BAGCHI: Please refer to Clause 60. Granting of time and making of any executable order is certainly within the competence of the learned judge. It is there as if these rascal lawyers are responsible for delay. But they are not in the least responsible. The court may pass a conditional order and if the order is not carried out, certainly court may dismiss the case. Greater number of courts, better facility for convassing a cause and proper judicial vigilance—all these things taken together may stop delay.

MR. CHAIRMAN: Mr. Banerjee, what is your experience if the court orders for an adjournment and the other party objects to it? Here delay means adjournment. Every party have asked for adjournment thus causing delay. To my under standing, purpose of this is that adjournment cause is there and that adjournment should be made commensurate with the delay.

SHRI RANJIT KUMAR BANERJEE: In this matter court is perfectly within his right.

MR. CHAIRMAN: It is the discretionary power of the court.

SHRI RANJIT KUMAR BANERJEE: Sir, the difficulty will be that this will be another source of litigation.

However water-tight we can make it, or revision-proof we make it, some methods will be there to challenge it, the power is already there. About that there is a no question.

MR. CHAIRMAN: So You are opposed to this amendment.

SHRI RANJIT KUMAR BANERJEE: I say it is unnecessary.

SHRI BAGCHI: Now, section 47 has been amended to make it comprehensive. It is all right. But as you all understand difficulty crops up after the degree and there is a provision in order 41 rule 4 for stay of the operation of the decree at the instance the appellant on terms. In the body of the Code there is no such provision with regard to the court passing the decree. Can that be added along with section 47 or incorporated in some other section? You have added order 21 rule 105 providing for the petitions coming within order 21. Now, if a petition under section 47 is pending, obviously there will be a stay of execution, otherwise it would be infructuous but the judgment debtor will go scot free unless some condition is imposed for compliance with the decree as a condition of stay.

MR. CHAIRMAN: Mr. Banerjee and Mr. Bagchi may I make a suggestion? I notice that you have studied this Bill and also made notes thereon although you have not been able to send us a written memorandum. While the evidence that you are now tendering before us is being recorded, well, it may not be possible for you to cover all the clauses on which you have made studies and you want to offer comments. So on that score I am trying to strike a via media which will meet the ends of justice and it will be fair to you and to us also that after the evidence is over you will be welcome to send to us to the Lok Sabha Secretariat a written note covering all he points that you want us to see on the various clauses—whether for retaining, amending or modifying the clauses. That will be welcome but with one proviso that you will kind-

ly try to send the note to us within the month of January. Will it be possible for you to do that?

SHRI RANJIT KUMAR BANERJEE: Yes, our notes are all complete and we shall send it after typing.

MR. CHAIRMAN: That does not mean that your evidence is over. That is far from my mind. Your scope is still open. You may now continue.

SHRI RANJIT KUMAR BANERJEE: Mr. Chairman, your suggestion has relieved us and we are very much grateful to you. Now, we feel that both you and we are trying to do the same thing and we are grateful to you in this respect that even if we miss something here we shall be permitted to send that in a written note within a specific time so that in your wisdom you may examine it. Therefore, we must be very short because when another opportunity is being given to us we should not waste your time and so we shall shorten the matter.

MR. CHAIRMAN: Now, what about clause 28, section 80 of the principal Act—it shall be omitted.

SHRI RANJIT KUMAR BANERJEE: We agree.

MR. CHAIRMAN: Now, what about clause 39, section 100?

SHRI RANJIT KUMAR BANERJEE: It is just an indirect condemnation of the honourable judge. You have not introduced anything new, that since the earlier days, since 1859 the law is there and from the earliest times right up to the present day it has always been held that you cannot go into the question of facts. We know the law is there but if somebody in exercise of that power forgets the law, it is for the higher court to correct it and not to fetter in this way, I will take the first question of delay. If it is fulltime hearing out without records of the case below, you cannot dispose of two or three matters a day. Secondly, why do you think that the judges will go on to the question of facts. That may be possible in a best society where the legal education is perfect but even then there are 10 or 15 per cent lapses, but the lapses should not be more and in such a manner that the procedure should be made cumbersome.

SHRI RANJIT KUMAR BANERJEE: What is the meaning of substantial question of law? Every law is either substantial or it is nonsense.

MR. CHAIRMAN: This phrase 'substantial question of law' is incorporated in Article 133 of the Constitution—it has been amended—'an appeal shall lie to the Supreme Court from any judgment that the case involves a substantial question of law'. The same thing is brought in here also. There is no other meaning. What substantial question of law means is neither in the Constitution, nor is it here. What is your objection to this substituted section 100 as in the Bill?

SHRI RANJIT KUMAR BANERJEE: Firstly, it will lead to plurality of procedure. Unless and until a matter is heard out completely it is not easy for a judge to certify or reject that it is not a fit case to be heard.

Secondly, at the time the records were not before the court. Unless appeal is admitted records will not come. Therefore, it will not be helpful.

Thirdly, if the judges in admitting appeal limit to the question of law alone, what is the use of recording it and saying, it contains substantial question of law. Therefore, plurality comes in here.

MR. CHAIRMAN: Do you mean to say, certification by the High Court, a substantial question of law apart, will be some sort of a proceed-

ing to enable the judge to certify that it is a question of law and, therefore, the second appeal is allowable?

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: Here you want that the old section should remain and you are not agreeable to this amendment.

SHRI RANJIT KUMAR BANERJEE: It will not be helpful under Article 133 courts are certifying to superior courts. High Court certifies that a substantial question of law is involved which has to be determined by the Supreme Court.

The delay is caused not by that. Delay is caused by other factors. Firstly, the service of notice, bringing of records take some time. Now, due to proceedings under Article 226 50 per cent of the Judges are engaged in hearing 226 cases and the number of judges are also not sufficient. These will mean plurality of proceedings and will end in delay. And delay will end in doing injustice.

MR. CHAIRMAN: So, you suggest that no amendment is called for.

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: Whether the relief contemplated under article 227 under the superintendence of the High Court over the subordinate courts will take care of the requirements that are contemplated under section 115.

SHRI RANJIT KUMAR BANERJEE: The scope of article 227 and that of section 115 of the C.P.C. are quite different. Article 227 and section 115 cannot be equated.

MR. CHAIRMAN: I would like to know your views as to whether under article 227 the High Court can take cognizance of the fact of exercise of wrong jurisdiction or non-exercise of jurisdiction which the courts will have exercised involving redress under this section can be filed.

SHRI RANJIT KUMAR BANERJEE: I am a bit conservative. I think article 227 was not incorporated for that purpose.

MR. CHAIRMAN: May I request both of you to give a note as to how redress can be had under Article 227 in matters not covered u|s 115.

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: You are opposed to the omission of sec. 115?

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: You are for its retention?

SHRI RANJIT KUMAR BANERJEE: Yes. In an interlocutory order parties are already in a court of law. They are moving against the order made by the court which is entertaining this suit. So to expedite matters notice can be given to the parties even in the court from whose order they propose to move to the High Court u/s 115 so that the delay in process of issue of notice, double hearing, long process of serving notice and going from this court to that court, calling for records can be avoided.

I now also want to raise another point as regards cl. 47. You have deleted that clause. On p. 107 of this draft it is stated "Since now this seclusion present exemption (read)" I do not agree with this. We may

desire it but we have not reached that stage. Why there is sec.113? Why you recognise this? A woman may refuse to come out of *purdah* and appear before a court.

MR. CHAIRMAN: You say that even if sec. 133 is deleted you will not agree with the deletion of sec. 132.

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: You consider the question of women who observe purdah?

SHRI RANJIT KUMAR BANERJEE: Of course I appreciate the principle that nobody is above law and everybody should appear before the court. That philosophy is good. I quite appreciate it but if somebody does not want to come why should you compel her.

MR. CHAIRMAN: Would you like our women to decide it?

SHRI RANJIT KUMAR BANERJEE: Yes.

MR. CHAIRMAN: Apart from sec. 133, you are considering this independently and you are of the view that section 132 should be retained on its own merits.

SHRI RANJIT KUMAR BANERJEE: Yes, the choice should be given to them either to come or not to come.

SHRI BAGCHI: Our next point, which is most important, is about clause 89, Order 39. In sub-clause (5) you have added 3A and have given a time-limit. That is all right, but what will happen if at the instance of defendant or if the court is otherwise busy the matter cannot be disposed of within the time-limit. What will happen if due to defendant's tactics adjournment is given beyond 45 days or if the court is otherwise busy? What will be the position?

MR. CHAIRMAN: What is your suggestion?

SHRI BAGCHI: My suggestion is, a clause be added the court may on sufficient reasons extend the time-limit.

SHRI S. K. MAITRA (JOINT SECY., MINISTRY OF LAW): That is already there in the clause. With the consent of the opp. party court may extend the time-limit beyond 45 days.

SHRI BAGCHI: I give an example. The West Bengal Premises Tenancy Act provides for completion of cases, for repairs within 3 months and cases for fixation within 6 months, but as yet there has not been any decision of any case of repairs or fixation within the time fixed. It is physically impossible. Time limit in matters of procedure ought not to be too rigid.

SHRI S. K. MAITRA (JOINT SECRETARY, MINISTRY OF LAW): There is a difference between that statute and this one. Here by virtue of the operation of the statute itself the injunction will stand vacated. So, if the court wants that injunction should continue it has to adhere to the time-limit, otherwise it will stand vacated.

MR. CHAIRMAN: What modification would you suggest that might remove the difficulties you apprehend? On that you kindly formulate proper amendment to this clause and kindly send the same to us along with your other suggestions. We will examine and give our thoughts to it.

SHRI BAGCHI: Then regarding expeditious trial we feel difficulty about service of summons.

SHRI RANJIT KUMAR BANERJEE: You will find that in 90 per cent cases summons are either returned unserved or served on the day or just a day before hearing. Then there are difficulties about calling for the records and substitution matters. We request this Committee to pull up these things.

SHRI S. K. MAITRA (JOINT SECRETARY, MINISTRY OF LAW): We have already provided that in Order V wherein simultaneously service of summons by registered post should be made.

SHRI RANJIT KUMAR BANERJEE: Difficulty is that in our country, say in Assam, the High Court exercises powers and jurisdiction upto the borders of Nepal. It is difficult to negotiate, difficult for people to go there. In Himachal Pradesh also it is practically impossible to serve notice or summons. Physical condition of our country should be looked into.

MR. CHAIRMAN: Any way, we will see how far delay can be reduced.

SHRI BAGCHI: Then regarding dismissal of suits for non-putting of processes. There ought to be some provision for revival. In Or. 9, rule 5 there is no such provision. Another rigid section by addition of clause in 64, that no fresh suit will lie, litigants are being non-suited for all times to come.

SHRI S. K. MAITRA (JOINT SECRETARY, MINISTRY OF LAW): Under rule 103 a separate suit was possible previously. Now that is intended to be omitted—all questions relating to execution, discharge and satisfaction of the decree are to be decided by the executing court itself.

SHRI RANJIT KUMAR BANERJEE: Sir, we will send our notes and memoranda to the Secretary by the end of January, 1975.

MR. CHAIRMAN: We would welcome if you could send those earlier. During the discussion some points certainly occurred in your mind. I am quite sure of it. So, kindly send these points to us within a short time and for the rest you take your own time and send those within January, 1975.

SHRI RANJIT KUMAR BANERJEE. We will do it, Sir.

MR. CHAIRMAN: Mr. Banerjee and Mr. Bagchi, I on behalf of myself and also on behalf of the members of the Select Committee sincerely appreciate the co-operation that you have extended to us by tendering your valuable evidence here. Your experience behind those evidence is going to help us in considering the various clauses, particularly the controversial clauses. We are also looking forward to the notes that you have agreed to give us. As I have stated earlier, we will give our careful consideration to those suggestions.

May I again thank you both on behalf of myself and on behalf of the members of the Committee?

SHRI RANJIT KUMAR BANERJEE: Mr. Chairman, I on behalf of myself and on behalf of my learned friend offer my heartfelt thanks to you and to all the members of the Committee. If we can do anything to develop India as a whole I should be happier. You will always get our co-operation I can assure you of that. I again thank you.

[The Committee then adjourned].

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'C' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Wednesday, the 1st January, 1975 from 10.00 to 13.20 hours in Council Chamber, West Bengal Legislative Assembly Building, Calcutta.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami
3. Shri Mohammad Tahir
4. Shri Noorul Huda
5. Shrimati Savitri Shyam
6. Shri R. G. Tiwari
7. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

8. Shri Bir Chandra Deb Barman
9. Shri Krishnarao Narayan Dhulap
10. Shri Kanchi Kalyanasundaram
11. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

WITNESSES EXAMINED

I. Shri Pramatha Nath Mitra—*Advocate, Calcutta.*

II. Shri B. C. Dutt—*Advocate, Calcutta.*

III. 1. Shri Shankar Das Banerji

2. Shri Dipankar Prasad Gupta

I. Shri Pramatha Nath Mitra, Advocate, Calcutta.

[The witness was called in and he took his seat].

MR. CHAIRMAN: Mr. Mitra, before we enter into the evidence I would let you know about some directions in this connection. Please note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire that your evidence to be treated as confidential, such evidence is liable to be made available to the Members of the Parliament.

I would now extend my hearty greetings and on behalf of my friends and colleagues here of this committee and wish you a happy new year.

SHRI PRAMATHA NATH MITRA: Yes, Sir. I also wish the same for the learned Members of the Joint Committee.

MR. CHAIRMAN: I find that you have not submitted any written note. So you are welcome to make your suggestions on the general principles of the Code of Civil Procedure Bill.

SHRI PRAMATHA NATH MITRA: Sir, I have prepared a written note. I was rather busy in the whole of December. During the last few days I have been able to prepare a note and had it typed in two copies. If you desire I can place one copy before the Hon'ble Committee.

MR. CHAIRMAN: Yes. Please give us one copy of your memorandum. Since you have not placed it beforehand we will examine your points carefully and I would request you not to read your notes but to make suggestions on such points as you feel necessary to the Hon'ble Members of the Committee.

SHRI PRAMATHA NATH MITRA: Sir, I am accustomed to speak standing. If you kindly allow me I would make my suggestions standing.

MR. CHAIRMAN: Though we allow all the witnesses to deliver their comments sitting, but as you feel it uncomfortable you are at liberty to speak standing.

SHRI PRAMATHA NATH MITRA: Thank you, Sir. First of all I have dealt with principles of *Res Judicata*. The draft makers of the Bill suggested a new clause (section 11A) to be inserted. I feel, it is confusng and so it is unnecessary. Section 11 deals with *Res Judicata*. Now the decisions have extended the doctrine of *Res-Judicata*. They (the draftsmen) call for a general principle of *Res Judicata* but the way they are doing it, I say, seems to me is introducing simply confusion into law which is very well said at judicial decision. So, it seems to me wholly unnecessary to insert Section 11A. The general principle of *res judicata* as for as possible have been laid down by the decisions. I think this is not at all necessary. It will create confusion. It is well settled over half a century by the decision of the highest judicial authorities. In respect of suits the provisions of Section 11 so far as made earlier were complete in every proceeding in execution and every civil proceeding other than suit general principles of *res judicata* have been applied. This is very unfortunately drafted. It will not help us at all rather than it will create confusion.

MR. CHAIRMAN: Mr. Mitra, I want some clarification from you. Section 11 of the Code embodies the principles of *res judicata*. You are now wanting the clause to remain as it is. The proposed Section of 11A, your opinion is, that it is unnecessary.

SHRI PRAMATHA NATH MITRA: If it is introduced, it will create confusion. The drafting is very unfortunate.

MR. CHAIRMAN: Your first point is that if these two additional clauses are being inserted to make express provision to the effect that the principles of *res judicata* shall apply to execution proceedings other than suit, then these additions are not necessary.

SHRI PRAMATHA NATH MITRA: It is not necessary.

MR. CHAIRMAN: Is it your case that these two eventualities are also included and they are governed under Section 11?

SHRI PRAMATHA NATH MITRA: Not by section 11. They are fully covered by the judicial decision and it is well settled by the higher judicial authorities.

MR. CHAIRMAN: If it is not decided by the higher judicial authorities, then what is your objection if it is put in the code itself?

SHRI PRAMATHA NATH MITRA: It is not necessary and also the drafting is unfortunate.

MR. CHAIRMAN: Would you please help us in suggesting that in what manner this drafting may be improved so as to remove your doubt?

SHRI PRAMATHA NATH MITRA: You will permit me to read the note.

MR. CHAIRMAN: Your first submission is that these are not necessary. You are also not happy with the drafting of the clause. Therefore, my suggestion to you that if you kindly forward your written idea within the month of January, then we will examine it.

SHRI PRAMATHA NATH MITRA: I have already handed over my memorandum to you.

SHRI NOORUL HUDA: Mr. Mitra, you have suggested that amendment Section 11A is not at all necessary and you have told that this will create further confusion because these are well settled by the judicial decisions. Can you give us an alternative better draft, otherwise we will be content with your observation that 'this is not necessary'?

SHRI PRAMATHA NATH MITRA: I would rather not attempt the task.

MR. CHAIRMAN: Mr. Mitra, kindly give your views on the next point.

SHRI PRAMATHA NATH MITRA: I am opposing the new Section 100 of Clause 39. I have tried to put my views very fully in the note.

MR. CHAIRMAN: I have observed that you have submitted a written memorandum just now. But the honourable members have not got any chance to go through it. I have also not go any chance to go through it. Your written memorandum will be examined by us later on. We will be benefitted by your oral evidence.

SHRI PRAMATHA NATH MITRA: I think that the main object of the proposed amendment is to save time. In my note I have made a strong objection to the charge against the High Court. Firstly, it is not making saving of time. What is the practice in the Calcutta High Court ? Well that order 41 and rule 11 is here to deal with this. What do their lordships do? They just go through the judgements and see whether there is really any point of law or ground which comes within section 100. If they think that there are any grounds then they say that the appeal will be heard. But if they do not find that there is any ground which comes within the purview of section 100, then they say that the appeal is summarily dismissed. There is no question of admission. When the order for hearing the appeal is made, notices are served on the respondents and the case is heard as a contested appeal before the two parties. And this process does not take very long time. Therefore, my submission is why introduce all this paraphernelia in this section and really by introducing this new section there would not be any saving of time. Secondly, I submit that the language of the section is such that the whole thing will have to be recast in future—not merely section 100 but the whole scheme regarding second appeal will have to be recast. Thirdly, I am taking objection to certain remarks which have been made in the notes on

section 100 on page 106. "Clause (a), (b) and (c) of section 100 are very wide in effect and clauses (b) and (c) have led to plethora of conflicting judgements. In dealing with second appeals, the Courts—meaning the High Courts—have devised, and successfully adopted, several concepts, such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the Courts below." Sir, I take strong objection to this. What is surprising is the revelation that these things are said to be devised by the High Courts for the first time. The drafters do not seem to know that there are a series of judicial decisions by the Privy Councils which the High Courts have been following. This is a serious charge against the High Court.

SHRI NOORUL HUDA: Mr. Mitra, there is no derogatory remark against the High Courts. I mean, the drafters have, according to your opinion, might have, made certain mistakes, but there is no derogatory remark against the High Courts.

MR. CHAIRMAN: Here you are referring to the notes on the clauses. First of all, these notes do not form a part of the Bill. They are only some arguments to justify why these changes are necessary. You may not agree with those arguments but in so far as the language of this note is concerned, as Mr. Huda has pointed out, there does not seem to me to be any aspersion or reflection against the courts. What they have said is that the high courts are flooded with a number of cases and that is why they think that this amending section will reduce the number. Your point is that this will not reduce the number but it will create more complication.

SHRI PRAMATHA NATH MITRA: What is the meaning or implication of this sentence? "In dealing with second appeals, the Courts have devised, and successfully adopted, several concepts, such as a mixed question of fact and law a legal inference to be drawn from facts proved and even the point that the case has not been properly approached by the Courts below." What is the implication? Is it that the courts have devised these concepts for the purpose of introducing matters for enlarging the scope of second appeals? What is the insinuation in this sentence? It certainly does contain an insinuation against the High Court.

SHRI S. K. MAITRA (Joint Secretary, Ministry of Law): These are the observations which have been made by the Law Commission which was presided over by the ex-Chief Justice of India. I am just reading out only a portion. "It would be noticed that clause (a), (b) and (c) of section 100 to which we will presently refer are in a sense very wide in effect. In fact, as we will have occasion to point out that clauses (b) and (c) have led to a plethora of conflicting judgments and it may be safely stated that ingenuity of the lawyers determined to seek admission for second appeals of their clients in the High Court, coupled with judicial subtlety which generally believes that even an erroneous finding of fact does on the ultimate analysis, lead to injustice, has unduly and unreasonably widened the horizon of section 100. It is easy enough to understand a point of law is; but in dealing with second appeals courts have devised and successfully adopted several other concepts, such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the courts below." This is the exact language that has been quoted in the note on clauses.

MR. CHAIRMAN: Mr Mitra, my observation on this issue is that you have rightly observed that this is very strongly worded. Our Law Secretary has pointed out that this is the observation of the Law Commission. Any way, may I suggest that let us come back to the main point. In spite of the

Law Commission, Privy Council and all that you feel that section 100 is good enough and should be retained. What is your specific objection? Here it is a substantial question of law and, secondly, certainly, it has to be done by the High Court.

SHRI PRAMATHA NATH MITRA: There is no such thing as admission in the second appeal. If you contrast Ordrers 45 and 41 you will find the difference. There, the language used is admitted. The whole procedure is different. I do not suppose that substantial question of law will introduce any greater clarity into the matter, or give any less latitude to the High Court to admit appeals.

MR. CHAIRMAN: Supposing this expression is modified to be a question of law only. Will that be better?

SHRI PRAMATHA NATH MITRA: Yes, that will be better.

MR. CHAIRMAN: May I point out that this substantial question of law is not adopted by the Government. It is borrowed from the Constitution as amended.

SHRI PRAMATHA NATH MITRA: Yes, I have also pointed out that it is borrowed from the old article 133. Even then, it will not do very well. I have referred to all these things in my notes. I say, the expression 'substantial question of law' is not going to introduce more clarity into the matter.

MR. CHAIRMAN: Even it is 'question of law' you object to the certificate.

SHRI PRAMATHA NATH MITRA: Yes.

MR. CHAIRMAN: Supposing these clauses are omitted. Only on question of law without the certificate the second appeal may be retained.

SHRI PRAMATHA NATH MITRA: I will object to that also because otherwise many injustices will remain unrectified. I think this has served very useful purpose and it is not necessary in the circumstances of our country.

MR. CHAIRMAN: From any angle you will not accede to any violation on the existing section 100 of the Code.

SHRI PRAMATHA NATH MITRA: Yes, as it is not going to serve the end of justice at all. Now I come to section 115. It will be much better if I read out my notes. You are going to repeal section 115. I suppose, there again they have quoted from the Law Commission, but I have not been supplied with a copy of the Law Commission report. In the notes on clause two reasons are assigned for the proposed repeal of section 115. The first reason is stated to be that in spite of decisions of the Privy Council to the effect that the section applies to the irregular exercise or non-exercise of jurisdiction or illegal assumption of jurisdiction and that in spite of these decisions the High Courts have continued to exercise a very wide and extensive jurisdiction under this sections. I am not aware that the Privy Council ever said any thing which had the effect of rendering nugatory or nullifying clause (c) of the section. What, by the way, is the distinction between "irregular exercise of jurisdiction" and "acting with material irregularity in the exercise of its jurisdiction"? Again, it has to be remembered that the Supreme Court has put a liberal interpretation upon the word "case" and has held that the expression "case" is a word of comprehensive import and is not restricted to the entirety of the proceeding in a civil court and it has further observed that to do so may result in certain cases, in deyning relief to the aggreved litigant where it is most needed and may result in the perpetration of gross injustice. It has also been held that a case said to be decided. If the court adjudicate for the purposes of the suit some right or obligation of the parties in controversy. It may be that in a few cases High Courts

have issued rules against purely intereocutory orders, but and large they have interfered only in "case decided" for granting relief to the aggrieved litigant where it is most needed and for preventing the perpetration of gross injustice which would otherwise result. Expedition is good, but justice is better. As far as I know, in the Calcutta High Court frivolous application have met with very short shift from the Judges.

The other reason advanced for abrogating section 11 is that "In view of the fact that adequate remedy is provided for in Article 227 of the Constitution for correcting cases of excess of jurisdiction, or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction, the section is no longer necessary and is, therefore, being omitted." If Article 227 confers exactly the same powers on the High Courts as section 115 does, then it is not understood what is gained by omitting section 115. All the evils and mischiefs which section 115 is said to have given rise to will continue to flourish as before, the only change being the nominal one of mentioning Article 227 instead of section 115 as the authority that is being invoked. It is not correct to say that Article 227 confers exactly the same powers on the High Court as section 115. I have given a reference to a Supreme Court decision. If you confer exactly the same powers I do not find any purpose in omitting sec. 115. If you want to do away with the evils you will have to omit both.

MR. CHAIRMAN: We would like to know whether this Art. 227 as it is, would enable any party to seek relief and the High Court to entertain petitions seeking relief as enumerated u|s 115 of the Code. Whether under the power of superintendence under Art. 227, as illustrated under clause 2 of that article it will enable the party aggrieved to seek relief and the High Court, if it so desires, will be pleased to entertain matters of this nature as stated in (a), (b) and (c).

SHRI PRAMATHA NATH MITRA: (c) will not come but (a) & (b) will come. You will find the history of this matter in the judgement of the Supreme Court as given in Waryam's Case, 1954 S. C. 215. You will find what their lordships say in regard to this matter in thier judgment quoted above and I have put in the words in my memorandum submitted to you.

MR. CHAIRMAN: You need not repeat what you have stated in your memorandum. This will be cyclostyled and circulated to the honourable members for their examination. We will look into it. Now you may come to your next point.

SHRI PRAMATHA NATH MITRA: I have said that section 21, clause 8 of the draft Bill, is not necessary because there is a a specific provision dealing with this matter.

MR. CHAIRMAN: What you have to say about cluuse 40, proposed new section 10 A.

SHRI PRAMATHA NATH MITRA: I have pointed out in my memorandum that this is a limited right of appeal. By leave the appeal can be preferred. If this is inserted, the result will be that judges will be referring more cases to the division bench for hearing. In actual practice in very limited cases leave is granted. When the judge himself thinks that there is some doubt only then leave is granted. So why take away this right?

MR. CHAIRMAN: Now we come to clause 90, Order 41. You have offered your comments under various rules under this Order. May I say that these are all matters of details regarding Orders and Rules and you have made your comments. We will look into your comments, examine and consider them also.

SHRI PRAMATHA NATH MITRA: With regard to Rule 22— I am finding fault with the language and it requires modification. It is not understood why a person cannot support a decree on a ground decided against him. The language is defective.

MR. CHAIRMAN: May I say that so far as our purpose is concerned it is to examine the clauses of the Bill, the Objects and Reasons and the Notes to clauses—all these have come out of the labour of the drafters of the Bill. Therefore, the language and other things, even their arguments are not binding on us. We discuss everything in detail and we should not be taken away by the language of the Bill. Your view is that the language is defective and it requires improvement. By an amendment with better language we can serve our purpose. I also agree with you that the language should be more clear.

SHRI PRAMATHA NATH MITRA: You are making an amendment of the Code itself— that would be a part of the law.

MR. CHAIRMAN: That understand, it requires improvement. We how it can be bettered

MR. CHAIRMAN: I think that you do not agree with the language of the amendment but you agree with the amendment itself.

SHRI PRAMATHA NATH MITRA: No, I do not even agree with the amendment.

MR. CHAIRMAN: Mr. Mitra, on behalf of myself and on behalf of the Committee I offer you our heartfelt thanks. We also extend our appreciation of the study that you have made and valuable suggestions that you have put forth before us. I can assure you that we will examine those points very carefully and we would be looking forward to you further notes that you would be sending to us, if you want to send any.

SHRI PRAMATHA NATH MITRA: I do not want to send any further notes.

MR. CHAIRMAN: Thank you once again.

SHRI PRAMATHA NATH MITRA: I am very grateful to you. I have devoted only five day's time for studying this Bill. I wish I could have devoted more time to it.

[The witness then withdrew]

II. Shri B. C. Dutt, Advocate, Calcutta

[The witness was called in and he took his seat]

MR. CHAIRMAN: Mr. Dutt, before we start let me inform you a routine direction. Please note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire that your evidence to be treated as confidential, such evidence is liable to be made available to the other Members of Parliament. I find you have already noted that and I think you have no objection.

SHRI B. C. DUTT: No, Sir, I have no objection.

MR. CHAIRMAN: Before we take your evidence I would like to extend on behalf of myself and on behalf of my colleagues hearty greetings to you and wish you a happy New Year today being the first of January, 1975.

You have submitted a very useful and exhaustive memorandum. Your memorandum has been made available to our honourable members of the Committee and we have gone through it. Now, at the time of giving oral evidence I would request you to stress those points which you specifically think to be very important and on which you want to draw the attention of this Committee. Regarding your other points which you have given in the memorandum we will carefully consider those when we consider the respective clauses. Now that you are here before us we would like to take this opportunity of hearing your further explanation and elucidation of such points on clauses which you would require us to hear.

SHRI B. C. DUTT: With respect to all of you, I believe, the purpose in

amending the Code of Civil Procedure it to expedite the disposal of the proceedings before a court of law. There are many factors which are to be considered in this regard. Mere amendment of Code of Civil Procedure is not enough. But since we are, at the present moment on the question of amendment of the Code of Civil Procedure, I think, it would be irrelevant to draw the attention of the Committee to other matters. On the question of amendment of the Code of Civil Procedure I have found that the proposed amendment has sought to make two radical changes mainly. One of these two is abolition of Section 100 of Code of Civil Procedure that is relating to the 2nd appeals in the High Court. That is the power given to the High Court to hear matters on second appeal from the subordinate courts. In my submission and in my 44 years of experience I have always found that on many occasions the subordinate courts have had to be corrected even on very simple questions of law, therefore, if you completely abolish Section 100 of the Code of Civil Procedure that will create a void which cannot be fulfilled except probably by a special appeal to the Supreme Court under article 136 of the Constitution of India. which may not be a procedure easily available to all litigants.

MR. CHAIRMAN: Mr. Dutt, clause 39 dealing with section 100 does not completely omit or delete Section 100. They have suggested a substitute of Section 100. Will you kindly turn at page 13 of the Bill? I find you have also dealt with that at page 9 of your memorandum.

MR. CHAIRMAN: At serial. 39 of your note you have written "Delete at the end of clause (5) the words 'that the case does not involve such question' and substitute for the same 'that the case does not involve any question of law nor any substantial question of law". I am now asking, do you want complete deletion or substitution of section 100 by a new section"

SHRI B. C. DUTT: I made a mistake in stating that the proposed amendments have the effect of abolishing section 100. I apologise for this mistake. When a matter comes up to admission before the High Court on second appeal they ought to certify in every case at the time of admission that it was fit case.

MR. CHAIRMAN: Section 100 as in the draft suggests it should not be substitute because it provides a second appeal may lie to the high Court. It should be only a substantial question of law and that also the court would certify. The amendments have been suggested for expediting the matter.

SHRI B. C. DUTT: I have indicated in the proposed amendment not only about the substantial question of law but also about the question of law. If you kindly look to my suggestion at page 9, sl. 39, I have said 'Delete at the end of clause (5) the words that the case does not involve such question'. It means the substantial question and it is to be substituted by the words 'that the case does not involve any question of law nor any substantial question of law'.

MR. CHAIRMAN: So, if the word 'substantial' is omitted you have got no objection?—is not it?

SHRI B. C. DUTT: Yes, Wherever there is a question of law, I have no objection.

MR. CHAIRMAN: What about your other points.

SHRI B. C. DUTT: If you kindly look at the proposed amendment of section 115, clause 45, you will find that my suggestion is that section 115 should not be omitted. Probably the reason for the general outlook responsible for the proposed amendment was that you have got similar provision in articles 226 and 227 of the Constitution of India. So section 115 might have been considered to be superfluous. My suggestion is, it is not so. You will remember while even

section 107 was there in the Government of India Act, section 115 was there in the Civil Procedure Code. It was held by the Supreme Court and practically by all the courts that the scope of different sections or provisions, *viz*, section 115 and Articles 226 and 227 is different and Section 115 should not be omitted even though Articles 226 and 227 are there in the Constitution. There is a lot of difference and there is really no question of one covering the field of another. Therefore, in my respectful submission, section 115 should be retained. If you like to have some change you may have it to some extent as I have suggested in my note—that is an alternative form.

MR. CHAIRMAN: So, your suggestion is to have an alternative via media of section 115 with some restricted form. We will examine them.

SHRI B. C. DUTT: Then Sir, with regard to general delay I have tried to tighten up the procedural methods. In my experience I have been finding that judgements are delivered very late. I have found delivery of judgements after one year or two years in High Courts and sometimes in the District Courts also. From that point of view my idea is that if the judgements are delivered after a long time the judges may not revive their ideas about the effect or spirit underlying in the evidence that was given at the time of hearing and the effect that was created by the lawyers in their arguments might have been completely forgotten. The lawyers also might have forgotten where there is delay in disposal about the arguments put forward by them when the suit was heard. So, the judges can make mistakes about the facts, and when the case is again placed before a superior court with an objection from the litigant that the lower court did not record the true version of lawyers' arguments the question poses difficulties. Therefore, I have suggested, subject to your consideration, that you should put some limit if possible withn whch a court should deliver judgment and in my proposed suggestion I have put forward the point of view that the subordinate court should deliver its judgment within a fortnight, and in my humble opinion Hon'ble High Court should not exceed one month. One month ought to be enough for any learned judge to prepare any judgment.

MR. CHAIRMAN: In your experience in the court did you ever note that during the prosecution of a case and after the evidence is closed any stenographer takes note of the arguments that is placed before you?

SHRI B. C. DUTT: Stenographer generally does not take note of any argument unless he is required by the parties to do so.

MR. CHAIRMAN: I agree with you that at the time of hearing of a suit in a court the argument will have some effect in the minds of the judges. He has to use that when he writes out the judgment. But if it takes a longer time he might have forgotten the proper spirit and effect of the arguments. It is very likely that they may be confused about that. Therefore, I am asking you whether there is any practice of noting down the essential points argued at the time of hearing so that at the time of judgment the judge may like to see the arguments put forward by the counsel of the plaintiffs or of the defendants. If there is no such system like this the judge might forget and the whole thing may be confused. That is why I am asking what is the general practice of noting the essential points

SHRI B. C. DUTT: I am answering your honour in this way. I have got 15 cases, which take some time. In some cases 15 days arguments are required and which may be treated as very long. Stenographers do not take down the notes of any argument. So far as the judges are concerned, they sometime take note. But I think, it is not possible for the

judges to take full notes. It is not possible for them to remember all the different arguments on different points. I argue a point but that the learned judges do not consider it worthwhile to take down note of the point. After one year he forgets to record the point when delivering the judgment. In the appeal court it may not be possible to have the opportunity of putting forward that argument unless the point is a pure point of law.

MR. CHAIRMAN: You are wanting that a safeguard should be laid down. Within a fortnight or within 7 days final judgement should be given. One has to visualise this fact that after all judges are also human being like us. Sitting hearing and hearing again in all the cases of the argument and then adjournment is granted. It is very likely that your reference may be true. But what can be the safeguard? I suggest whether the arguments should be recorded/ verbatim and should form a record so that there will be no difficulty to giving written judgement. Could you agree that the arguments put by the lawyers should be a written one?

SHRI B. C. DUTT: Lawyers firstly argue the case in the court. They have to remain engaged for 10 to 12 days for the purpose of preparing written arguments. If you want that the Advocates will argue the case within 1 and 1|2 days. That will be very difficult for the lawyers to argue within the specified time and give written notes of arguments also within that time.

MR. CHAIRMAN: In some cases arguments are made for days together by the learned advocates in the Supreme Court and High Court, of course depending upon the nature of the case. Would it be possible for the Code to prescribe that the hearing should be completed on the conclusion of the argument and judgement will follow immediately?

SHRI B. C. DUTT: It is very difficult. In some cases, judges reserve the judgment because the point involved is so difficult that it may not be possible to give final judgment without further consideration. That will be too much of a strain on the judges. One judge in our time in our court delivered judgements immediately after the lawyer finished his arguments.

SHRI NOORUL HUDA: Immediately after the argument is over.

SHRI B. C. DUTT: Mr. Justice P. B. Mukherjee delivered his judgements immediately after the arguments were concluded. I think the time limit should be 25 or 30 days after the hearing of the arguments.

SHRI R. G. TIWARI: It is not a written judgement.

SHRI B. C. DUTT: It is a full judgement, dictated at the time of delivering the judgement.

MR. CHAIRMAN: Mr. Tiwari is referring about criminal cases judgement. In the civil court also in certain district after hearing, final judgements are also given. But in the criminal cases judgements are given later on.

SHRI B. C. DUTT: Generally, it is not common. It is desirable that in the case of any urgency, parties should get the order even if full judgement cannot be delivered or is not available.

MR. CHAIRMAN: Mr. Dutt, I have gone through your notes and I find that you have thoroughly examined the Bill and you have not only gone through the sections, orders and rules but you have also given your comments. You have said where you agree and where you do not agree and you have suggested concrete alternatives. As far as lawyers are concerned, being a lawyer yourself, you have suggested a number of salutary provisions. All these things we will consider very carefully. You may kindly draw our specific attention to other points that you ask us

to consider. Now, regarding judgements and the time, you have suggested time for both the subordinate courts and also the High Courts. We will consider what should be the general time, whether a time can be prescribed. Then regarding the receipt to be granted by lawyers, you have suggested a new rule, rule 7 should be added. That also we will consider.

SHRI B. C. DUTT: In passing I may tell you that that suggestion has been made as a result of some very concrete experience of mine with regard to lawyers and clients.

MR. CHAIRMAN: I am very highly impressed for the labour that you have taken in preparing this note and you have tried not only to reflect your experience but also some ideas and principles about our socialist structure of society and the things that are obtaining today and how they can be improved by amendments. This I must appreciate very much.

SHRI B. C. DUTT: I must thank you for your kindness in going into my suggestions. As I have said these are my suggestions. Regarding the appeals and revision under section 115—I also tried to shorten the disposal of appeals. My point is that if the judge thinks that there is a point to consider in the appeal, then he issues notice and the case is heard and that should not take more than six months. Of course, thereby I do not mean any disrespect to anybody, not to our system, not to our judges, not to our legislators. I had the fortune on one occasion to go to foreign countries and I have had the fortune of meeting the Lord Chief Justice of England and the Master of the Rolls. So far as the courts are concerned, civil cases are disposed of there from the lowest courts to the House of Lords in a year and six months. That is the maximum period for a litigant to proceed from the lowest court to the highest court. Of course they have three courts—the Chancery division or the Kings Bench Division the Court of Appeal and the House of Lords. But we have a larger number of courts. So far as the Lord Chief Justice Parkar was concerned, he expressed regret that their criminal cases took about two years to dispose of finally. Of course, it may not be possible for us to secure that amount of expedition in the disposal of cases but I think two years is a sufficiently long time in a litigant's life to see the results of his litigation and the Civil Procedure Code must be so amended that at least there is a possibility of matters being disposed of within two years so that the parties can see the result of their own litigations, and have some compensation for the expenses they incur and the troubles they take.

MR. CHAIRMAN: Your suggestion is that in civil proceedings the final disposal should not take more than two years.

SHRI B. C. DUTT: That is what I think and I may tell you that there are various reasons, apart from the Civil Procedure Code, for delaying matters. The lawyers are sometimes responsible for it, the litigants are sometimes responsible for it, the judges even are sometimes responsible for it. That of course cannot be cured by the Civil Procedure Code because these are human elements which will always be there and even of there are very good judges it may not be possible but the machinery should be such that expedition may be achieved and the Code might at least give some facilities to those judges who want to dispose of matters rather quickly.

MR. CHAIRMAN: It is a very interesting subject—law.

SHRI B. C. DUTT: It is interesting otherwise one cannot be in law for 44 years.

MR. CHAIRMAN: As you have observed rightly that civil law should be so framed as to subserve the need of the people and more particularly the poor people and today they are at a handicap.

SHRI B. C. DUTT: There is one thing which the Government should do apart from the Civil Code. Now, today if a man has money; he can win the case even if it is a bad case; he can engage all the lawyers—I mean all those who count in a particular Bar and the poor man suffers and finds himself at a great disadvantage. There is a legal aid society and government pays to the society Rs. 20 thousand a year for giving aid to the poor litigants in the Calcutta High Court and the district courts. Rs. 20 or Rs. 36 thousand. That is not enough. I mean the poor people should be given assistance and if you are so minded, you can introduce or insert provisions in the Code of Civil Procedure making it imperative upon either the Central Government or the State Government to provide for legal aid to the poor and needy litigants.

MR. CHAIRMAN: There is a provision in the draft Bill as to how to assist the indigent litigant. I will point that out to you. Apart from that government is also thinking to bring a Bill to provide for legal aid, whether civil or criminal—and how this machinery should be set up and all those things are in the process of thinking and some exercise is going on. Now, you may kindly look to page 66 of the Bill. You will find a new rule is suggested—rule 9A—where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him. I do not say that it is enough. Anyway, do you suggest that the court should take note of it?

SHRI B. C. DUTT: If you pardon me. I will say, this is not adequate. There is a procedure in the Calcutta High Court in the Original Side where the Registrar is permitted to assign Solicitors and Advocates for paupers but that does not work. No pauper can have a good lawyer without payment of fees.

MR. CHAIRMAN: What I am suggesting is that would it be possible for you to just prepare a note as to what you think should be done regarding legal aid to an indigent person?

SHRI B. C. DUTT: I am just giving you an idea. I thought that it was only in the fitness of things and it was my duty also to point out to you whatever I have felt during my life time. I know what difficulties the poor people have to face for the purpose of fighting out a case in the courts. My submission is that there is an Act in England which is Legal Aid Society Act. If some legislation could be made in the form of Legal Aid Society Act by the Central Government and, if possible, also in the States, that would to some extent solve the problem.

MR. CHAIRMAN: The Act in England is being examined by the Government of India in the Ministry of Law, but I am trying to associate you with this task of formulating a law for our country for legal aid society. Now that you are so much interested in the subject and you have yourself suggested that you have some ideas, I think you can render us some help.

SHRI B. C. DUTT: I can prepare a draft, but it will take some time. I can send it to you, say, in a fortnight.

MR. CHAIRMAN: Take the whole month of January and please send it to our Lok Sabha Secretariat.

On my own behalf and on behalf of the Committee I extend to you a hearty thanks. I assure you that your suggestions will be examined by the Committee.

SHRI B. C. DUTT: I must express my gratitude to everybody present here for the kind attention with which you have listened to my submissions.

III. 1. Shri Shankar Das Banerjee

2. Shri Dipankar Prasad Gupta

(The witnesses were called in, and they took their seats)

MR. CHAIRMAN: So far as we are concerned, Mr. Banerjee and Mr. Gupta, before we take up the business I have to draw your attention to the direction which governs the evidence. Your evidence will be treated as public and it will be published. But if you desire that your evidence or any part of it should be treated as confidential, we will do so. But even then it will be made available to the Members of Parliament. You have not submitted any memorandum. You are welcome to make your submissions on any clauses of the Bill or on any principle which you would like us to consider.

SHRI BANERJEE: One of my suggestions is that a provision should be made limiting the time within which a court should deliver a judgment. It is my experience—I might tell you—I have been in the High Court only for 47 years and I have noted it—that in many big cases judgment is not delivered for months together. I have seen cases in which judgment is delivered six months after of even later. Personally I believe no justice can possibly be done and no judge can prepare a proper judgment after six months or seven months. Meanwhile he has been hearing other cases. The impressions that counsel create are lost and if there are a large number of witnesses you are likely to forget what the witnesses have said and after the span of six, seven or eight months when you start preparing a judgment from your notes, my personal feeling is that the learned judges, whether they wish it or not, are likely to make mistakes and thus there is failure of justice. So some time limit should be imposed. What happens sometimes is this. You hear a case which may be a difficult case, a big case. In order to show disposals the learned judge leaves that record alone and disposes of a number of small matters in order to show that he has been very diligent and that there are lot of disposals and so on and so forth. Therefore what I would respectfully ask you to recommend is that a time limit be given for the learned judges to prepare and deliver judgment. To my mind, the maximum time limit that ought to be allowed is three months, if not less.

MR. CHAIRMAN: You have very rightly suggested a time limit. Would you also suggest that in regard to the totality of the time taken for a particular civil suit, there should also be a time limitation to complete the entire thing—starting from the institution of a suit right up to the delivery of the judgment.

SHRI BANERJEE: I think there is some provision here also. I practise in the Original Side of the High Court and also in other courts. Much depends on the particular party. You file a plaint, then there is a time limit according to Original Side rules within which you have to file your written statement. If you wish to have an extension of time you have got to make an application before the court praying for extension of time. Then comes the question of filing of affidavit of documents—discovery and inspection. Sometimes it happens that we, who are responsible for the delay, are not taking action. In the High Court there is a rule whch says that unless a suit is disposed of within a period of a year or so it is placed on, what we call a "special list". The learned judge then immediately asks as to why no action has been taken and if you cannot give satisfactory explanation then under the Original Side Rules the court has the right to strike it out. Periodically they collect cases numbering about 150, 160 and unless good cause is shown a suit is struck off the list altogther. That is the practice of the Original Side of the High Court. I do not think

there is similar provision in the Civil Procedure Code which is somewhat different from the Original Side rules. Original Side rules apply to the Original Side, do not apply to the Appellate Side, nor does these rules apply to the district courts. That is a very good provision, if I may say so, giving the learned judges enormous power either to keep the suit in file or to strike it out altogether. That is not entirely the end of the matter because if you strike out a suit you have the right of appeal. No judge can arbitrarily say that I am not satisfied with the progress of the suit and so I strike it out. Therefore, similar provisions like the Original Side rules can be introduced there.

MR. CHAIRMAN: Is it your experience that disposal of suits depend on the quality of the persons of the various courts?

SHRI BANERJEE: Of course. It naturally depends on the quality of the learned judges.

MR. CHAIRMAN: Now regarding adjournments, some adjournments are indispensable but some are manoeuvred, manipulated by parties who are not evenly balanced. What is your experience in this regard?

SHRI BANERJEE: That is so.

MR. CHAIRMAN: You have pointed out that in the Original Side of the High Court you have got certain procedure and you have suggested that with some modification it should be applicable to subordinate courts and in the Appellate Side of the High Court also. That is a matter to be examined. But you are not suggesting as to what will be the actual remedy for the delay.

SHRI BANERJEE: There is a distinction between the type of cases that are heard in Calcutta and in mofussil. In the mofussil sometimes the witnesses and parties have to travel 30| 40 miles for coming to court because there are places which are not easily accessible for want of communication. That is one of the reasons why in mofussil matters are delayed, and moreover, I think the Judges are somewhat lenient beause of the difficulties that come up, and this thing is also applicable in Calcutta. You are perfectly right when you say that there is a good deal of attempt to manipulate matters and wear out the other side and that is the reason why do they manipulate adjournment. Besides, in the Original Side if we appear and the matter is not effective that is to say, the matter is adjourned, we are not paid anything at all under the rules. Supposing I want adjournment and induce the court to grant it no fees are paid. But it is absolutely reverse in every other court including City Civil Court— whether the matter is effective or not lawyers get the fee. That is the reasons why there is no temptation to have the matter disposed of at an early date because as many times as he appears he gets fee.

MR. CHAIRMAN: I am trying to ascertain what could be the remedy.

SHRI BANERJEE: These are the reasons why so frequently adjournments are asked and obtained even from the Judge's level to *Peshkar's* level.

MR. CHAIRMAN: But costs for adjournment deters the parties to ask for frequent adjournment—of course affluent and influential persons are not deterred by costs. But it is supposed to be a deterrant against asking adjournments.

SHRI BANERJEE: You see the cost that is allowed for adjournment under the C. P. C. in mofussil courts upto the High Court is insignificant and, therefore, it does not matter. Upto the second appeal level the cost that is allowed is very very little compared to the scale of cost permitted in the Original Side—sometimes thousands of rupees—and so there is a basic difference between the Original Side

of the High Court at Calcutta and the mofussil courts. We are allowed costs in the same way as cost are allowed in the Kings Bench Division. There is a scale of fees—so much for drafting, so much for written statement, so much for appearance—maximum 30 Gm, and we have yet the Solicitor system, that means, Solicitor's fee plus Counsel's fee etc. and these used to be a formidable sum to anybody. Previously in the Original Side no court-fee was required but now it has been introduced and here one has to pay fee at every stage but in District Courts they pay court-fees once and after that the fees required to be paid are nominal. This is the basic difference. Now-a-days in the Origianl Side you have retained taxation rules and fee and also introduced court-fees—double hardship. In District courts say in Alipur, they pay one cost, 10 per cent *ad valorem* court-fees but here we pay both due to recent change—both court-fees and old Original Side costs.

MR. CHAIRMAN: About court-fees and costs we will presently come, but so far as this delay is concerned would you agree that something should be incorporated in the Code so that delay in procedural matters is reduced as far as possible and practicable?

SHRI BANERJEE: In small matters that can be done. Sometimes there is a very big misappropriation case which needs probe into the books of the other side which takes considerable time and it would be wrong to assume that only lawyers are responsible for delay. Take your CBI—they take long time in investigating a matter. Everythings depends upon the extent of investigation that you have got to make for the purpose of coming to a conclusion. Therefore, I say, it is rather difficult. If you place simple matters and difficult matters in the same place it would be a mistake. Take for instance the very big case of Bhawal—I am sure you have heard of the case. That case was conducted by a very eminent Counsel who happened to be my uncle, Mr. A. Chowdhury. The case went for years before the Special Judge but judgement was delivered quickly. Now, for the purpose of making cross-examination effective large volumes of letters, correspondence books of accounts and large exhibits were examined and it took long time. If you have got to do that one inflexible rule regarding discovery and inspection would not achieve the object.

Sir, I know that Bhawal case. I have some experience of criminal cases as well because I was in charge of all the big cases as a Standing Counsel. I was the Standing Counsel of the Government of West Bengal for seven years. The point is that much depends sometimes on the judge. One of the reasons of the delay is that we stick to old and are not willing to change. Even now, today in the Original Side of the Calcutta High Court, where the Judge is an Indian, the counsel of both sides are Indians, the witnesses are all Indians, every question is put in English. Every question is translated into English. Isn't it duplication, Sir? Sir, I have no difficulty in cross-examining in Bengali, I will do that with greatest pleasure. But it affects many. Many will immediately decline and say that they cannot have effective cross-examination if they are insisted upon to cross-examine in Bengali. But, Sir, that is not true in the district courts. So, this process of translation and re-translation etc. duplicates matters and takes considerable time which can be avoided. Next, Sir, is recording. We could have a Tape Recorder if we like. But nobody has ever thought of it. In the districts the entire evidence is taken down by pen by the Judges.

MR. CHAIRMAN: Not only taken but the evidence has to be read and signed by the witnesses.

SHRI BANERJEE: Yes, Sir, you have to ask the witness and get the evidence signed by him. These procedural delays can be avoided by the use of tape recorders. There is

no reason why we cannot do that. And even for that matter dictaphone can be used. You can dictate something over the dictaphone and the typist could type that later.

MR. CHAIRMAN : We will have to wait for sometime for all these things.

SHRI BANERJEE : Sir, we will hug and cling to the old and never need any change !

MR. CHAIRMAN : Well, under the present circumstances, we must find a *via media*.

SHRI BANERJEE : Sir, I have forgotten to mention one thing. In the Original Side of the Calcutta High Court, the Judge is bound to take down evidence as it goes. If you say, 'What is your name', it will be recorded 'what is your name'. The answer also will have to be recorded, *viz.*, 'My name is John' etc. etc. This system has got its virtue in the sense that you cannot put something to suit the judge's own ideas about the witness. You have got to take down the evidence *verbatim*. If it is *verbatim* evidence then why should not there be a tape recorder?

MR. CHAIRMAN : The idea is good. But the tape recorder has also to be played back. Then regarding court fee, what do you think of reducing the cost? How to help the poor and indigent litigants particularly? Some provisions should be there?

SHRI BANERJEE : Sir, it can be readily answered. Reduction of cost is not that what you want. In India, the Government is not minded to reduce the cost, the Government is minded to get money out of it. This question, I remember, was raised by Dr. Katju when he sent for me when he was revising the Code of Criminal Procedure. The court fee, is a system, if I am not wrong, which is not to be found anywhere else. India is the country where you will have to pay 10½% *ad valorem* as court fee before you come to Court. For instance, if an honest person takes a loan of Rs. 1 lakh from me and is unable to pay that—not for any dishonesty but for any business loss or something like that—and if I file a suit for the recovery of the said sum of Rs. 1 lakh, then immediately I will have to give Rs. 10,000/- as court fee. Then the matter comes up before the court and for contesting the matter 7% will have to be paid to the lawyer. Then the decree is drawn up etc. etc. It means that I the poor lender have to pay Rs. 33,000/- from my pocket which also will have to be borne by the man to whom money was lent, if I win the case. But the government does not lose anything. I would submit, Sir, that if it is in your mind to help the poor litigants then certainly you should not impose court fees. Think how much the pleader gets—7% at the most. But you are paying the man who decides such cases of lakhs and lakhs of rupees and worst amount. I think they get an amount which is even less than what a cook gets. In the subordinate courts they get a paltry amount and in the ultimate stage they may get Rs. 1,200/- or 1,400/- at best. But, Sir, you are charging 10 to 12½% as *ad valorem* court fee. I think in Madras there is no limit but in West Bengal, Rs. 11,000/- is the maximum amount that you are called upon to pay irrespective of the value of the suit. How will you reduce the cost if you persist in maintaining the court fee system?

MR. CHAIRMAN : Court fee is one of the heavy items of cost. But there are other costs.

SHRI BANERJEE : That is insignificant. In mofussil it is only twelve annas. But here for every step you take, you have got to pay money. Then you get certified copy of the evidence on payment. Right from the begin-

ning to the end you go on paying. For instituting a suit you have to pay for affidavit of documents.

MR. CHAIRMAN: If you want to reduce the cost you suggest to reduce the court fees—is not it?

SHRI BANERJEE: There are no heavy items of course if you do not like to get the whole record translated. This translation makes you to pay court fee for the second time. Supposing if the documents of the subordinate judge are sent in the High Court these documents and papers are to be translated in English. Therefore the whole thing will cost a heavy amount of court fees for the purpose of an appeal. Even if you go to Supreme Court, so many volumes of papers, books and documents will have to be sent there—you cannot reduce the cost.

MR. CHAIRMAN : I would now like to say about the cost of lawyers. Though the fees of the lawyers are within the permissible limit still very many parties say that they pay the lawyers higher amount than the permissible limit. So, it becomes difficult for the indigent and poor litigants who depend mostly on lending money to pay the cost of their lawyers in that way. Do you suggest, what can be done?

SHRI BANERJEE : You can make a clause that the suits below 5,000, or suits below 10,000 and suits above 10,000 and you just fix what fees will have to be paid. Poor men's limit is 5,000 or even below upto Rs. 2,000/-. It falls under the jurisdiction of small cause. It does not matter if the fees are very much less. Fees should be on percentage basis—5% or something about that. But so far as court fees of over 10,000 are concerned the poor man has nothing to do with it.

MR. CHAIRMAN: Do you think that similar system should be introduced all over the country for the poor and deserving litigants so that they get justice in the courts both criminal and civil and for that reason do you consider that some legislative measure should be done?

SHRI BANERJEE : Sir, Legal Aid Society is there. But, I do not see very many cases or persons are getting assistance from the Legal Assistance Society. You know, Sir, about suits where a man declares that he has no money at all, the judge investigates and if he is satisfied that the man has no money either to pay the court fees or to pay any lawyer then the lawyer is appointed for the purpose of conducting the case. But, so far as the High Court is concerned the number of such cases are very few, though provision is there. In England they have also the Legal Aid Society. They are doing their functions properly. So, if this can be developed some more assistance can be given to the poor litigants.

MR. CHAIRMAN: You have highlighted about the general principles and the delay, the legal aid and cost of suits. May I request Mr. Gupta to say something about other points?

SHRI GUPTA: Since you are going over to new topics some of the points noted by me also cover those points. My points are, minimising the time and minimising the cost. So far as minimising the time is concerned, I see that the total time taken in a litigation can probably be divided into two parts—first is, procedural and the second is, judicial. My learned friend Mr. Banerjee has made a point that there should be time limit for delivery of judgment. I think, it can be easily extended to the procedural part also, but it is very difficult to extend to the judicial part. There are stringent provisions in the Code already. Where a party is in default of procedural acts. I draw the attention to Order 9, rule 5. The time of three months is put down to one month. I feel this should be extended in other procedural acts to be done by a party. For example, in District Court, much time is taken for

filing a written statement. I have found on several occasions that a party had taken one or even two years to file a written statement. So, I suggest that a time limit should be fixed for filing the written statement.

MR. CHAIRMAN : Some of the steps can simultaneously be taken one after another to decide what limits can be prescribed out of which all procedural matters should be successfully applied with. Do you agree that the evidence should be such that the procedural acts would prescribe day to day hearing? Is it possible?

SHRI GUPTA : Certainly it is possible.

MR. CHAIRMAN : What is your experience about the quality of judges—do they try to deal with a number of cases in a day?

SHRI GUPTA: In our Original Side-day to day only one case is finished. No second case is permitted. Whatever may be the number of witnesses. But in the district court, after 2 or 3 days hearing there may be an adjournment for a fortnight. There are various stages of the case. First of all, written statement. Secondly. disclosing the documents. Thirdly, inspection. After that the case will be ready for hearing. The court does not have any time to go through the records, unless and until arrears are cleared up. It is true that adjournments are liberally granted. It is also true that adjournments are misused from the lawyers point of view and also party point of view they misuse this adjournment. At the same time I feel one provision in the Bill is far too stringent and may not do justice in a particular case i. e. if a lawyer is engaged in another court, on that ground the adjournment is likely to be refused. I believe Clause 89 may cause injustice. This provision is ultimately rests with the discretion of the court'. If any lawyer is engaged in another court, and on that ground if adjournment is refused, it will create a great hardship on the part of the client.

MR. CHAIRMAN: What practice followed if the courts are situated in one place or different places?

SHRI GUPTA : Sir, you will kindly find at page 36 of the proposed amendment Bill where it is mentioned that the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment. So, the court is powerless. You will find, Sir, at 'd' in the proposed amendment Bill where the illness of a pleader or his inability to conduct the case, for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time. I believe that Clause 'C' may be reconsidered from that point of view.

MR. CHAIRMAN: Are you wanting total removal of the clause or partial modification of the Clause?

SHRI GUPTA: I think that this question of adjournment should be reconsidered from that point of view. So, my submssion would be that the question of adjournment should be treated in an administrative manner. It should be left to the judges' discretion. Administrative control can be exercised by the Chief justice of the High Court and in the lower court administrative control can be exercised by the District Judges.

MR. CHAIRMAN: What is your views about (d) & (e)?

SHRI GUPTA: Alternative arrangements may be possible in small cases. But if a lawyer has been engaged in a big case, it will take quite some time for another lawyer to take up the matter. For example if 20 witnesses have to be examined, the lawyer will

have to scrutinise various documents and naturally 30 to 40 days will be required to get ready for the hearing of the case.

MR. CHAIRMAN: You are wanting that the Clause should be reconsidered.

SHRI GUPTA: Yes Sir. On this point already discussed here. I do not have any more point excepting the legal aid. I believe in England, it is under State provision.

MR. CHAIRMAN: The Committee wants proper recommendation from the witnesses and this is the object of the Bill.

SHRI BANERJEE: I would like to tell you something relating to the Order 41 of Rule 5. If you kindly look into that in this way that if there is money decree and prefer for an appeal, then the court says well, you will have to furnish security for the entire amount. Now, that is a hardship and it may be a glaring mistake on the part of the learned judges. Do you say, you must pay the entire security, which means practically telling get out? I have heard over and over again, the court observing that we are powerless in the matter. You must furnish security for the entire amount. I humbly submit that it is nothing but denying justice. In many cases the judge may have gone entirely wrong I know one particular case which is in my hands. The suit was struck out and the judgment delivered without jurisdiction. Then when the man appealed, the court said, sorry, we cannot do anything, you first furnish the entire amount of the decree. The man has not got cash money and properties. Well, therefore, in a proper case the court should be given the right to direct security to be furnished but some amount of elasticity should be there and complete rigidity amounts to denial of justice. That is my point.

MR. CHAIRMAN: But will not that discretion be taken undue advantage of by unscrupulous people?

SHRI BANERJEE: Sir, if I may say, what are the judges there for? After all, if that little bit of discretion is not left to the judges, then they are not worthy of sitting on the chairs they are sitting on. Some amount of discretion must be given to the judge for the purpose of doing justice to the case.

MR. CHAIRMAN: You are pointing out cases where there is real hardship. In that case a proviso will have to be added here and that will have to be qualified.

SHRI BANERJEE: That will have to be done. If judicial discretion is there, it is there. Now, the next point that I would like you to consider is this. It will sound rather severe. If you kindly turn to page 34 of the Bill "The State Government may, at any time, having regard to the maters specified in sub-rule (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons." Now, what is the effect of this? Supposing a man is in prison and the State Government chooses to pass an Order. Well, you cannot pass a decree. Now, before you come to that order 4(a), first you kindly look to Order 2. "Where it appears to a court that the evidence of a person confined or detained in a prison within the State is material in a suit, the court may make an Order requiring the officer incharge of the prison to produce that person before the court to give evidence". I have seen that even before these changes, a man was brought from prison and he deposed in a case. Rule 4 says that

if the State Government makes an order, he shall not be produced in a court. That means, there will be proceeding and you cannot pass a decree without ever hearing.

MR. CHAIRMAN: Could not that person be examined on commission?

SHRI BANERJEE: Who will take the commission? The lawyers will have to go to the jail. The point is that if a man is in prison, if he deposes in prison, I will have to take my lawyers in jail to cross-examine him and the man may not be in Calcutta. We have jails all over West Bengal—in North Bengal, in Jalpaiguri and in Darjeeling and other places. Supposing a man is kept in Jalpaiguri Jail in North Bengal. We shall all have to go to North Bengal to cross-examine him and why? What is the danger? The man is already in custody, the man is already convicted. In my experience there will be no difficulty created by the law as it now stands. What is the difficulty on the part of the government to produce a convicted man before the High Court to give his evidence?

MR. CHAIRMAN: Have you considered the proviso to rule 2?

SHRI BANERJEE: But rule 4 is total prohibition in certain cases. Sir, let us be frank. Are you thinking of MISA cases. The point is that if the Naxalites are there, they are there but if you by this process are thinking of giving birth to fresh Naxalites I would not be surprised. The point that I am making is how is the government inconvenienced if the man is produced before the court for the purpose of giving evidence. Take for instance, under the Criminal Procedure Code today every accused has the right to give evidence and he does it. If he wants to give evidence, he comes out of custody and gives his evidence in court. In the worst of murder cases such a procedure is followed. All that I am asking you to consider is what will be the difficulty on the part of the government to produce a man from prison before the court? That is one of the rarest things that I see.

MR. CHAIRMAN: What is your concrete suggestion? Is it that rule 2 is enough?

SHRI BANERJEE: Yes. By the way, it reminds me of a case which was being conducted by then Mr. Sudhiranjan Das, a member of the Calcutta Bar. A man was accused for setting fire to a jute godown of his in East Bengal. The man was charged for arson and he was convicted and sentenced to imprisonment for seven years. Then the convicted man filed a case against the insurance company in the Calcutta High Court. The man was brought in chains to the High Court and as a convicted man he gave evidence on his own behalf saying that it was not a case of deliberate arson and he was entitled to claim the money from the insurance company. Mr. Justice Pankridge decreed the suit saying that no the man is justly and properly entitled to the amount claimed by him, in other words, the conviction is wrong. He came and gave evidence and he had been sent to prison for seven years for charge of arson. That is the only case which I remember in my long legal experience where a convicted man was brought from prison to give evidence in a case. That is why I say it is a rare thing. The only other types of cases that I can think of are the MISA cases or the Naxalites and who else are you thinking of? Why should not the same procedure of Criminal Procedure Code apply to these civil cases also? I remember another case. A man who was convicted was brought to the High Court Calcutta to give evidence in a Bengal Laxmi Insurance case. The man was brought in handcuffs. The first thing Mr. Justice Philip Buckland said, take of his handcuffs immediately, you have no right to bring a man in chains to a court, he is a free citizen here and you have no right to put handcuffs or anything on him here. Liberty of a subject is not

to be treated in that fashion because a man is in jail today. He may be imprisoned after a trial. He may be imprisoned without a trial. If a man is imprisoned without a trial under the Maintenance of Internal Security Act, should such enormous power be given to executive Government?

MR. CHAIRMAN: Mr. Banerjee that is a very wide subject and also very important subject, but for our limited purpose this rule where a prisoner is in jail and Government would not allow him to be brought to the court, under rule 2 a prisoner within 50 kilometers or so is permitted to be brought to the court and to give evidence.

SHRI BANERJEE: You are overlooking two words—'person or class of persons'. It means that it is not confined to any individual, *i.e.* this class of people will not be permitted to go. ..Therefore, you are not considering individual case.

MR. CHAIRMAN: I am confining to a particular case. Here is a person, or any person is to be brought to the court. He is prevented by State rule—one person or class of persons. We want them to be examined. Normally, it should be done in court and rule 2 provides for persons as to how they can be brought on court. With that you are agreement. I am trying to find out what can be a possible solution. One is, of course, you are opposed to it. That is your first proposition. But whether it can also be said that this prison must be allowed to be examined on commission and if he is examined on commission while he is still in prison, the cost is to be met by the State. I think that will meet the requirements of the Civil Procedure Code. Anyway, we will examine your objection and also probable solution.

SHRI GUPTA: Sir, I would like to put on record that I do not support what has been stated by Mr. Banerjee. May I justify the reason why I say so. I would like to draw your attention to the provision of clause 4(2).

MR. CHAIRMAN: There are 4(2) (a) (b) (c).

SHRI BANERJEE: (c) would cover the whole thing.

SHRI GUPTA: In Criminal Courts there are special security provisions for trial of a man under strict security condition. That may not be available in a civil suit.

MR. CHAIRMAN: Our minds are open and we will apply our minds fully when we consider the clauses of the Bill at proper time. We have noted what Mr. Banerjee and Mr. Gupta have stated.

SHRI BANERJEE: My next point is, the legislature should make provision as to what is called a *pro-inter-see-suo* proceeding. I will explain. It is like this: A files a suit against B, obtains an order for the appointment of a Receiver. The Receiver comes and attaches, not the property of the defendant B, but the property of C. If C comes and objects, or prevents the Receiver, he is likely to be hauled upon on contempt of court. Under the law there is a provision which they call *pro-inter-see-suo*, *i.e.*, a person aggrieved can make an application to the court saying, I am not a party to the said dispute between A and B. The property attached is mine. It has nothing to do with A and B, please release my property. This subject has been dealt with—if you will kindly make a note—in Halsbury's Laws of England, 3rd Edition, Volume XVI, at pp. 71-72, and you will find therein the text of a writer of the eminence of Sir John Woodroffe—Woodroffe's Laws of Receiver, pp. 72-73, on the same subject. I think it is fit and proper to have some such provision here also.

MR. CHAIRMAN: I now request Shri Gupta to make his submissions

on the main points and if he so desires he can kindly supplement these by writing and sending them to the Lok Sabha Secretariat within January. This will serve the purpose.

SHRI GUPTA: I believe the omission of the definition of the preliminary decree is not right because order 34 is being amended. Preliminary decrees are very necessary at least in two very important cases: (i) suit for accounts and (ii) partition suits.

Next, on page 3, clause 7, there is an 'Explanation' with regard to jurisdiction of a court. The language expressed is ".... the cause of action shall, in the absence of any term in the contract to the contrary, be deemed to arise ...."

SHRI S. K. MAITRA (Joint Secy. Ministry of Law): That is there because in certain contracts provisions are there. That is why safeguards are made.

SHRI GUPTA: Putting it here may cause reflection on other cases not covered by this expression. My submission is that the general law should be there as it is.

As regards the question of second appeal, the scheme of this code appears to be: (i) revision is abolished and (ii) letters patent appeal in the case of second appeal is abolished. With regard to section 100 when an appeal is admitted it is confined to a substantial question of law (page 13). There has recently been amendment of article 133 which means that Supreme Court has no legal concern with the justice of the case; it is more concerned with laying down the law. Supreme Court observed in a particular case that the judgment may be incorrect but we are not here to correct every incorrect judgment. You will be able to get justice from the High Court. When the amplitude of Supreme Court's power is being restricted and when letters patent appeal is abolished, I think the further step of abolition of High Court's power should not be taken. My suggestion is that the law has been well settled in section 100. By introducing new word will be entering into new fields as to what do we mean by the words "substantial question of law". Since curtailment is being taken place in many fields, my personal feeling is that sec. 100 should be allowed to remain as it is.

MR. CHAIRMAN: If the words "substantial" and "certification" are omitted, will you have any objection?

SHRI GUPTA: My submission is that the word "Law" is already there in the existing section 100. Question is whether we should change it or not—law and usage. The ambit of Section 100 has been laid down by a series of judicial decision.

MR. CHAIRMAN: From the amending section if this word "Law" is taken away and "certification" is taken away what is the position?

SHRI GUPTA: Position will not be much different because in the existing section it is 'usage having the force of law' and the word 'usage' is a misnomer.

MR. CHAIRMAN: What is the interpretation of the court about 'usage having the force of law'. It is private custom and it is not substantial law?

SHRI GUPTA: That's right.

MR. CHAIRMAN: Any way, we will examine this objection. I don't know what will be the solution, but I will examine it in due course.

Now, Section 115 has been sought to be omitted and you have suggested that it should remain, and Art. 227 has been referred to. In the Notes the purpose of omission is that Art. 227 covers everything and therefore there is no need of Sec. 115 any more. Now, you take your time and prepare a note on that and kindly send the same to us for our help. That is, in

Art. 227 clause 1 as illustrated by clause 2 certain things are stipulated. Art. 227, clause (2) says, notwithstanding the generality of clause 1 following things would come under the superintendence of the High Court, call for returns etc., on the other hand, Sec. 115 as it stipulates certain other things which in revision the court has to look into, if the Subordinate court has not exercised its jurisdiction or exercised its jurisdiction illegally and so on and so forth and therefore, this provision of Sec. 115 is not necessary. I would request you to send us your considered opinion on this particular section since you have urged for its retention point it that when 227 is there it will take care of all these things and so Sec. 115 is not necessary.

SHRI GUPTA: I said that if you want to take away the powers of the High Court then if that is the reason for Sec. 115—that is one aspect, but if the reason is that Art. 227 is there and so there is ample jurisdiction of the High Court and therefore it should not remain, that is another thing. But if it is a question of reducing the jurisdiction of the High Court then 227 should be removed also along with 115.

MR. CHAIRMAN: Your proposition is that both should remain.

SHRI GUPTA: Yes.

SHRI BANERJEE: I may point out that Sec. 115 of the C. P. C. was similar to Sec. 439 of the Cr. P. C., practically the same. 439 has been renumbered in the new Cr. P. Code. If that can remain why not 115. And Art. 227 is there to cover all your sins. However, I will consider it carefully and send you a written note.

SHRI S. K. MAITRA (Joint Secy., Ministry of Law): In the Cr. P. Code Sec. 438 is there under which Sessions Judge hearing revision has to refer to High Court, he should not dispose of an application for revision. But in the new Cr. P. Code Sessions Judges have also been given concurrent powers of revision and it has been drafted that way and High Court will entertain revision case from Sessions Judge and revision from lower courts will lie with Sessions Judge. Will that be acceptable?

SHRI BANERJEE: You see, if I may say so, a Munsif is a kutcha man.

SHRI S. K. MAITRA: That is why from Munsif's order revision will like with District Judge.

SHRI BANERJEE: That is to say, Munsif's findings of facts are final—but Munsif is a kutcha fellow.

MR. CHAIRMAN: This is a controversial matter and so I request you to give your considered thought over it and send us a written note which will be of considerable help to us.

Now, on behalf of myself and my colleagues on the Committee I express our appreciation for the valuable suggestions you have made. I can assure you that we will give your suggestions our careful thought and consideration.

SHRI BANERJEE: We are also grateful to you for the patient hearing you have given and for the long time you have allotted to us.

MR. CHAIRMAN: Thank you, very much.

(*The Committee then adjourned*)

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE 'C' OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Thursday, the 2nd January, 1975 from 15.00 to 17.00 hours in Committee Room, Orissa Legislative Assembly Building, Bhubaneswar.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri A. M. Chellachami
3. Shri Mohammad Tahir
4. Shrimati Savitri Shyam

Rajya Sabha

5. Shri Bir Chandra Deb Barman
6. Shri Krishnarao Narayan Dhulap
7. Shri Kanchi Kalyanasundaram
8. Shri D. Y. Pawar

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri N. N. Mehra—*Senior Table Officer.*

WITNESS EXAMINED

I. *Government of Orissa (Law Department).*
Shri K. M. Misra—*Legal Remembrancer.*

II. *Orissa State Bar Council, Cuttack.*

Spokesman:
Shri S. Mohanty—*Chairman.*

I. Government of Orissa (Law Department).

Spokesman:
Shri K. L. Misra—*Legal Remembrancer.*

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Mr. Misra, before we start our work, I want to draw your attention to a direction to note that the evidence that you give before us would be treated as public and as such is liable to be made public. If you desire that all or any part

of your evidence should be treated as confidential it will be treated as such; but even so, the evidence will be made available to other members of Parliament. You have submitted a written memorandum on behalf of the Government. Do you like to give any evidence on this or any additional point.

SHRI MISRA: What I find from the file, Mr. Patnaik who was then Addl. Secy. has submitted this.

MR. CHAIRMAN: This memorandum is before us and we will consider it. You should not confine your evidence to the written memorandum. You are welcome to give evidence as you like.

SHRI MISRA: The Secretary has gone to Delhi in connection with International Law Conference. The Advocate General has also gone out of State. Although there is no order authorising me to speak on the memorandum, when it is government memorandum I will support this.

MR. CHAIRMAN: We will take it that you endorse this memorandum.

SHRI MISRA: I will refer to Order 8 rule 1.

MR. CHAIRMAN: For the benefit of the hon'ble members I will read Rule 1.

SHRI MISRA: Here filing of the written statement has been made obligatory. The word 'may' be omitted. My point is we must fix a time otherwise what I know from my experience is that the defendant or defendants take longer time to file written statement.

MR. CHAIRMAN: The interpretation as I understand would be the defendant need not necessarily or he is not obliged to file the written statement. But if this amendment is accepted whether he likes it or not, he will have to submit it.

SHRI MISRA: It would remain as it is. What I press is if we put some time limit it will hasten the trial of the suit. If he appears let him take two years time, but let him file the written statement, within the reasonable period.

SHRI MOHAMMAD TAHIR: Time is generally fixed not by the Court but by the Peskar.

SMT. SAVITRI SHYAM: It has been left on the discretion of the Court.

SHRI MISRA: I want to put a limit on the time. If he does not file at the time of first hearing, the maximum reasonable period should be three months. There are some peculiar suits where some papers will have to be collected.

MR. CHAIRMAN: We will consider so far Orissa Government is concerned that the time limit should not exceed 3 months.

SHRI MISRA: For the information of the Chairman I may say we have fixed some time limit in some other matters. For example, in proceedings under section 145. We have different time limit within which time the case will be disposed of. On the other hand, it is a restriction on the party because the party has to file the written statement.

MR. CHAIRMAN: Here you represent the Government of Orissa. The Government of Orissa has been defendant in several cases. If you consider the Government of Orissa as the defendant requires to file a written statement and the court being obliged not to grant time for the written statement beyond three months what will be the position. The discretion is with the court. I am just cautioning. The fact is courts are very lenient and as a result the party suffers. Our object of the Bill is to reduce the delay. Therefore we can appreciate that the Government of Orissa is coming forward to sug-

gest that there should be a time limit for filing the written statement. We will consider that.

SHRI MISRA: Now I will refer Order 21 Rule 22. This notice is to come in two cases. One, where the decree is more than one year after the date of decree the execution is filed. Second, against the legal representative of the party. My view in this regard is that one year is going to be substituted by the word "two years". We may delete this issue of notice in case of two years. We will confine it only when the execution is levied against the legal representative, and that no notice should be given in case where the execution is filed after two years time.

MR. CHAIRMAN: What will be the date?

SHRI MISRA: This will be an unnecessary proceeding.

SHRI S. K. MAITRA: Your point has been partially met by this amendment.

SHRI MISRA: I want complete deletion of that clause. My point is why this provision has been made. If a decree is not executed within one year, this formal notice is to come first because in the meantime the decree might have been adjusted or satisfied. That can be achieved by issuing a straight notice. In case of legal representative I know there is difficulty because he might not have known the liability of those things.

MR. CHAIRMAN: We will examine. But why this objection to issue notice. Let it be one year or two years. When the Court awards a decree it is for the decree holder to seek execution of the decree and within three years he has to do it otherwise there will be time-barred. Anyway, we will examine it.

SHRI MISRA: I will refer to section 82. Here three months period is given for satisfaction of the decree holder. Thereafter the court has been given power to extend it. The State is being put in the same footing as an ordinary litigant.

MR. CHAIRMAN: So you do not want any time.

SHRI MISRA: After the decree is passed the only question is payment of money. Regarding payment no budgetary difficulty would be there. It will be met from other contingency funds and all those things.

MR. CHAIRMAN: What is your experience. When Government happens to be the judgment debtor, if a decress is passed, only execution remains, whether the execution proceedings have to be instituted under this section or Government have always honoured the decrees.

SHRI MISRA: If we have not gone for appeal. we honour the decree. Some time is taken in arranging payment.

MR. CHAIRMAN: Has there been any execution case against the Orissa Government by the decree holder?

SHRI MISRA: Execution cases have been filed. In many cases we have applied and taken time for payment.

MR. CHAIRMAN: You are saying when a decree is against Government no time or extension is necessary because Government is supposed to satisfy the decree and would have no need for execution proceedings.

SHRI MISRA: There will be need for execution proceedings. As soon as the decree is passed a notice is issued through the Government Pleader or the Government Pleader informs the concerned Department and then the matter goes to the Law Deptt. ultimately. In this process three months period is not in many cases sufficient.

SHRI S. K. MAITRA: He says Government should be put on par with other litigants. No time limit should be given.

MR. CHAIRMAN: Under section 82 this time is given to the Government. If they do not give within three months this execution takes place.

SHRI MISRA: We are deleting Section 80.

MR. CHAIRMAN: If you want to equate the State Government or the Government of India, any decree against the Government should be treated on par with other defendants, in that case there is no need of Section 82 at all. Do you agree to the omission of Section 80?

SHRI MISRA: The whole of Section 82 would be omitted.

MR. CHAIRMAN: We will take note of it.

SHRI MISRA: Taking clue from that I am suggesting that Government should not be given any privilege.

MR. CHAIRMAN: In that case clauses 4 and 5 do not arise at all because there is no need of Section 82.

SHRI MISRA: Although nothing is said in this comment, I am personally of the view that there is some meaning in keeping Section 80. It should not be deleted, if I may be permitted to say.

MR. CHAIRMAN: If you represent the State Government, you should represent their view. Your Government's point of view is Section 82 should remain as it is.

SHRI MISRA: To be frank, I have not obtained any order from the Government what to say. We have formulated certain things and thereafter it is a combination of both the opinions.

MR. CHAIRMAN: It will take sometime for us to give final decision because this involves the State Government and you represent the State Government before us. I would suggest that you need not give us the final view on this Section. You may send us an extensive note on this after you duly consult and then we will decide whether Section 82 will go or the proposed deletion of subclauses 4 and 5. In your evidence we take it as your personal view that Section 80 be deleted and Section 82 also should go. But so far as Government of Orissa's view point is concerned you will take time to consult them and send a note to us after consideration. We will consider that. You may kindly send to us within January.

SHRI MISRA: I think this can remain in the statute for some more time to come because specially the women throughout India have not come up to that level; especially in Orissa, still a majority of them observe *purdah*, and if they are brought to court, they can never stand the cross-examination and examination, and they will spoil their case.

SHRI MOHAMMAD TAHIR: So you do not want that they should be compelled to come to the court?

SHRI MISRA: It is not a right, a privilege. We do not want to discriminate. This is just a privilege they are enjoying. With the progress of time we may completely omit it. They will ordinarily come. They will not remain behind *purdah*; but I think this may take time.

SHRI MOHAMMAD TAHIR: Even if they are forward there will be some who do not like to come to the court. So they should not be compelled to come to the court because

in spite of most advanced areas there may be some who will not like it.

SHRIMATI SAVITRI SHYAM: Why only those women who observe *purdah*? Why not everybody?

SHRI MISHRA: I have taken into consideration the reason what the Law Commission has recommended. I think the whole area has not developed. There are certain areas Orissa still observing *purdah* and this will give a handle to the unscrupulous litigants.

MR. CHAIRMAN: Now Mr. Mishra on this Clause also (Page 107) "Since now-a-days the situation of women is completely in consistence with the social philosophy and the customs and manners of the present days considerably changed it is felt that no serious hardship is likely to be caused by the removal of the present exemption. This section is therefore omitted.'

But so far as the State of Orissa is concerned you feel that this deletion of this section at the present moment might cause some hardship to the women. On this also, as in Section 82, you kindly give us the considered views of the State Government. Well, in the charts here, the points that we have taken do not find place in the Memorandum before us, and, therefore, I am suggesting now that you are placing these points before us you have not finally consulted the State Government. As in the case of Section 82, also in the case of Clause 47 you will obtain Government views and send it to us.

SHRI MISRA: I Will obtain Government views and send to the Hon'ble Committee. Regarding this chart also I may inform the Chairman and other members...

MR. CHAIRMAN: You will kindly address to the Lok Sabha Secretariat and that will come to us.

SHRI MISRA: Regarding the chart also no Government orders have been obtained as I find, because I was not incharge of this file.

MR. CHAIRMAN: We do not want to put you in embarrassing position afterwards. You are representing the State Government. These are far reaching legislative measures. Therefore, we are taking evidence of the Government. We are giving you time so that the considered views of the State Government will be sent to the Committee. That will carry more weight. That is why you will kindly club this along with the points you are making and any other points also Government likes to consider. You have some more time. Any other points? At least we have got some partial information I will call it tentative.

SHRI MISRA: I will do it within January. This also I have to place before the Government, because as I find no Government orders have been taken.

MR. CHAIRMAN: Your Secretary has gone to Delhi. When he comes, you discuss with him and discuss with the Government and get their feelings and send us in January in a modified form. For the time being we take it as tentative.

Before you withdraw, I, on, my behalf and on behalf of the Committee express my sincere gratitude for the cooperation you and the Government have given to us and also the hospitality the Government have extended to us us. You will formally convey our appreciation and feelings to the State Government.

Thank you very much.

[*The witness then withdrew*]

II. Orissa State Bar Council, Cuttack

Spokesman:

Shri S. Mohanty: *Chairman*

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Mr. Mohanty before we enter into the evidence I would invite your attention to the Direction for giving evidence before

the Committee. If you desire any part of it to be confidential you can do so. But in that case it will be made available to other members.

You have put a Memorandum before us and also the replies to the questionnaire. Our members have got both these materials. You are welcome to give oral evidence and elaborate and emphasise on whatever points you like.

SHRI MOHANTY: Shall I take oath?

MR. CHAIRMAN: No, it is only a formality as in the courts.

SHRI MOHANTY: Mr. Chairman, Sir, so far as our comments are concerned, within the time available, we have concentrated on some of the provisions. The first one is regarding Section 20 of the Civil Procedure Code about the place of suing. The proposed amendment suggests that the cause of action will be deemed to arise where the corporation has its principal office. Supposing the principal office was at Calcutta. It was shifted to Delhi. Then if he files a suit at Delhi it will cause hardship to the debtor of the firm who lives in Calcutta.

MR. CHAIRMAN: You are referring to Clause 7—Explanation I: "The Corporation shall .... principal office in India."

SHRI MOHANTY: Sir, what I say is a Corporation may have its office at Calcutta at the time of transaction. If it shifts its business to Delhi that would enable the Corporation to file a suit at Delhi also against the debtor of Calcutta.

MR. CHAIRMAN: Your suggestion here in the Memorandum is that the existing Explanation should remain: "The Corporation shall be deeemed to carry on business .. ....at any place where it has a subordinate office".

SHRI MOHANTY: Now suppose we have a Corporation having their principal office at Calcutta with subordinate office at Cuttack, Berhampur. Now as the Explanation stand it is deemed to be carrying on business in all these places. What can be the objection to it by amending it that it shall be deemed to be carrying on business only at the principal office?

MR. CHAIRMAN: I would request the Law Secretary to explain.

SHRI S. K. MAITRA: The place of suing is determined with reference to the place where the cause of action arises. So far as this Explanation is concerned it is concerned only with a Company or Corporation which is deemed to be carrying on its business at its principal office.

SHRI MOHANTY: Kindly look at Explantion II.

Simultaneously: "In the suit for recovery of money. .. .."

SHRI S. K. MAITRA: This is different. A suit can be filed anywhere where the contract was made or where the breach takes place or at the principal office. These are the three places. If both parties contract the suit can be field at any of these three places. It cannot take away the right of the parties.

SHRI MOHANTY: 90 per cent of the contracts are entered into by ordinary people. Of course big firms do like that.

SHRI S. K. MAITRA: You cannot help. They are not purdanasin ladies. If the contract was that the suit will be filed at Ahmedabad? "The cause of action shall be deemed to arise ....to whom money is due". At least this the law in England also. The debtor has to find out the creditor. This is the principle on which the English Law is based.

SHRI MOHANTY: That is true. Taking into account the conditions in India, the instance which I have given, a business firm carrying on business in Calcutta suddenly shifts the business to Delhi and certain persons borrowed from the firm at Calcutta.

SHRI S. K. MAITRA: That is always there.

SHRI MOHANTY: Not in the present C. P. C. This amendment will give that right to the business firm.

SHRI S. K. MAITRA: Law Commission says "In respect of payment of debt ..... In this state of law it will be desirable to make the clarification to the effect that in the absence of a direction to the contrary in a suit for recovery of money cause of action will be deemed to arise at the place where the person to whom money is due resides", This I think will actually resolve the controversy.

SHRI MOHANTY: May I suggest we can suitably amend it by saying that "at the place where the firm was carrying on business at the time the contract was entered into", because we find in Orissa several persons go to Calcutta and file suits in Calcutta courts against the debtors and get *ex parte* decrees.

MR. CHAIRMAN: They enter into the contract here but the party files the suit at Calcutta.

SHRI MOHANTY: At the time of the contract.

SHRI S. K. MAITRA: Arising in part.

SHRI MOHANTY: No, I am taking about the plaintiff. Even if in part it arises at Delhi, he can sue at Delhi. If the cause of action in part arises at Delhi where the Corporation is carrying on its business, it can file a suit at Delhi.

MR. CHAIRMAN: Anyway this whole thing, what you have expressed in the memorandum and what you have told now will all be considered.

SHRI MOHANTY: Next is section 80. Of course I have given my reasons in my notes. I was Government Pleader for 2 years. I know under section 80 notices were serving a very useful purpose. Sometimes at lower level the claims of outsiders are ignored. They do not attach any importance to it. But once under section 80 notice is given, the procedure is that Government Pleader will forward it to the Legal Remembrancer. Then the Legal Remembrancer will consult the Advocate General and at he higher level some decision is taken. At least in 10 per cent of the cases, the Government consider the claim and intimate the party that you need not file a suit. So the section 80 notice serves an useful purpose.

MR. CHAIRMAN: Provided the notice given under section 80 is adhered to and respected by Government. Then it will avoid the cost and the delay. But if it is not respected? Because Government sleeps over the notice. This is a general complaint. There may be some good Governments, some good Advisors to Government. They respond and they pay. Thereby the cost are avoided. But if it is not responded, then the plaintiff has to wait for 2 months under this section.

SHRI S. K. MAITRA: You had been a Government Pleader for some time. In most cases technical objections are raised on the ground that notice under section 80 was defective.

Supposing for argument sake I say, a provision is made that some sort of notice is to be given, but there should be no particular form and no defect in this notice can be pointed out and that cannot fetter the suit.

MR. CHAIRMAN: If this section 80 is retained, any type of notice put-

ting the claim to the Government that unless you satisy the claims, suit will be filed, will be sufficient. To-day section 80 notice is a replica of the plaint. We will look into this

MR. MOHANTY: I am giving one instance. So far as railway claims are concerned, you give a notice under section 77. I know from my experience that 60 percent of claim are settled after notice. I am taking about a stage before the suit is filed.

SHRI S. K. MAITRA: Modification of section 80 is acceptable?

MR. MOHANTY: Yes.

MR. CHAIRMAN: Then next clause.

MR. MOHANTY: Clause 29. It refers to decrees passed against government or Government Officers. The existing provision is that a time would be fixed. If the suit is contested, the Government is supposed to know it. The Government Pleader is supposed to know. So. I am against a further notice being given to the Government.

MR. CHAIRMAN: You are opposed to both the new clauses 4 and 5. You say that addition of sub-sections 4 and 5 appears to be unnecessary.

SHRI S. K. MAITRA: You agree to the rest?

MR. MOHANTY: I am referring to the amendment in the light of the existing section. Is an amendment necessary? If so, what is the purpose? The existing provisions are quite clear. Let us say that nomally the State appears through the Government Pleader. Judgement is passed. The Court fixes a time for satisfaction of the claim. This information comes to the Government Pleader and to the parties.

SHRI S. K. MAITRA: That is true most of the time. If it does not satisfy, the Court has to send a report to the Government. Do you think it is good and proper that the Courts should be sending notice to the Government that such and such decrees have not been satisfied? Government knows that the decree has been passed. What is the necessity? Unless this report is made. the decree cannot be executed. After this report. 3 months have to expire. Then the decree will be executable. So is it necessary in the present state of things that the Courts should be so subservient to the Government?

MR. MOHANTY: Amendment says notice to Government Pleader.

SHRI S. K. MAITRA: No report. No notice. Only the Government Pleader has to be intimated.

MR. CHAIRMAN: If it is a contested suit, the Government is represented through the Government Pleader. As the Law Secretary is suggesting, this is a matter of the Court being required to report to the Government. Regarding the rest, you have no objection. Now next clause.

MR. MOHANTY: Now clause 34.

Abovt Rs. 3000 only appeal both on fact and law, that is what is going to be provided. So far as Orissa is concerned, it is a poor State in India. Now in the Constitution Article 133 amendment, you have omitted the test or valuation of Rs. 20,000. The right of appeal should be open to all, whether low or high valuation. Now by this you, say, if it is Rs. 3000 or above, then only a right of appeal both on fact and law would be available.

MR. CHAIRMAN: You want it to remain as it is. Money value of rupee has gone down. Do you like that this should be there?

SHRI MOHANTY: All the big businessmen are gone, all the Zamin-

dars are gone only some contracts and other things are there.

MR. CHAIRMAN: We will consider it.

SHRI MOHANTY: Sir, I may kindly be excused, I am not speaking in the interest of the lawyers only. I am speaking as to how the provision will work, if section 100 is amended as proposed. Even at the state of admission the points on which it is admitted would be noted down and at the final hearing only these points can be canvassed. At the stage of admission what is happening now is that if there is an arguable point of law, they admit it. Though there are more than one arguable points. At the time of final hearing all points are argued. The present amendment means that at the stage of admission there will be full hearing of all points in the absence of the opposition party. The Court will note down all the points on which appeal is being admitted. At the final hearing these points can only be canvassed?

SHRI S. K. MAITRA: Supposing that provision is modified and it is said that those points which arises on the hearing and such other points as may arise after hearing the respondent, the Court, will consider that.

SHRI MOHANTY: I am pleading for the appellant. Will it not unnecessarily extend the time for disposal? What we are doing is we are filing a second appeal. When we are filing the second appeal we are taking 8 to 10 grounds. There is one legal ground which is pulpable. We urge it. When the Judge finds it substantial, he admits the second appeal.

SHRI S. K. MAITRA: When the Judge admits and makes an order that the appeal will be heard that carries the necessary implication that there is a point of law involved. What harm is there, if formulation of that point is done?

SHRI MOHANTY: The judge should consciously apply his mind but in many cases he does not.

MR. CHAIRMAN: Your note on clause 39 is in itself an elaborate note. But you have not touched 2 points. If you look to this clause—proposed section 100 at page 13 of the Bill compared with the section of the code a departure has been made in respect of law, usage having the force of law the ground on which on second appeal may be admitted. The other is on the present provision the judge must certify on those substantial points of law on which he admits. The grounds must be recorded for non-admission so that party may go to the Supreme Court to seek redress. Unless grounds are there that point you have urged on this substantial question of law, as you have said the present section as it stands should be retained. Even the second appeal is dismissed the Judge has to meet the points raised and give the reasons and say why he has rejected.

SHRI MOHANTY: This will unnecessarily involve elaborate hearing.

MR. CHAIRMAN: If the second appeal is allowed these two things are necessary. There must be substantial law and the usage having the force of law. The other is obligation on the part of the judge to issue certificate then only he will give reasons for admission.

SHRI MOHANTY: The Supreme Court have laid down what is a question of law for admitting a second appeal.

MR. CHAIRMAN: You want reasons for rejection should be recorded.

SHRI MOHANTY: I may tell you frankly at the time of admission they hardly look to the grounds. They do not read the grounds. They hear the point of law. We urge and they

look to it and find out if there is a question of law. At that time grounds are not referred, even at the time of argument as you know, if some point is not argued, they take it that it has not been argued. All these points will be argued in the presence of the respondent. So it is unnecessary. We are concerned whether there is substantial question of law. If that is there we should not provide for elaborate hearing.

MR. CHAIRMAN: We will consider it.

Clause 40:

SHRI MOHANTY: This has remained more than a century. The Judge has been given discretion to decide if he would grant leave. To err is human. While hearing the second appeal the Judge may miss a point at the time of judgement ....

SHRI S. K. MAITRA: This practically amounts to 3rd appeal.

Have you any information about any other country in the whole world where the system of third appeal is in vogue.

SHRI MOHANTY: I don't know.

SHRI S. K. MAITRA: In such cases can you not go to Supreme Court?

SHRI MOHANTY: Going to Supreme Court is a luxury so far Orissa is concerned. Of course number of such cases are very small. They can also file a review.

SHRI S. K. MAITRA: You feel there is no need for it. The real point of law is involved, if it is a mistake.

SHRI MOHANTY: *Clause* 41: It is not desirable to take way the right of appeal on the ground of low valuation.

MR. CHAIRMAN: We are also trying to raise the value of rupee.

MR. CHAIRMAN: *Clause* 42 (*Section* 103): We have already discussed this point in clause 39. You say it should be left untouched. We will consider it.

SHRI MOHANTY: *Clause* 45 (*Section* 115): So far this has served so long a very useful purpose. Omission of section 115 will unnecessarily lengthen the period of pendency of suits. It will involve more trouble.

SHRI S. K. MAITRA: If the same remedy is available in another provision what is the good of keeping two remedies?

SHRI MOHANTY: 227 is the Constitutional remedy. So far as Calcutta and Madras High Courts are concerned they hear the appeal under 227 in a single Judge Court and in Orissa it is the Division Bench which dispose it of. There is no need omitting this 115.

SHRI S. K. MAITRA: If parties can achieve their aim under Art. 227 why should you want this section to be retained?

SHRI MOHANTY: This is more expensive and elaborate process. If there is a revision ordinarily High Court issues notice for admission and hearing. The other party appears. Mistakes if any are immediately rectified. The suit remains pending for a month or so. Most of the people would not be able to take advantage of Art. 227 to correct all these mistakes because it is an expensive method.

MR. CHAIRMAN: We have heard contrary views on this. But things are not very clear to us as yet. I would like to have your opinion on this. It was claimed here that adequate remedy is provided under Art. 227. I am not satisfied with that. I want

to compare Art. 227 with section 115. If these things are anolgous, as it claim, the remedy available on Art. 227 and 115 then there is no need of this duplication.

Art. 227 says "Every High Court... Art. 227 is elaborated by clause 2. Whether it is the same in section 115? To my mind 115 goes a little further beyond that. There are three things, that is, call for records, to have exercise over the lower Court, jurisdiction not vested, has not exercised jurisdiction which is vested and accommodated legally. My only point is whether authority of superintendence will enable the High Court to take cognizance of these factors also.

SHRI MOHANTY: No, it is very difficult. I may speak here cases where 227 applies. If it can be otherwise—the remedied in appal or otherwise, the High Court may say that there is some remedy by way of appeal against final decision. Are you remediless till the decree is passed? On an appeal you may get adequate relief. So we should not interfere. We do not want to exercise the extraordinary jurisdiction in such cases under the Constitution. They are doing this in so many cases.

MR. CHAIRMAN: When adequate relief is there under 227 why 115 should be there.

SHRI S. K. MAITRA: Court may refuse to exercise jurisdiction on the ground of existence of adequate remedy.

MR. CHAIRMAN: We will see to it.

SHRI MOHANTY: *Clause* 47 (*Section* 132): Deletion of Section 132 is opposed.

Women are now saying that they are equal. But still seme exemption is necessary.

SHRI S. K. MAITRA: The paramount task of deciding cases on the oral-evidence...(read out).

SHRI MOHANTY: We are also facing such cases. We are examining in the chamber of judges.

SMT. SAVITRI SHYAM: What is your opinion?

SHRI MOHANTHY: That first thing is they are claiming to be equal. But some protection is necessary.

MR. CHAIRMAN: Your memorandum is before us. We have gone through it. When witnesses come and appear in person, they are in disadvantageous position. They need that the witnesses should be before the Judge and the other party is to see. The other thing is the society has changed. Therefore it is not necessary. Both things will have to be recomciled. You feel the time has not yet come to completely delete it.

SHRI MOHANTY: If it is proposed to do away with it, atleast some provision should be made for examining the witness in the chamber.

MR. CHAIRMAN: When the Court holds a session in camera the counsel of both sides sit and take evidence. If that is provided whether that will meet the present requirment of the people.

SHRI MOHANTY: Personally I am in favour of retention of the provision though its application may be restricted to some extent.

MR. CHAIRMAN: Anyway we will examine how to reconcile your suggestion is some sort of laxity should be there. We will see.

SHRI MAHANTY: *Clause* 99 *Rule* 12(*a*). So far the criminal cases are concerned whether you commit an offence or not it is a limited question. The judge feels that you cannot argue. Then he only orders for sentence. It

is only five minutes affair. But so far as civil litigation is concerned many intricate questions of law arise at the time of appeal, even at the time of admission of first appeal.

MR. CHAIRMAN: We will examine.

Clause 91: The same as before.

Whatever you have replied to the questions we have taken note of all these which are of general nature. You must be noticing the object of this Bill is to avoid delay, to reduce the cost and thirdly rule 8(2)..... So far the delay is concerned, some of the provisions have been made clear with that intention. All these have been done keeping in view the recommendation of the Law Commission. We have to see whether they will meet the requirements to reduce the delay and unnecessary litigation.

SHRI MOHANTY: I feel when this type of interogatory cases are discussed, mostly the other side takes time to file objections. After the objections are filed then it is heard, then affidavit is filed. In that process 5 to 6 months elapsed in a suit. After all if you go to file a suit or if you take a defence, the onous is on you to prove. The intention is to shorten the procedure. But actually in practice it is lengthened.

SHRI S. K. MAITRA: That is seldom done.

MR. CHAIRMAN: Is it your experience, even after the closure of hearing long time is taken in giving the judgment?

SHRI MOHANTY: The High Court is very strict on this. In subordinate courts at the time of inspection, if delay is noticed, the High Court also takes strong objection.

MR. CHAIRMAN: Do you suggest any time limit to be prescribed for giving the Judgment?

SHRI MOHANTY: If it becomes necessary.

SHRI MOHAMMED TAHIR: One point should be made clear. As you have said now after taking evidence and hearing cases sufficient time limit should be there for delivering the judgment. I think judgment should be delivered as quickly as possible after completing the hearing.

SHRI MOHANTY: Now the High Court is very strict.

MR. CHAIRMAN: Then that is well and good.

SHRI MOHANTY: Even if it is made, supposing in a particular case it is not possible, then another forum has to be afforded.

MR. CHAIRMAN: Anyway all aspects have to be considered. The idea is how to abridge the procedure. The other thing is regarding the cost of litigation.

SHRI MOHANTY: Now the court fee is going on rising. The State Governments in order to balance their budget are raising the court fee.

MR. CHAIRMAN: Whether it is State Government or the Central Government, the objective is to reduce the cost. You must know what are the items of cost. The court fee is one of the heavy items. Now if the cost is to be reduced, this heavy item contributing to the cost of litigation has also to be considered.

SHRI MOHANTY: In spite of the rising of prices the cost which is granted to the successful party has not been enhanced to that extent. It is still low. So far as litigation is

concerned, poverty itself is acting as an element.

MR CHAIRMAN: You have said about reduction of court fees. What about the fees paid to the lawyers which contribute to the cost of litigation? We are trying to ascertain facts.

SHRI MOHANTY: The Parliament is trying to enhance the salary of Judges. They are increasing the dearness allowance and other things. The fee is sanctioned in the High Court rules. Every party pays much more than that.

MR. CHAIRMAN: If the prescribed fee is not commensurate with the cost of living, that should be enhanced. But if the lawyers do get fees over the prescribed limit—nobody knows to what extent—whether anything can be done about it?

SHRI MOHANTY: The fee which is prescribed is not the fee which a party can give to a lawyer or the lawyer can charge. It is only the amount which a successful party is entitled to recover from his adversary. The rules provide only that.

MR. CHAIRMAN: We are concerned with the total cost of litigation which is said to be very heavy particularly for the poor litigants compared to the affluent and influential ones. There is another question that will come later. You cannot totally abolish it. But we must strike a balance. The lawyers should not be allowed to take any amount of fees.

SHRI MOHANTY: Suppose I am a junior, a beginner. There is a bigger man like Mr. Daftary or Mr. Sitalvad. If a client has the luxury of engaging Daftry in a case, he cannot expect that he will do the case for Rs. 50 for which a Junior may agree. The Advocates Act does not prescribe fees.

MR. CHAIRMAN: It is not prescribed or it needs to be prescribed

SHRI MOHANTY: Not in the Civil Procedure Code. It may be in the Advocates' Act.

MR. CHAIRMAN: Just as a poor litigant cannot be compared with an affluent one, similarly a junior Advocate is at a disadvantage against a bigger one.

SHRI MOHANTY: The value of work, thought or preparation which he can put is not necessarily undervalued.

MR. CHAIRMAN: It is a ticklish question.

SHRI MOHAMMED TAHIR: Mr. Chairman, I want to know the clear opinion of my learned witness as regards abolition of court fees so far as the cost is concerned, The Law Commission is also in favour of abolition of court fees. What is your opinion if the court fee is abolished?

MR. CHAIRMAN: They have said reduction. Supposing it is total abolition?

SHRI MOHANTY: That will be an ideal state of things.

MR. CHAIRMAN: We are not thinking from the point of legislation. But nevertheless when the objective is reduction of cost, the court fee happens to be one of the heaviest items of cost of litigation. How the Centre can do it? Then the States' complaint will be that it is a source of revenue to them. Therefore they will be reluctant for its reduction unless somebody reimburses or subsidises it.

SHRI MOHANTY: I may tell the Chairman that now there is a competition. The Bengal rate is different from Kerala. Kerala values a suit at a particular rate and Bengal values it at less. What is happening is that all suits which can be filed in either of these two places are not filed in Kerala but in West Bengal. So such things will crop up.

MR. CHAIRMAN: Another point. This being the state of affairs with various States lowering the court fees, it is a ticklish question. We do not know how to legislate and how to enforce. Then what remedies are available to the litigants who are at a disadvantage being poor as against the affluent ones to match against the legal remuneries? Now in Calcutta and some other places, they have got some sort of legal aid society. The Government of India is also thinking of doing something on that line. What is your idea about this legal aid?

SHRI MOHANTY: I have given that in answer to questionnaire No. 6 at page 2, of my memorandum.

"At the discretion of the Court. .. this concession be not misused."

MR. CHAIRMAN: If the Court is satisfied that the litigant is poor and indigent and the case is good one, because sometimes frivolous cases are coming. Now any Hon'ble Member has to seek any information?

SMT. SAVITRI SHYAM: The topmost lawyers are being engaged in every important case. They have no time to attend to so many cases. So they take adjournment from the court. So it makes delay. While the junior lawyers are suffering a lot they are not getting so much cost. Some of them are leaving the profession. What should be done that the topmost lawyers should not be engaged in each and every case?

SHRI MOHANTY: We have provided in the Advocates' Act two classes of lawyers—Senior advocates and junior advocates. The senior advocates can only plead. They cannot appear, they cannot draft, they cannot receive money. They must appear through junior whom they can pay. That is a matter to be provided in the Advocates' Act. They are bound to engage juniors.

SMT. SAVITRI SHYAM: In the list of cases they are found everywhere, at 5/6 places in Allahabad High Court. How that can be justified? There must be some provisions that the juniors will do this and the seniors will do this. Then there will be no cases of adjournment. Some suggestions should be given.

SHRI MOHANTY: Generally by force of circumstances the seniors are pushed to High Courts and Supreme Court. They cannot go to the lower courts. Your question is the senior advocates are often called in the High Courts and the junior advocates are deprived to argue. Something should be done so that there is equal distribution or demarcation of work. I said that under the Advocates' Act they have made provision that the senior Advocates can only plead. They cannot appear, cannot draft, cannot receive money direct from the client and cannot receive instructions direct from the client. All this field is open to the juniors. That is how some assistance is given to the juniors. Now they have provided that an Advocate can be declared as a senior advocate only with his consent. If he disagrees he cannot be declared as a senior advocate.

MR. CHAIRMAN: To this I have a supplementary. Before the Advocates' Act was enacted we had so many classes of lawyers, like, Muktears, lawyers. advocates, barristers and so on. The Advocates' Act levelled them down and called them all advocates. Even once Muktears are now having the same privileges as advocates. But there are two classes senior and junior. Supposing senior is done away with, then there will be only one class of advocates.

SHRI MOHANTY: That class is there. Only to give scope to the juniors it is said that the cases may not be handled by the advocates at the top. This will give facility to the juniors, to come up.

MR. CHAIRMAN: What I am suggesting is that even if this category is removed the junior advocates would

want to engage a senior advocate. Even now the seniors are engaging other seniors and the parties are engaging several senior advocates depending upon the type of the case. The disadvantage of the junior advocate acting with a senior is that he cannot argue a case unless he is permitted.

SHRI MOHANTY: He can as soon as the senior finds that he is capable of arguing.

MR. CHAIRMAN: In a particular case where the senior is there and the junior has taken that cases to the senior, the junior cannot argue.

SHRI MOHANTY: Because he cannot argue, the junior has taken the case to the senior.

MR. CHAIRMAN: Whenever any advocate wants the services of another, he asked the party. Generally that is done.

SHRI S. K. MAITRA: That is compelling the litigant to have two sections of lawyers.

MR. CHAIRMAN: This is not regarding the junior and senior advocates.

SHRIMATI SAVITRI SHYAM: Why not make it that all should go to the association and not to the individual lawyers?

SHRI MOHANTY: Provided the Government takes it up. We have no pension, no provident fund nothing.

SHRIMATI SAVITRI SHYAM: The bulk of the society will not get pension.

MR. CHAIRMAN: Mr. Mohanty on behalf of myself and my colleagues of the Committee I sincerely appreciate your cooperation and I thank you heartily. This being the second day of the New Year we wish you a Happy New Year.

Thank you.

[The Sub-Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE I OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Thursday, the 9th January, 1975 from 14.30 to 17.15 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati).

PRESENT

Shri L. D. Kotok—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri B. R. Kavade
4. Shri Debendra Nath Mahata
5. Shri V. Mayavan
6. Shrimati Savitri Shyam
7. Shri R. N. Sharma
8. Shri T. Sohan Lal

Rajya Sabha

9. Shri Sardar Amjad Ali
10. Shri Bir Chandra Deb Barman
11. Shri Nawal Kishore
12. Shri Syed Nizam-ud-din
13. Shri D. Y. Pawar
14. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

WITNESSES EXAMINED

1. *Government of Assam, Gauhati*

Spokesmen:

1. Shri D. Dass—*Chief Secretary.*
2. Shri U. G. Tehbildar—*Secretary, Law Department.*
3. Shri M. D. Saadullah—*Joint Secretary, Law Department.*

II. Shri Bishnu Kinkor Goswami,
Advocate,

Chairman, Bar Council of Assam, Nagaland, Meghalaya, Manipur & Tripura, Gauhati.

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1. Government of Assam, Gauhati

Spokesmen:

1. Shri D. Das—*Chief Secretary.*
2. Shri U. G. Tehbildar—*Secretary, Law Department.*
3. Shri M. D. Saadullah—*Joint Secretary, Law Department.*

[*The witnesses were called in, and they took their seats*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

So far as our Committee is concerned, our mind is absolutely open over this Bill. On this Bill, we are taking evidence from State Governments' representatives, Bar Councills, High Court Judges and other members of the judiciary and the general public. We shall consider the evidence tendered before us and formulate our own opinion and then make suitable recommendations to the Parliament. You must have noticed from the statement of objects and reasons that the Government have formulated this Bill on the basis of the recommendations of the Law Commission. You can now express your views on the various clauses of the Bill.

SHRI D. DAS: So far as the Government of Assam is concerned, we have confined our examination to a few important amendments sought to be made. May I draw your attention to clause 6 at page 93? The scheme with respect to the doctrine or *res judicate* has been specified therein. As far as our Government is concerned, we have no difference with regard to any of the clauses under this except in respect of (e)...

MR. CHAIRMAN: Mr. Das, I think you will agree with me that it will be better to refer to page 4. You are referring to Page 93. You are referring to the Statement of Objects and Reasons.

SHRI D. DAS: The important points have been summarised in para 6. I am specifically referring to para 6 at Page 93 of the Bill. This is on Page 93 and it deals with the doctrine of *res Judicate.*

MR. CHAIRMAN: On that, you have no objection?

SHRI D. DAS: We have no difficulty in agreeing fully with the amendments suggested except in respect of (e) at Page 94. Here, it is stated:

> "Section 80 which provides for compulsory notice before the institution of a suit against a Government or a public officer is being omitted because, it is felt, that the State or public officer should not have a privilege in the matter of litigation as against a citizen and should not have a higher status than an ordinary litigant in this respect."

In our view, the existing provision

relating to compulsory notice to the State Government of a public officer should be maintained.

MR. CHAIRMAN: In this Bill, kindly refer to Clause 28. Here, it is said Section '80 of the Municipal Act shall be omitted'. This is what has been proposed. Here, at page 94 of the Bill, in the Statement of Objects and Reasons, in sub-para (e) of para 6, they have explained it. They have given the reasons and it is because of that they have proposed to omit Section 80. Assam Government wants that this Section should be retained. They want that this should not be omitted. We understand like that. They do not agree with the arguments given in the Statement of Objects and Reasons. I am trying to understand what the Assam Government actually wants. They have referred to the Statement of Objects and Reasons and them they have referred to sub-para (e) of para 6 at Page 94 of the Bill. As I understand it, I am explaining the position before you. They do not agree with the main proposal to omit Section 80. They do not agree with the reasons given. They have made that statement. They do not agree with the reason given in the Statement of Objects and Reasons. I would like to ask them, do the Government of Assam have any additional reason why this Section 80 should be retained and not deleted as proposed in the Bill?

SHRI D. DAS: Our main consideration has been that the Government cannot be equated with a citizen. A Government, whether it is a State Government or the Central Government has obligations and limitations in the discharge of their public functions which an ordinary citizen does not have. If a Government in the discharge of their public duties is to be subjected to all kinds of excessive litigation, then we apprehend that the initiative and the dedication which is expected of public servants or the Government may be physically not possible and it will be prejudicial to the interests of public servants.

MR. CHAIRMAN: Mr. Das, under this Section 80, which is sought to be omitted, two months time is required to be given before formally filing a suit. Before taking over jurisdiction in regard to a matter, this notice has to be given. Then only, a suit will lie against Government. This is what Section 80 prescribes. You have explained that a Government, whether it is a State Government or the Central Government should not be equated with an individual. Is it because that a Government is composed of different individuals at various places that you want to make a distinction between a State and an individual?

SHRI D. DAS: No. That is not our point. Our point is that an individual does not suffer from the limitation like the public authority which is the Government in the discharge of his own functions. An individual does not perform public functions, whereas the Government entirely performs public functions. They are entirely different. They cannot be equated.

MR. CHAIRMAN: I will seek another clarification. I would like to ask you on behalf of the Committee, what is the experience of the Government of Assam in regard to settling the liabilities that they incur, when a plantiff or a claimant has gone to the Court to file a suit and taking advantage of this two months notice being given to the Government, he has settled that claim or that suit within that period?

SHRI D. DAS: Normally, this kind of notice is served on the State Government to enable them to give very serious consideration to settle this matter before the stage is reach-

ed when a suit has to be filed. This is the opportunity that we get and we immediately try to make sure that this opportunity is made use of.

MR. CHAIRMAN: We are examining the whole thing. The question is, if two months notice is given and if the Government does not respond in the case of a person who has got a claim and who considers it to be legitimate and who takes the help of the Court, what will be the position? Therefore, they have said that this privilege should not be given. You say that there is need for retention of Section 80.

SHRI D. DAS: This clause gives adequate opportunity for the Government to settle the matter. A notice under section 80 received by the State Government is given the topmost consideration.

MR. CHAIRMAN: Today a notice under section 80 which has to be served on the Government has to be almost a replica of the plaint, complete with all the formalities. Would you have any objection if a letter is issued, by way of notice, giving the intention of the claimant to the Government department concerned saying: unless you satisfy my demand within two months, I will go to the Court. Will that suffice? It will not be a technical form.

SHRI D. DAS: If the notice has to be made more simple, and more practical, we do not have any objection. But the notice should contain the chief points against the Government for which he considers it necessary to file a suit against the Government. A summary of the case against the Government should satisfy our purpose. We want to know what his grievance is. We do not insist on any particular form; we do not insist that the notice should be a replica of the plaint.

SHRI M. P. SHUKLA: We find that the views of most of the State Governments are similar to yours. We presume that this is so because the Government find some difficulties in taking a decision within a limited time. Section 80 is used by the Governments to take some technical objections about the forms prescribed. Do you agree that only time is the essential factor and not the form? Most cases fail on technical grounds. Even genuine cases fail on technical grounds and the matter is delayed. People are harassed. On the other hand, State Governments say that there are administrative difficulties and no decision is taken at one level; the man on the spot has to be consulted and so they want time for administrative reasons, and not for any legal or constitutional reasons. It has been the experience in the past that this section is not made use of by the Government for settling the claims by the citizens but only to take objections. The whole purpose is to render justice to affected people and to make justice speedier and the procedure which is responsible for delaying justice has to be modified.

SHRI D. DAS: We feel that the two months' period should be retained for reasons already explained.

SHRI SARDAR AMJAD ALI: You have submitted a memorandum before this Committee giving your suggestions. How do you arrive at those suggestions?

SHRI D. DAS: We have consulted different departments of the Government which are concerned with this kind of thing and we have come to these conclusions. Normally when an amendment to an existing Act is proposed we convene a meeting of the concerned departments and we discuss it among the officers, particularly Secretaries and come to some consensus and place the views of the Secretaries concerned before the Minister concerned.

SHRI SARDAR AMJAD ALI: Could you tell us exactly when this meeting was held?

MR. CHAIRMAN: Why not put your question straightway?

SHRI SARDAR AMJAD ALI: The memorandum says that these are the suggestions of the State Government. I want to know how they arrived at this.

SHRI D. DAS: Whenever there is an important legislation sought to be enacted, the Secretary of the Department concerned immediately brings it to the notice of the Chief Secretary. The Chief Secretary convenes a meeting of the other Secretaries concerned with the subject Discussions are held and certain conclusions are reached. The Secretary of the concerned Department puts up the case to the Minister for orders. Sometimes if it is sufficiently important, it is brought to the notice of the Cabinet also. So far as this memorandum and the views I am submitting are concerned, I carry the full authority of the State Government.

SHRI SARDAR AMJAD ALI: There is the State Law Commission. Did you refer this matter to them before formulating these suggesions to be placed before this Committee?

SHRI D. DAS: We did not make a specific reference to the Law Commission but we decided to include the Member-Secretary of the State Law Commission as a member of our team. Even yesterday I was discussing these amendments with my colleagues, including the Member-Secretary of the Law Commission.

SHRI SARDAR AMJAD ALI: Did you refer the matter to your Advocate General for his opinion?

SHRI D. DAS: No.

SHRI SARDAR AMJAD ALI: The intention of the legislature, as indicated in para (e) on page 94 is:

> "The State or public officer should not have a privilege in the matter of litigation as against a citizen and should not have higher status than an ordinary litigant in this respect."

Don't you think your suggestion is contradictory to this?

SHRI D. DAS: I have already explained that. We do not agree that in all matters the State Government or the Central Government is necessarily at par with an ordinary citizen. Public functionaries have certain obligations and limitations to which an ordinary citizen is not subjected. They should not be equated.

SHRI SARDAR AMJAD ALI: Have you come across decisions of State Governments which are absolutely wrong decisions, taken carelessly and without having any care and caution?

SHRI D. DAS: The relevant question is whether the Government does something carelessly without due regard to the rights of the ordinary citizens. I can only say that there is no question of any authority in the State Government dealing with a question carelessly, deliberately with a view to prejudice the rights of a citizen. We may err or suffer from inefficiency, but as far as the legitimate rights of the citizens are concerned, we do respect them.

SHRI SARDAR AMJAD ALI: Do you agree that the existing Civil Procedure Code was the creation of the colonial powers, who wanted to place the Government officials above the ordinary citizens of this country?

SHRI D. DAS: I am not supposed to clarify. It was the deliberate intention of the colonial powers to place the Government and the public functionaries above the individual citizens and it is because of that this kind of clause has crept in, I would respectfully like to submit.

SHRI SARDAR AMJAD ALI: Don't you think that the retention of Section 80 will be a contravention of Article 14 of the Constitution?

SHRI D. DAS: We do not agree that there is contravention.

SHRI SYED NIZAM-UD-DIN: Mr. Das has given a suggestion that Section 80 should be retained. There has also been another suggestion that it may not be made obligatory on the person to serve a notice on the Government; the suggestion is that it should be made optional. If a person waits for two months in case he serves a notice on the State Government, the State Government shall have to compensate him for waiting for two months and in case he does not wait for two months, then he can proceed with the filing of the suit. Do you agree with this suggestion that this should be made optional?

SHRI D. DAS: We would like this to be made obligatory. If a person waits for two months, we shall have no objection if compensation is to be paid. But, the obligation to give two months notice to the Government should remain.

SHRI S. K. MAITRA: First of all, about Section 80, I would like to clarify. One of the arguments against Section 80 is that it prevents a person from filing an injunction where an injunction is an absolute necessity because he has to wait for two months If Section 80 in its present form is retained, how justice will be done to the person who wants a temporary injunction? What is the idea of the State Government? Can you make an exception at least in this case?

SHRI D. DAS: Where there is a strong case for an injunction we cannot make any specific comment on this at this stage, but, we can only clarify our position as I have just now replied. If as a result of having to wait for two long months before he files a suit, the legitimate interests of the party is prejudiced to his disadvantage then, in the ultimate suit if some compensation is given to the party, we shall have no objection on that account.

SHRI S. K. MAITRA: As you know, an injunction is normally granted where it cannot be set off by compensation. When compensation itself is not an adequate remedy, only then an injunction is granted. In one of the memoranda submitted, one specific instance has been given. I would like to mention it. An illegal order of deportation has been made against a person and he is asked to leave India within fifteen days. If he has to file a suit, he has to wait for two months. He will be deported by that time. Then, what will he do?

SHRI D. DAS: There are certain laws in respect of which there are certain orders of the State and Central Governments where persons are deprived of even going to the Court.

SHRI S. K. MAITRA: This is only an illustration which has been mentioned in one of the memoranda. In such a case, there is no bar to file a suit. But, if a person has to wait for two months, then his purpose in filing a suit will be defeated and frustrated. Then, what will he do?

SHRI D. DAS: I suppose, it will be worthwhile to take the risk.

MR. CHAIRMAN: Presumably and obviously, we have not examined this aspect. Mr. Maitra wanted to know your opinion in regard to the types of cases which he has explained. In regard to Section 80, several suggestions have been made regarding the difficulties experienced by the citizen. This involves waiting for two long months. Mr. Maitra has pointed out that this two months delay may take away a valuable right of a citizen against the Government if he has to wait for two months after serving a notice on the Government and then go to the Court with the hope that he will get an injunction. Ultimately, the case will be fought by the Government against the citizen. Within these two months, he might have suffered a lot.

SHRI D. DAS: If the Court is satisfied that even by payment of adequate compensation in due course, his interest will not be protected, then, on principle, we shall have no objection to a citizen asking for an injunction even without filing a suit. But, it should be so prescribed that an obligation has to be placed upon the Court to examine this kind of application with utmost care to see that this is not mis-used. This is our submission. As long as some such restrictions are imposed,....

MR. CHAIRMAN: There should be some give and take. The Government wants to take a special privilege because of its position and its special functions which you have explained. Mr. Maitra has explained the special circumstances wherein a citizen may suffer because of two months delay and it may affect the legitimate right of a citizen to seek redress in the Court pending the determination of the matter in full, where an injunction can be granted. There has also been another suggestion made by my hon. friend that it should be made optional and if a person waits for two months, he should be compensated.

SHRI D. DAS: We have agreed, so far as reasonable compensation is concerned. Even in connection with injunction also, in very exceptional circumstances as long as the right is exercised with utmost care, we shall have nothing to object on principle.

SHRI S. K. MAITRA: My next point is this. The omission of Section 80 is not the only proposal. There is also a proposal to modify Section 82. As you know, Section 82 provides that when a decree is passed against the Government, the Court has to make a report to the Government that the decree remains unsatisfied and the decree cannot be executed before the expiry of three months from the period the report is made. Now, this is being modified. There will be no report and the Court will fix the time. The Court is being given power to extend the time. This is the proposal in the Bill. There is also another proposal about the filing of the defence. This also sought to be modified. There, the Court has power to extend the time from time to time, and to give Government adequate time to file its defence, but, in the Bill, the proposal is that the power of the Court to grant time will be limited to only two months. About this, you have not said anything. Do I take it that the Government of Assam are agreeable to this provision?

SHRI D. DAS: It makes a lot of difference whether it is the plaint of a citizen or it is in connection with the order of a Court. The moment an order of the Court is passed, for the execution or implementation of the order, Government should not stand in the way. After all it is a Court's order. So far as the judicial court is concerned, Government should have no separate status.

MR. CHAIRMAN: He has drawn my attention to this part of the statement. The representative of the Law Ministry enquired whether injunctions should not be provided for in exceptional cases. The Government of Assam have no objection.

The second question was this. After the decree is passed by the court in favour of a plaintiff against the Government, there is a provision for a report to be given by the court before execution can be instituted by the decree holder. The view of the Government of Assam is that they have no objection and they do not see why the Government should get any further time than other ordinary decree holders.

SHRI D. DAS: The moment an order of the competent court has been passed, for the purpose of the execution or implementation of that order, Government should have no special privilege.

SHRI SARDAR AMJAD ALI: There are certain cases. Under the

Land Acquisition Act, land can be taken over by the Government and compensation could be paid afterwards. If the order appears to be illegal, one should be able to challenge it in a court and that can be stayed only by way of injunction.

SHRI D. DAS: In extreme cases, we have no objection to a person being given the right of injunction. If some sort of a provision is sought to be made to protect the interest of affected persons in certain special types of cases and to seek the injunction from the courts, the Government of Assam have no objection.

MR. CHAIRMAN: Now, it is for the Law Secretary and the Government of India to see how it could be provided.

SHRI D. DAS: We now refer to subclause (f) on page 94. Here our view is that a provision like this will be rather harsh on the common man, if you bar appeals in suits where the amount involved is Rs. 3,000 or less except on points of law.

MR. CHAIRMAN: Suppose this is totally abolished?

SHRI D. DAS: We shall welcome it because for an ordinary man even an amount of Rs. 100 is important and why deny that poor man of his right.

SHRI S. K. MAITRA: So far as this limit of Rs. 1,000 is concerned it is in section 102. It relates to the second appeal. A second appeal is barred if the subject matter of a suit of the nature cognisable by a Court of Small Causes is valued at Rs. 1,000. There we propose to raise it to Rs. 3,000. This provision in section 96, relates to the first appeal and is a new provision on the anology of section 102. Under the Presidency Small Cause Courts Act or under the Provincial Small Cause Courts Act, there is no appeal against the decision of the judge. Normally small cause suits are upto Rs. 750 or Rs. 1,000. On the analogy of the provision made under those Acts, a provision has now been made; even the first appeal is barred; there is no appeal at all on facts except revision. Now an appeal will be allowed only on questions of law; so far as appeal on facts is concerned, it will be barred. Rs. 1000 limit is there already in section 102 which relates to the second appeal, not to the first appeal.

MR. CHAIRMAN: So far as this provision is concerned, section 96 to which clause 34 applies, they suggest that the existing provision should be retained.

SHRI D. DAS: We shall now refer to (g) on page 94.

SHRI U. G. TEHBILDAR: Coming to clause 39, which seeks to substitute section 100, we feel this will require the court to have two full dress hearings and writing two judgements, because there is always a hearing on the question of admissibility. Under the new provision, it has been made compulsory for the court to formulate the points for hearing. This will require a full dress hearing and full judgement will have to be written. So, instead of shortening the process, it will delay the process of law. That is the main ground of our objection.

MR. CHAIRMAN: So, you don't want the new section and you feel the existing section 100 should be retained?

SHRI U. G. TEHBILDAR: Yes.

SHRI S. K. MAITRA: Second appeals are not automatically admitted. There is a hearing and after the hearing, if the judge is satisfied that the appeal involves a question of law, only then the judge passes an order that the appeal will be heard. This order carries a necessary implication that the appeal involves a question of law. So, if the judge is required to set down what is the question of law involved, there will

be no additional work involved. Instead of "a question of law" we have made it "a substantial question of law". The procedure which is being laid down looks to be very formidable, but in practice it may not be so formidable. There is one sub-section which provides that the appeal will be heard only on the question certified by the judge at the time of admission. That may require modification, if the Committee so feels. After hearing the other side, some other questions may also arise. The judge should be empowered to hear the appeal on those grounds also. That is for the Committee to consider.

MR. CHAIRMAN: We will consider it.

SHRI D. DASS: Section 115 should not be omitted, because Article 227 is a special provision which in very exceptional circumstances empower a court to admit a writ petition. If section 115 is omitted, the ordinary citizen will be left in the lurch. A privilege which an ordinary citizen has been enjoying under the ordinary law should not be taken away because of the existence in the Constitution of a special provision.

MR. CHAIRMAN: I draw your attention to Article 227.

Article 227 reads:

> (2) Without prejudice to the generesuperintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
>
> (2) Without prejudice to the generality of the foregoing provision, the High Court may:—
>
> (a) call for returns from such courts;
>
> (b) make and issue general rules and prescribe forms for regulating the practice and procee. dings of such courts; and
>
> (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts."

These are the three things. I will ask the Government to examine this. You have rightly pointed out about this. I want your opinion specifically in regard to the provisions under Article 227 of the Constitution and Section 115 of the Code.

SHRI D. DAS: The two things are absolutely different and one cannot be a substitute for the other.

MR. CHAIRMAN: You suggest that Section 115 should be retained. What else?

SHRI D. DAS: Then. I would like to say about Section 132, which is in regard to the right of pardanishin women to be exempted from appearing in a Court. There may be very few people who may like to exercise this privilege, but, even then there may be cases in which this kind of exemption will be needed.

MR. CHAIRMAN: This is regarding the compulsory production of the witnesses before the Court. Section 132 gives exemption to pardanishin women. The State Government of Assam feels that this should be retained as it is.

SHRI D. DAS: This should not be deleted.

MR. CHAIRMAN: What is the reason? Do you think that the time has not come yet?

SHRI D. DAS: The time has not yet come. Even today, there are certain sections of the community, who under certain customs, are unwilling to appear before the Court and make submissions. If somebody is willing to appear in the public. this Section does not prevent that person from appearing in public. But, this Section will prevent somebody, who does not want

to appear in public, from exercising this right.

MR. CHAIRMAN: We will examine the other points in the memorandum which are of a general nature. May I on behalf of myself.....

SHRI SARDAR AMJAD ALI: I would like to seek a clarification. On page 2 of the memorandum, in reply to Question No. 3, it has been stated:

> "The procedures for preparation and publication of records of right are given by special statutes which also provide for appeals etc. So, they should not be included in a civil proceeding."

Would you kindly explain? Do we take it that these cases relating to the records of right should be given completely to the revenue officers or a particular type of Code having some powers to deal with exclusively....

SHRI D. DAS: The fundamental right of a citizen to go to a civil court against any order passed by a revenue court or any order passed under these special statutes is there. That ordinary right should continue. The ordinary right of a man to go to a civil court is except in those cases, whereby he is prohibited from going to a civil court. Our point is that, the revenue code functions today in a small manner. We feel rightly that the revenue code which is more or less an administrative code relating to the day to day life of a man should function in a small and simple way and should not be burdened by these hard and fast and elaborate procedures. Under the revenue code, a person has the opportunity to agitate upon in an appellate court also. It has been specifically provided.

MR. CHAIRMAN: I think that is all. Mr. Das and friends, may I on behalf of myself and my colleagues in the Committee convey to you our sincere appreciation for the suggestions you have made and for the valuable evidence you have tendered before us? May I also take this opportunity to convey our thanks to the Chief Secretary and the Government of Assam for the hospitality shown by the State Government and for the cooperation given by them? We very much appreciate that. I thank you and your colleagues once again for the cooperation given to us.

SHRI D. DAS: On behalf of my colleagues. I would like to express our grateful thanks for the opportunity given to us to express our opinion concerning the life and welfare of the citizens. We have done our best to make our points as clear as possible without in any way trying to fetter the Committee from coming to their conclusions. The evidence which we have tendered is in the nature of suggestions for the consideration of the Committee. On behalf of the Assam Government, we assure you that we shall do everything in our power to make the work of the Committee easier and it will be our privilege to provide whatever help that is sought from us. We are quite aware of the shortcomings from which we might have suffered and we do hope that in your wisdom, you will kindly overlook them. Thank you, Sir.

(*The witnesses then withdrew*)

II. Shri Bishan Kinor Goswami, Advocate

Chairman, Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, Gauhati.

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even

though you might desire the evidence is liable to be made available to the Members of Parliament. Mr. Goswami has taken great pains and had given a written memorandum on the whole Bill as also detailed replies. Mr. Goswami happens to the President of the Bar Council also. He is appearing before us in both capacities. For the sake of clarification of this memorandum, we will take it up on behalf of Bar Council also.

SHRI B. K. GOSWAMI: Yes.

Mr. CHAIRMAN: When the memorandum has come from this learned body, it should indeed be very valuable and we very much appreciate it. Now, I seek your indulgence and request Shri R. N. Sharma to take the Chair.

[*Shri R. N. Sharma in the Chair*]

MR. CHAIRMAN: Your memorandum is exhaustive. Would you like to add something to it?

SHRI B. K. GOSWAMI: I have given my reasons for different things. On one point, with regard to section 80, I may be excused that I am in a rather embarrassing position because I happen to be a member of the Government delegation. This is my personal view as well as that of the Bar Council. I have given my reasons for our views in respect of this section, as well as other sections. It is up to the hon. Members to consider my views.

With regard to section 47, my submission is this. When a decree holder goes to execute a decree, sometimes execution proceedings can be held up for years together. I have known some cases which are pending for the last twenty years, execution is still pending. The party cannot be blamed because section 47 is there and he takes advantage of that section. In the old section 47 also the auction purchaser in the execution of the decree was treated as a party to the suit for the purpose of section 4. The new amendment to section 47 is practically a bifurcation of explanation given to section 47 into two, as explanation I and II. Practically it has retained the old character of section 47. I have also quoted the decision of the Supreme court in 1973 S.C. 2423. In the *Statement of Objects and Reasons* it is stated that there is conflict of decisions on this point, whether the auction purchaser is a party to the suit for the purpose of section 47 or not. With due respect I say that the conflict is set at rest by the Supreme Court and the Supreme Court has interpreted section 47 as it stands and that is the only interpretation. My submissions on this question are: When a person purchases property from court in execution of a decree, he has got a remedy. He can file an application under order 21, rule 95 for delivering possession and the limitation period, was previously three years but under the Limitation Act of 1963 it was brought down to one year. He will have to file an application for delivery of possession within one year from the date of purchase. But if a person purchases a similar property from an individual vender and he does not get possession, he has got a limitation of 12 years. Now a person who wants to get possession shall have to go to the executing court within one year. My personal view is that it is not equitable for various reasons. A man may not be able to apply within one year for delivery of possession. If he is unable to apply within one year, should his right to get possession of the property be extinguished for all times to come? I respectfully submit that this matter might be considered because before 1956 the explanation to section 47 was something different. In 1966 it was amended. I submit that the previous position may be retained.

SHRI S. K. MAITRA: In this Bill, the amendments which have been made seek to provide that all questions relating to execution

discharge, satisfaction of the decree should be decided by the executing court and not by separate suit. That is the position which has been taken. You say that it should be decided by a separate suit and not in the execution proceedings. It is diametrically opposite.

SHRI B. K. GOSWAMI: I do not dispute that at present under Order XXI Rule 95 he may get possession through the executing court provided he files his application within one year. But even if a person does not file his application within one year, his right to get possession through the intervention of a civil court may not be taken away.

About section 96, I have nothing more to add to what the Chief Secretary has said. I find one new section 100A is being added. My personal reaction is that Letters Patent appeal should be debarred and I welcome this new section. According to clause 10 of the Letters Patent of Calcutta High Court—we also follow the same—whenever a first appeal is decided by a single judge, as of right the party can file another appeal in the same High Court against the decision of the single judge. The intention of the Bill is to curtail the right of the parties to file another appeal before the same High Court against the decision of a single judge. If that be so, there is no reason why another right of appeal should be given against the decision of a single judge to a division bench of the same High Court. So, a provision similar to section 100A may be made in the case of first appeal also.

According to section 98, if there is a conflict between the decisions of two judges, a reference can be made to a third judge only when there is a question of law. But under clause 36 of the Letters Patent, a reference may be made to a third judge on a point of fact as well as law. I want that the provisions in Letters Patent as well as the CPC should be the same so far as this point is concerned. Coming to section 100 in the second appeal, there are two hearings. The first hearing is on the admissibility. As the law stands today, when the judge hears the case for the first time, there may be ten questions of law, but if the lawyer can impress the judge on only one question of law and if the judge is convinced about that one question, the appeal may be admitted; but at the time of final hearing the High Court may hear on other questions of law also. But according to the amendment being suggested, there has to be formulation of different questions of law by the judge at the time of hearing under Order 41, Rule 11. It will be an *ex parte* hearing on behalf of the appellant. The judge will have to decide the question *ex parte*. The lawyer will have to argue all the points of law. He cannot remain satisfied by arguing one important question of law because he does not know whether at the end that question of law may stand or not. So, he will have to argue all the ten questions of law and the judge will have to give his full consideration to all these ten questions of law. The judge will have to go through the judgments of the lower courts very carefully and hear the full dress arguments of the lawyer. He will have to give his reasons while formulating the points. I think it will be more or less a judgment which will be available to the superior court to examine. So, it is unnecessarily increasing the work load of the judge. It will be difficult for the lawyers also. So, I submit that the existing position may be retained. Regarding Section 115, I have given my views. This is on Page 4. Of course, I have not stated in detail. This is because I have given my replies to the questionnaire. On this point, I would like to submit only this much that the

scope of Article 227 and Section 115, strictly speaking, are not the same. The Supreme Court has laid down that the scope of Article 227 of the Constitution is wider than Section 115 of the Code. This is the decision of the Supreme Court. We feel that Article 227 of the Constitution which gives a very extraodinary power to the High Courts should not be utilised like any other statutes, in regard to the day to day affairs. This power of superintendence is given to the High Courts only to see that there is no grave injustice. This extraordinary power should not be made available in all cases. With due respect, I would like to say one thing. If this principle is accepted, that since Articles 227 of the Constitution is there, we should omit Section 115, then, why don't we adopt that principle and apply that principle in the case of Criminal Procedure Code? Then, we can very well omit Section 401 of the Criminal Procedure Code in regard to the revisional power of the High Courts, because the High Courts have got the power under Article 227 of the Constitution. Similarly, we can omit the provisions in regard to revisional power in all the State laws or Central laws. I would respectfully submit that this is a sacred thing. After all, Constitution is a very sacred thing. That sacred provision should not be allowed to be used in enforcing each and every statute and if this principle is accepted, then, I think all the State and Central laws dealing with revisional power should be curtailed and you can give it to the High Courts. Regarding Section 132, about the *pardanishin* ladies, I agree with the views of the Government of Assam. Then, in regard to the new Section 148A. which is proposed to be inserted, I would say that this is a very good thing, that the right of filing a caveat has been given. This is on Page 16. I have no objection to this particular principle except in regard to a few words. I would like to draw your attention to sub-section (4) of the proposed new Section 148A.

It says:

> "Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application."

I have objection only to these words 'at the caveator's expense'. This should not be there.

Then, in regard to Order I, Rule 8, my humble suggestion is this. Of course, there are several High Courts decisions that the suit shall not abate by the death of one of the plaintiff. To make the position clear, there is no harm if we add that merely because one of the plaintiff dies, the suit as a whole will not, abate. Then, I have got some objections regarding Order IX, Rule 13. This is in Clause 62. The relevant portion is at page 29.

It says:

> "Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim."

The words 'notice of the date of hearing' will create complications. It will lead to various types of interpretations. From my humble experience as a lawyer, I have seen that the rich and powerful plaintiffs somehow win over the process servers. I am saying this from my experience. The powerful plaintiffs win over the process servers. He can manage to have a report from the process server that he went to the particular place to serve the summons, the defendant refused, and therefore, it is hung up at his own

residence. In Assam, the common method is what is called by hanging. I think this may be happening in other places also. The rich plaintiff may very well obtain such a report. The report of the process server is ordinarily taken into consideration. If it is supported by an affidavit, then, it is taken into consideration as evidence. The burden is on the defendant to prove that the report is wrong. Now, if this provision is made, then, the powerful plaintiff may very well bring one witness who will say that the defendant may not have received the summons, but, he told him (defendant) that he has got a case, that so and so has filed a case against him and the next date of the hearing is such and such. It will be very easy to manufacture such witnesses. So, I would respectfully submit that this should be deleted. Then, I come to Order XVII, rule 1. This is on page 35. I now refer to page 35, order XVII, rule 1. When a case comes up for hearing, it will be taken today and it will be continued tomorrow and so on. Sometimes the plaintiff's side might be taken up first; or sometimes it may be the defendants' side. Whichever party is taken first, that party should be asked to adduce evidence first and the date or dates might be fixed for the evidence of that side. Then another date should be fixed for the evidence of the other party. Let us assume that on behalf of the plaintiff there are ten witnesses and a particular date is fixed for that side. On that date the defendants' side also are to come ready and maybe, that side also may have ten witnesses. With ten witnesses, the plaintiff side may take three or four days and the defendant will have to bring on all these four days all his witnesses and it will mean tremendous cost to him, especially if he is a poor defendant. My suggestion is that the dates should be specified for each party to minimise the cost.

I shall now refer to sub-clause (c) on page 36. I have objection to this as well as the words 'other than being engaged in another court', in sub-clause (d). In big cities a number of civil lawyers might be available but in mofussil courts where sometimes only three or four good civil lawyers are there, if a lawyer is engaged in another case and it cannot be foreseen it is not possible to hand over the brief in the last minute to a new man; it will not be just. My respectful submission is that it should not be a ground for adjournment but it should not be said that it should never be a ground for adjournment. No prohibition should be laid down but it should be left to the discretion of the court, as it is at present.

SHRI M. P. SHUKLA: Among the junior advocates the practice is that if they want to delay the proceedings, they take the plea that they are busy in another court; it is rather an abuse of a privilege.

SHRI B. K. GOSWAMI: My reply to this will be that for eliminating delays amendments to the Code alone will not do, unless the preseiding officers, the lawers and the litigants all co-operate. If one wing does not co-operate, there will be delay.

SHRI M. P. SHUKLA: The provision presupposes that they do not co-operate.

SHRI B. K. GOSWAMI: It will depend upon the Presiding Officer. No, I refer to Order XVIII, rule 18. A provision has been made for local inspection. I only want that the court should keep a record of the local inspection and it should be a part of the record of the court and a memorandum of inspection should be prepared and it should also be made admissible. At present the law is silent on this point. Generally it is admitted. It does not form part of the record. In order to avoid that I respectfully submit that the rule should lay down that the judge is bound to make a memorandum; he should not carry it in his memory; he must put it writing, what he has seen for the record.

SHRI S. K. MAITRA: That is the practice. There are case laws on this point.

SHRI B. K. GOSWAMI: The order is silent. Some High Court say that it is not part of the record. In criminal procedure code it has been specifically laid down that it will form part of the record. In Civil Procedure Code it has not been so laid down.

Now, I come to page 38, order XX. Page 38 Clause 73 seeks to insert new rule 5 A in order XX. This is welcome. I want that the court should record in the order sheet itself the forum of appeal and the limitation period.

Page 56, Clause 77. The words "so far as it relates to the suit" in Rule 3, Order XXIII are proposed to be substituted by the words "so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromises or satisfaction is the same as the subject matter of the suit". I do not think this is proper. I feel that the compromise should be limited only to the subject matter of the suit.

SHRI S. K. MAITRA: That means, this amendment will not be necessary?

SHRI B. K. GOSWAMI: Yes. Coming to clause 77, under section 96 there is no right of appeal against a consent decree. As the aggrieved party is specifically debarded from filing a suit to set aside a compromise decree, it should be made clear that if the party challenges that the agreement or compromise is not lawful, in such cases, although there is a compromise decree, that decree should not be regarded as a consent decree. There is some conflict of decisions on this point. Some High Courts have said, "You have entered into a compromise decree. Unless that decree is set aside by a competent court, you have no right of appeal." So, I want that a provision may be made in section 96 that when the compromise itself is challenged as being unlawful, such a compromise will net be regarded as a consent decree.

Coming to Clause 84, I have suggested in my memorandum, that an Explanation may be added to Rule 3 of Order XXXIII in conformity with the made by the Kerala Hight Court. It deals with pauper suits by indigent persons. The Kerala High Court has amended this rule to the effect that when there are more than one plaintiff it will be sufficient compliance if one of the plaintiffs presents the plaint personally before the court with a petition for permission to sue as a pauper. The Kerala amendment may be in corporated in the Bill.

At page 76, a new Explanation is being added in Rule, 5, Order XLI which is puite welcome. This is in conformity with the Supreme Court decision, but there is a slight deviation. The Supreme Court judgement says that if a communication is received either by a lawyer or by a party on affidavit, then the court may act upon that information. But in the new explanation, the words are "an affidavit sworn by a pleader based on his personal knowledge". Suppose a case is going on in this court in Nowgong and ultimately it goes to the Supreme Court and the Supreme Court passes a stay order. The lawyer at Nowgong will not have personal knowledge. The lawyer in ths Supreme Court and might have sent a telegram or a letter or a phone call saying that a stay order has been passed by the Supreme Court. Will it not be too much to insist that you obtain an affidavit from the Supreme Court lawyer? So, I have suggested that an affidavit sworn by the party or his pleader stating that a stay order has been passed by the party or his appellate court should be suffioient. Of course if some party or lawyer makes a false statement, apart from being proceeded against under the I. P. C. it may be provided that it will be treated as contempt of court. Then, the last suggestion I have is in regard to Order XLIV. Order XLIV deals with the appeal by indigent persons whom we call paupers. Here, there is one stringent provision. I want that it should be libralised. The present provision of Order XLIII rule 1 is this.

"Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable."

I have got objection only to this existing portion in all matters including the presentation of such application.' Now, the position is this. Let us say there are five persons, five brothers. They file their suit as paupers or indigent persons. The suit is filed in the mofussil court, at Jorhot or some other town in Assam. Ultimately, if he is required to the High Court and if all the five persons are to personally present a petition in the High Court, then, it will cause hardship to them.

SHRI SARDAR AMJAD ALI: He should not be regarded as a pauper.

SHRI B. K. GOSWAMI: There is no meaning in regarding them as paupers. If all the five persons have got the means to go to Gauhati from Jorhat or some other place and go back, to personally present the petition, then, there is no meaning in calling them as paupers. So, I submit that Order XLIV, rule I may be amended to the effect that at the appellate stage, the personal presentation by the pauper is not necessary. Here, I would also like to draw your attention to rule 3 at page 80.

SHRI S. K. MAITRA: If he continues to be a pauper all these provisions will not be necessary.

SHRI B. K. GOSWAMI: Here, it is stated in rule 3 at page 80:

"Where an application referred to in rule 1 was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred no further enquiry in respect of the question whether or not he is an indigent person shall be necesseary."

But, there may be a case where I file an appeal I file a suit as a pauper. The Court does not accept my contention. I am not held to be a pauper, when I file an appeal I shall have to present an application. Then, Order XLIV will be applied. This is regarding appeal. I suggest that there should be some amendment of Order XLIV. Here I would like to draw your attention to the amendment proposed on page 80. This is in respect of sub rule (2) of new rule 3.

"Where the applicant, referred to in rule 1, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court, unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred."

SHRI S. K. MAITRA: It may be made by the Court.

SHRI B.K. GOSWAMI: But Order XLIV will remain. There may be some conflict. I only place it for the consideration of hon. Members whether there should be any conflict between the two provisions. If the hon. Members deem it necessary then Order XLV may suitably be amended so that there may not be any scope for any conflict.

SHRIMATI SAVITRI SHYAM: Mr. Goswami, you have taken pains and you have made some good suggestions. But, I would like to ask you one question. In the Supreme Court as well as in the High Courts, most of the top lawyers account for the bulk of the cases and they have to run from this Court to that Court. That whole

objective of the Bill is to reduce the expenses, to curtail the delay and to make the procedures simple. So, would you like to suggest that there should be some restrictions imposed on the top most lawyers in regard to the handling of cases?

SHRI B. K. GOSWAMI: So far as lawyers having a very lucrative practice are concerned, I think, the hon. Member knows that there are two types of lawyers. One is called the advocate and another class of advocates who are called senior advocates, Generally, a lawyer, who by virtue of his standing in the Bar is considered to be suitable is designated by the High Courts or the Supreme Court as senior advocate. Once he becomes a senior advocate, then, he has to retain a junior; it is obligatory on his part to keep a junior. Whenever instances arise in regard to adjournment, the Court will take into consideration the competence of the junior while granting adjournment. In the opinion of the Court, if the junior is sufficiently competent, then, the Court may ask the junior to conduct the case. This is generally being done. So far as our Hight Court is concerned, we have seen that if the junior happens to be a new man in the profession, if the Court thinks that he may not be able to do justice to the case, then, the Court may grant adjournment. On the other hand,, if the Court feels that the junior is such a person that although he is a junior, he is competent to conduct the case, the Court will ask the junior to conduct the case in the absence of the senior. My humble opinion is, it will depend upon the Court.

SHRIMATI SAVITRI SHYAM: My second question is about the legal aid societies. These are there everywhere in every High Court. But, they have not made much headway in the serving of the poor. The poor are not benefitted by these societies. Would you like to suggest some sort of a legislative measure m respect of legal aid societies?

SHRI B. K. GOSWAMI: As far as I know, only in a few places, there are legal aid societies. I do not know how they are functioning. I am told that there is one legal aid society in Delhi. I have seen in papers that there is one legal aid committee in Bombay. But, I do not know whether there are legal aid committees in other places.

SHRIMATI SAVITRI SHYAM: I am seeking your advice, whether some sort of legislation should be enacted.

SHRI B. K. GOSWAMI: This can be done. The Constitution also requires that some help should be given to the poorer sections. Unfortunately—neither the Central Government nor the State Governments or the High Courts have done anything in regard to this. I should also implicate the Bar Councils. Being the Chairman of the Bar Council, I must also admit that we have also failed in our attempt to make some schemes up till now. It is really regrettable that up till now, nothing has been done for giving proper legal aid. I would only appeal to the hon. Members and the Central Government that they should take some initiative in regard to this matter.

SHRI SARDAR AMJAD ALI: Particularly the Law Ministry.

SHRI B. K. GOSWAMI: The reason why I say that the initiative should be taken by the Government is because legal and cannot be given by individual societies or some persons collectively. It involves money. Government will have to come forward with finance. It involves finance. The hon. Deputy Minister is here. I would take this opportunity to request the Government to initiate some measures for giving legal aid to the poor.

SHRI SARDAR AMJAD ALI: Mr. Goswami's memorandum is quite exhaustive. About revision powers under section 115 will it be possible

for the courts to deal with revision petitions in the absence of records?

SHRI B. K. GOSWAMI: I think in some cases it is possible, but not always. In many cases it is possible to to decide revision petitions without the record. There may be some questions when the entire record is not necessary. At the time of hearing the revision court may say: We do not find any necessity for the record and if the court finds it necessary, before the final heading it may call for the record. As I said, in many cases the record is not necessary. It is true revisional powers are misused by some parties

SHRI SARDAR AMJAD ALI: That is the object removal of section 115. About the service of summons do you agree that there are difficulties with regard to the reports of the process servers. What is your opinion if any one suggests that the court will have the power to fine a process server if he does not serve the process in due time in accordance with the law?

SHRI B. K. GOSWAMI: With regard to the service of process, I have made my suggestions.

SHRI SARDAR AMJAD ALI: If the preson is not found, there is a substitute service by hanging.

SHRI B. K. GOSWAMI: That will be called 'service by hanging'. Under Order V, rule 20, there is another procedure for substitute service.

SHRI SARDAR AMJAD ALI: If the person concerned is not found or if he is trying to avoid, should not the service be done by registered post directly?

SHRI S. K. MAITRA: We have provided in the Bill itself that simultaneously it will be sent by registered post.

SHRI M. P. SHUKLA: Pubication in the newspapers is a substituted service. Whenever you employ an human agency, whether you send it by registered post or through a process server, it is bound to occur.

SHRI SARDAR AMJAD ALI: If the procedure is simplified like this service directly if possible or by publication in newspapers. Do you think it will be helpful?

SHRI S K. MAITRA: I think it will be causing hardship because there are many persons who would not read newspapers.

SHRI SARDAR AMJAD ALI: 80 per cent of our people are illiterate. Anything published in the gazette is presumed to be known to all. Even we do not know many things though they might be published in Gazette. Newspapers also do not reach the remote corners.

SHRI B. K. GOSWAMI: It depends more on the court. When the High Court passes an order for serving a notice, a gentleman may be residing in the interior, the court fixes fifteen days time, in 99 per cent of the cases,, notices are served within time and returned because the process servers are afraid of the High Courts; about other courts they are not so much afraid of the High Courts; about other courts they are not so much afraid.

SHRI SARDAR AMJAD ALI: Suppose a man concerned avoids the process, or refuses, the court will pass an order that it should be served by registered post.

SHRI B. K. GOSWAMI: The present provision is that when there is a report from the process server that somebody had refused to accept, the court accepts that report; refusal to service the present law is this.

SHRI SARDAR AMJAD ALI: Suppose a man successfully avoids the process server; the process server does not actually get him and he

makes a report to the court that the man is not available. The court passes order; let there be post card or let it be hung. Instead of going into all those procedures, if the man is not available the next process should that the summons should be served by registered post.

SHRI B. K. GOSWAMI: That is being done even today.

SHRI S. K. MAITRA: In the Bill we have provided that simultaneously summons will be issued through the process server as well as by registered post. Another provision has been made that it could be served on an adult male member or even a female member, adult female member of the family if no adult male member is there. Simultaneously summons will be issued by registered post with acknowledgement due. All these things have been provided for. About revision, you said that the ambit of article 227 is wider than section 115. If that is so, what is the purpose in keeping two forums if one forum will do?

SHRI B. K. GOSWAMI: But the courts will be reluctant to exercise their extraordinary powers under article 227 except in cases of flagrant violations of law.

SHRI S. K. MAITRA: In the old Cr. P.C. the provision was that an application for revision could be made to the Sessions Judge. But the Sessions Judge could not make the final order under section 438. It was the High Court which could make the order under section 439. Now we have provided co-extensive powers to the Sessions Judge and to the High Court. So, the Sessions Judge can finally dispose of applications for revision. Similarly, if we provide that revision application from orders of munsifs will lie to the District Judge and revisions applications from order of Additional District Judges and District Judges will lie to the High Court, will it be acceptable.

SHRI B. K. GOSWAMI: Yes Sir.

MR. CHAIRMAN: Thank you, Mr. Goswami. We will give very careful consideration to your evidence.

SHRI B. K. GOSWAMI: May I express my gratitude to the committee for having given me this opportunity?

(*The committee then adjourned*)

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE I OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Friday, the 10th January, 1975 from 10.30 to 14.00 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati).

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Narendra Singh Bisht
3. Shri B. R. Kavade
4. Shri Debendra Nath Mahata
5. Shri V. Mayavan
6. Shrimati Savitri Shyam
7. Shri R. N. Sharma
8. Shri T. Sohan Lal

Rajya Sabha

9. Shri Sardar Amjad Ali
10. Shri Bir Chandra Deb Barman
11. Shri Nawal Kishore
12. Shri Syed Nizam-ud-din
13. Shri D. Y. Pawar
14. Shri Virendra Kumar Sakhalecha
15. Shri Dwijendralal Sen Gupta
16. Shri M. P. Shukla

LEGISLATIVE COUNSEL

SHRI S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

WITNESSES EXAMINED

I. *Bar Association, Nowgong (Assam).*

Spokesmen:

1. Shri Kusha Dev Goswami—*President*
2. Shri Sarat Chandra Goswami—*Secretary*

3. Shri Jogesh Chandra Sarmah— *Advocate*
4. Shri Debabrata Sarmah—*Advocate*

II. *Government of Tripura, Agartala.*

Spokesmen:

1. Shri Henchandra Nath—*Advocate General.*
2. Shri Sukumar Chakravarty—*Secretary (Law).*

III. *Government of Nagaland, Kohima*

Spokesmen:

1. Shri R. H. Macdonald D'Sliva—*Principal A.T.I., Kohima.*
2. Shri M. H. Khan—*Secretary, Law & Parliamentary Affairs.*
3. Shri Darshan Singh—*Deputy Secretary, Law and Parliamentary Affairs.*

I. *Bar Association, Nowgong (Assam).*

Spokesmen:

1. Shri Kusha Dev Goswami—*President.*
2. Shri Sarat Chandra Goswami—*Secretary.*
3. Shri Jogesh Chandra Sarmah—*Advocate.*
4. Shri Debabrata Sarmah—*Advocate.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Goswami, on behalf of myself and my colleagues in the Committee, I welcome you and your learned colleagues in our midst. Before we take your evidence, I would like to draw your attention to Direction 58 of the Speaker Lok Sabha, which will govern your evidence.

You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. We issued a questionnaire to you and your Bar Association have sent to us written replies to these questions. We will come to that later on. So far as the Bill is concerned, you have not submitted any memorandum to us, and therefore, if you desire to make some preliminary submissions on the Bill, you may do so.

SHRI S. C. GOSWAMI: At the outset, I thank the Members of the Committee for giving us this opportunity to appear before this august body. Now, I would simply point out those provisions in the proposed amendment Bill, in regard to which we have objections. Now, the purpose of this Bill, as it is seen from the Bill itself, is to ensure fair trial, speedy disposal and to make the procedures simple as far as possible. This is also intended to give a fair deal to the poorer sections of the community. So, while considering the proposed amendments, I think, we should have an eye on the fundamental objectives for which these amendments have been proposed. First of all, we have objection in re-

gard to the insertion of new Section 11A. By this new section, *res judicata* has been extended to be operative in respect of execution proceedings. Now, while opposing the insertion of execution proceedings, I would like to draw the attention of the Committee that in certain proceedings, executions are taken up summarily and in respect of certain decisions given under Order XXI, remedy is available to the aggrieved party by way of a separate suit. Now, if 11 A is inserted, then, the litigant will be victimised by way of a decision under Order XXI, which will be a summary one. As such, our point is that, 11A should not be inserted by including execution proceedings, and if 11A is to be inserted, then, all proceedings under Order XXI should be made a regular appeal giving the party the right to file first appeal and second appeal. Unless that is done, if 11A is inserted, then the litigants wlll be hard hit.

MR. CHAIRMAN: What about this new sub section (b), Every civil proceeding other than a suit. There are two things which are being sought to be added.

SHRI S. C. GOSWAMI: So far as sub-section (a) is concerned, this will include mutation proceedings also in revenue courts because in mutation proceedings, Civil Procedure Code is attracted so far as the procedure is concerned. This is so far as Assam is concerned.

MR. CHAIRMAN: But, Mr. Goswami, I think, as is well understood, civil proceeding includes suits. But, suits are quite distinct from other kinds of civil proceedings, under this. What about every civil proceeding other than a suit? May be mutation proceedings or some other kind of civil proceedings, this provision of *res judicata* has been sought to be included? Do you object to that also?

SHRI S. C. GOSWAMI: But, my point is, there are certain proceedings which are governed by the Civil Procedure Code. But, at the same time, they are taken up summarily. As I said already, there are certain proceedings under Order XXI, which are taken up summarily.

MR. CHAIRMAN: You may kindly refer to original Section 11, from which these questions have arisen.

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

Then, the explanations are there. Now, by this amendment, what is proposed is that Section 11 shall, so far as may be, also apply to every proceeding in execution and every civil proceeding other than a suit. In regard to the first one, you have said that the execution proceedings should not be added. Similarly, in regard to (b) do you suggest that suit also should not be added?

SHRI S. C. GOSWAMI: Automatically, it comes in.

MR. CHAIRMAN: You are opposed to both the provisions. In totality, you oppose this insertion of new Section 11A. We will take up the next point.

SHRI S. C. GOSWAMI: I refer to page 3, clause 7, explanation I. Our suggestion is that a corporation should be treated as having its business throughout the Union. The head office may not be in Assam but if the corporation is working here or if the corporation has some business at Delhi or other places it should be given a broader status by extending its working throughout the Union, so that though the head office of the corporation is at Bombay. I can file a suit at Gauhati.

SHRI SYED NIZAMUDDIN: Some corporations are State corporations. Should it not be qualified that way?

SHRI S. C. GOSWAMI: Initially it may be State corporation but it may extend its business throughout the Union. That is why we want to suggest that their status should be a bit higher. Though it is State corporation they could have their business throughout the Union. It will give the advantage to all the citizens and more so to the poorer sections of the Community.

We now come to Clause 11 new Section 24 (A). We have objections to this provision. The purpose of the amendment is speedy disposal and there is another purpose also, simplifying the procedure. In our view these two conditions would not be satisfied. There is no end to raising legal points in civil suit. I file a suit in the court of munsiff having jurisdiction up to Rs. 3000 for recovery of rent for two months at the rate of Rs. 300 and the claim is Rs. 600. The munsiff can say that when the rent is at the rate of Rs. 300, the yearly rent will come to Rs. 3,600 and it will be beyond his jurisdiction to try the suit for ejectment of that person. The munsiff will have to consider whether there is existence of tenancy or not. In the ejectment suit also he will have to consider the question of tenancy, and its termination. The munsiff will have to write to the district court for transferring the suit to the court of the sub-judge or some other competent court. Before transferring, the district court will necessarily have to give a hearing to the parties. This process will not help in the speedy disposal of the case. In our opinion these provisions are not to be incorporated.

SHRI SARDAR AMJAD ALI: Do you think that a suit relating to the recovery of rent and a suit relating to the eviction of a tenant are of the same or equal nature?

SHRI S. C. GOSWAMI: Yes, because I have placed before you that unless the tenancy is proved no decree for rent can be passed and any ejectment suit against tenancy must be proved and its termination must be proved.

So, one thing is common both in the ejectment suit and in the suit for recovery of rent, *i.e.* existence of tenancy.

SHRI SARDAR AMJAD ALI: Recovery of rent is being regarded as money suit, but an eviction suit is different.

SHRI S. C. GOSWAMI: Yes, but the existence of tenancy is common. If it is found that the terms of tenancy was a monthly rent of Rs. 300, a rent suit for recovery of Rs. 600 is within the limit of the munsiff to try. But if an ejectment suit is brought, it will exceed the munsiff jurisdiction. So, under this provision the munsiff can legitimately refer the matter to the district court for transferring it to the higher competent court. In that case, that rent suit will take a minimum of 3 years till it is finally disposed of by the lower court itself. So, it will defeat the purpose for which the amendment is proposed.

SHRI V. K. SAKHALECHA: If anybody raises the question of jurisdiction, the suit will automatically be transferred. So, you feel that any litigant who wants to delay the proceedings will raise the question of jurisdiction.

SHRI S. C. GOSWAMI: At the earliest opportunity, the defendant will raise the plea. Here the power is given to the court to do it *suo motu* even. No court will take the responsibility of withholding that order when it is moved by a party. So, this provision will delay the disposal of suits.

SHRI SYED NIZAMUDDIN: Don't you think this provision avoids multiplicity of suits?

SHRI S. C. GOSWAMI: It will not avoid multiplicity of suits. If a tenant is a defaulter, necessarily rent suits will be filed. because even though a tenant defaulted at a particular time, the landlord may decide to allow the continuance of the tenancy without-filing an ejectment suit. But here as it appears, whether the suit is filed or not, that is not to be taken into consideration. If a suit is filed, then the munsiff will have no jurisdiction. On that ground, he shall have to write to the District Judge for transfer of the case.

SHRI SARDAR AMJAD ALI: The words used here are "based principally on that question." That means, it is relating to the same issue which is pending before it. If another suit is brought on that particular issue and when it finds that on the same issue it has competent jurisdiction, then only section 24 can be invoked.

SHRI S. C. GOSWAMI: I have given the example of rent suit and ejectment suit. In both the existence of tenancy is common and that is bound to be adjudicated upon. In an ejectment suit, if the defendant says that he is not a tenant, the court shall have to adjudicate first whether there is existence of tenancy. In a rent suit also, if the tenant says "I am not his tenant at the rate of Rs. 300" the court must adjudicate whether he is a tenant at the rate of Rs. 300. So, in both suits the common question is existence of tenancy.

SHRI SARDAR AMJAD ALI: As soon as the written statement is filed, the court can decide the question of jurisdiction at the very first instance.

SHRI S. C. GOSWAMI: In all civil suits, the orders passed by the court should be done by hearing both the parties. By inserting this provision, the court has been empowered to refer the matter to the district court even without waiting for the defendant's statement. If he did not refer it, the defendant can ask the court by a petition to refer the matter by pointing out the ground. When the court has power to do it even *suo motu*, I think no court will refrain from referring the matter to the higher court if it has been pointed by the party. If that matter is referred in that way, whether *suo motu* or at the instance of the party, it will delay the proceedings in its disposal. In an appellate appeal, or in other money suits, some sort of legal objections may be raised saying that the Court will have no jurisdiction.

SHRI SARDAR AMJAD ALI: That is what we say actually in all the written statements. The first part is 'if the Court has no jurisdiction' and so on. Mr. Goswami, if I am correct, now, at present, the position stands like this. Unless and until the suit is gone into and the final stage of adjudication comes, the Court is not in a position to determine whether it has got jurisdiction or not. But, here by introducing this new section, probably, the intention of the legislature is to see that at the very first point of time, if it appears to the Court that it is not competent either from the pecuniary point of view or from the point of view of territorial jurisdiction, whatever that may be, after the submission of the written statements, if the Court comes to the conclusion that it has got no jurisdiction, in that case, it will refer the case to the Court of competent jurisdiction. Is that not an improvement? What is your opinion?

SHRI S. C. GOSWAMI: This is not an improvement because, the provision is already there and there is a direction in the existing Civil Procedure Code for taking objection of jurisdiction at the earliest opportunity. So, even under the existing provisions in the Civil Procedure Code the defendant, before filing the W.S. can take objection of jurisdiction at the earliest opportunity and it is to be heard. If the defendant can satisfy that the

Court has no jurisdiction, then, the Court will necessarily, even now, refer the matter to the higher court. This will not be an improvement and this is not an advantage because the provision is already there.

SHRI VIRENDRA KUMAR SAKHALECHA: There is no provision for referring to the higher court. On the objection of jurisdiction, the plaint is returned.

SHRI S. K. MAITRA: The jurisdiction is not to try the first mentioned suit. It is the jurisdiction to try the suit subsequently filed in which the same issue is raised. So, the Court at the very first stage must be competent to try the suit which is subsequently instituted in which the same issue is raised. This question of jurisdiction is subsequent jurisdiction. About your point in regard to the relationship of a landlord and a tenant, if the existence of the tenancy is not disputed, there is a provision in Section 116 of the Evidence Act whereby the tenant is stopped from denying the title of the landlord. There, the only question that will arise is in regard to the rate of rent. If the existence of the tenancy itself is disputed, then, that is an issue which will have to be determined. If the Court is not competent to decide, it will have to refer it to another Court. The whole idea is to reduce the number of suits so that the plea of *res judicata* can be successfully raised. Otherwise, in a subsequent suit, the doctrine of *res judicata* will not apply.

SHRI S. C. GOSWAMI: It will not help in reducing the multiplicity of suits.

SHRI S. K. MAITRA: This Section 21, to which you are referring to, will not be relevant here. That relates to the suit which has been instituted. This relates to a subsequent suit. He is referring to the objection as to jurisdiction, which has to be taken at the earliest opportunity. That point arises in the first mentioned suit. Here, this Section applies to an issue which is raised in a subsequent filed suit.

SHRI VIRENDRA KUMAR SAKHALECHA: This does not contemplate a subsequent suit. He has given an example in regard to rent. Take the example of a declaration suit in which the relief is sought. If it is not of market value, the suit will be returned under this section.

SHRI S. K. MAITRA: This section relates to cases where possibly a plea can be raised in a subsequent suit. If the Court, while trying the suit, has no jurisdiction, it will return the plaint, rather send it to the District Court. That is the idea so that the plea of *res judicata* can be successfully applied. As I have already explained, in a rent suit, if the existence of the tenancy is not disputed, then, under Section 116 of the Evidence Act, there is an estoppel against denying the title of the landlord. There, the only question that will arise for determination is the quantum of rent. If the existence of the relationship of landlord and tenant is disputed, then, the question of title will arise. In that case, the Court will have to refer it to a higher court which will have jurisdiction to decide. That is the whole idea. In a way, of course, there will be some delay. But, this will ultimately cut out the second stage so that in the ultimate analysis. there will be reduction in delay. That is the idea.

MR. CHAIRMAN: We have discussed enough. We will examine all aspects. Your evidence is on record. We will examine and consider all aspects. We will take up the next point.

SHRI S. C. GOSWAMI: Now, I would like to refer to Clause 16, insertion of new Section 35B, page 5. Now, so far as this provision is concerned. I am unable to get an idea of the legislation. First of all, no suit can be delayed by a party when it is before a Court. What about dates? Dates are given by the Court. Delay in a pending suit cannot be caused. Dates

are given by the Court's order and before granting the date, the Court has to satisfy itself, and after being satisfied, the Court will grant the date. After granting the date, it cannot be said that the delay was caused by a party. When I seek an adjournment on certain grounds, if the Court is not satisfied, the Court will refuse the adjournment and proceed with the suit. But, after the adjournment, and after lapse of, say, one year, at the time of the disposal of the suit, the Court cannot say that I was responsible for the delay in the disposal of the suit.

MR. CHAIRMAN: But Mr. Goswami, even under the existing Code, there is a provision for costs to be awarded in certain cases of adjournment. What is being proposed here is that the costs will be commensurate with the delay. This is a sort of a deterrent.

SHRI S. K. MAITRA: Suppose there is a suit about the title. or a boundary dispute and it cannot be decided except by local survey. The Court passes an order asking the Plaintiff to take steps for a local survey. He does not do anything. He says that he would prove his case without any local survey. On the date of hearing he files an application for local survey. If you refuse that application the suit is bound to come back on remand. In such cases do you agree that the Plaintiff had unnecessarily delayed the case?

SHRI S. C. GOSWAMI: I appreciate the point but I think the present wording in the clause is to be modified in that case. If a party fails to take proper steps at the proper time such a party has to be penalised in granting relief. In such case relief should be granted but with sufficient cost. As a matter of fact it is being done even today.

SHRI S. K. MAITRA: In that case it becomes a cost in the suit. Here it will not be a cost in the suit.

SHRI S. C. GOSWAMI: According to the procedure followed in Assam if the court is satisfied that the case cannot be adjudicated without that report the court will grant a prayer for the issue of a commission. At the same time the court will say that the cost is Rs. 25 or 30 and in some cases it comes to Rs. 300 or even 400. The procedure is there in Assam.

The whole thing is that the court will have to consider whether the disposal of the suit had been delayed. Let us take one example. I pray for the issue of a commission to examine a witness at Rajasthan. The report will come from Rajasthan that the witness is not available in the address given by the party. I put in a petition again saying that that person is at present residing in Bikaner and a commission is issued once again. Once more the report comes that the man is not available at Bikaner. I put in a petition again saying that the man is at Delhi. Probably that man is not in the world at all. In such cases, appropriate cost should be given and normally they are given. The order for the issue of the commission is cancelled and heavy cost is awarded, even now in Assam.

MR. CHAIRMAN: The question is whether such cost should form part of the decree or it should be taken outside. That is the difference sought to be made here.

SHRI SARDAR AMJAD ALI: The witness suggested that there should be some modification. What modification is he suggesting?

MR. CHAIRMAN: I was coming to that. First of all the question is whether the cost of adjournment for such reasons which are not to the satisfaction of the court requires a heavy cost and whether that cost will form part of the decree of not. Second thing that my colleague has sought to ask is; if this clause is to be rewarded or modified could you help the Committee, later on, by giving us a draft saying in what manner you would lik

this clause to be modified to your satisfaction. We shall examine it. You can send it later on.

Your evidence is on record and that will be sent to you for correction. I request you to formulate the points you have made and send us a memorandum by the end of this month, so that it might be helpful to us.

SHRI S. C. GOSWAMI: About section 58(1A), our suggestion is this exemption ought not to be given. A man may make it a point to borrow money to the extent of say Rs. 150 and he may have 10 creditors. All of them may obtain a decree. At the same time, the man is a pauper and he will never pay. If this exemption is not there, at least there will be something to attach.

About section 60, we want that the insurance policy money should not be exempted. I have no property and I am a broker, say, I have a few insurance policies and at the same time I have some liability which exceeds the policy money. On my death or even during my life time, if decrees are obtained, there is nothing left for attachment. If the policy money. is not exempted, the credit can at least attach the policy.

MR. CHAIRMAN: You do not want some exemptions on humanitarian grounds? Instead of this blanket exemption of the insurance money, if a certain portion of it is exempted, will you agree to that?

SHRI S. C. GOSWAMI: Yes, say Rs. 500 may be exempted.

MR CHAIRMAN: The exact amount we can decide later. You agree that it will be equitable to exempt a certain portion of the insurance money?

SHRI S. C. GOSWAMI: Yes.

Then, we want that section 80 should be omitted. The idea behind existing section 86 is to give an opportunity to the State or the public servant to satisfy the claim. So far as its continuance is concerned, the best thing would be to take statistics, say for two years, from the State Government as to how many notices were received under this section and how many were complied with. That will be sufficient to come to a conclusion about the deletion of this section. You will find that not even 1 per cent of the notices have been complied with. The operation of certain executive orders needs immediate checking. If people cannot file a civil suit without serving notice and without waiting for two months, the mischief would have been already done before he can come up with the suit. So, it is high time section 80 was deleted.

MR. CHAIRMAN: In appropriate cases, the court depending upon the exigencies will be competent to issue an injunction. Will that serve the purpose?

SHRI S. C. GOSWAMI: Even in that case, there will be some difficulty because the court may say that it is not satisfied that it is a fit case which secion 80 should be dispensed with.

MR. CHAIRMAN: The main idea of deleting section 80 is that we should not discriminate between an ordinary citizen and the State or public officials. But even so, will it be equitable to equate an individual with a complex machinery like Government or Corporation? Is not some reasonable distinction called for? What is your opinion on that? It does not apply to Government only. This also applies to Corporation and on where decisions have to be taken at many levels colletctively.

SHRI K. D. GOSWAMI: From our experience, I must say that this should not retained. The sooner it

is deleted the better it will be. If it is retained, it will do as more harm than good.

MR. CHAIRMAN: At this stage, we are not forming any opinion. Here is an existing provision which is sought to be deleted by the Bill. This Bill has been brought forward on the basis of the recommendations of the Law Commission. There has been a good deal of weight in favour of deletion of this provision. Our Committee has to examine this.

SHRI VIRENDRA KUMAR SAKHALECHA: Is the Government pressing for retention of this Section?

SHRI K. D. GOSWAMI: No. This has affected the parties in very many cases.

SHRI SARDAR AMJAD ALI: It is the opinion of the Bar Association of Nowgong. It will not be fair on our part to say how the Government is thinking.

MR. CHAIRMAN: We are not saying this. We are taking advantage of the presence of the learned witness before us. This Section relates to a suit against a Government or a public servant. Your experience shows that this should go. It is not only your experience. Law Commission says that. It has been argued before us that it should be retained. We are trying to scan both sides.

SHRI JOGESH SARMAH: In Section 78-D of the Railway Act, there is a provision for six months notice for settlement of the claim. Over and above that, we say that Government should be given another two months time. What for?

MR. CHAIRMAN: We will examine all aspects. This is a Government Bill and it has been proposed that this Section should be deleted. This has been proposed on the basis of the recommendation of the Law Commission.

SHRI VIRENDRA KUMAR SAKHALECHA: We must also presume that the Government must have statistics.

MR. CHAIRMAN: We will see when we take up clause by clause consideration.

SHRI SARDAR AMJAD ALI: Mr. Goswami, would you kindly see page 94 of the Bill, Statement of objects and reasons. Please refer to sub-para (e) of para 6. Is your Bar Association in full agreement with this?

SHRI S. C. GOSWAMI: We fully agree.

Then, Section 82 has to be deleted, according to us. It says....

MR. CHAIRMAN: You need not read the clause. Your opinion is that it should be deleted.

SHRI S. C. GOSWAMI: For the same reason for which Section 80 is sought to be deleted.

MR. CHAIRMAN: Are you opposed to all these provisions in clause 29?

SHRI S. C. GOSWAMI: After the decree, I am entitled to get the money or the relief. I am entitled to get it immediately. If Section 80 is deleted by refusing to give some time to the State for rectifying the defence or satisfying the claim, then, what justification can there be for granting some time after the decree?

MR. CHAIRMAN: Provision for report by the Court to the Government after the decree is passed?

SHRI S. C. GOSWAMI: The decree itself will be passed in the presence of the lawyer of the State.

MR. CHAIRMAN: In the case of *ex parte* decrees?

SHRI JOGESH SARMAH: In the case of *ex parte* decrees, the party does not appear and does not take any notice.

MR. CHAIRMAN: You do not want to give any time after the decree is passed. That position is clear.

SHRI S. C. GOSWAMI: Then, Clause 37. Here, it is said:

> "after the words 'any misjoinder' the words 'or non-joinder' shall be inserted."

Our point is that, the words "non-joinder" ought not to be included. We have one suggestion to offer that instead of the words 'non-joinder' the words 'proper party' may be inserted. Now, after filing the written statement, the defendant will point out that a certain party is a necessary party and ought to be joined in the suit. The plaintiff refuses to appoint him and after close of the case, if the Court finds that adjudication on the dispute cannot be given without that party, then, what justification can there be for not dismissing the suit and allowing the party to bring in that party after a lapse of two or three years?

SHRI S. K. MAITRA: This is there in the proviso:

> "Provided that nothing in this section shall apply to non-joinder of a necessary party."

SHRI S. C. GOSWAMI: That is why, I have suggested that instead of 'non-joinder' it should be 'proper party'.

MR. CHAIRMAN: We will examine this and you mention in your written note also about this. It is on record. We will see.

SHRI S. C. GOSWAMI: Then, section 115. Our point is that section 115 should be there in order to make the Civil Procedure Code a self-contained one without relying on any other Act. Now, if section 115 is deleted, it is argued that Article 227 of the Constitution will be available to the aggrieved party. Now, where is the guarantee that Article 227 will be there for all time to come? Our experience now shows that the Constitution can be amended at any time nowadays.

SHRI SARDAR AMJAD ALI: This Code can also be amended.

SHRI S. C. GOSWAMI: If Article 227 is deleted from the Constitution, what will be the fate of the litigants under the Civil Procedure Code? For want of a self-contained provision in the Code itself, the litigants will suffer. This is one aspect of the matter.

The Civil Procedure Code should be a self-contained one and it should not rely on any other law. The other aspect is this. There are certain provisions in the CPC against which no appeal lies. Revision is available. If we read the lines in between, the scope of the enquiry under Article 227 and the scope of enquiry under Section 115 of the CPC are slightly different. The parties may go without relief, for want of that provision. So 115 should be retained.

MR. CHAIRMAN: I shall seek a little elucidation. The notes on clauses says that adequate relief is available under Article 227 for things under Section 115. You say that is not so. I invite your kind attention to Article 227 sub-clause 2(a), (b), (c) and also to section 115 sub-section (a), (b), (c) would the relief provided under Section 115 of the code be sought under Article 227 also as claimed in the notes on clauses.

SHRI S. C. GOSWAMI: My point is that Article 227 is conferring a power purely on the administrative side, whether a particular court has taken up the case properly. Suppose without getting a written statement from the opposite party the presiding

officer fixes a date for framing all issues, under Article 227 that High Court can say that he must have first got the written statement and then fix a date for framing issues. That is the administrative side of the proceedings. Article 227, it is our feeling, entitles the court to look into administrative side of the proceedings of the subordinate court whereas section 115 empowers the High Court to look into the methods of orders passed by the High Court, whether he has properly exercised his jurisdiction or has refused to exercise his jurisdiction or he has improperly exercised his jurisdiction. One is administrative and the other is judicial; so we want that 115 should be retained.

I now come to Order (I) rule 3(A) on page 17. Suppose I have filed an ejectment suit in respect of joint tenancy against three persons. Two persons are in England. Summons cannot be served on them. It will be delayed. Can that ejectment suit be split up? That is the point to be looked into. I think this provision ought not to be there. There will also be multiplicity of suits.

MR. CHAIRMAN: We shall examine that point.

SHRI S. C. GOSWAMI: I now turn to Order (II) rule 6, on page 19. This also will create complication I refer to Order XXII, rule 10 (a) (ii) page 55; the lawyers should not be saddled with this responsibility. About Order XXXIII, page 65, the procedure should be simplified. If a pauper wants to file a suit, he should apply to the court and if the court is satisfied, the order should be given on the date of presentation of the plaint by examining the applicant and a few witnesses if necessary.

MR. CHAIRMAN: You kindly formulate in what manner you want this provision to be modified and send it to us so that we can apply our mind to it.

SHRI S. C. GOSWAMI: Yes, Sir.

SHRI V. K. SAKHALECHA: You object to the provision that this should be first enquired into by the ministerial officer and then by the court?

SHRI S. C. GOSWAMI: Yes. That should be dispensed with. Everything should be given to the court. He will present his plaint alongwith an application that he may be allowed to sue as a pauper. If the court feels some more evidence is needed, a few more witnesses may be examined and then the court should pass an order.

In order to expedite the legal proceedings, we suggest that the execution proceedings should be a continuous one. There should be no separate executing court. No new file should be started in respect of execution. When the decree is passed, it is the duty of that court to put the party in the position to which he is entitled. While passing the decree, the court should fix a date, normally after one month after the period of appeal, for taking steps for execution. After one month, if an appeal is preferred, a stay order will come. If an appeal is not filed, then execution will proceed. If that is done, there will be no occasion for any enquiry under section 47, because the defendant will not get any time for taking any adjustment etc.

MR. CHAIRMAN: This is a very significant suggestion. He says there should be no separate executing court and execution proceedings should straightaway start on the expiry of the period of appeal if no appeal is filed. I request your Bar Association to take a little more trouble and suggest to this Committee what are the existing provisions in the CPC that should go if this suggestion is to be incorporated in the Bill.

SHRI S. C. GOSWAMI: Yes, Sir.

SHRI M. P. SHUKLA: Let the Law Ministry of the Goverment of India also make a note of it.

SHRI BEDABRATA BARUA: This will be considered.

SHRI D. L. SEN GUPTA: You suggest that before the suit is finally settled by the highest court of appeal, execution proceedings should commence. What will happen if the judgment is versed in appeal?

SHRI S. C. GOSWAMI: Whenever an appeal is filed and the party concerned moves for a stay of execution, a stay order will be passed in appropriate cases. Then, if he looses, he will come up for the second appeal. In the second appeal, Court will also stay the execution. The execution will be stayad by the appellate Court till it is finally disposed of by the Supreme Court.

SHRI D. L. SEN GUPTA: Is there legal bar now on execution proceedings being conducted, as the law stands? I think the present position is that the party who has got a decree can file an execution proceeding. Mr. Goswami, I am not practising in civil courts. But, I think—excuse me, if I am incorrect—as the law stands today, after the decree, the party who has got the decree can seek an execution. But, from the point of view of expediency, they say 'All right, why should I spend for nothing? Ultimately, if the judgment is reversed, then also, there will be expenses again'. Even in an execution proceeding, you will have to engage lawyers and all these things. So, from the point of view of expediency only, people do not go for execution till the matter is finally disposed of. The law does not prohibit anybody from going to execution.

SHRI S. C. GOSWAMI: Even now. If I get a decree today, then, I can file an execution tomorrow provided I get the copies and all that. Now, for doing this certain help will be given to the litigants because they will not be required to take the certified copy of the decree.

SHRI D. L. SEN GUPTA. Again, there comes the difficulty, if there is no certified copy of the decree. The certification is necessary for the purpose of deciding.

SHRI SARDAR AMJAD ALI: Because the executing court is a different one.

SHRI D. L. SEN GUPTA: But the question is this. What is the guarantee? There should be some safeguard, there should not be a frivolous execution petition saying that this is the order. That may not be the order.

MR. CHAIRMAN: Mr. Sen Gupta, they have said something absolutely new. The executing court is different. What they have suggested categorically is that if we have to aviod delay, more than one month time should not be allowed. I have requested them to send us their concrete suggestions. Then, we will see.

SHRI VIRENDRA KUMAR SAKHALECHA: They will give us their suggestions and we will examine them on merits. Mr. Goswami, your whole suggestion leads to one thing, that is, saving of the litigant's time and money. That is your suggestion. Your suggestion makes this only difference. Normally, executing courts are the same. Suppose, hundred decrees are passed by a court, normally, 50 cases come in for execution and the other 50 do not. Your suggestion will mean that every court will have excess work of execution. But, at present, the position is like this. You know this as a lawyer. When hundred decrees are passed, execution comes only in 50 or less than 50. Ultimately, there will not be execution proceedings in all the cases in which the decree is passed.

SHRI S. C. GOSWAMI: Today or tomorrow, it must be done by the same Court.

SHRI S. K. MAITRA: The only advantage is that the decree holder would be absolved of the responsibility. Otherwise .....

SHRI S. C. GOSWAMI: There is also saving of time.

SHRI S. K. MAITRA: He does not have to make an application for the execution.

SHRI S. C. GOSWAMI: Let us say, in a Court, there are 200 cases awaiting decision and hundred cases for execution. The total on file will be 300. Here, in this case, the total on file will be only 200.

SHRI VIRENDRA KUMAR SAKHALECHA: The work is the same.

MR. CHAIRMAN: I think we should conclude this evidence. Most of the things have been covered already. Two more witnesses are waiting. We have to examine the Tripura and the Nagaland Governments. I am sorry, I could not devote more time with you. As we have seen, hon. Members are very much interested to get the benefit of your experience and the views of your Association. I would also request you to send us your submissions in the form of a written note by the end of this month. You may also send us your concrete suggestions in regard to specific amendments. I thank you again.

SHRI VIRENDRA KUMAR SAKHALECHA: They have not given their suggestion regarding one important point, regarding second appeal and formulation of the point.

MR. CHAIRMAN: They have made their submissions. You may send us your submissions regarding to this point also, in regard to second appeal.

SHRI VIRENDRA KUMAR SAKHALECHA: This is an important change. Do you support it?

SHRI S. C. GOSWAMI: We do not support it.

MR. CHAIRMAN: My friend has raised this question. The existing section 100 relating to second appeal is sought to be modified by the new Section 100 where a second appeal can be allowed only on a substantial question of law. This is very important. Section 100. Secondly, the admitting court will have to certify that a substantial question of law has been involved. Then only, the second appeal will be allowed.

SHRI VIRENDRA KUMAR SAKHALECHA: The question should be formulated.

MR. CHAIRMAN: They are opposed to it. Mr. Goswami, we will examine this. I thank you once again for appearing before us and giving us your suggestion. We will examine them very carefully.

SHRI K. D. GOSWAMI: On behalf of our Association, we convey to you our gratitude for giving us a patient hearing and we hope that our suggestion will receive your due consideration.

[*The witnesses then withdrew*]

II. Government of Tripura, Agartala

Spokesmen :

1. Shri Harichandra Nath—Advocate General.
2. Shri Sukumar Chakravarty— Secretary (Law).

[*The witnesses were called in and they took their seats*].

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated

as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is lable to be made available to the Members of Parliament.

You have submitted a written memorandum, and you have also replied to the questionnaire. Both these things have been circulated to the members.

SHRI H. C. NATH : There were two sets of questionnaire. I gave answers to them on two occasions. There were 83 questions in one.

SHRI SUKUMAR CHAKRAVARTY: That questionnaire has not been given to the Government. It was separately given to the Advocate General.

MR. CHAIRMAN : The Government need not be bound by what Advocate General says. He has his individual capacity. We will take your evidence on behalf of the Government of Tripura. Whatever you submit on behalf of the Government, we will record as such. Regarding the written replies to the questionnaire we will take them from him. This memorandum is on behalf of the Government of Tripura. One of you can make a statement and other can supplement. The written memorandum is before us and if you want to emphasise anything or add something to it you may do so.

SHRI SUKUMAR CHAKRAVARTY: One line has been omitted in our memorandum and that line should read; "but, for this reason, the power given under Section 115 CPC should not be withdrawn." So our memorandum should be suitably amended at the appropriate place.

MR. CHAIRMAN : We shall get it corrected.

SHRI SUKUMAR CHAKRAVARTY: Except for the few provisions which had been mentioned in the memorandum we generally agree to the other provisions.

MR. CHAIRMAN : Your Government wants that the points mentioned in the memorandum should be considered by the Committee. The other amendments proposed in the Bill are generally acceptable to the Government of Tripura. I think I can take it. Section 80 of the CPC is proposed to be deleted. Your Government wants that it should be retained.

SHRI SUKUMAR CHAKRAVARTY: We have explained the reasons.

MR. CHAIRMAN: Has your Government responded to notice under Section 80 giving two months time to settle the claims of the prospective plaintiff, in a suit. What is your record of response to section 80?

SHRI SUKUMAR CHAKRAVARTY: We are collecting the information.

SHRI M. P. SHUKLA: At Madras and Bangalore we had asked the Government representatives to give us statistics for one or two years which would reveal the state of affairs in those states. Probably they could also do the same thing.

MR. CHAIRMAN : I shall ask them to furnish that information. Can you send it by the end of January or middle of February?

SHRI SUKUMAR CHAKRAVARTY: We shall try our best.

MR. CHAIRMAN : At present, the notice under section 80 has to be served on a particular form which is a replica of the plaint and objection is taken on technical grounds to pass the claim. Suppose this notice is in the nature of a letter outlining the claims and giving an indication that if within such and such time the claim is not settled, the party will be compelled to seek relief in the court and if that is treated as

sufficient notice by the court, will it be acceptable to you?

SHRI SUKUMAR CHAKRAVARTY: But the grounds should be mentioned.

SHRI BIR CHANDRA DEB BARMAN: Under the existing Code, you are entitled to know the cause of action and relief, not the grounds.

MR. CHAIRMAN: If the time is reduced from two months, will it be sufficient?

SHRI SUKUMAR CHAKRAVARTY: You know the difficulties of the Government. We want that months should be retained.

SHRI D. L. SEN GUPTA: You have entered into a contract with a private citizen either for service or for goods. You know your liability. You do not redeem your pledge. The party goes on writing to you for two years saying, "Please clear my dues". After 2 years you say, "We have not got notice under section 80"!

SHRI SUKUMAR CHAKRAVARTY: The department concerned might have to consider the legal aspects. When the notice is received, they send it to the Law Department. The Law Department after making enquiries from the concerned department advises the Government suitably.

SHRI D. L. SEN GUPTA: So, the defect is in the Government procedure, not in the CPC. Notice under section 80 is not necessary if the Government department moves diligently and with a sense of responsibility when a letter of request comes from the party. When a letter of request comes instead of a notice, who prevents you from passing it on the department concerned for comments?

SHRI SUKUMAR CHAKRAVARTY: I am not representing the administrative department but the Law Department. Government consists of so many department. Government should not be attacked in the court suddenly. It should get some notice.

SHRI V. K. SAKHALECHA: Many High Courts have held that the Government should not act just like a litigent and even in cases where the limitation period has expired, Government should honour the claim.

SHRI SUKUMAR CHAKRAVARTY: Even time-barred claims are sometimes passed by the Government.

MR. CHAIRMAN: Can you give statistics about it?

SHRI SUKUMAR CHAKRAVARTY: I have myself given that advice in some cases. Whether it has been actually paid. I do not know.

SHRI SARDAR AMJAD ALI: Has the Tripura Government asked for the opinion of the Advocate General whether section 80 should be retained or not?

SHRI SUKUMAR CHAKRAVARTY: Yes; we have taken his advice also. He is of the same view.

SHRI SARDAR AMJAD ALI: The words in section 80 are "... purported to be done in his official capacity". Supposing the Chief Secretary of my State wants his adopted daughter to be married and for that he wants a big place. I am a poor fellow living by the side of his house and I have a peice of land. The Chief Secretary in his official capacity occupied my land for three or four days and performed the marriage. What relief do I get against this encroachment? Have you come across such cases?

SHRI SUKUMAR CHAKRAVARTY: I have not come across such cases.

SHRI SARDAR AMJAD ALI: Have you come across any case where a decision taken by a Government official in his official capacity has been subsequently quashed by the court?

SHRI SUKUMAR CHAKRAVARTY: It has been quashed by the Court on what ground?

SHRI SARDAR AMJAD ALI: That those were mala fide.

SHRI SUKUMAR CHAKRAVARTY: Then, he will be personally liable.

SHRI SARDAR AMJAD ALI: Have you come across some such things?

SHRI SUKUMAR CHAKRAVARTY: If it happens, it will be a personal liability.

SHRI SARDAR AMJAD ALI: I have given you one instance. I would like to know whether you have come across with some such experience where a decision taken by a government official in his bona fide capacity believing that he is doing it in his official capacity, has been set aside when challenged in the Court?

SHRI SUKUMAR CHAKRAVARTY: May be.

SHRI SARDAR AMJAD ALI: May 'includes' 'may not'.

SHRI SUKUMAR CHAKRAVARTY: If it is found that it is done in his official capacity, it may be.

SHRI SARDAR AMJAD ALI: Once you say 'may be'. 'may' includes 'may not'.

SHRI M. P. SHUKLA: There may be cases where the purpose may not be served by waiting for two months for filing a suit. Let us say, my house is ordered to be demolished and I think it is a wrongful order. I want to go to the Court by giving a notice of two months. During this time the administrative authority cannot wait and they will demolish the building. This may involve a few lakhs or a few thousands of rupees. Ultimately, if my claim is upheld, even then, the loss that is sustained and the damage which has been done can never be restored. In such cases, would you not agree that when there is such a contingency, this requirement of notice of two months should not be there? Would you not agree that this requirement of notice should be done away with in such an emergency? I have given you one instance. It is possible or not in such cases. Let us say, a citizen is deported and he is asked to leave the country within 15 days. He has to go the civil court only after giving two months. But, within 15 days, he will be deported. He will not be able to come back to file the suit. What is the remedy in such cases? Would you not agree that in such cases, particularly in regard to injunction suits, this requirement of notice should be done away with? If time is given, then the purpose may not be served. A person may do a thing in his official capacity and he may consider it to be justifiable. But, I as a citizen, may not consider it to be justifiable. I am speaking from experience. In a period of two months, after spending a lot of money on lawyer's fees, Court fees etc., ultimately, even if I get the decree, I cannot get the building restored. What is the remedy? Therefore, in the case of injunction suits and in such cases as I have cited, would you not agree that the requirement of notice should be done away with?

SHRI H. C. NATH: First of all, in the case of an injunction suit, the suit has to be instituted then and there with a prayer for injunction. So far as decisions of the High Courts are concerned, first of all, I would say that decisions are not concurrent on this point. This is my personal experience. But, one thing is clear that decisions are not concurrent on this point. I am speaking about the High Courts and I am not speaking of the Supreme Court. The decisions of the High Courts have been divergent. In a matter like this, where the urgency is so much, the suit has to be instituted then and

there with a prayer for injunction. Instances have been given by me. In certain cases, High Courts have held the view that Section 80 will not be attracted. Without compliance of Section 80, a suit can be instituted. I am giving two things. This is one of the aspects. Of course, there can be a writ without compliance of Section 80. If Section 80 is retained, difficulties like this will come. This is one of the points. May be. Another point is that, they could file a suit in a civil court. It may be in any court. There is also no bar on a party in going to the High Court. These two cases are distinct. There are two kinds of reliefs, one in going to the civil court and another in going to the writ court. We know that Section 80 is not applicable to writ petitions. Writ petitions are open to all. Therefore, in the present situation, if I am not mistaken, this alternative remedy does not bar a party from going to the High Court.

SHRI M. P. SHUKLA: You are the Advocate General. You will speak on the Government side. You will say that alternative remedy is available and therefore. two months notice is necessary. That will be your argument.

SHRI H. C. NATH: Cases of emergency may not be even 1%. Only under very special circumstances, such types of situations will confront us. Now, with regard to Section 80, I will explain a bit further. What I am saying is this. A question was asked about the view of the Advocate General. It is stated that retention of Section 80 is sought, for the benefit of the Government and not for the litigent public. Government enjoys this privilege. That is one of the things. Secondly it has been said that it was discriminatory because the Government was enjoying a privilege which the people were not enjoying. So this was discriminatory from these two aspects.

SHRI M. P. SHUKLA: We are considering practical things, the administrative difficulties. Government spokesmen have said everywhere that it should be retained whereas the lawyers experience is that section 80 is not used by Government for the purpose of settling the claims but for taking technical objections and to defeat the objectives of the litigant. Sometimes certain formalities are missing such as the cause of action, the name, the place of residence of the plaintiff, etc. Virtually the whole plaint has to be given. Actually what happened is that lawyers send a copy of the plaint. There is also the time factor. There may be an emergency when you would like to wave the things. Why not make a specific provision in law that the courts should follow a prescribed practice. Why insists on two months time. Why insists on form. In emergencey cases irreperable injustice might be done. There is no possibility of taking technical objection. A citizen and the Government should be at par before the eyes of law. No party should be in an advantageous position so as to do injustice to the other party. Do you agree that there should be no particular form as given in sub section (c)? Secondly, do you agree that there should be no existence of two months period? Thirdly, do you agree that in the case of emergency the section should be waved?

SHRI CHAKRAVARTY: I have explained our position.

SHRI H. C. NATH: There are two things. One is whether Section 80 has to be retained at all and the other is whether there should be some modification with regard to Section 80. These two things cannot go together. Till now we were considering whether it should be omitted. If any modification has to be made we have to think about it.

It cannot be answered now.

MR. CHAIRMAN: So your Government had not considered these aspects

about the modification so far as this clause is concerned; your opinon is that Section 80 should be retained. A suggestion has been given whether it requires modification. Two points have been brought out and on that you will kindly send us your considered views in a note, whether the period can be reduced from two months and secondly what are your views about the emergency cases.

SHRI SUKUMAR CHAKRAVARTY: We have already explained our views. We cannot agree to that. In emergency cases he may go to the High court for relief. There the time lag is not necessary.

SHRI H. C. NATH: If the modified provisions are made available to us we can give an answer whether those provisions are suitable or not.

SHRI M. P. SHUKLA: There should be some via media. The emergency question, the point of time, and the form—these should be considered.

SHRI SUKUMAR CHAKRAVARTY: The form is given in the Section.

SHRI M. P. SHUKLA: The Committee is competent to change it if it comes to the conclusion that something has to be done to the form.

MR. CHAIRMAN: The time at our disposal is short and we cannot go on cross examining each other. Your views are in the memorandum and we shall consider it. Now we come to clause 45 Section 115 that is sought to be omitted.

SHRI SUKUMAR CHAKRAVARTY: We do not agree to it. We have explained our position

MR. CHAIRMAN: Do I take it that your Government considers that Section 115 should be retained?

SHRI SUKUMAR CHAKRAVARTY: Yes. Because of the misuse of Section 115 there might be more work load if many petitions are there. But if the High Court is strict this can be checked.

MR. CHAIRMAN: Your view is that section 115 should not be deleted. But remedies are available under article 227. The question is whether they are analogous to the situation envisaged under section 115.

SHRI H. C. NATH: I have dealt with it.

SHRI SARDAR AMJAD ALI: About clause 50, the Advocate General was saying that under article 226 or article 32, I can go either to the High Court or Supreme Court if my civil liberty is effected. But clause 50 says that we are not including that.

SHRI S. K. MAITRA: CPC provides the procedure for suits. Section 141 provides that the same procedures that are applicable to suits will apply to proceedings. A doubt arose whether a writ petition under article 226 is a proceeding within the meaning of section 141. We are now making it clear by this Explanation that a writ petition under article 226 will not be a proceeding within the meaning of section 141.

SHRI H. C. NATH: This is with regard to procedural matters only. The Explanation sought to be added by clause 50 only means that in the case of article 226, the exact procedure in the Civil Procedure Code need not be followed. It does not mean that the remedy under article 226 has been excluded. It is there. That cannot be touched. But as regards the procedure to be followed, it is not the procedure laid down here in section 141, but there might be a procedure of its own for article 226. The remedy available under article 226 has not been touched.

MR. CHAIRMAN: The only point is that despite the provisions in the Constitution you want that Section 115 should be retained. So far as the questionnaire is concerned your

Government have not given any reply. So far as your replies to the questionnaire are concerned Government is not a party to it. You have given replies to the 34 questions. But we are more concerned with the questionnaire issued by us, consisting of 14 questions. You have not given us your replies to these questions.

SHRI H. C. NATH: I have given it.

MR. CHAIRMAN : There is some confusion. We have got your replies to the 34 questions. But, this questionnaire was not issued by us. Our Secretariat issued a questionnaire on behalf of the Committee, consisting of 14 questions. You have not furnished your replies to that questionnaire.

SHRI H. C. NATH: I have got one copy with me. I can give it to you.

MR. CHAIRMAN: You give us that copy. We will make copies of the same, circulate among the Members and then send one copy to you. Now, you can point out important points, if any, in your replies to the questionnaire.

SHRI H. C. NATH: Now, with regard to Question No 3, I have stated:

"I do not think it is desirable that a civil proceeding should also include proceedings relating to the preparation and publication of the record of rights. Extensive provisions have been made in the Land Reforms Act of this State as regards proceedings relating to the preparation and publication of the record of rights. This proceedings, in my view, should not be equated with civil proceedings as the former have some special features of its own."

Then, in regard to Question No. 6 relating to legal aid, I have given my answer. In regard to Question No. 7, I have said that I do not think that copies should be furnished to the parties free of cost not in an unqualified manner. Then, in regard to Question No. 8, I have differed and I have stated:

"I do not think it will be proper and convenient to hear preliminary objections along with the merits of the case. In my view, preliminary objections should be heard at an earliest stage so that when a case is heard on merits there may not be any handicap to the disposal of the same due to some preliminary objections standing in the way."

In regard to Question No. 9, which relates to review provisions. I have given my opinion that this is not very much necessary. On the basis of my experience, I would say that this is being resorted to only in very very rare instances. Therefore, I am saying that this may be deleted. Now, with regard to Question No. 11 'Are the provisions of Order XI necessary'? I think this is very much necessary. I have said here.

"Order XI of the Code deals with discovery and inspection either at the instance of the Court or on the application of any party to a suit. In my experience, I have found the said provisions useful in many respects. These provisions do not tend to prolong the period of litigation but on the contrary help in minimising or rather curtailing the extent of time ordinarily required in a civil litigation."

I think these provisions of Order XI should not be deleted. I think I have almost covered all the points. In regard to Question No. 12, my suggestion is that the jurisdiction of the Small Causes Courts should be widened so that more number of cases will be taken up and there will be speedy disposal. Therefore my suggestion is that the jurisdiction of the small cause court should be widened. With regard to 13, temporary injunctions had been retained. That had not been dropped. I agree with 13. Injunc-

tions should not be denied in to to. The scope for injunctions should be there but it should be sparingly used. The provision is there.

MR. CHAIRMAN: On behalf of myself and the Committee we express our thanks for your cooperation and the valuable suggestions that you have made in the written memorandum and in your reply to the questionnaire. We look forward to the statistic that we have called for from the Government under Section 80. We are taking this original and we will give you a copy. Your reply to the 34 questions may relate to the questionnaire of the Law Commission. Any way the replies are there and we shall make use of it. Thank you very much for your cooperation.

SHRI H. C. NATH: Only Section 80 has to be utilised in the proper way by the Government.

MR. CHAIRMAN: We have called for some information and we expect that too reach us by the end of January or the beginning of February. (*The witnesses then withdrew*).

III Government of Nagaland, Kohima.

Spokesmen :

1. Shri R. H. Macdonald—Principal A.T.I., Kohima.
2. Shri M. H. Khan—Secretary, Law and Parliamentary Affairs.
3. Shri Darshan Singh, Deputy Secretary, Law and Parliamentary Affairs

[*The witnesses were called in and they took their seats*].

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI R. H. M. D'SILVA: As stated by our Law Minister in the Memorandum submitted to the Committee the draft Bill actually provides an exception in the case of Nagaland. The original code also was not applicable in Nagaland except in spirit. The Constitutional sanction for this is embodied in Article 371(a). There is a clause which has been incorporated in the draft Bill making an exception for Nagaland unless the State Assembly decides otherwise.

MR CHAIRMAN: It is already there in para 4 of the memorandum submitted by your Law Minister. You want clause 2(c) to be retained as it is. You agree to the Explanation also?

SHRI R. H. M. D' SILVA: Yes:

SHRI D. L. SEN GUPTA: The Bill has for its object effecting those modifications which will shorten the process of time and also make the proceedings less expensive without impairing the cause of justice. You say you approve the spirit of the Bill?

SHRI R. H. M. D'SILVA: We fully agree with the objectives of the Bill. In Nagaland we want to continue the simple, speedy system of justice available under the tribal customary laws. As I said, the tribes are unsophisticated in their approach. Provided both the parties accept the jurisdiction of a particular court, that court is capable of deciding the case almost immediately. That objective of speedy and costless justice is already there in Nagaland.

SHRI D. L. SEN GUPTA : Will you knidly give us a copy of those rules which exist in Nagaland which ensure speedy justice as against this delayed justice?

SHRI R. H. M.: D'SILVA: Yes, Sir.

SHRI D. L. SEN GUPTA: Can we take it that it is the replica of the CPC as such without the delay and expense part of it?

SHRI R. H. M. D'SILVA: The words used in our rules are that we adopt the spirit of the CPC. We do not violate anything which is in the CPC.

SHRI D. L. SEN GUPTA: So, can it be said that our primitive laws as we call them were much better and more useful than the so-called civilised law as we see it in the CPC?

SHRI R. H. M. D'SILVA: The Naga customary laws as they stand are absolutely adequate for administering justice, civil or criminal, in Nagaland. The customary laws vary from clan to clan and from village to village. In November we held a seminar on the tribal customary laws and tried to bring about some uniformity. We are making a start so that within the State there is some element of uniformity without damaging any of the essentials of the customary laws.

MR. CHAIRMAN: They have handed over to me their rules. The civil law as it is applicable in Nagaland is contained in Rules for the Administration of Justice and Police in the Naga Hills District, 1937. It is said in rule 35 that the High Court and the Courts of the Deputy Commissioner etc. shall be guided by the spirit but not be bound by the letter of the CPC. CPC gives them the guidelines. They have adapted it to their requirements. They are satisfied with the provision made in clause 2(c) and the proviso in the Bill. They want it to be retained.

SHRI D. L. SEN GUPTA: My question is this. It is embodied in your own statute that you go by the spirit of the Civil Procedure Code though not by the letter. The spirit is now embodied in our proposed amendments. So, can we take it that to this spirit, you have no objection?

SHRI R. H. M. D'SILVA: We absolutely agree with the amendments as they have been put forward in this Bill. The whole idea is to speed up the disposal of suits. We fully agree with it.

MR. CHAIRMAN: They agree with the spirit of the new amendments. So far as Nagaland Government is concerned, they will apply it according to the conditions prevalent there. They agree with the main principles.

SHRI R. H. M. D'SILVA: We find nothing in the amendments which will go against what we are doing already. Since it is an improvement on the previous law, we welcome it.

MR. CHAIRMAN: Mr. D'Silva, on behalf of myself and my colleagues in the Committee, we thank you for the cooperation given by you and for having come all the way and given us your views. I assure you that our Committee will consider your suggestions very carefully. I thank you once again and we express our regret for the delay in calling you in.

SHRI R. H. M. D'SILVA: From our side, we thank you for giving us a hearing.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE I OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Saturday, the 11th January, 1975 from 15.00 to 17.30 hours in Committee Room, Meghalaya Legislative Assembly Building, Shillong.

PRESENT

Shri R. N. Sharma—*In the Chair*

MEMBERS

Lok Sabha

2. Shri Debendra Nath Mahata
3. Shri V. Mayavan
4. Shrimati Savitri Shyam
5. Shri T. Sohan Lal

Rajya Sabha

6. Shri Sardar Amjad Ali
7. Shri Bir Chandra Deb Barman
8. Shri Nawal Kishore
9. Shri Syed Nizam-ud-din
10. Shri D. Y. Pawar
11. Shri Virendra Kumar Sakhalecha
12. Shri Dwijendralal Sen Gupta
13. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

WITNESSES EXAMINED

I. Shri B. B. Lyngdoh,

Minister of Law,
Government of Meghalaya, Shillong.

II. *Gauhati High Court Bar Association, Gauhati.*

Spokesmen:

1. Shri Tarun Chander Das—*Advocate.*
2. Shri Kanak Sarma—*Advocate.*
3. Shri Pulakananda Das—*Advocate.*

III. *Shillong Bar Association, Shillong.*

Spokesmen:

1. Shri A. S. Khongphai—*President*
2. Shri B. P. Datta—*Secretary*
3. Shri U. C. Roy—*Member*

IV. *Government of Meghalaya, Shillong*

Spokesmen:

1. Shri N. M. Lahiri—*Advocate-General.*
2. Shri S. N. Phunkan—*Legal Remembrancer.*
3. Shri D. R. Rymmai—*Law Officer.*

I. Shri B. B. Lyngdoh,

Minister of Law,

Government of Meghalaya, Shillong

[*The witnesses were called in and* and he took his seat]

MR. CHAIRMAN: We have before us Mr. Lyngdoh, the Minister of Law. We welcome him on behalf of the Committee. I hope the Committee will be benefited by his evidence.

May I now invite his attention to direction No. 58 under which the evidence that he gives could be treated as public and is liable to be published. I hope he has no objection. Even though he may desire that all or any part of his evidence should be treated as confidential it is liable to be made available to the Members of Parliament.

SHRI B. B. LYNGDOH: In general I should like to give my appreciation on the proposal for amending the C.P.C. Here and there I should like to contribute some suggestion. In the making of any law I think the most imortant factor is the human element or the human material that is obtaining in various parts of the country. I may give two specific points. First I should like to discuss the cases of temporary injunction. A lot of mischief is being done through the provision of temporary injunction. The human element is sucn that a person who sits in authority, when some body approaches him is prove to accede to the prayer. That is the human element. Generally therefore these injunctions are granted haphazardly without the exercise of a sense of responsibility.

For example an applicant for the post of school teacher in one Government aided school filed a suit against the appointment of his rival candidate for the post of a head master. He was seeking a temporary injunction. That post was filled up by advertisement and the management Committee constituted by the Government presided over by the inspector of school appointed a particular candidate to that post. The candidate who lost filed a suit and asked for a temporary injunction restraining the appointed head master to take over the school with the result that the school remained closed for a long time much to the sufferings of the students for more than one year. Though the provision in the C.P.C. clearly says that injunctions should be issued only to preserve the subject matter *status quo*, so that the suit would not be infructuous, the injunctions have been issued haphazardly and without giving notice to the opposite party.

It might happen also, it cannot be within the C.P.C., but under arti-

cle 226 of the Constitution, that a person may go before a High Court with a petition and the High Court might issue the stay order paralysing the administration itself. In our State the district council of Jaintia Hills runs the administration and the main revenue is from royalty. It has been collecting royalty for years. One day a forest contractor files a suit against the legality of the royalty. If an injunction is issued, the District Council's Administration would collapse, because their main revenue is from the royalty and that injunction will remain for so many months. Though the royalty has been there for years, yet the court cannot wait for a hearing for a week or month to decide whether the royalty is legal or not. So, injunctions have been issued at random. So, the law should be made more strict on the issue of injunctions. There should be an opportunity for the opposite party to appear and show cause against the injunction. I feel the Presiding Officers of the courts should have the highest sense of responsibility and not approach it from a merely technical or formal angle. Therefore, a word may be inserted in the section dealing with temporary injunctions that injunctions should not be issued unless the court is convinced that the suit will become infructuous if a temporary injunction is not given. For example, a person is ordered to leave the country and he is given 10 days' time. He goes to the court and in that case an injunction should issue because if he goes out, the suit will become infructuous. It should be done only in such cases.

Similarly about attachment, suppose a suit is filed about a certain store. If the attachment order is passed and the store is closed, then the business is completely disrupted. Ultimately if the suit fails, the loss may be irreparable.

SHRI BEDABRATA BARUA: Do you agree with the provision at page 74 of the Bill that the injunction may be given for 30 days and in special cases, the court may extend it by another 15 days?

SHRI B. B. LYNGDOH: I appreciate it, but I want that more guidelines should be given. It should be made clear that injunctions will issue only in cases where the court is convinced that the suit will become infructuous if the injunction is not issued. I would like that notice to the opposite party should be given before injunction is issued, because *ex parte* hearing is no hearing at all

SHRI D. L. SEN GUPTA: Invariably notice is given in the case of mandatory injunctions. Even in the case of temporary injunctions, they can be vacated by moving the higher court.

SHRI B. B. LYNGDOH: But a lot of mischief will have been done by that time.

Coming to delay in disposal of cases three factors are responsible for it—the court and the lawyers of the two sides. It is a question of not taking the work seriously. We know what happens in the courts. They take a cup of tea, look at the watch and say, "we will take it up some other day". If one party asks for time, it is very easily given. The human factors are there and we cannot perhaps change it by law. But there should be certain provisions against easy adjournments. For example, I suggest that a minimum cost should be imposed on the party seeking adjournment.

We should not leave it to the Court's discretion to fix the cost. There may be a nominal fee, Rs. 5 or Rs. 10 which the party would not mind. But, then, the cost involved by way of lawyer's fee and the cost that is incurred on the witnesses who had to come and give evidence may be big. Apart from the fact that it causes delay in giving justice, it involves a lot of expenditure for the other party as well. I would suggest that minimum cost should be fixed in the

CPC itself, namely, the expenses to be incurred by the opposite party, the actual expenses of lawyer's fee and the expenditure incurred in regard to the witnesses. Then, real justice will be done and at the same time, the delay will be very much reduced if we impose a condition that anyone who seeks adjournment of the case should pay the cost to the opposite party in full for all the expenses that they have incurred. This is my specific suggestion about adjournment of cases.

Now, I would also like to say something about the examination of witnesses by commission. For example, a witness may be in Bombay. Then, the party will ask for a commission to be appointed to examine him in Bombay instead of bringing him here. The delay involved in such examination is very very great. We have found in practice that though witnesses will not be very necessary but the parties who are interested, who would gain by delay would create such conditions and such witnesses, who will be very far away and ask for a commission. The final stage would have been reached, yet, just a mere application for examination by commission will cause a great delay. What I would suggest is that though we cannot abolish it completely—there may be genuine cases—the parties when they file their written statements, in the Court, should file their list of witnesses and at that time itself. they should list their witnesses who are required to be examined by commission so that there will be no abuse in future. I would suggest that at the pleading stage, the party seeking a commission should indicate to the Court at that very stage and they should not come at the fag end of the suit just to delay the case and ask for the appointment of a commission.

I also support this proposal for postal service of summons. This will help a great deal because sometimes, in the case of service by messengers etc. it becomes difficult, they go and hand over to somebody and then the parties will plead that they have not received the summons. I support this proposal.

There is a proposed amendment to do away with the requirement of notice under Section 80 for suits against the Government. The objective may be laudable to help the litigants so that they may not go through that procedure. But then, there is one aspect of the matter. The notice may invariably save the litigants. We are all human beings. Government also consists of individual officers. They may commit some wrongs; they may commit some illegalities and the person affected may have a right of litigating in the Court. But, if notice is given, Government is in a position to examine the case and settle it out of Court. They settle the case out of Court instead of wasting the time, energy and expenses of going to Court. Notice may serve the purpose of giving an opportunity to the Government and the officers concerned to settle the case. I do not know whether we should abolish it altogether, so far as this requirement of notice is concerned. This may reduce the delay and this may reduce the formalities. But I would suggest that we should retain this provision for notice for the purpose of settling cases out of Court.

Another point is about the aid to poor litigants. Now, at present, we have a provision that a person who is poor and who has a right or claim on certain property or in regard to a certain matter, applies to the Court to get exemption from Court fees and so on so that he may pursue his claim. Now, so far as this is concerned, I would suggest that perhaps it is not the plaintiff who deserves more, but, it is the innocent defendant, the man perhaps who has a property, but certain greedy neigh-

bours may like to pounce upon the property. If they are rich, they can file a suit and the defendant will have no means to defend himself. I feel that the defendant deserves more help than the plaintiff. So, I would suggest that the provisions for pauper suit may also be made equally applicable to the defendant. The person who is poor should not be left to the mercy of the rich man to file a claim and get his property. He should also be helped. In this, of course, the question of court fee is not involved. He is not to pay any Court fee. But, the expenditure he has to incur in engaging a lawyer is very big. Just as the Government does in criminal cases, here also, if the defendant proves himself a pauper before the Court, may be given a lawyer to defend him and may be paid by the Government. Now, there is another aspect that if we give help to a plaintiff, it will really be an incentive to litigation. So, it is the defendant who should be helped.

These are some of the points in general so far as my humble experience and knowledge is concerned. Another thing that applies to my State is that you have provided an explanation clause that the State Government in Meghalaya may extend the CPC to areas that are suitable for it. I welcome this very much and in fact Shillong and around may be fit for application; wherever there are qualified lawyers to appear, it will be fit for the CPC. It may be retained. We are extending it gradually to other parts of the State.

SHRI SARDAR AMJAD ALI: You say that section 80 should be retained.

SHRI B. B. LYNGDOH: There is this aspect of an opportunity for settlement out of court.

SHRI SARDAR AMJAD ALI: They get a chance of this notice but there is hardly any case where they take recourse to cure the malady.

SHRI B. B. LYNGDOH: I do not know because notice will not prevent a plaintiff from going to a court. It is only a question of time. I do not know whether it will give encouragement to officers to do wrong when they know that notice will come. It will be putting the officer in the bad book of the Government, Notice is bad enough. An opportunity is being given to the Government to set right any wrong by the office to an individual. I am not now thinking of the interest of the Government or the officers but the interest of the citizen who might be affected and perhaps the Government might settle it on receipt of the notice. Of course there are two factors. The litigant should be given an immediate opportunity of redress by going to a court. But you know the court processes also take a long time and perhaps we may give the Government an opportunity to settle it.

SHRI SARDAR AMJAD ALI: How many notices under section 80 were received by your Government for the last, two or three years and how many of them had been settled and how many of them were not settled?

SHRI B. B. LYNGDOH: That might be replied to by the officers who come before this Committee. We are a new State. But we do have cases where we have settled and you may ascertain the facts from the officers who are apearing before you.

SHRI SARDAR AMJAD ALI: Is it not a fact that when a writ petition comes under article 226 before the High Court or under article 32 before the Supreme Court, when the presiding officer thinks that there is a fit case, issues notice to the advocate general or the solicitor general to appear and have their say and thereafter issues an interim order?

SHRI B. B. LYNGDOH: I do not know about the Supreme Court but

here in the High Court from 1954 onwards invariably the court issues injunctions without any notice.

SHRI SARDAR AMJAD ALI: There are some cases where if the court does not interfere immediately irreparable mischief would be done to the plaintiff.

SHRI B. B. LYNGDOH: The present provision also provides that where it would cause such irreparable loss, it could be done but there are rare cases of irreparable loss.

SHRI SARDAR AMJAD ALI: I believe you do not want to curtail the hands of the judiciary.

SHRI B. B. LYNGDOH: I do not know what you mean by restraining the hands of judiciary. The law has to provide, has to help the judiciary to do justice. If you just leave everything to the discretion of the court, we have no need to have the CPC at all.

SHRI SARDAR AMJAD ALI: You are not in favour of completely abolishing it?

SHRI B. B. LYNGDOH: No; I have said where a suit will be infructuous an injunction was necessary.

MR. CHAIRMAN: On behalf of the Committee, we thank you for the valuable suggestions that you have given us. We shall indeed be benefited by your experience.

SHRI B. B. LYNGDOH: I am thankful to the Committee for giving me this opportunity.

(The witness then withdrew.)

II. Gauhati High Court Bar Association, Gauhati:

Spokesmen:

1. Shri Tarun Chandra Das— *Advocate*
2. Shri Kanak Sarma—*Advocate*
3. Shri Pulakananda—*Advocate.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be pulished, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Mr Das, I do not think you have submitted any written memorandum?

SHRI T. C. DAS: We have got a copy of the memorandum which we have prepared. After reading it, I will pass it on to the Committee.

The new section 11A (b) says "every civil proceeding other than a suit." But "civil proceeding" has not been explained and no explanation has been given about its categories. So, an explanation may be added to define categories of civil proceedings.

In clause 7, setcion 20 there are two Explanations. Explanation II of the old Act has been omitted relating to subordinate office where cause of action might have arisen. This may be added with Explanation II of the present clause because there may be certain instances where in the subordinate offices also, cause of action either partly or wholly may arise So, it should be retained.

Then, I would like to draw your attention to Clause 21—Explanations I and II—Page 7. Now, my submission is that section 47 also includes the auction purchaser. The right of the auction purchaser has been curtailed in the sense that an auction purchaser had a right to claim and take

possession of the property within 12 years from the date of purchase or from the date of cause of action. Now, by this new amendment, the right of the auction purchaser has been curtailed because he cannot have the right to bring of a separate suit inview of the provisions laid down in Section 47. Though he has same remedy no doubt under Order XXI, he shall have to make an appreciation to the Court to take possession So, in my humble submission, this right has been curtailed.

SHRI M. P. SHUKLA: You agree with the deletion of Section 80?

SHRI T. C. DAS: I welcome this. This is a special guarantee given.

SHRI D. L. SEN GUPTA: Where he does not say anything to the contrary, you can presume that he supports it.

SHRI T. C. DAS: Then, amendment of Section 82, proposed subsection (4), regarding extension of time. My submission is that there should be a fixed period of time, If the Government is the defendant in a suit and the suit is decreed for realisation of money, the court may allow time at the prayer of the defendant for payment because the Court has ample jurisdiction by this provision to allow time even for an unlimited period. So, my humble submission is that at least a fixed time may be prescribed, up to what period, the time can be granted. Otherwise, time may be granted by the Court without any limitation, may be for even two or three years. Then, Clause 34 "Amendment of Section 96."

SHRI M. P. SHUKLA: You want to lessen it?

SHRI T. C. DAS: My submission is that either the amount may be reduced or at least the provision for first appeal should be made.

SHRI S. K. MAITRA: Reduced to what figure?

SHRI T. C. DAS: Rs. 1000. or, there should be a provision for first appeal.

SHRI SYED NIZAM-UD-DIN: Which of the two propositions you like?

SHRI T. C. DAS: The provision for first appeal may be made. Sometimes, it happens that some provisions of law or facts may not be very correctly dealt with. In Clause 39, substitution of new Section has been proposed for Section 100. My humble submission is that the provision of old section 100 should not be deleted. Clause 58, amendment of Order V. proviso. In this, my humble submission is that in some cases it may be that some time may be required by the defendant to look into some documents and he may like to scrutinise certain documents and papers before filing written Statement. Therefore, provisions for at least one chance may be made in such cases, so that the Court may, for sufficient cause allow some time to the defendant to file his written statement.

SHRI SYED NIZAM-UD-DIN: If the discretion is given to the Court, the Court may or may not.

SHRI T. C. DAS: The proviso should be so worded that the Court may give time on the basis of sufficient grounds.

SHRI DWIJENDRALAL SEN GUPTA: Sufficient remains undefined.

SHRI T. C. DAS: It is for the Court to decide.

SHRI DWIJENDRALAL SEN GUPTA: There is a compromise.

SHRI T. C. DAS: Then. I would like to draw your attention to Clause 71—Page 36 Order XVII—the new proviso (b) to sub rule (2) of rule 1. My humble submission is that, for the words 'beyond the control', the words 'sufficient reason' may be inserted.

SHRI M. P. SHUKLA: This is the existing practice. You do not want that to be modified?

SHRI T. C. DAS: This should be 'if sufficient cause is shown by any party seeking for an adjournment'. The provisos (c), (d) and (e). These appear to be very strict provisions.

SHRI M. P. SHUKLA: Which concerns the lawyers.

SHRI T. C. DAS: Sometimes, it happens in the mofussil courts. We have this experience. There may be two lawyers who are equally good and every party would like to engage them. If one of the lawyer is ill who has already been engaged by a party to the suit and the other lawyer cannot hold the brief due to personal reason, the party will be put in difficulties to conduct the case for the reason of the illness of the lawyer. Therefore, these provisions may be modified to the extent that the parties to the litigation are not put to hardship. With regard to clause 73, rule 6A(1) and (2), suppose a suit is decreed for Rs. 10,000 with proportionate costs. Proportionate costs will not be taxed or assessed prior to the drawing up of the decree. A decree will have to be prepared and then the party will be able to know what is the actual cost. My submission is that an execution petition can be filed even by obtaining the operative part of the judgement as preprovisions laid down in clause (6). An amendment petition again will have to be filed for realisation of the cost in case the decree is prepared after filing of execution case. That will also delay the execution proceedings. A time may be prescribed. Within two or three months when the decree must be drawn up, if it is possible. That is for the consideration of the Committee.

We come to page 49, order 21. 58(2). It refers to all questions including questions relating to right, title or interest in the property attached. Previously if the court is not satisfied that a person is not in possession, it did not go to adjudicate the right, title and interest. In this matter suppose a person files a claim petition and he claims that he has a right and he would say that he wanted to examine some persons to adjudicate that right, the proceeding will be delayed. the court will have to determine the right and title also, not possession only. Determination of the right and interest will take certain time and a person who has obtained a decree will remain without any progress of the execution of his decree for years together.

Now, rule 58(5) (in page 49) gives a right to the claimant who was unsuccessful to file a suit. My submission is that the earlier sub-clause includes the questions relating to right, title and interest. The Committee might consider whether it should be eliminated and the original provision of order XXL, rule 58 may be kept if possible.

I now refer to page 73, clause 88—order XXXVIII, rule 8. There is exactly a similar provision under order 21, rule 58. That means the claimant will have to prove the right, title and interest.

SHRI M. P. SHUKLA: What is your point? Are the provisions self-contradictory?

SHRI T. C. DAS: My submission is this. The Committee might consider whether it will not delay the proceedings. If the old provisions of order XXL. rule 58 was there, only possession will be the *prime facie* proof for adjudication.

SHRI D. L. SEN GUPTA: Is it your submission that there should be determination *prima facie* of possession only, and not right and title.

SHRI T. C. DAS: That is my submission because he has a specific right again has been given to him to file a suit in the original provision of order XXI rule 68.

Now, order XXXIX, rule 3A (in page 74). In this clause the wording is 'from the date on which it was granted'. This may kindly be substituted from the "date of service of notice upon the defendant". Sometimes it happens that service may not be possible within one month but the court will close the door one month after the order. Service of notice may be made very strict as laid down under Order V.

"(b) The application for such injunction shall as far as practicable, be heard and disposed of within thirty days from the date on which such injunction was granted."

This may also be kindly looked into from the service point of view.

MR. CHAIRMAN: The memorandum does not mention on whose behalf it has been submitted.

SHRI T. C. DAS: This is on behalf of the Gauhati Bar Association.

MR. CHAIRMAN : The Committee has taken note of the suggestions made by you and the committee will examine them in detail. We thank you very much for appearing before us.

SHRI T. C. DAS: We are very grateful to you for giving us an opportunity to put forward our views before the committee.

[*The witnesses then withdrew*]

III. Shillong Bar Association, Shillong

Spokesmen:

1. Shri A. S. Khongphai—*President.*
2. Shri B. P. Datta—*Secretary.*
3. Shri U. C. Roy—*Member.*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Mr. Khongphai, I do not think you have submitted any memorandum. Would you throw some light on the provisions of the Bill?

SHRI A. S. KHONGPHAI: Sir, at the outset, I would like to point out that recently the Parliamentary Committee on the Indian Penal Code Amendment Bill, 1972 came to Shillong and recorded evidence tendered by me on the 10th and 14th June, 1974 before the Joint Committee. This concerns the administration of justice and mainly aimed at the amendment of the Indian Penal Code. We are now concerned with the amendment of the Civil Procedure Code (Bill No. 27 of 1974) and the Limitation Act. 1963. We have just received the copy of the Bill only two or three days ago and it is not possible for us to give full and detailed suggestions on so many amendments suggested to the main Act. The administration of justice both civil and criminal in this part of the tribal areas is different from the rest of our country.

In olden days, Khasis dislike any one going to court, that is, to the durbars for trial of their disputes by the Syiems, Lyngdoh. Dolloi, Wahadadar, Sirdar or any judicial functionaries, although such Courts have been in existence from time immemorial. The idea being that if such disputes are brought before the judicial authorities,

they will, unavoidably involve the taking of oath which once taken will make it difficult for a person, a family or a clan to live peacefully with one another. In extreme cases, such persons or children who disobey their parents or aunts or uncles and deliberately bring such disputes before a trial durbar, may be debarred from inheriting their properties. Khasis say "bym ia bit shuh haba la kiew inglieh ingsaw" which means that they cannot do well when a party takes a dispute to the white and red house meaning trial durbar.

In this part of the country, there are rules for administration of justice and police brought up to 1937 for Khasi and Jaintia Hills, Garo Hills, Naga Hills, North Cachar Hills which were subsequently modified. Previously, the adminstration of justice in these tribal areas were entrusted to the Deputy Commissioner, his Assistants and the Sirdar, Dolloi, Headman of Khelh and other Chiefs of village authorities.

It has to be noted that (1) the Deputy Commissioner and his Assistants shall, in all cases in which the parties are indigenous inhabitants of the hills, endeavour to induce them to submit their case to a panchayat. There are decisions of our High Court also that unless they first submit their case to the Panchayat, their coming to the Court is not correct. Then, secondly, the High Court and the Courts of the Deputy Commissioner or the Additional Deputy Commissioner and his Assistants shall be guided by the spirit, but not bound by the letter of the Code of Civil Procedure.

Even in the recent rule for Administration of Justice—The United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953—Rule 47 provides—

> "Procedure in Civil cases —In civil cases, the procedure of the District Council Court or the Subordinate District Council Courts or the Additional Subordinate District Council Courts shall be guided by the spirit, but not bound by the letter of the Code of Civil Procedure, 1908 in all matters not covered by recognised customary laws or usages of the District.'

Sir, here, I would like to say that I have published a book entitled "Principles of Khasi Law", wherein, on page 7, I have quoted one ruling of the Supreme Court:

> "In a recent case from the State of Nagaland, though in Criminal Appeals Nos. 198 of 1965, and 29 to 32 of 1966, (1967 S. C. 224), their Lordships observed 'Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code, what is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century, the Criminal Procedure has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some techincality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conceived in the best interest of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of 'justice in these backward tracts'.'

SHRI M. P. SHUKLA: Mr. Chairman, if you permit me, I would point out to the witness that what he has read suggests that he is in agreement with the provisions of the Bill. I would invite his attention to Clause 2(c)—Explanation on page 2 of the Bill. If he looks into that, he will see that the Bill incorporates his suggestion.

SHRI A. S. KHONGPHAI: Here, it is said:

"It extends to the whole of India except..."

SHRI M. P. SHUKLA: This Clause covers all the points that you have made.

SHRI A. S. KHONGPHAI: I think it does. But, here, it is said:

"the State of Nagaland and the tribal areas."

SHRI M. P. SHUKLA: This Explanation on page 2 meets your suggestions.

SHRI M. P. SHUKLA: The suggestions that you thought of had all been accepted in the Bill and probably this meets all the points you are suggesting. Do you agree?

SHRI A. S. KHONGPHAI: Yes, I agree. Besides the tribal areas in Nagaland and Meghalaya, there are tribal areas in North Cachar Hills.

SHRI M. P. SHUKLA: Please see the Sixth Schedule of the Constitution, para 20. It is there in the Constitution itself. Only the Governments concerned, namely, the Governments of Meghalaya, Mizoram and Nagaland may notify that certain provisions could be made applicable with or without modifications. This meets what you have been submitting before the Committee. I think you agree with this point of view.

SHRI A. S. KHONGPHAI: In 1971 there was no State of Meghalaya. It came into existence on 21 January, 1972.

SHRI SARDAR AMJAD ALI: You want explicit mention of Meghalaya in the Bill as the Constitution does not make the position clear, in your opinion.

SHRI A. S. KHONGPHAI: That is all.

SHRI SARDAR AMJAD ALI: The witness said that they received the Bill only three days ago. They should be given some time so that they could produce a memorandum of their views and send it to the Committee, as also to the questionnaire.

MR. CHAIRMAN: I may say now that if they could send any memorandum before the Committee finalises the Bill, we shall definitely take that into consideration. If they send their views by the middle of February, I think it is possible. Thank you all.

SHRI A. S. KHONGPHAI: I think it is possible; we shall go one by one. But the main view is already before you.

[*The witnesses then withdrew*]

IV. Government of Meghalaya, Shillong.

Spokesmen:

1. Shri N. M. Lahiri—*Advocate-General.*
2. Shri S. N. Phunkan—*Legal Remembrancer.*
3. Shri D. R. Rymmai—*Law Officer.*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though

you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. N. PHUNKAN: With the leave of the Committee, I shall go into some of the clauses and afterwards our Advocate-General will also supplement the points. Our first observation is in respect of clause 2 of the Bill, Explanation. There seems to be an impression that the CPC is applicable to the entire Shillong town. That is not a fact. Even here there are some tribal areas and the C.P.C. applicable only in three wards of the cantonment of Shillong. So, this Explanation needs some modification.

In the Explanation under sub-clause (c) the last portion, "other than those within the local limits of the Municipality of Shillong" should be removed. As it is it applies to three wards and Cantonment of Shillong town and it will continue to apply to three areas. We also welcome the idea of entrusting us with the powers to extend the C.P.C. to tribal areas. We are watching closely the developments and in course of time, we will do it. Incidentally, para 5 of the Sixth Schedule of the Constitution may need amendment in view of the fact that powers have been given to us to extend the C.P.C. to the tribal areas of Shillong.

Coming to clause 3, it says "for the words 'the Indian Civil Service' the words 'an All India Service' shall be substituted". Why only All India Service is not clear. It is for consideration whether this is to be omitted completely or some other services are also to be included.

Clause 5 amends section 9. I feel the word 'impliedly' in section 9 has given rise to a lot of judicial pronouncements. It may be considered whether "impliedly" can be omitted.

Clause 7 seeks to amend section 20. As the section stands now, Explanation II gives the party the right to file a suit against a corporation even at a place where the subordinate office of the corporation is located. Suppose a company having its head office in Bombay or Calcutta runs business in this part of the country, it will be difficult for us to file a suit in those places. So, the position about subordinate office may be kept as it is.

In clause 8, in the proposed new sub-sections (2) and (3) the last sentence "unless there has been a consequent failure of justice" may give rise to judicial interpretations and I submit that it may be omitted, in view of the fact that the court has got inherent jurisdiction in case of failure of justice.

Clause 12 seeks to amend section 25, I request the Committee to consider our peculiar circumstances. We have a common High Court for five different States. From section 25 read with section 24 it is now clear whether in the case of the North Eastern region, for a case to be transferred from one State to the other State a person has to go to the Supreme Court. Section 24 gives power to the High Court or a District court to transfer a case from one subordinate court to another subordinate court. Now, Section 25 gives power to the Supreme Court to transfer a case from one State to another State. But, here, our High Court is exercising jurisdiction over 5 States and 2 Union Territories. So, it is for consideration if that Section 25 may not be made applicable to these areas for transfer of a case from one State to another State under the same High Court.

SHRI SYED NIZAM-UD-DIN: In case, it is out of the 5 States?

SHRI S. N. PHUNKAN: That is alright. There is no objection. My point is that there is some conflict between Sections 24 and 25 for this area, because our High Court exercises jurisdiction over 5 States.

SHRI S. K. MAITRA: There is a point in what you are saying. That point will be taken into consideration.

SHRI S. N. PHUNKAN: About giving relief to the litigant public, I feel that this will help us a lot. Then, I would like to refer to Clause 22. By this Clause, it is proposed to amend Section 51. Here, for the words 'or leave' the words 'or is, without lawful excuse, likely to leave' are proposed to be substituted. I would submit that otherwise also, this power is sparingly used. In fact, sending a man to civil prison seldom happens. Otherwise also, the interpretation is that if a man can be lawfully excused, he must go. These words may not be very much necessary for this purpose. Now, by Clause 24, it is proposed to amend Section 60 of the Code. I would submit only one point here. It is proposed that life insurance policies and pay and allowances of the service personnel are to be exempted. If a person in service is earning Rs. 4000 or so, why should he be exempted? If I have a life insurance policy for Rs. two lakhs, why should I be exempted? I want that a limit should be put. There should be a maximum limit. Now, about Clauses 27 and 78. This is regarding commission. If I may be permitted to say, my experience is that sometimes this power of commission is exercised by the parties to drag on the proceedings. Two difficulties, however, come in the course of proceedings. One is, if a commission is issued for a person in Bombay or Calcutta, it takes years to come back. The second point is that, the prayer for a commission normally comes, if the party really wants to drag on the proceedings, at a very late stage. I would request the hon. Committee to consider these two aspects, how to stop this practice.

SHRI SARDAR AMJAD ALI: What is your suggestion? Do you want that this should be abolished?

SHRI S. N. PHUNKAN: I do not mean that. My humble submission is this. It is for consideration whether a time limit for applying for commission can be put, say, at the time of the filing of the list of witnesses.

SHRI M. P. SHUKLA: What about Clause 28—Section 80. Do you want that this should be retained?

SHRI S. N. PHUNKAN: Our submission is this. Let us say, a person is deported and he is asked to leave India within 15 days. He cannot come and file a suit. In such cases, the suit will become infructuous, this should be relaxed. In fact, in my short experience in Government, I have found that there are number of cases in regard to this Section where cases are settled after a notice is received. It happens that lower level parties are being harassed. Government, do not know. When it comes to the notice of the Government, immediate steps are taken.

SHRI M. P. SHUKLA: You want that time should be given except in cases where the injury may be irreparable.

SHRI S. N. PHUNKAN: Where the suit will become infructuous. About Clause 29. This is regarding amendment of Section 82. Here, what I suggest is that notice should be given to the head of the administration, the Chief Secretary or Secretary to Government. I have nothing to say on Clauses 32 and 33. Here, I would only refer to Section 93 of the Code.

> "The powers conferred by Sections 91 and 92 on the Advocate-General may, outside the presidency-towns, be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in this behalf."

I think the words 'outside the presidency-towns, may not be necessary in the present context. The words had some significance in those days, but not after Independence. This may be omitted. Moreover, it is always

difficult for the Advocate General to look into such matters. So, these Powers have to be delegated. Coming to Clause 34, here, it is proposed to amend Section 96 of the Code. I would invite your attention to the new sub section (4) which is proposed to be inserted. There is a limit of three thousand rupees. Considering the present economic conditions in this part of the country, I would say, Rs. 3000 is quite high. It should be brought down to Rs. 1000.

SHRI M. P. SHUKLA: Would you like first appeal in every case?

SHRI S. N. PHUNKAN: I am not talking about Section 100. I am talking about Section 96.

SHRI S. K. MAITRA: I think you agree with the principle embodied in this sub-section. Only about the quantum, you say that instead of Rs. 3000, it should be Rs. 1000.

SHRI S. N. PHUNKAN: Or it may be left to the discretion of the State Government.

SHRI M. P. SHUKLA: It is already at the discretion of the Government. It may apply or may not apply.

SHRI N. M. LAHIRI: I feel that section 100 should remain as it is because it has been crystalised by decisions of the Privy Council as well as the Supreme Court. Power is also limited and restricted. In the eastern region there are hardly 200 or 250 appeals a year. It is somewhat regrettable that the district judges and sub-judges are not upto the mark there are of course a few exceptions. Very often injustice is done. Unless this power is retained, I feel that more harm would be caused to the people.

The reasons given regarding section 115 are not at all tenable. It says that some of the High Courts are not following the Privy Council or possibly the Supreme Court also. The remedy for that lies elsewhere. Article 227 cannot be a substitute for section 115. Instead of shortening the litigation time, it may prolong litigation in certain cases. I feel that it should be retained as it is. It has stood the test of time and it has worked well. So far as our State is concerned there are no problems because here we are governed by the Assam High Court Jurisdiction Order. In revision cases the High Court also can go into the question of facts.

SHRI S. N. PHUNKAN: In respect of clause 41, the same arguments I have put forward earlier, apply to this clause also.

I now refer to clause 47. I oppose the omission of this section. The notes on clauses say that the judge should have the advantage of observing the manner of delivery of the witnesses if he has to assess her credibility. The same argument will also apply for commissions but still in the proposed amendment we retain the provisions about the commissions. So this argument will not be tenable for omitting section 132. Even now there is some generation gap in India. Let us wait and keep section 132.

I now come to clause 48, privileges of members. In this part of the country a body has been constituted under the 6th Schedule of the Constitution having law making powers, plenary powers. They are called district councils. They are not like municipal corporations or panchayats. I suggest that the same privileges may also be extended to members of the district councils.

Coming to clause 58, there is a consequential change. There is a special provision for Pakistan. In view of the emergence of Bangla Desh I request the Committee to consider whether the same privileges can also be extended to Bangla Desh.

I now come to clause 59, regarding new rule 14A. There is a timelimit of two years for the registered address. It is not clear to me why only two years. These words 'two years' may not be necessary in view of the fact that the execution proceedings take a long time.

Clause 62 seeks to substitute a new clause (a) for the existing clause (a) in sub-rule (1) or rule 6, Order IX that the *ex parte* decree can be passed only on the basis of the plaint. I feel that some statement on oath should be there and the decree should not be passed only on the basis of the plaint.

Clause 70 introduces a new provisision to compel the attendance of a witness detained in prison. This will be very helpful. The power has been given to the State Government to say which type of prisoners shall be produced before the court. Apart from the clauses specified by the Government, it may so happen that it is difficult for an individual prisoner to be produced in court. There should be provision for calling a report from the jailor or an official in charge of the prison who is more conversant with the prisoner.

I welcome clause 72 but it should be considered whether a minimum amount may be fixed.

It is not clear whether a stenographer can record the evidence or whether it should be typed. In the High Court the stenographer takes down the order. What is the serious objection here? I request that the judge may be empowered to direct the stenographer to take down the judgment.

Coming to clause 73 without casting any aspersion on anybody, suppose there is a mistake on the part of the Presiding Officer in giving information either about limitation or about the forum of appeal, what happens?

SHRI M. P. SHUKLA: It is provided by law and it is not necessary for the judge to pronounce it. Is that your idea?

SHRI S. N. PHUNKAN: Yes. Then, clause 76 introduces a new idea of making the lawyer liable to pay costs!

SHRI M. P. SHUKLA: The words "new idea" used by you give enough indication. The lawyers would not like to be burdened with costs on behalf of their clients.

SHRI S. N. PHUNKAN: Coming to clause 79, it is not clear why the State Government also should be impleaded. Let us leave it to the lawyers for the plaintiff to decide whom to implead.

SHRI M. P. SHUKLA: When a public officer performs any act in his official capacity it is the act of the State itself.

SHRI S. N. PHUNKAN: Then, about Clause 84. This is regarding giving aid to poor litigants. I would ike to invite your attention to new rule 9A which is proposed to be inserted. What happens, if he is a poor defendant?

SHRI M. P. SHUKLA: Litigant includes both defendant and the plaintiff.

SHRI S. N. PHUNKAN: It seems only the plaintiff is entitled.

SHRI M. P. SHUKLA: It may be modified. You may suggest modification. The word 'litigant' includes both. Probably, you agree with this.

SHRI S. K. MAITRA: As order XXXIII now stands, under the Order, the plantiff is exempted from payment of Court fees. Now, by this amendment, the plaintiff is being exempted from process fees also. So far as the defendant is concerned, he has no such liability. But, in this Bill, we have provided that if the defendant has a counter claim or he wants a set off, then, the defendant will get the same facility as the plaintiff. This has been provided for in this Bill. But, for pauper defence, no provision has been made because if the defandant is a pauper, he does not have to pay any court fees. That is why, this has not been done. Possibly this clause providing for a lawyer may be extended to the defendant also.

SHRI S. N. PHUNKAN: There should be a proper machinery or a forum.

SHRI M. P. SHUKLA: We shall be benefited if you put your points in a small memorandum and send it to the Committee. This will be helpful to us.

SHRI S. N. PHUNKAN: If I may submit, my points may not be very useful for the Committee.

SHRI M. P. SHUKLA: Since you have taken pains to assist the Committee and since you have gone through the whole Bill, I would suggest that you may take some more pains and give us a note, detailing your points so that we will be able to have a better idea of what is in your mind and the Committee may be able to give better thought and better judgement at the appropriate time. You may send your note by the 15th of February. I have made this observation when I found that you have come to the last page.

SHRI S. N. PHUNKAN: Only one point about Clause 88. The words 'without any lawful excuse' may not be necessary. Clause 89—it is a very good provision and it will help us a lot. This is in regard to *ex-parte* injunction. It causes a lot of difficulty sometimes. If I may suggest, it is for consideration whether this can also be extended to conditional attachment. These amendments have been proposed within the structure and framework of the present Code which is in existence for the last so many years. I personally feel that these amendments will be of great help to the nation and also of course, if I may say, it will depend on the human element involved in administering the Code.

SHRI M. P. SHUKLA: We would also like to have the benefit of your suggestions in a written form by the time the Committee goes into the consideration of the Bill. If the Advocate General also helps us in the same way, it will be more beneficial for us.

SHRI N. M. LAHIRI: Mr. Chairman, we will work together and submit a joint memorandum. Mr. Phunkan has covered most of the points. But, I would invite your attention to Clause 2 of the Bill—the Explanation regarding tribal areas. Now, the whole objective is to give power to the Government to extend this Civil Procedure Code to the tribal areas. If this suggestion is accepted, then, the words 'other than those within the local limits of the Municipality of Shillong' are not very clear. The Code of Civil Procedure is in force only in three words out of 12 words of Shillong Municipality. These were known as British Portion of Shillong Town under the Shillong Civil Courts and Law Act, 1947. In the three wards only, the Code is applicable. In other areas, they are governed by Rules for the Administration of Justice and Police.

SHRI M. P. SHUKLA: You want that the words 'other than those within the local limits of the Municipality of Shillong' should be removed?

SHRI N. M. LAHIRI: Consequently, Part V of the Sixth Schedule of the Constitution also requires to be amended.

SHRI M. P. SHUKLA: We note that suggestion. But, this does not come under the purview of the Committee. This Committee cannot suggest an amendment to the Constitution. It can only confine itself to the...

SHRI N. M. LAHIRI: The whole purpose will be frustrated if this provision is retained as it is.

SHRI M. P. SHUKLA: Our Minister of Law is here. They may take note of this and bring out suitable legislation after it is considered by the Cabinet.

SHRI N. M. LAHIRI: If the State Government wants to extend this Code.

SHRI M. P. SHUKLA: We quite follow. I have only said that this does not come under the purview of this Committee.

SHRI N. M. LAHIRI: I quite appreciate. But, this is the problem that will have to be faced in extending the Civil Procedure Code to the tribal areas. Now, regarding the pronouncement of the judgment, the question is, whether time limit should be fixed or not. Our experience shows that sometimes arguments are heard, then, for many months, judgement is not delivered. I do not know of other States. But, it happens. Unfortunately, it is happening. So, some time should be fixed for delivery of judgments. This is one of my suggestions. Then, I would invite your attention to Order XLI, rule 5. The proposed Explanation which is proposed to be inserted at the end of sub rule (1). Here, I would like to invite your attention to the wards 'but an affidavit sworn by a pleader, based on his personal knowledge'. How can an advocate swear an affidavit based on his personal knowledge? This will be very difficult. The words 'personal knowledge' of the party should be there. I now refer to Order 41, rule (5), sub-rule (4) on page 76. For the words 'Notwithstanding anything contained in sub-rule (3)', the words 'subject to the provision of sub-rule (3)' was sought to be substituted. I am in favour of retaining the old provision because when an ex parte stay order is granted, it may not be possible to fulfil all these conditions immediately.

SHRI SARDAR AMJAD ALI: You plead for retention of Section 80?

SHRI S. N. PHUNKAN: Not in the present form but in the modified form.

SHRI SARDAR AMJAD ALI: How many notices were received by your Government and how many of them were disposed of? How many of them have been quashed by the Court during the last two years?

SHRI S. N. PHUNKAN: I have sent statistics already to the Government of India.

SHRI N. M. LAHIRI: It is our endeavour to see that the bona fide claims of the people, of contractors and others are settled. Otherwise it leads to corruption. We have made it a specific point to settle genuine claims.

SHRI SARDAR AMJAD ALI: You say that section 115 has to be retained because you want the CPC to be a self-contained Code. Do you think there is any necessity for the General Clauses Act in this country if every Act is to be a self-contained one?

SHRI N. M. LAHIRI: It gives powers of appeal and revision; everything is provided. Power of revision is to be retained in various Acts also. The General Clauses Act is for a different purpose; only for the purpose of interpretation. The whole object of the Bill is to shorten the life of litigation so that justice would not be delayed. In certain cases at least, I feel that a lot of litigation might be shortened if 115 is retained. 227 may not be sufficient; it should be sparingly used.

SHRI S. N. PHUNKAN: About settlement of notices, I may point out that we are a successor State to Assam. Where we felt so, we had settled things. But some things might have been by the Assam State.

MR. CHAIRMAN: I thank you for your evidence. On behalf of the Committee I have to make a special request to Mr. Phunkan so that he could send us a brief note on the points which he wants the Committee to consider seriously. That note should reach the Secretariat before the 15 February 1975. Thank you very much.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE I OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Monday, the 13th January, 1975 from 10.00 to 11.40 hours in Committee Room, Assam Legislative Assembly Building, Dispur (Gauhati)

PRESENT

Shri L. D. Kotoki—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Debendra Nath Mahata
3. Shri V. Mayavan
4. Shri R. N. Sharma
5. Shri T. Sohan Lal

Rajya Sabha

6. Shri Sardar Amjad Ali
7. Shri Bir Chandra Deb Barman
8. Shri Nawal Kishore
9. Shri Syed Nizam-ud-din
10. Shri Dwijendralal Sen Gupta
11. Shri M. P. Shukla

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committe Officer.*

WITNESS EXAMINED

Shri A. R. Barthakur, Advocate, Gauhati.

[*The witness was called in and he took his seat.*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidenct to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

You have not sent us a written memorandum.

SHRI BARTHAKUR: I have not got a copy of the Bill.

MR. CHAIRMAN: Here it is. You can give us your general views now and later on after studying the Bill, you may send us by the end of this month a detailed memorandum incorporating your views.

SHRI BARTHAKUR: Yes, Sir. From my practical experience, I shall give certain suggestions. My experience is that the service of process accounts for much of the delay in civil proceedings. Sometimes the process servers send a note saying that because of shortage of time, the process could not be served. Sometimes they serve it on wrong persons. Sometimes they do not report at all. Sometimes it takes 1 to 2 years even for serving the process. Some restrictions should be put on the person responsible for service of the process. Not more than 2 months' time should be allowed for that. If it is found that the officer concerned was negligent in discharging his duty, he should be taken to task and the extra cost incurred by the party concerned should be realised from him.

MR. CHAIRMAN: When the parties deliberately avoid the serving of process by giving false addresses etc. What is to be done?

SHRI BARTHAKUR: They can be taken to task.

SHRI M. P. SHUKLA: Would you suggest that there should be a provision that all the three steps—serving the process, sending a registered notice and publiction in the press—should be taken simultaneously, instead of one after the other?

SHRI BARTHAKUR: That will certainly improve matters.

MR. CHAIRMAN: Any other causes of delay?

SHRI BARTHAKUR: I have got a number of suggestions to offer.

MR. CHAIRMAN: Process serving causes a lot of delay and you have suggested some measures. We will examine them.

SHRI BARTHAKUR: About adjournment, as you have suggested, it has got two aspects. Sometimes, the parties are responsible and sometimes there are genuine cases. When you come to the completion of the hearing, then, adjournments are sought for. Sometimes, we pray for adjournment because we do not get copies.

SHRI M. P. SHUKLA: Sometimes, we do not get the witnesses. Sometimes, we do not get the lawyers. These are also there.

SHRI BARTHAKUR: There are a number of things which are to be considered in the matter of granting adjournment. As you have said, sometimes, the witnesses are not available. Certain time limit should be fixed. If it is found that somebody is wilfully delaying the appearance of the witnesses, adjournment should not be granted. Secondly, after the completion of the hearing, arrangements should be made to furnish copies.

SHRI M. P. SHUKLA: There is already a provision, I think, in the presents Code. Mr. Maitra may be able to point out the rule by which the supply of copies...

MR. CHAIRMAN: Mr. Barthakur suggests that as soon as hearing is over, copies should be supplied.

SHRI BARTHAKUR: This is not there. This has not been provided for.

MR. CHAIRMAN: He is suggesting that we should provide for this. Mr. Shukla points out that it may be there already, in the existing Code. You may kindly see. The learned witness suggests that this should be examined, whether the copies should be provided.

SHRI BARTHAKUR: Free of cost or at nominal cost.

MR. CHAIRMAN: Your suggestion is that copies should be provided?

SHRI BARTHAKUR: Simultaneously.

SHRI SARDAR AMJAD ALI: Copy of evidence?

SHRI BARTHAKUR: Copy of evidence of witnesses. I sugegst that you should provide that we should got the copies at a reasonable time after the hearing is over. In most of the cases, specially in our State, we find that we do not get the folios and in the folios, you can get only maximum 30 words and a lot of space is also wasted. So, something should be done.

SHRI M. P. SHUKLA: I think copies of statements of witnesses in civil cases are not essential. In the civil cases, the lawyers can go into the statements of the witnesses. This may be hardly 3-5. This may be in the case of criminal cases where the process of cross examination, at times, continues at length just to bring out the truth. So, it is very necessary. Here, I do not think, it is very necessary. Mere inspection can do, as at present we do. Even without a proper application, the lawyer can take the file from the case card and go through it. We have been doing this. In our part, we do like this.

SHRI BARTHAKUR: In ordinary cases, it is not very difficult. You must make a distinction. If you take up the Code itself we shall have to make some provision which goes to the very root of the problem.

SHRI M. P. SHUKLA: We have noted your suggestion.

SHRI S. K. MAITRA: If there are a large number of defendants. and if copies are to be given simultaneously to each of the defendants, how many carbon copies will be prepared?

SHRI BARTHAKUR: This aspect is also there.

SHRI S. K. MAITRA: This is not practicable. This really difficult.

MR. CHAIRMAN: Do you suggest that when the evidence is recorded, simultaneously typed copies should be made and handed over to the parties, and no certified copy is necessary?

SHRI BARTHAKUR: If certified copy is considered to be necessary. . .

SHR S. K. MAITRA: At one time, you can make only six copies. If there are a large number of defendants, then, so many copies will have to be made.

SHRI BARTHAKUR: If you want to avoid delay, then, we shall have to make some provision This is my feeling. If five or six copies can be made, I do not see any difficulty why another six copies cannot be made.

SHRI S. K. MAITRA: Simultaneously, more than six copies cannot be made.

SHRI BARTHAKUR; We can get them printed or cyclostyled. The most important point to be taken into consideration is that the number of copyists in our State is small. They say 'We have not got sufficient number of copyists; we cannot give you more copies; This amounts to a lot of delay. This is one of the causes of delay. If steps can be taken to give certified copies without delay expeditiously, this will avoid delay. Then, Section 149. This is in regard to deficit court fees. Something must be done about this. We have the experience that the courts, under the powers given under Section 149 have grant long adjournments for the purpose of giving deficit court fees.. A limit should be put. The discretion has be a limited discretion.

MR. CHAIRMAN: Your idea is that more time is given to furnish the deficit court fee. Your suggestion is that this should not be allowed.

SHRI BARTHAKUR: There should be a limit.

SHRI M. P. SHUKLA: You can say that it should be dismissed

straightaway: Since, this is one of the causes of the delay, you can say that a reasonable time should be given and this should be given only once.

MR. CHAIRMAN: Mr. Barthakur, since you have made this suggestion, I think it will be in conformity with your suggestion ...

SHRI S. K. MAITRA: There is one difficulty. Supposing, the time imit is put and the deficit court fees are not put in, the plaint will have to be rejected. Rejection of the plaint has the effect of a decree which is appealable under Section 96. The appellate court will allow time.

SHRI BARTHAKUR: The limit should be put in the section itself.

SHRI S. K. MAITRA: This is for the trial court. For the appellate court, you will have to say, where an appeal lies, the appellate court shall not grant leave.

MR. CHAIRMAN: I think this is not a point which deserves examination.

SHRI M. P. SHUKLA: One point should be made clear. The court fees may be deficit because of various interpretations you should say that there should be no appeal. Time should be given only once. If it is not given within that time, the suit should be rejected.

SHRI BARTHAKUR: This matter can be taken up along with the appeal which he wants to prefer. Under section 149, discretionary power has been given to the Court and this accounts for a lot of delay really.

MR. CHARIMAN: That point requires to be examined. Your suggestion is that time should be fixed?

SHRI M. P. SHUKLA: Sometimes it is purposely made in order to bring a case within the purview of certain courts. Suppose a suit is valued at Rs. 5,000 by one court and it is valued at Rs. 3,000 by some other court, that court may be convenient for him; he may reduce the valuation and the court fee. The defendant will take the objection that it had been undervalued. Suppose a time limit is fixed and the other party will go in appeal even if it is rejected. The point of delay will not be met.

SHRI BARTHAKUR: The admitted court fee admitted by both parties should be paid.

SHRI SYED NIZAM-UD-DIN: The question of court fee is not a matter between parties.

SHRI BARTHAKUR: That question can be kept open.

SHRI SARDAR AMJAD ALI: Suppose a time limit is fixed to pay the deficit court fee. That decree is not appealable, for default of deficit court fee.

SHRI BARTHAKUR: So far as the appeal is concerned, it will not take much time. There is no question of printing paper books; it might be heard only on the question of valuation.

SHRI S. K. MAITRA: Experience shows that invariably the appellate court grants time. If the court fee is not paid, the plant has to be rejected and rejection of the plaint is also a decree. Therefore it is automatically appealable. If it goes to the appellate court, it grants time. The purpose will not be served unless we make it non-appealable.

MR. CHAIRMAN: We shall examine it, whether it could be provided you may go to the next point.

SHRI BARTHAKUR: I come to appeals. In most High Courts, they make rules providing for preparation of paper books and printing paper books. It causes inordinate delay in most of the second appeals filed in our High Courts. In respect of a 1967 appeal, paper book is yet to be made ready. There are a number of cases. You should dispense with the printing of paper books. If we argue a case in the lower appellate court on the basis of document available with the court can we not argue a case in the

High Court also on the basis of available records?

SHRI S. K. MAITRA: The Code does not provide for paper books; it is provided for by the High Court rules.

MR. CHAIRMAN: Would it be possible to provide for that in the Code itself? That is a point to be considered. Even without insisting on printing paper books, the appeal can be heard. That is the suggestion. It is for us to examine how this could be done.

SHRI M. P. SHUKLA: Paper books are not printed, not because of the rules. The party which has to pay for the cost of printing does not want to pay, because it might be to its advantage to get the suit prolonged. We can suggest this to the High Courts. This was probably necessary when the language of the High Courts used to be English only and in the lower court the witnesses spoke in the local language. Now it may not be necessary. The High Courts should modify their rules in this regard. What else can this Code do? There will be many other matters like that.

SHRI BARTHAKUR: I agree with his. We should not mix up this with translating certain documents. Some witnesses give their evidence in Assames and the High Courts language is English. That has to be translated. That must be there. Practical experience is that printing paper books involves a lot of delay and cost also. Could not some measures be thought of?

SHRI M. P. SHUKLA: we agree with your suggestion in this respect. How to do it is the point. A working arrangement can be made between the High Court and the district court. Cost and delay are involved in this matter.

MR. CHAIRMAN: To me it appears staggering that an appeal is pending for the last seven years due to this. It is a matter, which has to be examined. Otherwise we make a Code here and so many loopholes are there. It must be looked into.

SHRI M. P. SHUKLA: The Law Ministry should call for statistic from the High Court about cases pending for want of printing books.

MR. CHAIRMAN: I endorse the suggestion. The Law Secretary will take note of it.

SHRI BARTHAKUR: Then the records are not properly maintained and so in spite of repeated reminders from the appellate court, the records do not go. Something must be done for the proper maintenance of records by the trial court.

MR. CHAIRMAN: What is the delay on this account?

SHRI BARTHAKUR: There is no hard and fast rule sometimes it takes 1or 2 years for the records to go from the lower to the higher court even though they are situated in the same place.

SHRI SARDAR AMJAD ALI: Do you think lawyers have some hand in that?

SHRI BARTHAKUR: It will be too much for me to say about that. Some provision should be made in the Code itself to reduce this delay.

SHRI M. P. SHUKLA: Just as there is a limitation for appeal, there should be a time limit for calling of the records. If the staff are responsible for the delay, they should be penalised. This should be made the responsibility of the presiding officer.

SHRI BARTHAKUR: Then I come to examination of witnesses on commission. I appeared in a case where an hon. Member from Rajya Sabha had the privilege of dealing with that matter. The commission was issued in 1960, but it could not be returned till 1974. The quarrel was between two brothers. The mother used to stay with the youngest brother. The elder brother wanted to bring the mother to the local dharamsala on the contention that she would speak the truth only at the dharamsala. They are rich and both of them engaged big lawyers.

MR. CHAIRMAN: Whatever be the relationship between the parties, this delay is too much. This should be taken care of.

What is your experience about the time taken by the courts to deliver judgment after the closure of evidence and conclusion of arguments?

SHRI BARTHAKUR: In High Courts, it takes a lot of time. In the case of lower courts, in Assam recently we have seen some improvement because of the quality of the Judges. But, we have not been able to draw good people to the Bench to several reasons. The time taken is sometimes 6 months, sometime 1 year.

SHRI SARDAR AMJAD ALI: There should be some time limit on the judges also to write the judgment.

SHRI BARTHAKUR: Yes. In a Board of Revenue matter from Jorhat I have requested the judge to deliver the judgment, which has got a lot of consequences. 4 months have passed but still it has not been delivered. A simple question about limitation is involved in the said matter.

MR. CHAIRMAN: The judge has to bear in mind the demeanour of the witness, what emphasis is to be placed on the evdence. etc. If so much time lapses between the time of conclusion of evidence and the writing of the judgment, is it humanly possible to remember the demeanour of the witnes, etc,? The remedy is that it will increase the number of presiding officers. If you take a case. ....

MR. CHAIRMAN: To meet the ends of justice, with a view to avoid delay, something should be done, if possible, to provide that there should be a totality of time from the institution of the suit to the passing of the judgement.

SHRI BARTHAKUR: That you cannot do. We cannot fix the totality of the time, as you have said, from the institution of the suit till the disposal of the suit because many matters will intervene. So far as the writing of the judgement is concerned, I think there will be no difficulty and you can impose a time limit.

SHRI S. K. MAITRA: So far as the point made by the Chairman is concerned, I may inform the Committee that all the High Court rules provide for this. From the date of institution of the suit, not more than one year should elapse. If, it exceeds one year, the judge has to explain the causes or delay.

MR. CHAIRMAN: The objective of this Bill is to avoid delay. Something can be provided here. There are also many things involved in this like the responsibility of the administration. quality of the judges and so on. You cannot take a suit in isolation, when you think of reducing delay. We will examine this.

SHRI SYED NIZAM-UD-DIN: Would you refer to the provisions for filing of written arguments?

SHRI BARTHAKUR: As a lawyer, I will not object to that definitely. If it can assist the judge for filing of written arguments, definitely, we will be at his disposal. But, I do not think, this is the cause of delay.

SHRI S. K. MAITRA: Would it be practicable to put a statutory time limit with regard to delivery of judgements?

SHRI BARTHAKUR: Why not? So for as the writing of the judgement is concerned, I think, there will be no difficulty.

SHRI S. K. MAITRA: Some cases may require longer time some cases may be done quickly. Would it be practicable?

As you know, in th case of election petitions, we have provided for six months time. But, no case is completed within six months. Therefore,, if it is statutorily. .. ..

SHRI BARTHAKUR: But, as the hon. Chairman has pointed out, you cannot fix any time limit from the date of institution till the disposal of the suit.

SHRI S. K. MAITRA: Even for delivery of judgement, would it be Practicable.

SHRI BARTHAKUR: You can fix a longer time.

SHRI S. K. MAITRA: What would be the longer time?

SHRI BARTHAKUR: Not more than three months. Three months time is enough. Otherwise, the judge will forget what has been actually argued before him.

SHRI SHUKLA: Mr. Maitra has said that rules are provided in the High Courts with regard to the time limit from the institution of the suit till the disposal of the suit. We will be grateful if copies of rules in different High Courts are furnished to the Committee, so that the Committee can go into this.

MR. CHAIRMAN: We will get this from the Law Ministry.. The point is that,, hearing of the arguments and the writing of the judgement should be a continuos process. Just as in the crimianl cases, where under the jury system, they retire and come back and deliver the judgement, why not in the civil suits also, after the arguments are over, the Court retires, writes up the judgement and then delivers it and takes another case?

SHRI BARTHAKUR: There is some difficulty.

MR. CHAIRMAN: Would that not be ideal?

SHRI BARTHAKUR: If that can be done, nothing like that.

MR. CHAIRMAN: Justice delayed, justice denied.

SHRI S. K. MAITRA: As you know, in the old Criminal Procedure Code. So far as questions of law were concerned, the judge was the final authority. In civil cases, not only facts have to be decided, put, complicated questions of law have also to be decided for this purpose documents have to be read, various conflicting rulings have to be considered and all these take time. So, in civil cases, immediate delivery of the judgements may not be possible. In case of small cause suits, where it is only a question of fact, the rule is that judgement has to be delivered then and there. But, where questions of law are involved, it will be difficult.

SHRI BARTHAKUR: I agree with Mr Maitra that in civil matters, it will be difficult.

Then, I come to the execution side. So far as execution is concerned, I think, it should be a continuous proceeding. Instead of filing a separate execution case, after the delivery of the judgement and the decree is passed. I think a lot of time can be saved. if the execution is started in the same proceedings.

MR. CHAIRMAN: By the same Court?

SHRI BARTHAKUR: In the same Court and in the same proceedings. I have sometime in mind about the time limit for the execution of the decree. But, the whole purpose will be defeated if the execution court is allowed to take its own time to decide certain matters which would have been decided in the original suit. Let us say, I file an execution proceeding. But, it may be said that the property was not properly described and therefore it is not executable. That matter is left open before the executing court and then the hearing takes place and so on. Ultimately, it takes years together. So, my suggestion would be that if it is so worded as to make it a continuos proceeding and the objections which were not taken in the original suit are not allowed to be taken in the execution proceeding, it will save a lot of time.

Now, Section 47, I feel that it should be also be restricted because it has given certain discretionary powers to the executing court and we should do something about it.

MR. CHAIRMAN: What would you specifically suggest?

SHRI BARTHAKUR: As I said, the objections which were not taken in the original court should not be allowed to be taken. Now, in regard to Question No. 2, certainly, to save time, we can serve certain types of notices on the pleader. But, this should not be in all the cases.

MR. CHAIRMAN: You do not consider it desirable to permit the service of all processes?

SHRI BARTHAKUR: Not in regard to all processes. In certain matters a lawyer cannot take the responsibility. But, in regard to certain formal matters, definitely notices can be served on them.

About the publication and preparation of the record of rights, I think, the Civil Procedure Code should not be made very bulky so as to bring these things within its purview because land matters and record of rights differ from State to State and this should be left to the State Government and the State legislatures. So far as Question No. 4 is concerned, here also, I do not think it should be brought within the purview of the Civil Procedure Code. It should be left to the revenue courts because state laws differ. In Assam, we have got a peculiar land system which, I think, differs in material particulars from the land system in other States of the Union.

SHRI BARTHAKUR: About question No. 5, I should think that the court fees should be reduced. In our High Court, the other day we used to file a writ application by paying Rs. 6/- as court fee. Now the Assam Government had raised the court fee to Rs. 50/-. In the Supreme Court, we have to pay Rs. 250/- as court fee for filing a special leave petition.

SHRI SARDAR AMJAD ALI: What is your suggestion for incressing the revenue?

SHRI BARTHAKUR: The Court fee should not be taken as a source of revenue to a State.

SHRI S. K. MAITRA: Court fee is a State subject; it is not within our purview.

MR. CHAIRMAN: Court fee is one of the heavy items of cost of a suit.

SHRI SARDAR AMJAD ALI: You have mentioned court fee. Do you think that the counsel's fee is also an item in the cost of litigation. Do you agree that certain limits should be fixed for the counsel's fee?

SHRI BARTHAKUR: It has got some connection with the larger questions also. Suppose you fix a certain fee on the paper and people take money under the table? It is already there.

SHRI SARDAR AMJAD ALI: There is a prescribed limit according to the High Court rules. A particular lawyer takes more than the prescribed fees. Is he liable to be prosecuted under the Advocates Act?

SHRI BARTHAKUR: I do not think so.

SHRI SARDAR AMJAD ALI: Is it not misconduct?

SHRI M. P. SHUKLA: You will have to evolve an agency to find that out and impose a punishment.

SHRI SARDAR AMJAD ALI: Some body engages me as his advocate and he gives me certain directions. If I disclose it to the other party it is misconduct. The aggrieved party can make an application to the Bar Council and the Bar Council can issue summons to me to explain my conduct. If I do not justify my conduct my licence can be cancelled. Do you think that the demand and acceptance of an enhanced fee will also be

treated as misconduct under the Bar Council rules?

SHRI BARTHAKUR: You can do so but it will remain as such on paper; it will be observed more in violation. You will be depriving the bulk of the litigant public of the best legal brain that he entitled to and can pay for.

MR. CHAIRMAN: What about the opposite party then? An affluent party can go in for the best cluster of brains. There is a poor fellow on the other side and probably he has a better case. How should this be looked into.

SHRI BARTHAKUR: I have seen the Prime Minister's statement on this point. Because of the poverty of the people even in genuine cases, people do not get the best legal service because they could not pay for it. You can remedy the defect to some extent by appointing suitable people to the judgeship. It does not depend upon arguments alone; it depends upon the calibre of the judge also to understood the law and do justice to all concerned.

MR. CHAIRMAN: In that case, if you leave things to the judge, the other side also need not be represented. When one side is represented by lawyers, the other also must be given legal advice so that the court may be assisted to come to proper judgement.

SHRI SARDAR AMJAD ALI: He says the Law Ministry is not appointing proper judges; if you allow me, I am in full agreement with him. Even after the conclusion of the arguments, the judges take a lot of time to deliver judgements. There are judges who find time to go to clubs but they do not find time to write or deliver the judgements; the litigant public and the lawyers are harassed.

SHRI M. P. SHUKLA: My friends from the Lok Sabha should make a note of this and when the demands for grants of the Law Ministry come up for discussion, they should ventilate this point of view.

MR. CHAIRMAN: Question No. 6 relates to aid to poor litigants. Do you agree on principle that no litigant should be allowed to suffer in the matter of getting justice because of his poverty?

SHRI BARTHAKUR: Yes.

About question eight regarding preliminary objections, I feel that will be difficult. So far as review is concerned, in many cases, it is very important but, it becomes difficult when you look at the court fees.

About question 10, I feel section 115 should not be deleted.

MR. CHAIRMAN: On that, I would like to have a note from you. It is claimed that article 227 gives adequate relief for getting redress on the same matters which are provided in section 115.

SHRI BARTHAKUR: We must make the C.P.C. a self-contained code.

SHRI SARDAR AMJAD ALI: Is there a single self-contained code? About procedural matters regarding articles 32 and 226, the Constitution does not prescribe the rules and procedure of filing a writ petition. Even the Constitution is not self-contained.

SHRI BARTHAKUR: For that, the High Courts have prescribed the rules. We must not look at article 227 with the same eyes as section 115. They are not identical. The tendency in the Supreme Court and High Courts these days is they do not like to admit even good cases because the number of pending cases is very high. So, if you delete section 115, many people will not get justice. To avoid delay, when you get a matter admitted under section 115. you can allow the main suit to proceed; it is not necessary to wait for the disposal of the application under section 115.

SHRI SARDAR AMJAD ALI: Because section 115 is there, the High Court is not entertaining applications under article 227.

SHRI BARTHAKUR: It cuts both ways. Our experience is; article 227 is of little help to the litigants specially in regard to civil matters. I feel the purposes of article 227 and section 115 are quite different.

MR. CHAIRMAN: You kindly study the notes on clause 45 at page 107 and send us a written note. Kindly see if there is duplication.

SHRI BARTHAKUR: Yes Sir.

MR. CHAIRMAN: We have to examine it carefully whether those things that are provided under Section 115 can actually be availed of under Article 227.

SHRI BARTHAKUR: I would like to draw your attention to Section 80 of the Code. My submission is that it is absolutely redundant. No Government Officer nowadays wants to take the responsibility, so far as Section 80 is concerned. Practically, it is inoperative.

MR. CHAIRMAN: You agree with this deletion?

SHRI BARTHAKUR: It does not serve any purpose whatsoever.

MR. CHAIRMAN: One view is that notice under Section 80 avoids litigation.

SHRI BARTHAKUR: Actually, during the last eleven years. I have not come across a single case which was sorted out by serving a notice under Section 80. I do not think it is necessary. It does not serve any purpose. There are practical difficulties. Let us say, Government wants to deport a certain person immediately saying that he is a foreigner. He may be actually an Indian Citizen. If he wants to file a suit, what is the remedy? He cannot go to the Court until he serves a notice under Section 80. The purpose is defeated. Then, something should be done about Section 82.

MR. CHAIRMAN: In such cases as you have referred to, namely, deportation of a citizen, if it is provided in the Code itself that the Courts can interfere and issue injunctions?

SHRI BARTHAKUR: One has to discriminate.

MR. CHAIRMAN: It has been claimed that the purpose of section 80 was to avoid litigation against the Government which consists of a number of persons and that decisions have to be taken at various levels. This is sought to be deleted. But, we have to examine.

SHRI BARTHAKUR: The question is, it does not serve any purpose, according to me. Nobody wants to exercise his discretion on a particular matter because they may be taken to task and malafide may be imputed. Now, Section 82. After the whole suit is decided, Government is again given some time for the purpose of satisfying the decree. At least in money matters, that should not be allowed. After the institution of the suit, you serve notice on the Government to settle the suit. Then, after the decree is passed, Government is given a longer time to pay the decretal amount to comply with the decree.

MR. CHAIRMAN: You do not want that time should be given?

SHRI BARTHAKUR: It should be executed as an ordinary money decree. It should be left to the discretion of the Court to fix the time.

SHRI S. K. MAITRA: The Court will fix the time within which the decree has to be complied with. The Court has also been given the power to extend the time.

SHRI BARTHAKUR: I can bring the records of about 13 cases which are on my table now involving lakhs of rupees and no Government Officer wants to take the responsibility. They want order from the Court. As a result, we are shuttling between the Supreme Court, the High Court and the Courts of the District Judges at Shillong and at Gauhati. But, we are not getting the money at all. The purpose is defeated.

SHRI SARDAR AMJAD ALI: Would you kindly enlighten the Committee as to what is your view about injunctions granted in cases where the lands vest with the Government? Because of the injunctions, lands may not be distributed to the landless labour. Are you in favour of the suggestion that in such types of cases, injunctions should not be granted? The lands may not be distributed to the actual beneficiaries because Courts do interfere in such matters.

SHRI BARTHAKUR: I see the importance of the question. Let us say, a particular property belongs to a particular person, jotedar. Those lands are sought to be distributed among the landless people. But, in this case, that particular person will be put to hardship. He should be allowed to retain at least 50 bighas of land which he would be entitled to retain under the ordinary laws of the country. So, you cannot make a general statement. Individual cases have to be decided on their merits. I may refer to a particular case which I have taken to High Court. He is the owner of Satra. A patta has been issued in his name. Government wants to enquire that land, and distribute that land among the landless under the Revenue law. A lot of hardship is being caused to him. It will be difficult to make a general law. They should be left to be dealt with by the local legislation. So far as principle is concerned, it is all right.

SHRI SARDAR AMJAD ALI: You say that in matters of record of rights and so on, things should be left completely to the revenue courts. This has been your argument. Why not you refer this matter to the revenue courts for settling this, whether the land is properly vested or not?

SHRI BARTHAKUR: So far as our land revenue regulation is concerned, elaborate arrangements have been made. If there are wrong names, you can appeal and get them corrected. You can go to the district authorities, the Board of Revenue and to the High Courts and so on. So far as Assam is concerned, I do not think there will be any difficulty to deal with the types of cases to which you have made a reference.

MR. CHAIRMAN: On behalf of myself and on behalf of my colleagues in the Committee, I thank you for the cooperation which you have given and for the valuable suggestions you have made. We will examine them very carefully. I also request you to send whatever written memorandum, etc. you would like, particularly on the points we have discussed, as early as possible, preferably by the end of this month.

SHRI BARTHAKUR: Thank you very much for giving me this opportunity.

[The Committee then adjourned.]

RECORD OF EVIDENCE TENDERED BEFORE SUB-COMMITTEE II OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Friday, the 17th January, 1975 from 10.00 to 14.00 hours in Tilak Hall, Council House, Lucknow.

PRESENT

Shri Rajdeo Singh—*In the Chair.*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri M. C. Daga
4. Shri Mohammad Tahir
5. Shri Satyendra Narayan Sinha

Rajya Sabha

6. Shri Krishnarao Narayan Dhulap
7. Shri Kanchi Kalyanasundram
9. Shri V. C. Kesava Rao

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. D. Chatterjee—*Chief Examiner of Questions.*

WITNESSES EXAMINED

I. *Government of Uttar Pradesh (Judicial & Legislative Department)*

Spokesmen:

1. Shri K. N. Goyal—*Secretary*
2. Shri B. D. Agarwal—*Deputy Legal Remembrancer*
3. Shri S. N. Sahai—*Deputy Legal Remembrancer*

II. *Government of Bihar (Law Department)*

Spokesmen:

Shri Durjodhan Dash—*Deputy Secretary.*

III. Shri Rudra Pratap Rai—*Advocate, Joint Secretary, Civil Court Bar Association, Jaunpur.*

I. *Government of Uttar Pradesh (Judicial and Legislative Department).*

Spokesmen:

1. Shri K. N. Goyal—*Secretary.*
2. Shri B. D. Agarwal—*Deputy Legal Remembrancer.*
3. Shri S. N. Sahai—*Deputy Legal Remembrancer.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Let us begin now. In the beginning, I may inform you that there is a direction from the Speaker of the Lok Sabha and that is like this—"Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now I would request Mr. K. N. Goyal to proceed with his valuable opinion or suggestions regarding the Bill and its amendments.

SHRI GOYAL: I would respectfully submit that the Bill is a vast improvement on the existing provisions of the Code of Procedure. I may also say that the U.P. Government has already submitted a memorandum and I hope copies of that memorandum may be available to the Hon'ble members. In any case I would make my own suggestions according to the questionnaire and also according to the points I have noted, Sir.

I went to the reports of the administration of justice. In U.P. I found that out of about 150 thousand cases instituted in a year about 50 thousand are decided under Order 9 in the first instance. 3 thousand cases were decided on admission of claims and about 15 thousand cases were settled on compromise. After overall trial i.e. 20 thousand contested cases were decided. I also found that to arbitration only 100 cases were referred. This is very sad state of affairs so far as the arbitration is concerned. It means that about one case in 2 thousand cases were referred to arbitration. This shows that arbitration is not very popular. So one thing that could be done about reducing delays and expensiveness would be to make arbitration more popular or more acceptable but at the same time it will not be appropriate to make the arbitration compulsory because the compulsion goes against the very concept of arbitration. I would respectfully submit the causes of delay. If we could have overall view not only the Civil Procedure Code, the Contract Act and the Evidence Act, all these are inter-connected. So this arbitration I mentioned only because this was the figure which I found. Now the duration which I found was that the average duration of cases decided after full trial is at least one and a half year and when it goes in appeal then it also takes another one and a half year. The case when decided in full takes at least three years and the case thereafter further takes time in execution and then execution appeal and so on. The result is that a plaintiff who has to spend about 10 per cent on court fee and 10 per cent on counsel's fee and 5 to 10 per cent on other expenses, he thus goes out of pocket. Even if he gets costs after the settlement of the case he gets only about 25 to 30 per cent and that too he would get after lapse of so many years. So we have to think reducing the time lag, reducing the cost. The delay causes further delay

unless one of the parties gets vested interest in delays. The delay, cost and the difficulty in proof, all these combine together make the people to suffer all the many, injuries otherwise which they would like to redress against. They do go to courts and Indians are said to be litigious but the fact is that in claims for damages or loss to person, few claims are filed, because the people go to court only when absolutely necessary. For instance in the High Court maximum number of writs are filed either on service matters or about consolidation of holdings. The former are filed because of livelihood, and the latter are filed because it affects their property and also because it affects their livelihood. It is only because then it is necessary and then they are desperately driven to court, otherwise they suffer in silence. Even the Government has on the basis of its experience of litigation recognised that it is very expensive to go to court and therefore they have made special laws for recovery of dues and recovery of possession and also for sale of mortgaged property. There are other institutions also just as the semi-government institutions who also want some facilities and now even the commercial banks are pressing the governments of the different States that unless they are given the same facility as are available for the recovery of government dues they would not extend the credit operations to their States. So the State Governments are obliged to give to the Commercial Banks the facilities for the recovery of their dues as are given to government dues. They also get the power to get the property sold without intervention of the courts. So this shows that our Code, although, it is judicially very perfect, in as much as the party gets the maximum opportunity to get the hearing in every respect, to judge it judicially, perhaps it is so perfect that one can hardly make an improvement over it. But however there is one thing that it takes a lot of time and lot of expenditure to the parties or the genuine litigants that they suffer while the unscrupulous party gains. In U.P. we have attempted to reduce the delays by abolishing unnecessary practices prevalent in the decision of cases over the valuation. We have also set up the prescribed authority in some cases of ejectment in urban areas. Similarly we have tried to improve the public money recovery by introducing an effective Act. Then we also made amendment in the Civil Procedure Code. These are some of the amendments we have attenpted at the State level.

Now I would make some humble suggestions. One of the suggestions is, Sir that in the appeals the service of processes takes long time because while the case is going on in the Lower Court the parties get their applications served on each other. The copies of the applications are delivered to the counsel on the other side when the case is in the trial court but when the case goes in appeal then the party which has to be directly served takes long time. It is mentioned that the counsel will be competent even in appeals if he files the Vakalatnama but what happens is that the counsel says that he must have instructions and only then he can be authorised agent for receiving processes but he can intimate the client and require the client to deposit with him in advance registered envelope or a self-stamped envelope so that he can subsequently inform.

Another suggestion is that the cost of witnesses who are not summoned through court should also be taxable. At present the parties want processes to be obtained through the court We should require them to bring their own witnesses wherever possible and only in cases when the witnesses obviously are those who cannot be persuaded for instance the Government servants may not give the evidence at the behest of the private party, only in those cases the summons should be applied for to courts. Unless there are exceptional reasons, he

should bring his own witness and so this cost should be taxable. In Government cases the government officers are called by the Government and no summons is obtained. Because there is no summoning, therefore the expenses of the witnesses are not taxed. So this is my another suggestion.

Thirdly, Sir, the party seeks adjournment of an hearing not merely by the discretion of court but as a matter of requirement of the C.P.C. What happens is that the court awards the cost of adjournment payable to the counsel. Of course the counsel should be compensated. Here I would say that parties and the witnesses also suffer, not merely the counsel alone.

Then, Sir, sometimes both parties make a joint application for adjournment. In those cases no costs are payable to either party, and the court's time is wasted. In that case some cost should be levied in the form of special court fee so that the Government's time and the time of the court is compensated.

The next thing is about the Order XVII, Rule 3 of the C. P. C. It has been a source of much fruitful litigation. No useful purpose is served by Rule 3 and the matter may be decided on merits even when the other party is absent. Even though it may have been conceived as a salutary provision in order to penalise a party who is unreasonably absent, what happens in such cases, is that the matter goes in appeal in an appellate court, the court is inclined to take a liberal view and remand the case for decision on merits, even though the party may be penalised by cost. It is better if we amend rule 3 altogether. Where the party is exceptionally at fault, he may be penalised by a special cost at the time of restoration of case.

Waste of time also occurs in fulfilling the requirement under Order XVIII, Rule 5. This is usually not followed in practice. If it is followed, it results in considerable loss of time. In the case of illiterate witness when the statement is recorded in the presence of the court, then it should not be necessary to read over the same again before him.

Order XVIII Rule 11 says that when a question is objected to, the question should be recorded the objecton, should be recorded and the answer, made by the witness should be separately recorded. If it is not insisted upon, it would be better so that if any party is aggrieved by the question being allowed, he can put an application and set out all the facts and the court may not be put to botheration of recording all those questions and answers.

In ex-parte case, if the pleadings itself could be on affidavit, then it would not be necessary for the plaintiff to have to be examined orally. Then the court, can, if the defendant is absent in spite of service, treat a plaint itself as an evidence of claim because it would be on affidavit. If it is satisfied on the averments made on the plaint, then it can decree the claim without requiring any evidence to be recorded orally.

Another suggestion is, Sir, that under Order XXIII Rule 3, —the compromise or adjustment, if it is required to be recorded must be in writing and signed by the parties concerned. Either it should be recorded in the presence of the court, or if it is said to have been arrived at outside the court; then it must be in writing and signed.

An useful improvement has been made in the Bill by extending the provisions of Order XXXVII of the C. P. C. to various classes of—the court and not superior courts. I think it can be further extended. For instance almost in many other money suits, the provision could be extended. For instance, in rent cases we have already made a provision in U.P. that the admitted amount must be

deposited before contesting the case. So we can also provide in Order XXXVII that the party should also deposit in the court the admitted amount apart from leave of the court.

Another thing in this connection is that it seeks to cover the liquidated losses and damages-cases. Even Section 74 of the Contract Act is not conclusive. I would suggest that just as you have incorporated in the Bill an amendment of the Limitation Act a consequential amendment of Section 74 of the Contract Act should also be made so that there could be some finality as to liquidated damages which are specified by agreement of parties in the court, they should be enforceable. There should not be any question of further proof. In works contracts—particularly, it has been seen that the contractor delays the completion of the work unreasonably, the parties suffering from breach are required to prove specifically the damages suffered. Though it is not in the C. P. C., it is a consequential change that either you can make in the Bill or recommend in Order 37 of the C. P. C.

I have already suggested that something should be done about the Arbitration Act. In order to facilitate the proof also some suggestions may be made which are not in the Bill itself.

Then Sir, in Section 34 an useful provision has been made that rate of interest may be charged upto the rate of interest on loans which are advanced by the Nationalised Bank. This is limited where a decree exceeds Rs. 10,000. It does not seem fair barring the middle class and lower class people. Why should middle and lower class man suffer. The man who is claiming an amount more than 10,000/- will get 18 per cent interest, while a man who is claiming Rs. 2,000/- will get only 6 per cent. So, this limitation over 10,000/- does not seem to be reasonable.

In Section 51 it has been provided that the decree should not be executed by arrest or detention .. .. In actual practice this provision of Section 51 is not very frequently resorted to or put in practice by courts, and by making it more restrictive, the court itself will not be usually ordering the arrest of judgement—debter, but to require as a matter of law, it should further be proved that the judgment—debter did not have lawful excuse.

Section 60 is about the relief to agriculturists. It is for consideration whether the bigger farmers should also be given the same protection against the attachment of their property as the smaller cultivators are given.

SHRI M. C. DAGA: Ceiling Law is there. How would you define bigger farmer?

SHRI GOYAL: You can make it 3½ acres or 6½ acres.

Section 80 of the C.P.C. is proposed to be deleted and it has been said that in democratic country, there should not be any distinction. It is not the question of distinction, Sir. But it is the question of differently situated State Government or the Central Government on account of method of working from the other citizens. If it may be justified as a separate class, then it should not be considered undemocratic to have a requirement of two months notice before a suit is filed. As a private citizen, if I get a notice from anyone, there should not be any difficulty in meeting the claim right away. But when the Government is concerned, the matter has to go to different departments and it has to be examined at various levels and the man on the spot may not be able to take a quick decision so he will sent the case for decision at higher ups. The State is not unduly favoured because it is differently situated from other citizens. So Section 80 should be retained.

SHRI S. K. MAITRA: Have you prepared any statistics about the cases,

in which the action has been taken on receipt of notice by the Government?

SHRI GOYAL: It will be difficult to compile the statistics. The files are moved as soon as the notice is received by the administrative department for examining whether the case is fit for contesting or not.

SHRI M. C. DAGA: Can you give some idea where on receipt of the notice the State Government have moved for compromising the case?

SHRI GOYAL: The State Government start taking action as soon as the notice is received whether the case is fit to be defended or it should be compromised.

SHRI M. C. DAGA: In 1974 how many notices have the State Government received under Section 80 and in how many cases the reply has been given by the State Government. Give figures for 6 months or even for 3 months?

SHRI GOYAL: We will try to collect the statistics and send it to the Committee.

MOHAMMAD TAHIR: This proposal has been made so that there should be a mandatory provision under Section 80 to compel the Government that it must settle the case within 2 months' time.

SHRI GOYAL: Either it should settle or it should reply that the claim is not sustainable. I would suggest that in order to enable the Government to take final action, the period of notice should be slightly longer—say 3 or 4 months. People also do not like to go direct to the court and they like to give notice to the Government again. This deletion will not achieve any object.

SHRI GOYAL: You give three months time and then make it obligatory that a suitable reply will be given either to admit the claim or to reject the claim, and if no reply is given then some special costs may be awarded.

SHRI V. C. KESAVA RAO: A litigant hardly files a suit after notice is given.

SHRI GOYAL: This is exactly the same what I am saying.

SHRI V. C. KESAVA RAO: The object of Section 80 is to give Government or public officer an opportunity to examine the legal position. The evidence disclosed that in a large number of cases the Government or public officers make no use of the opportunity offered by that section. In most cases notices are given till after the expiry of the period of two months. On page 56 of the 54th Report Section 80 says "One of the most important sections in this part is Section 80. We fully concur with the recommendation made in the earlier Report for the repeal of Section 80." It is a welfare State. The government servants must be more alert and more active. After all the Court will not grant unnecessary adjournments.

MR. CHAIRMAN: That is the suggestion.

SHRI M. C. DAGA: I have read the two reports.

SHRI GOYAL: What I am submitting, Sir, is that you are now sitting in judgement over of the two reports and you are not bound by their recommendation. If you were bound by them, then there is nothing for the Select Committee to consider.

SHRI M. C. DAGA: That is why we want to have your views on the reports.

SHRI GOYAL: To get the reply in two months' time is too short a period for the final reply.

SHRI S. K. MAITRA: Supposing Section 80 is modified and a notice is provided for. If the notice is not in proper form then what will happen?

SHRI GOYAL: If you make it mandatory then there will be no trouble.

Even today when the court insists on a notice the litigants go to the High Court and file a writ petition there. Sometimes lower courts also miss the provision or they are too lenient, in granting injunction. My personal opinion is that if you decide to delete Section 80 something should be there so that notice could be given to the District Government Counsel. At least fourteen days' notice or one month's notice would be necessary so that before filing a suit the Government may also be informed. In our high court there is a rule that no writ petition is to be filed unless advance notice is given of fourteen days earlier. But in exceptional circumstances the High Court can waive that restriction.

SHRI M. C. DAGA: In this connection there is Order 27. There is limit of two months' time but you have suggested that three months' time should be given.

SHRI GOYAL: Yes, because we thought that two months will be too short a period. So we suggested three months' time.

SHRI MOHAMMED TAHIR: If within two months time, you give proper reply then at least 50 per cent cases will be reduced. They will not be filed.

SHRI GOYAL: In order to make sure that at lower levels proper decision have been taken which do not injure the Government interest two months time is not sufficient. There are different levels of decision and lower authorities are not competent enough to take a proper decision. Sometimes there will be a lot of collusive compromise and then the PAC will haul up the department concerned as to how the compromise was arrived at. These are the reasons why we require more time.

MR. CHAIRMAN: You may now proceed further.

SHRI GOYAL: Then, Sir, Section 82 is being made more onerous from the Government point of view. Now the report to the Government before execution process is issued is being eliminated. This again will be very difficult. Sometimes you might have heard that such and such railway station was attached or the decree remained unsatisfied. So unless adequate time is given the difficulty will still remain as the things have to pass through different departments.

SHRI M. C. DAGA: When the judgment is announced the time is itself given in the decree, and even if in those two months Government is not prepared to make the payment then...

SHRI GOYAL: Sometimes intimation is received late and sometimes there are other irregularities.

SHRI M. C. DAGA: You can make an application to the court and the court can grant you time. But in every judgment the time is always given.

SHRI S. K. MAITRA: The existing provision is that a court has to make a report to the State Government stating that the decree has not been satisfied. Unless three months expire decree cannot be executed.

SHRI GOYAL: That would be all right. Another thing, Sir, I would submit is that order 27 provides for representation of Government in suits through Government pleader. Some similar provison should be made also about the statutory corporations.

SHRI M. C. DAGA: Do you agree to it?

MR. CHAIRMAN: That is accepted.

SHRI GOYAL: I may say that there is special provision about the representation of government in the suits

and I would submit that similar provision be also made about the statutory corporations, for instance the local authorities. They also usually have standing counsel in the courts. In order to save the time spent in serving process that process should be served on S.C. It is not only to the statutory authorities like the local bodies but also about the government companies and I would go to the extent that even in government companies if they intimate to the S.C. to go to the District Court, they should also be allowed to be served through counsel and that would be helpful to both. The defendent would get the facility of receiving prompt information from his counsel in the district and also the plaintiff will be benefitted in saving the process fee and so on. The process can be served in the court itself.

SHRI S. K. MAITRA: You would like that to be extended to the statutory corporation and government companies and even to non-government companies if they intimate in advance. That purpose may be served by amending Order III.

SHRI GOYAL: There should be a standing agent and not a recognised agent even before the suit that I have a particular recognised agent I will serve all cases that may be filed against me in this court.

Another thing Sir in order 25, commissions have the examination of the witnesses. You have suggested that ordinarily the Commissioner should not examine in an interrogatory form but he should examine orally. Ordinarily it should be interrogatory so that the questions and answers should be more precise and the time would also be saved. This would provide an opportunity to have the open commission whenever the parties of the court so deem fit.

Another thing is about order 33. This is about the pauper whom you are calling indigent persons. In actual practice there should be some check on claims for compensation in cases on the so called paupers. The paupers may claim compensation for 2 lacs of rupees frivously claiming whereas the other party will have to pay on the value of Rs. 2 lacs. So some limit should be placed on claims for compensation in suits under order 33.

SHRI MAITRA: You may formulate your proposal.

SHRI GOYAL: I would like to do it.

SHRI M. C. DAGA: Here suppose a suit is dismissed, are we then in a position to recover the amount.

SHRI GOYAL: What I am suggesting is that those persons may be putting forth grossly exaggerated claims in such cases as defamation, injury to one's person or reputation so it has to be considered as to in what form we shall put it.

Another thing is about rule 8(a) which is to be inserted in Order 33. Empowering the court to grant a counsel also to lay down the mode of selection of paupers. This should be left to the State Government because they will have to adjust their programmes according to their funds otherwise they would be obliged to pay the costs of the counsel. Supposing a claim is an exaggerated claim of Rs. 2 lakhs and we have to pay the counsel *ad valorem* and the claim may be dismissed, so we cannot recover that from the pauper.

Similarly another thing is about clause 93, which is also about the indigent persons. Here again you are providing to do away restrictions....

These restrictions appear to be wholesome and reasonable and I do not think we should tinker with it.

Clause 94 regarding applications under article 133 of the Constitution here I would submit that while I agree with its spirit but it does not go far

enough. What I would suggest is that while delivering the judgment entertainment of oral application and right away its disposal be provided for so that the party losing from that court may go straight to the Supreme Court against the rejection or if leave is granted so that he may approach the Supreme Court. When a leave petition is made under article 133, notice of leave application is sent to the parties. That may take a long time. It may go to another bench and then another bench will have to hear afresh. This causes delay and also involves service of processes. Another thing is that the losing party is precluded from obtaining stay of the order which has gone against him. I would suggest that the clause 94 should be amended so that the bench should be enabled to dispose of even oral petitions under article 133 along with the judgment itself.

Another thing is about order 47. Here you are over-ruling the Kerala High Court view.

I think that was a good view which could legislatively be accepted, and in fact if subsequently a decison of the Supreme Court comes which declares the law differently, then why should we bother the Supreme Court again and again. That should itself be treated valid ground for review, for if you find the law declared in a different manner, then in that case the decision itself does become legally erroneous. So I would support the Kerala High Court view for incorporation in the Code itself.

SHRI S. K. MAITRA: Will it not burden the lower courts instead of the higher courts.

SHRI GOYAL: If your honour permits, Mr. Agarwal will supplement the suggestions. I have not lately made a thorough study of this.

SHRI B. D. AGARWAL: I would like to submit about section 11 CPC. This gives rise to a problem and the Law Commission have referred to that problem in their 54th report. They have said it on page 21, which is—"The existence of this condition to a certain extent detracts from the finality of judgments, which gives rise to a certain amount of multiplicity of proceeding".

Supposing a suit were to be filed for arrears of rent in the Small Cause Court and the arrears are claimed at the rate of Rs. 15. The tenant says that the rent payable is at the rate of Rs. 10 only. The Small Cause Court decides the rent as Rs. 10 per month. Thereafter the plaintiff goes to the Munsif's court and the issue is raised there also that the rate is Rs. 10 not Rs. 15 p.m. That point has been decided after litigation in the Small Cause Court but in the Munsif's court it would be said that the Small Cause Court was not the court capable of taking cognizance of the subsequent and therefore that does not come under *res-judicata*.

In Allahabad High Court this question arose and there was difference of opinion in the case reported in A.I.R. 1970 Allahabad 604.

By majority they held that the decision of the Smll Cause Court will not operate as res-judicata. The Law Commission has made a suggestion in this behalf. My submission is that this will lead to multiplicity of proceedings, more of expenses and more of delay. If we amend this clause by putting the words "in a court competent to try such subsequent suit or issue and has been heard and finally decided by such court" the purpose would be served.

SHRI M. C. DAGA: Issues are not framed in Small Causes Court.

SHRI B. D. AGARWAL: This is a point which has been raised. In this Bill there has been nothing said about this aspect of the problem of Section 11. Probably you would like to consider this.

About Section 92 I have to submit that in obtaining the leave of the Court may take equal time. The reason given for this is that the A.G. takes much time. I think, Sir, that A.G. being a man of the public may take into account the legal consideration as well as administrative considerations and he may also take cognisance of the surrounding facts and take a wider view before giving his consent.

SHRI M. C. DAGA: I put a specific question. Generally the Advocate General takes not less than 6 or 7 months in giving permission and that too after a great persuation. It is very easy for a counsel or the client to move the Court and get permission. Kindly give us data or statistics as to how many applications were moved by the people and what was the time consumed by the A.G. The feeling is that even for years together Advocate General does not give reply. You kindly check up.

SHRI B. D. AGARWAL: Section 96. There is an explanation to be added. This is a noval provision but I feel that in most cases this will be merely an academic exercise without any fruitful result. This will result only in multiplicity of appeals and it should not be encouraged. This will add to the burden of costs and time, etc.

SHRI M. C. DAGA: What about the issue that has been decided against him?

SHRI GOYAL: It is open for him to go to the court. But our submission is that he should not be allowed.

SHRI B. D. AGARWAL: Then, Sir, Section 100. This is in relation to second appeal. The provision introduced is that an appeal shall lie if the High Court certifies that the case involves a substantial question of law. When we amended Article 133 recently the rationale as given by the Law Commission at page 75 of their Report was that the philosophy of this amendment is that High Courts in our country should ordinarily decide all questions of law pertaining to the interpretation of State legislation and their decisions on such points should be final. Now that is the logic behind amending the Article 133. If after amending Article 133 and providing a restricted scope there, we at the same time say that no revision shall lie and no second appeal shall lie unless a substantial question of law is there. The result is that in one district a provision is interpreted in one way and in another district it may be interpreted in another way as there is no guidance to the subordinate courts and their decision is final.

SHRI S. K. MAITRA: There is a difference between Article 133 and this. Article 133 says about the substantial question of law of general importance but, according to the Bill, the question of law in the second appeal should not be of general importance. There must must be a question of law between the parties and such must be a substantial one. So the difference between 133 and the suggestion made by the Law Commission is procedural. Now the suggestion is that the Judge must apply his mind and must formulate a question of law stating the reason.

SHRI B. D. AGARWAL: As for the procedural matter it may be all right. But to formulate a question of law and expressing the reasons probably may not be called for, because when the question of law is formulated the question will speak for itself.

SHRI GOYAL: This will delay the cases in the admission stage. Today Judge may decide 50 admission cases in a day. But when this provision will be restricted he may decide only 3 or 4 cases.

SHRI M. C. DAGA: Then he will have to do homework more.

SHRI S. K. MAITRA: If the word 'substantial' is deleted will it be all right?

SHRI B. D. AGARWAL: That will be all right from my point of view. Regarding Section 115, the Bill provides that it should be omitted altogether. In this behalf my submission is that revision is discretionary and High Court by and large may or may not entertain the revision. The scope of revision is substantially restricted by the Supreme Court wherein they have said that this lies only where there is jurisdictional issue.

SHRI S. K. MAITRA: So there is no escape to section 115.

SHRI B. D. AGARWAL: If the matter goes to writ under Article 227, it will be costlier. The counsel will charge higher fees in each writ.

SHRI M. C. DAGA: So you say that it should be retained.

SHRI B. D. AGARWAL: Yes, but with some modification. We may restrict the scope of revision to matters which close the controversy, leaving the rest for agitation in appeal.

SHRI GOYAL: Upto the valuation of 20,000 the power has been given to the District Judges and over Rs. 20,000 the power has been given to the High Court. There is also provision that no revision over the order of the District Judge.

SHRI MOHAMMAD TAHIR: If a Munsif has passed an order, can the party aggrieved go to the High Court?

SHRI GOYAL: Not direct. They can go to the High Court under our amendment in section 115. We have made a provision that upto valuation of Rs. 20,000 revision will lie to the District Judge.

SHRI B. D. AGARWAL: Order XX, Rule 6A that is being added is on page 38 of the Bill. It is with regard to the matter being taken in appeal Sir. A very wholesome suggestion has been made to the effect that the last paragraph of the judgement should indicate in precise terms of the reliefs granted. I submit, Sir, that the details which are intended to be given in this operation portion. they may not suffice. Some more details will be required to be given. For instance, names of the members of the parties their expenses and other things. But all those things that presently appear in a decree, they should be appended to the judgment itself when it is delivered. Regarding preparation of the decree one months time is insufficient. Learned Chief Justice has recently suggested that if it is permissible to pronounce operation portion of the judgment alone, it will not only save time, it will also help in eliminating corruption to some extent. So this is worth considering.

SHRI M. C. DAGA: Some suggestion should be there that the Judge should deliver judgment within 15 days' time.

SHRI B. D. AGARWAL: Regarding this our circular letters are there. But we wish that it should be provided in the law.

MR. CHAIRMAN: At what point corruption is there?

SHRI B. D. AGARWAL: It is at the ministerial level, Sir. All these manipulations are at the ministerial level and not at the higher level.

SHRI GOYAL: Normally judgments should be announced within 15 days. You can make it obligatory to pronounce the judgment within the limited period of 15 days. That is all right. But sometimes cases are very bulky. Then it becomes impossible to pronounce the judgment within the limited period of 15 days. On the contrary in some cases two-three days' time is enough to pronounce the judgment.

SHRI M. C. DAGA: What is your opinion? Good lawyers do not want to become judges.

SHRI GOYAL: A good lawyer does not earn less than Rs. 50,000.

SHRI B. D. AGARWAL: In Order XXVII, rule 5, page 59 of the Bill. There was a suggestion that the minimum limit should be three months, while we are putting the maximum at two months. Will that be workable?

Section 128(2)(e) in the present Code says that the rule making power is with the High Court. I may narrate a very interesting case. The State Government gave a contract and made payment of a certain amount to the person who claimed to be a partner of the contractor. Then there came a suit to be filed in which that contractor denied that the money was paid to him. He said that the money was not received on his behalf, although the man who got the money accepted that he had received the amount. In such a case the Government will have to go in a regular suit to recover back the amount from the person to whom it was paid. So there should be some provision for indemnity being asked for in the said suit itself instead of filing fresh suit. Section 8A says "While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify."

In our Courts, Sir, we are following strictly adversary system. If such a body is being impleaded in a suit, they will have a right to appeal also and this will leave the litigation open, not only to parties involved, but also to outsiders.

SHRI GOYAL: A person aggrieved is given an opportunity to contest.

SHRI B. D. AGARWAL: In our courts you would like to recommend the institution of a Registrar or some sort of coordinating officer for inspection copies of Judgment, delivery of judgment and so on and so forth. Justice B. Mukherjee in his report has made such a recommendation. That will help in eliminating delay.

SHRI S. K. MAITRA: Can't it be done by the High Court by an order?

SHRI GOYAL: It can be done.

SHRI M. C. DAGA: Munsifs are not provided with stenographers and competent clerks. They have 40 cases to attend daily.

SHRI GOYAL: Since our State has its limited resources and the developmental programmes are being centred around the items of power, roads, irrigation and so on, so I would suggest that the Central Govt. may be persuaded to give us the marching grants. This is my humble submission.

SHRI B. D. AGARWAL: Justice Krishna Iyer very recently observed in one of the judgement that there should be more and more written briefs exchanged in the shape of agreements rather than verbal arguments. Probably something of that type may be adopted and in pleading permission should be given for arguments and points of law as well as the rulings to be cited instead of the facts alone.

MR. CHAIRMAN: Besides what you observed here, I would request to send your suggestions to the Lok Sabha Secretariat afterwards.

SHRI S. N. SAHAI: Sir, the basic structure of the Code of Civil Procedure has not been touched in the amendments so far and I do not think how far it will be proper to touch matters relating to the basic structure. By basic structure I mean that the hearing of the case results either in a decree or an order. If there is a decree there are two appeals and one revision. If there is an order there is one appeal and revision. Personally I think that it will suffice if after trial only one appeal is allowed on facts as well as on law and thereafter interference on a question of law only is

allowed in the revisional stage. I mean that there should be no distinction between the decree and order in matters of appeals and revisions. At present there are appeals from interim orders then only one appeal is allowed. Thereafter if a party feels aggrieved it may take the matter to the High Court or to the District Judge. In U.P., in a suit of certain valuation the case may go to the High Court or the District Court on a question of law when there is an irregularity or something like that. Just as in some criminal cases it is there. In civil cases it will suffice if only one appeal is allowed whether that is a decree or an order and that appeal should be on the facts as well as on law. After that if a party feels aggrieved then the matter may be taken to the High Court and their interference may be made on a question of law only. This is what I have referred to as a basic structure.

Then my another suggestion is with regard to the execution because much delay takes place at the execution stage. The time of the court is mostly occupied in hearing the suit and one day in actual practice is set apart for the execution and miscellaneous cases, that is Saturday. So the courts have got very little time to devote to the execution cases and the result is that considerable delay takes place in the disposal of the execution cases and the courts are not able to bestow personal attention. So my suggestion is that there should be one Execution Court assisted by many Presiding Officers to all the decrees passed by that court of that jurisdiction. There should be two sets of courts—1. for hearing regular suits and another doing only executive work.

SHRI M. C. DAGA: What about the funds? If execution court is established, will Uttar Pradesh have enougn funds?

SHRI S. N. SAHAI: I may involve some extra expenditure. But one Presiding Officer may be set apart. That is a suggestion of general nature.

Then, Sir, about revision. On that I will submit that Section 115 should be retained. At present it is sought to be deleted on the ground that the purpose will be served by inserting the remedy under Article 227.

SHRI M. C. DAGA: This point has already been made.

SHRI S. N. SAHAI: Then, Sir, in Clause 3 there is a proposal to abolish the distinction between preliminary decree and final decree. This is a salutary provision and I agree with it.

Then, Sir, I shall refer to Clause 8 of the Amending Bill. Now Section 20 is said to be amended and a Sub-Section 3 is to be in intersted to the effect that no objection as to the competence of the Executing Court.... There is another amendment which says that the Executing Court should also have a pecuniary jurisdiction. At present there is a clause. In this clause along with territorial limits, competence of Executing Court with reference to legal limits of its jurisdiction,, pecuniary limits should also be added. This is just of consequential nature.

Then, Sir, I shall refer to clause 11. The power of District Court by 24(a) is going to be added. The language of this section 24(a) may be clarified so that the object which is in view may be achieved.

SHRI S. K. MAITRA: Please give us a redraft.

SHRI S. N. SAHAI: Similarly, in Section 24, now a provision is being made for transfer of cases where the court has no jurisdiction. It will lead to much litigation when a suit is pending and an application is filed in the district court and the question of jurisdiction may be called upon to decide. Because unless it is held that the lower court has no jurisdiction the case will not be transferred from that court under section 24. It should be clarified that he transfer of the case

will made only after the question of jurisdiction has been settled in the ordinary manner and where it is raised and when it is finally decided then it may not be necessary to return the plaint, if the case may itself be transferred where it can be tried in that very district or something like that.

Similarly in Order VII a new clause 6 is being proposed. After Rule 10 there is a proposal to insert Rule 10(a). This relates to the power of the court to return the plaint for being filed in a particular court and to give notice fixing the date of appearance in the court where the plaint is filed after it is returned. Without settling the matter as to in what court the suit will be filed, the provision may not be very effective. If the court holds that it has no jurisdiction and the suit should be filed in a particular court and the court is satisfied then it should be possible to ask the defendent to appear in that court. At present the decisions are only to this effect that the court has no jurisdiction.

SHRI GOYAL: On the plaintiff's application, where the defendent is also appearing, the plaintiff will specify in what court he will appear.

SHRI S. N. SAHAI: If the plaintiff specified, then it is all right.

Then, Sir, about Section 80. It should be retained for public officers.

SHRI M. C. DAGA: What are the reasons?

SHRI S. N. SAHAI: The reasons are similar to the provisions of Cr. P. C. so that they may not be exposed to the risk....

Now, one thing about injunction, Sir. After amendment it will be necessary to dispose of the injunction application within a period of 45 days.

SHRI S. K. MAITRA: Interim injunction will not remain in force....

SHRI S. N. SAHAI: Where the defendent intentionally avoids the service.

Sir, I subscribe to the other suggestions that have been made.

SHRI MOHAMMAD TAHIR: Have you thought about the court fee. The Law Commision has made a recommendation about its reduction and there are also some suggestions that the court fee should be abolished altogether.

SHRI GOYAL: In principle I agree. It is the duty of the State to provide justice just as it is the duty of the State to provide medical facilities and all that. But it is the question of revenue so the State Government are not in a position to abolish the court fees.

SHRI MOHAMMAD TAHIR: Law Commission says that do not make it a source of income.

SHRI GOYAL: Every pie is counting these days so it is difficult to persuade any State Government to abolish court fee or reduce it.

SHRI MOHAMMAD TAHIR: At least for those persons who belong to backward classes and scheduled tribes it should be exempted.

SHRI GOYAL: We are happy to inform you, Sir, that we are doing something by way of legal aid to Scheduled Castes and Scheduled Tribes.

MR. CHAIRMAN: Why in the name of scheduled castes and backward classes. It should be in the name of the poor.

SHRI MOHAMMAD TAHIR: Court fee may be taken for filing the suit but after that there should be no court fee.

SHRI B. D. AGGARWAL: Then there will be frivolous litigation.

SHRI GOYAL: In principle we entirely agree that there should

be court fee at the initial stage and after that the court fees may be abolished.

SHRI GOYAL : It can be abolished altogether, but the question is that of resources.

SHRI MOHAMMAD TAHIR: What do you think about deletion of Section 132 regarding women appearing in court?

SHRI B. D. AGARWAL : That is a wholesome provision.

SHRI MOHAMMAD TAHIR: There must be a substantial percentage of women who would not like to go to court. So let it remain as it is. Those who do not want to go to court why should we compel them?

SHRI GOYAL : We are treating them equally.

SHRI MOHAMMAD TAHIR: It is not a question of equal treatment; it is a question of prestige.

SHRI M. C. DAGA : Before issues are framed, some kind of weeding out process seems to be necessary. What that process would be, can you suggest something?

SHRI GOYAL : There are two things. One is that there is a dual system but here we have no pre-trial system. So it will be very difficult without pre-trial system. Secondly, there is shortage of judges. So in the case of pre-trial it will not serve our purpose unless we increase the number of judges.

SHRI M. C. DAGA : Under order 10 rule 2 a party should be examined. Should there a mandatory provision or not?

SHRI B. D. AGARWAL : Preferably there should be a mandatory provision. A party should invariably be examined. But if you make it mandatory, it will become a formality and it will not make any difference by making it mandatory.

SHRI M. C. DAGA : Do you suggest anything regarding rates of court fee on petition under article 32 or rule 26?

SHRI GOYAL : Our 3/4th judges are occupies with writ petitions, while the court fee realised from them is far less. The maximum court fee is realised from first and second appeals and for that work only two judges are available. The writ petitioners are taking more time of Hon'ble Judges than the persons who go in first or second appeal.

SHRI M. C. DAGA : There is a view that salaries of judicial officers should not be a charge on general tax payer, because it is the primary duty of Government to provide free or cheaper justice.

SHRI GOYAL : I would mention one thing, Sir. The court fee, for instance, in a writ petition is Rs. 100, but the person concerned would have to pay 1500 to his counsel which is 15 times more than the court fee paid for the writ petition. So even if you eliminate these 100 rupees, it will not be less expensive.

MR. CHAIRMAN : We are very thankful for the trouble you have taken in coming over here and making valuable suggestions before the Committee. I on my behalf and on behalf of the members of the Sub-Committee extend our thanks to you, and hope that if there remains something which has been omitted here, you will kindly draft it and send it to the Lok Sabha Secretariat by the end of this month.

SHRI GOYAL : We are also extremely grateful to all of you.

[*The witnesses then withdrew*]

II. Government of Bihar (Law Department)

Spokesman: Durjodhan Dash,—Deputy-Secretary.)

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Have you submitted any note?

SHRI DASH: No Sir.

SHRI M. C. DAGA: I think it would be better if you give a memorandum first. We will study it and then you come to Delhi for answering specific questions which we would put after examining your memorandum.

SHRI DASH: I have no objection if the hon'ble members so desire, but I have a few suggestions to make if you permit me, Sir.

The learned members are well aware that there is a general grievance or complaint in the matter of civil litigation and delay in disposal of cases, which tentamounts to denial of justice to the parties. The principal Act has failed to bring about any help in the speedy and timely disposal of civil litigations. So in my humble opinion there is an urgent need to bring about such amendments in the principal Act as would result in speedy and timely disposal of the cases without jeopardising the cause of justice.

MR. CHAIRMAN: The opinion here is that you need not read out the whole thing. You submit your memorandum and we will examine it. If still there remains something you will come to Delhi and clarify those points.

SHRI DASH: I would just give you some points for your consideration. In proposed Section 29A there is provision for the service of summonses on the parties which should be completed within 30 days and returned to the court of issue and any person other than the presiding officer of the court responsible for delay in service beyond that period shall be liable for disobedience of the order of the court.

Regarding Order 5 rule 1—After the already proposed proviso my humble submission is that the following further provisio should be inserted.

"Provided further that in no case shall the court allow time to the defendant beyond 60 days after the date of service of the summons to file a written statement." These are my suggestions.

MR. CHAIRMAN: I would like you to submit your memorandum here and the Hon'ble members of this sub-committee will put some questions to you and you may reply only to those questions. The members will study your memorandum and only after that they would put their questions.

SHRI DASH: I shall get this memorandum typed out here because I have got only one copy of it and I would try to submit it to the Committee today or tomorrow.

MR. CHAIRMAN: You may send a letter intimating our Secretariat that you are reaching there on such and such date for giving your witness.

SHRI MOHAMMAD TAHIR: Mr. Chairman I would like to make my humble submission and that is that Mr. Dash be allowed to put forth

his suggestions and if after all the necessity so arises he may then be called at Delhi otherwise not.

MR. CHAIRMAN: It is a good suggestion.

SHRI MOHAMMAD TAHIR: I want to ask one question regarding Section 11. We want to know your opinion about a certain case in which the court has given a decision without taking into account the survey records. What will be the position in that case?

SHRI DASH: I humbly disagree with the view that the principle of *Res-Judicata* should be made applicable to the preparation and publication of the survey record of rights proceedings because they have been treated so far as revenue proceedings. If those proceedings are to be considered as final then I think there will be great injustice done to the owners of properties and land and on the contrary I would say that unless in the revenue proceedings of preparation and publication of survey records of right decisions of civil courts are taken into account, in my opinion that will cause great injustice.

SHRI MOHAMMAD TAHIR: Suppose a judgement is there. The property belongs to A & B. Now A gets his name recorded in the property which is not his. In that case, what will be effect of the judgement?

SHRI DASH: The judgement should be given effect to unless on the question of possession the Survey Authority finds it otherwise. But in any case the judgement should be noted in the remarks column for the guidance of future litigation, if any.

SHRI MOHAMMAD TAHIR: Suppose it is not recorded.

SHRI DASH: If it is not recorded then it may be difficult for the Civil Court in future litigation to know what was the real position.

SHRI MOHAMMAD TAHIR: There are many causes. Although the person in whose favour the judgement has been delivered is in possession of the property but the revenue officers—Kanoongo and Amins—they for mere chips may put names here and there. So my suggestion is that if any entry has been made against the judgement it should have no effect.

SHRI DASH: In that case merely speaking about the previous judgement will not be sufficient unless there is further declaration of the competent court that the records of rights are illegal. Once the records of rights is finally published it will have the presumption of correctness.

SHRI S. N. SINHA: Do you think the Survey Officers will attach importance to the judgement of the Civil Court any may not make entry against that judgement.

SHRI DASH: The previous decision of the Civil Court may be in respect of title and possession when the judgement was delivered. If the survey operations are carried out after say, 30 years, then the question of possession might change. If the survey authorities find that another man is in possession then they are bound to record the present possession. But what is expected of them which they do not do it generally is to make a note of the judgment our people are illiterate. Whenever a survey record is prepared they take it for granted.

SHRI M. C. DAGA: Now the survey records are prepared in the presence of *Surpancha* and not by the Patwari.

SHRI DASH: In our State the *khanapuri* is done by Amins.

SHRI M. C. DAGA: I am very thankful to you for your practical suggestions. Now I am reading to you the observations made by Lord Kilbrandon: "The ship is well designed, fundamentally sound and is for most of the time on a correct

course; what is wanted is an overhaul and modernisation of the navigational instruments, so that is more easily kept on that course. And some of the officers are getting a bit elderly—this will always be true." What your State is doing so far as junior Munsifs and Judges are concerned? You know that now-a-days good lawyers and advocates do not like to become Munsifs and Civil Judges.

SHRI DASH: To may knowledge there has been a very little or no improvement in the service conditions of the judicial officers. Recently we have moved through our Association for the merger of the cadres of Addl. District and Sessions Judge and that of the Distt. and Sessions Judge because in both these posts we have to perform the same duties. I understand, in States like U. P. and other States, there is a single cadre. Except for pay scales nothing practically has been done.

SHRI M. C. DAGA: In order to make litigation inexpensive whether you want to abolish the court fees. What is your Government thinking about it?

SHRI DASH: Recently I am told that rates of court fees have been increased. In my humble opinion the cost of litigation can be minimised by reducing the rates of court fees, fixing the ceiling in fees chargeable by lawyers and by symplifying the procedure in courts. These three things can minimise the cost of litigation to some extent.

SHRI MOHAMMAD TAHIR: What is your opinion if the subsequent court fees are abolished?

SHRI DASH: Of course relief should be given to the people on that score.

MR. CHAIRMAN: I on my behalf and on behalf of the Members of the Sub-Committee extend heart felt thanks for the trouble you took in coming over here and giving valuable suggestions.

[The witness then witdraw]

III. Shri Rudra Pratap Rai, Advocate, Joint Secretary, Civil Court Bar Association, Jaunpur.

(The witness was called in and he took his seat).

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available te the Members of Parliament.

SHRI RAI: Regarding causes of delay in civil litigation I want to put many suggestions. Due to shortage of officers there are a lot of files pending for more than 5 or 10 years. I am specially saying for Jaunpur district. Upto 1969 there were ten courts of Munsifs, 3 courts of civil judges and 1 court of the district judge. Now there are only 8 munsifs—original courts—and no additional courts. So the first cause of delay is the lesser number of officers. My information is that near about 4000 cases are pending. Delay also occurs due to unnecessary adjournment and due to false applications being filed. Unless you check false and frivolous aplications are checked up delay in the disposal of cases cannot be avoided.

Second point is regarding service of notice on the pleaders. With this point I do not agree that notice should be served on him. We are running 1975 and in these days it is very easy for any man to represent himself that he is such and such person. If a court gives notice to a pleader and the pleader does not appear in the court an ex parte judgement is passed and then no remedy is available

to the person concerned. Whatever is true I would submit before you, and you cannot check me. My opinion is that notice must be given direct to the parties and not to the pleader. If notice is given to the pleaders alone, that would be injurious to the parties concerned.

On the question of preparation of record of right, I disagree with the suggestion that the civil courts should be given this right.

Regarding question No. 4, You might agree with me, that land used to be distributed to landless persons. But it is the practice in villages that powerful men in the villages manipulate in getting the land from poor persons. Suppose the land is in the name of A and if someone is powerful, he gets it transferred from A to B without the knowledge of A, and afterwards gets the sale deed executed from A without his knowledge. To get rid of this difficulty my submission is that these poor persons should not be given the right of sale, transfer or mortgage. If you do not give this right to landless persons they will definitely get their land and will remain owners of the land.

Since we want to protect the right of the poor persons such a provision should be there in the CPC.

Then I come to question No. 5— regarding measures to minimise the cost of litigations. You are going to amend Section 100 and Section 115 and at the same time you are going to minimise the cost of litigation. I am going to suggest that section 115 should not be deleted at all because it is an easier and cheaper remedy available to all poor persons. If the poor class people have to go upto the court of district judges it will be easier and cheaper for them, but if they have to go to the high court it will be difficult and costlier for them. If I am permitted to say I would submit that Parliament have amended section 115 and district judges have been given the power to hear revisions. There a lot of poor persons get justice and they are blessing you all. So I would submit that kindly do not snatch bread and *satu* from the bags of poor persons.

So far as the question of giving certificate is concerned I would submit that this power should be given to the court which hears the first appeal, because that will be easier and cheaper. If a district judge or a civil judge who hears the first appeal gives a certificate that this particular appeal involves a certain question of law and this matter may be agitated before the hon'ble High Court, that would be easier and cheaper remedy available to the poor persons. If this power is given to the High Court then the litigant persons will have to go to the High Court two or three times before the certificate is given to them. I do not know how this right of giving certificate by the hon'ble High Court will be beneficial to the poor persons. I think that this power if at all given should be given to the court which hears the first appeal.

So this will minimise the cost of litigation.

The next point is to reduce the court fee. If you are giving benefits to the poor persons under Section 229(b) to get the declaration in Rs. 1.50 then why a case or a suit is to be tried before the Civil Court by paying Rs. 20.50 I am unable to understand why this step motherly treatment is being given to the litigants before the court. If you want to file an affidavit, you have to purchase one stamp of Re. 1 denomination and a ticket of relief costing 10 N.P., Re. 1 is to be paid to the Oath Commissioner and thus in Rs. 2.50 an affidavit is filed. On the other hand if you have to file an affidavit before a civil or the Distt. Judges court it does not cost you less than Rs. 4.50 The law itself has been increasing the cost of litigation day by day.

मेरा निवदन यह है कि कास्ट आफ़ लिटिगेशन सी०पी०सी० से नहीं बढ़ता है। सी०पी०सी० में रुपये पैसे का कोई जिक्र नहीं है। अगर आप को लिटिगेशन की कास्ट को मिनिमाइज करना है तो आपको एग्जीक्यूशन परपज के लिये एक सैपरेट एजेन्सी कायम करनी होगी। उसमें इतने प्रासेसेज हैं कि वर्षों बीत जाते हैं पर फ़िर भी फ़ैसले होने को नहीं आते। बेटा तो क्या पायेगा, पोता भी पाये या ना पाये। इसलिये अगर आप चाहते हैं कि खर्चा कम हो और पब्लिक का फ़ायदा हो, समय भी कम लगे तो उधर डिक्री हो और उसके कगाजात अलग एजेंसी के पास चले जाएं ताकि वह जो भी कार्यवाही हो उसको तुरन्त कर दें। एग्जीक्यूशन का जो मैटर है वह ज्यादा दिक्कत तलब है और उसको सरल होना चाहिये मैं आप को एक इसकी मिसाल दे दूं और वह यह है कि सन् 1952 में एक मकान मालिक जो कि रिटायर्ड गवर्नमेंट सर्वेन्ट थे उनको उनका मकान खाली करवाने की हाई कोट से इजाजत मिल गई। तब से लगातार वे उस किरायेदार से मकान खाली करवाने की कोशिश करते रहे हैं परन्तु आज 17-1-75 तक मकान मालिक को मकान का दखल नहीं मिल सका है। वे स्वयं एक टिन शैड में रह रहे हैं। मैं लिटिगेशन की बात कर रहा हूं कि इसमें जो डिले होती है और जो कास्ट इन्वाल्व होती हैं उसको कैसे खत्म किया जाय। अगर आपकी कोई अलग एजेंसी होती तो शायद इतनी डिले और इतनी कास्ट इन्वाल्व नहीं हो सकती थी। इसलिये यह बहुत जरूरी है।

क्वेश्चन नं० 6 : मैं समझता हूं कि यह प्रश्न राजनीति से ज्यादा सम्बन्धित है और मैं इस पर अपने विचार प्रकट नहीं करना चाहता। यदि आप मुझे अपने विचार प्रकट करने की आज्ञा देते हैं तो मैं इतना कहूंगा कि जिस दिन से आप लीगल और फ़ायनान्शयल ऐड देना स्वीकार करेंगे तब से लोग आप की ही ओर इसके लिये ताकना शुरू कर देंगे और उसे चैक करना आपके लिये मुश्किल हो जायेगा। जिस समय से आप इस सहायता को देना स्वीकार कर लेंगे उसी दिन से बहुत से लोग इस सम्बन्ध में दरख्वास्तें देना शुरू कर देंगे कि वे इस मुकदमे के लिये सहायता चाहते हैं और उससे एक्सचैकर बहुत काफ़ी हद तक प्रभावित हो जायेगा। उससे बेजारे गरीब आदमी तः क्या हमेशा कनिंग पर्सन्स ही लाभ उठाया करेंगे।

क्वेश्चन नं० 7 :

श्री बागा : आपके कहने से पहले मैं यह जानना चाहता हूं कि इसमें डिले कैसे होगी ?

श्री राय : इसमें डिले इस प्रकार होगी कि फ़र्ज कीजिये कि एक मुकदमा "ए" ने दाखिल किया और "बी" ने नहीं किया। उसमें से एक ने दरख्वास्त दे दी कि डाकुमेंट की कापी मिलनी चाहिये। इस तरह से मुकदमात पर दिनों दिन तारीखों पर तारीखें पड़ती चली जाती है और नतीजा यह होता है कि वह भी खत्म नहीं होता।

क्वेश्चन नं० 8 :

SHRI RAI: About this we see generally that these preliminary points involve documentary and oral evidence both. So here the point is only of court fees which is generally a preliminary point in civil litigation. That should be decided forthwith and the rest be decided on merit at the final stage.

Question No. 9.

The provision of review is a necessary as water for a human being.

जिस दिन नजरसानी खतम हो जायेगी, उस दिन नजर खतम हो जायेगी और अगर नजर खतम हो जायेगी तो इंसान अन्धा हो जायेगा....

श्री बागा : और अन्धे को ज्ञान प्राप्त हो जायेगा।

श्री राय : अन्तर का ज्ञान विधाता की देन होती है जिसने हमको और आपको पैदा किया है। अन्धा ही हो जाने से अन्तर का ज्ञान पैदा नहीं हो जाता। इसलिये प्रावीजन आफ़ रिव्यू रहना चाहिये और इसको डिस्टर्ब नहीं करना चाहिये। यह बहुत जरूरी है।

Question No. 10.

I have already dealt with earlier and do not want to repeat it again.

Question No. 11.

It is not casual necessary because generally our professional persons get only time and harass other party. So in my opinion this may be deleted. It will not harm the poor persons.

Question No. 12.

I do not agree because 'summary trial *se insaf ka gala ghunt jaya karta hai.* Only money suits and the suits of plaint may be tried under summary trial, not other cases.

Question No. 13.

Thought it is very harsh to issue injunction against deed, but at the same time the moment you will stop this ex-parte proceedings then the poor person will never get any remedy any where.

फ़र्ज करें कि कोई तगड़ा आदमी किसी की जमीन पर जबरदस्ती मकान बनवा रहा है। वह कहता है कि मैंने दावा कर दिया है। अदालत में सुनवाई कर लो। वह कहता है कि जो चाहे करो। अगर एक्स-पार्टी आर्डर नहीं मिलेगा तो वह गरीब मर जायेगा। इसलिये एक्स-पार्टी इंजक्शन इशू होते रहे लेकिन कुछ राइडर लगा दिया जाय जैसे कि अगर कोई डाकूमेंट्री एवीडेंस फ़ाइल पर नहीं है या कोर्ट को कोई ऐसा ग्राउण्ड नहीं मिलता कि इंजक्शन इशू किया जा सके तो न करे। लेकिन अगर कोर्ट इंजक्शन आर्डर इशू करती है तो वह यह भी ध्यान रखे कि सिविल प्रोसीजर कोड में जितनी भी ताकतें कोर्ट को दी गई हैं फ़ाल्स इंजक्शन आर्डर इशू कराने के खिलाफ़ एक्शन लेने की, तो उन सारी दफ़ाओं को जिनको हर कोर्ट ने बक्से में बन्द कर दिया है उनको बक्से से बाहर निकालें जिससे कि लोग फ़ाल्स एक्स-पार्टी आर्डर इशू कराने की हिम्मत न करें।

माननीय चेयरमैन साहब को नालिज में है कि इलेक्शन पिटीशन पोस्टपोन कराने के लिये रटीं ले लेते हैं उनका मकसद यही रहता है कि फलां तारीख को फलां काम न हो। इसलिये जब इंजक्शन आर्डर इशू हो तो यह खासतौर से छानबीन करें और देखें कि आया कि यह उचित है या अनुचित। अगर अनुचित हुआ है तो उस पर प्रापर एक्शन जो सी०पी० सी० में दिये हुये हैं उनका इस्तेमाल करें। अगर उनका इस्तेमाल नहीं करते तो भगवान ही रक्षा करें। लेकिन एक्स-पार्टी का प्रावीजन बरकरार रहना चाहिये और अगर खतम कर देंगे तो इंसाफ़ नहीं मिलेगा।

Question No. 14.

I have already said that execution is very important matter and a separate department must be established so that any decreetal amount should be realised as land revenue. Delays and unnecessary expenditure must be avoided. In my opinion there is no other way out to get rid of all these trouble from which litigants are suffering for the last more than 100 years.

If you are all sitting for doing some justice to poor persons, there must be some clause, section, rule or order introduced in C.P.C. that if the

courts pass wrong and frivilous order and if appellate court thinks that the order or judgment is wrong on fact or on law or on othergrounds than some thing must be done against that particular court. Either court fees should be realised or some other thing should be done. With due respect to all members, I want to put this matter though being a lawyer this matter should not be initiated by me, even then I am putting this matter before you.

SHRI S. N. SINHA: In Section 100 you have suggested that the court deciding the case in the first instance should certify that it involves a question of law and a second appeal can be done. Is that your suggestion?

SHRI RAI: Yes, Sir.

SHRI S. N. SINHA: In that case do you mean to say that the trial court be again moved by the appellant for getting this certificate that there involves a question of law?

SHRI RAI: You want only a certifiscate that this particular case involves the question law and if the district judge who is deciding the appeal should certify that this case involves the question of Law.

SHRI S. N. SINHA: In this case also the poor litigant will have to go twice?

SHRI RAI: But in his own house and not to the High Court. A litigant belonging to Ballia or district Dehradun, if he want to go in second appeal then he has to go thrice to Allahabad for filing the application to get a certificate for filing the appeal. Nowadays we are suffering very much. This will be very injurious to the poor persons if you give this right to the High Court.

SHRI S. N. SINHA: So your view is that the court which hears the first appeal should be authorised to give a certificate for filing the appeal stating the question of law.

SHRI RAI: Because if you will give this right to the High Court then it will be more expensive matter for a poor person.

SHRI MOHAMMED TAHIR: But the question is whether a district judge who has already delivered a judgment would give a certificate against his own judgement.

SHRI RAI: When you have given this power to the High Court why our district judges be not given this power?

जितनी ही ज्यादा पावर आप डिस्ट्रिक्ट जजेज की कोर्ट को देंगे उतना ही ज्यादा गरीबों का भला होगा। उतना ही कम खर्च लगेगा और उतना ही जल्दी फ़ैसला होगा। अभी होता यह है कि मुवक्किल अपने वकील के यहां पहुंच ही नहीं पाते और उनको चिट्ठियां पहुंचती रहती हैं कि आपकी अपील फ़ायल हो गई है। आप पहुंच नहीं पाये इसलिये आपका मुकदमा खारिज हो गया। वास्तविकता यह होती है कि अपील फ़ायल ही नहीं होती।

श्री दागा : एक बात मैं आपसे पूछना चाहता हूं कि वकील जो फ़ीस लेते हैं उसका गलत सर्टीफ़िकेट देते हैं, इसका क्या इलाज है ?

श्री राय : आप मुझसे कहते हैं कि हमें 7.5 प्रतिशत के ऊपर फ़ीस लेने का अधिकार नहीं है। यह फ़ीस सन 1920 से जारी है। क्या किसी अधिकारी ने कभी यह जानने की कोशिश की कि जब एक आने में एक सेर गेहूं मिलता था तो उस समय हम 7.5 प्रतिशत चार्ज करते थे और आज जब गेहूं का भाव प्रति किलो दो रुपये के ऊपर है तो भी वही 7.5 प्रतिशत फ़ीस चली आ रही है। यह

देखने की बात है कि आज के दिनों 15 रु० में क्या वकील मुकदमा लड़ सकता है। हम मजबूर हैं गलत सर्टिफ़िकेट देने के लिये। जो सर्टीफ़िकेट ला परमिट करता है वही सर्टीफ़िकेट हम पेश करते हैं।

श्री दागा : मैं आपसे जानना चाहता हूं कि प्रेसाइडिंग आफ़िसर्स एडजर्नमेंट इसलिये ज्यादा देते हैं क्योंकि वह आपकी नाराजगी मोल नहीं लेना चाहते। वह चाहते है कि पापुलर बने रहें इसलिये ऐसा करते हैं।

श्री राय : यह बात सही है कि आफ़िसर्स वकीलों को एकमोडेट करने के लिये एडजर्नमेंट देते हैं। यह भी बात सही है कि वकील एडजर्नमेंट कास्ट भी लेते हैं। और यह बात भी सही है कि हमारा इलाका बहुत गरीब है। वहां अभी भी 2 रुपये और चार रुपये रोज फ़ीस पर काम होता है। यह भी बात है कि दफ़ा 11 जाब्ता दीवानी जौनपुर में लागू नहीं होती। ऐसी बात नहीं है कि एडजर्नमेंट लेने का सारा दोष गरीब वकीलों पर ही है। अगर मुवक्किल बीमार हो गया या कोई दूसरा ऐसा कारण है तो उसके लिये भी एडजर्नमेंट लेना आवश्यक हो जाता है? यह बात सत्य है कि जिसे भगवान ने पेट दिया है वह अपना पेट भरने के लिये हर प्रयत्न करता है। हम भी करते हैं और आप भी करते हैं। हर आदमी ईमानदार है जिसे मौका न मिले गलत तरीके से पैदा करने का और वह आदमी भगवान है जो मौका मिलने पर भी ईमानदार बना रहे। परन्तु आज की दुनिया में वह बेवकूफ़ समझा जाता है।

श्री दागा : जो जज एडजर्नमेंट मना करते हैं वह अनपापुलर हो जाते हैं, तो इसकी रेमेडी बार एसोसिएशन के पास होती है। एडजर्नमेंट होने पर वकील को कास्ट मिलती है।

श्री राय : वकील एडजर्नमेंट कभी नहीं लेता है जब तक कि वह बीमार न पड़ जाय।

श्री दागा : इस पर आपकी क्या राय है कि इशूज बनने के पहले सारे पेपर्स फ़ायल हो जाने चाहिये।

श्री राय : इससे मैं एग्री करता हूं।

MR. CHAIRMAN: We are very thankful to you for the trouble you have taken in coming over here and giving your valuable suggestions before the Sub-Committee.

[The Sub-Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE II OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Saturday, the 18th January, 1975 from 10.00 to 14.00 hours in Tilak Hall, Council House, Lucknow.

Shri Rajdeo Singh—*In the Chair*

MEMBERS

Lok Sabha

2. Shri Chandika Prasad
3. Shri M. C. Daga
4. Shrimati T. Lakshmikanthamma
5. Shri Mohammad Tahir
6. Shri Satyendra Narayan Sinha

Rajya Sabha

7 Shri Krishnarao Narayan Dhulap
8. Shri Kanchi Kalyanasundram
9. Shri V. C. Kesava Rao

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri K. D. Chatterjee—*Chief Examiner of Questions.*

WITNESSES EXAMINED

I. Shri K. B. Sinha—*District Government Counsel (Civil), Lucknow.*

II. *Bihar State Bar Council, Patna*

Spokesmen:

1. ShriSatyendra Sahay Varma
2. Shri Mahendra Nath Saran
3. Shri Uma Prasad Singh

III. *High Court Bar Association, Allahabad*

Spokesmen:

1. Shri K. B. L. Gour, Advocate.
2. Shri S. I. Gupta, Advocate.
3. Dr. R. Dwivedi, Advocate.

IV. Shri O. P. Gupta, *Advocate, Allahabad.*

I. Shri K. B. Sinha, Dist. Govt. Counsel (Civil) Lucknow.

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Before you proceed I would like that you should know the direction given by the Speaker and that is—where witnesses appear before a committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though thy might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.."

Now I would request Mr. Sinha to proceed with his suggestions and observations.

SHRI K. B. SINHA: Since now I have got the questionnaire I would like to give my replies to the questions as they are.

So far as the first question is concerned about the delays in the disposal of cases and so far as the Civil Litigation is concerned, I would submit that the first and foremost reason for his delay is thtt everything in the court of law has to be processed through the judge or the Munsif. There are many formalities which can be done in the office and the case should reach the Presiding officer of the court only when all those formalities have been done or completed and for that I would submit that so far as the preliminaries, attendance and all that is concerned, they must be done at the stage or so far as the clerical staff is concerned right upto the rank of the Munsarim of the court and when a case is represented and everyone knows that it has to be heard then it should reach the Presiding Officer . . .

SHRI M. C. DAGA: What is that stage?

SHRI SINHA: That stage is filing of the written statement and the pleadings are only when it is ripe for the framing of the issues because prior to that the presiding officer of the court does nothing.

SHRI MOHANMMAD TAHIR: Is it then to frame the issues?

SHRI SINHA: It should go to the court when it is ripe for framing of the issues. So far as Oudh is concerned, it has been a healthy practice here that the issuer framed by the court and the statements under 10 was recorded which was very elaborate and exhaustive. Here we never indulged in the issues being framed by the lawyers or by the authorities and it is handed over to the Court and the order received by the pleader. It never happned in Oudh. In fact if you see the old files, you will find that on the date of issues the statement recorded was so exhaustive that the scope for manufacturing evidence or for procuring the evidence was completely finished. They will take down names of witness on each particular point and you are pinned

down to that and the issues are framed by the court and not by the lawyers. At Lucknow as well the lawyers do not frame the issues. It is the court who frames the issues.

SHRI S. K. MAITRA: If the file is placed before the judge, then what about the rejection of plaint?

SHRI K. B. SINHA: It cannot be rejected by the Munserm. It will come to him at the stage of issues and then also it can be rejected.

SHRI M. C. DAGA: Generally the court asks for the report and the clerk submits the report. Then that difficulty will not any more arise.

SHRI K. B. SINHA: The plaint is admitted by the order of the presiding officer and it has to be admitted only when court fees etc. are fully well.

SHRI M. C. DAGA: Now suppose a lawyer raises a very important report and at that time it must be brought before the court.

SHRI K. B. SINHA: That will again be a matter of framing the issues. That will be a plea raised by the party and that would be a subject matter of issue. Over this matter what I can suggest is this. So far as the interlocutory matters are concerned and which generally delay, in that connection I would submit that a period should be prescribed within which those applications should be disposed and it should be the shortest period possible. For example an application for appointment of a receiver, or issue of an injuction or attatchment before judgement are concerned, these are matters that delay generally. One of these matters are adopted to delay the disposal of the case. And the fourth one is the service of witnesses. The witnesses are not being served. The court is helpless and the other party is also helpless and the only procedure is that summons are issued by the court and then they are received back. There is no other agency for affecting immediate service of the summons on the witnesses as also on the parties. So there should be a machinery provided for affecting immediate service on the witnesses as also on the parties.

SHRI MOHAMMAD TAHIR: What machinery would you suggest?

SHRI K. B. SINHA: It may be through the police as is done in the case of criminal cases. It may also be through the services of specially appointed Amins to affect that service. So far as the police are concerned the summons can be served on lawyers as already provided in the C.P.C.

Now I come to the second question. In this regard I would submit that during the pendency of the suit, it is not only desirable but also very essential that service of all process should be affected on the pleader of a party. This is provided in the CPC already and merely saying that I have no instructions and the summons should go to the party . . .

A pleader appointed by a party has a right to receive summons in all process and for speedy disposal of cases it is but necessary that processes issued should be served on the lawyer of a particular party.

SHRI MOHAMMAD TAHIR: After the suit is filed and lowyer is appointed . . .

SHRI K. B. SINHA: Yes Sir. Prior to that no process is possible to be served, because he does not become an agent.

SHRI SATYENDRA NARAIN SINHA: Yesterday, a Joint Secretary of a bar counsel of Jaunpur told that the the service of the notice on the pleaders should not be considered to be adequate, because in his opinion it resulted that the cases are decided ex-parte. Has it come to your experience?

SHRI K. B. SINHA: Sometimes even after the service of the sum-

mons, the lawyer refrained from appearance. Any lawyer having least conscience in him would not refrain from putting in appearance if a notice has been served on him. He can simply go to the court and can ask for more time to contact with the client and generally the courts allow if the matter is not urgent. Being as an agent having filed Vakalatnama, the lawyer cannot refrain from putting in appearance and if he does so be becomes guilty of misconduct.

SHRI M. C. DAGA: Sometimes it so happens that the lawyer does not put in his appearance in the court because of fee.

SHRI K. B. SINHA: Fees is not the problem but instructions can be a problem.

SHRI S. K. MAITRA: If there is a collusion between the two lawyers, then . . .

SHRI K. B. SINHA: This is mere apprehension. Even if anyone colludes with the other party, can he shut his mouth. He will not be able to know what his lawyer has commited with the other party, because most of the litigants are illiterate and we can make any statement without their understanding what statement we are making. If it is there, there is very negligible percentage. The lawyers profession is a noble one.

SHRI MOHAMMAD TAHIR: So in your view the notices should be issued to the lawyers only.

SHRI K. B. SINHA: Yes, Sir. My submission to the members is that the notices should be issued to the lawyer and lawyer only. If a lawyer feels some difficulty, he can always go and pray before the Presiding Officer for time. And if the Presiding Officer feels it is only for delaying the matter he can refuse.

Regarding Question No. 2, Under the New Bar Council Act, a pleader cannot withdraw his power unless his client agrees. How can he violate that term of power given to him by saying that he will not accept the process. It may be difficult so far as Presidency Towns are concerned, so far as the other districts are concerned, there is no difficulty.

Now coming to the III question, I would very frankly submit that here we do not have any such procedure. No record of rights is prepared. The case is decided and the decree is prepared on the basis of the judgment delivered. If somebody wants to have something for record, he can apply for its copy. It would be desirable if it is done and a permanent record is maintained but there will be a great difficulty also in the matter because a final record can only be maintained only after a litigation is passed through all the stages—the First Appeal, the Second Appeal and then at what stage this record is prepared.

So far Question No. IV is concerned. I would express my unability on this matter because I am not dealing with revenue Law or practising on the revenue side. I am only a Civil Lawyer.

Regarding Question No. V minimising the cost of litigation. As your Hon'ble Sirs know in U.P. the litigation is most expensive and I do not think if there is any other State where the expenditure on litigation is so high.

SHRI M. C. DAGA: For instance, Delhi is there.

SHRI K. B. SINHA: There the lawyers may be expensive, but not the court and process fee. In U.P. we are charging highest fee on the plaints and suits. We have a sliding scale here. On Rs. 1,000 valuation,

the court fees is Rs. 177.50 and there is no maximum court fee payable. Previously we have the maximum court fee payable at Rs. 12,500 irrespective of the valuation of the suit.

The first and foremost step in minimising the cost of litigation will be either the court-fee should be abolished completely, although it will tell upon on the resources of the State, or it should be minimised. There should be a uniform scale in all the States. Then the cost of process should also be minimised. Further the expeditious disposal would also automatically result in reducing the cost of litigation.

So far as question No. 6 is concerned, I think, we cannot make any hard and fast rule in this connection. There may be some cases so far as providing legal aid is concerned when the litigant is not at all in a position either to pay to the lawyer or the court expenses. So far as court expenses are concerned, we have Order XXX, but so far as giving legal aid to the litigant is concerned, that has to be analysed on the basis of some principles to be laid down otherwise we cannot have any measures for judging because litigation is very expensive. Litigation expenses also differ according to the stature of the lawyer and the court in which the case is fought. Expenses are much higher in the High Court than the expenses incurred in the lower courts. Nobody spends on litigation on his sweet will. If there is some provision for providing aid, everybody would ask for it and would be very difficult to make any distinction. So on principle I think we may formulate anything in the nature of Order XXX but there should not be any executive order for providing legal aid.

MR. CHAIRMAN: Suppose a man has gone to Bombay and there he was implicated by someone. In that case the court may allow legal aid or not.

SHRI K. B. SINHA: For this courts should have some fund, otherwise they cannot provide any sort of aid. In criminal cases the Government pays to the lawyer, but it is not given to the litigant. So we may provide some facilities for conducting litigation instead of providing to the litigant.

Regarding question No. 7, I think that these should be provided to the parties free of cost. It will not cost anything to the courts.

So far as hearing preliminary objects along with the merits of the case are concerned, it is always desirable that the preliminary objections which go to the root of the matter should be heard first. If the question of jurisdiction is decided against the party, the court should not proceed to decide the case on merit. So in my view the question of preliminary objection as to the maintainability or otherwise which go to the root of the matter should always be decided first.

So far as the provisions of review are concerned, I think it is necessary with certain safeguards as already provided in the C.P.C. and I do not think that review in any other condition except what has already been permitted under the code is necessary.

Regarding question No. 10, my submission is that section 115 should remain. Article 227 is a very expensive remedy. Section 115 is a cheaper remedy, much cheaper than Article 227. It will not be in the interest of the public to delete section 115 in view of Article 227.

So far as question No. 11 is concerned, the provisions of Order XI are very necessary. They provide a great help in the progress of the case to both the parties.

So far as question No. 12 is concerned, I would submit that here in U.P. the scope of summary case has already been enlarged. Here all the ejectment

suits between the landlord and the tenant, so far as urban property is concerned has become triable in a summary manner. If the nature of the suit is not complicated, there is no reason why summary procedure cannot be adopted.

So far as question No. 13 relating to Order XXXIX is concerned, the provision is already there and this should continue. And so far as issuing or putting limitation on the powers of the court to grant temporary injunction is concerned, I would submit, that powers are already there. I would submit that power to issue temporary injunction should be extended even to those cases where the provisions of Order XXXIX Rule (1) and (2) do not strictly apply. There are very many hard cases where Order XXXIX and Rule (1) and (2) are not required and yet injunction is required and the Supreme Court felt the necessity of that provision.

A.I.R. 1962, Supreme Court. page 527, Manohar Lal Vs. Hiralal, their lordships observed, "My submission in this connection would be that the scope of Order XXXIX should also be extended to such exceptional cases as were contemplated in this section So there must be a power to grant injunction in those cases which are not covered by Order 39, rule (1) and (2). but in cases where the issue of an injunction is a must.

Regarding question No. 14, the first thing that I would suggest is that the provisions of Order XXIX rule 2(3) should be deleted. That envisages that if the payment is not certified in court, it will not be taken into consideration towards satisfaction or adjournment. If I pay Rs. 1000/- by means of a cheque and that cheque is cashed by him, I do not care to have it verified.

Because now in this stage in which we are, we are generally making payments by cheque and it is much more an evidence than fact of its being certified by the court and if it is not verified by the court, I cannot plead that I have not paid the amount. I am saying this Sir, on the basis of my practical difficulty faced more often than once. People pay the amount and after four or six years some one puts a decree that you pay the amount or your property is going to be sold. Although I have paid the amount and now I am not in a position to pay it second time and the view of the court is that you recover the amount by filing a suit. So this rule 22(3) should go and so far as the delay is concerned that again is a procedural matter. In my opinion provisions of order 21 are responsible for delay. They have provided a complete machinery for realisation of the amount. That machinery may be defective but the provision is not defective. For example if a notice is to be issued that your property is going to be sold and you are having service of it, but no body would suggest that issue of notice should at all be dispensed with. Really in fact it is not the provision of order 22 but the machinery for complying that provision is defective. Now then there is the second provision. If a sale is to be made, a notice is to be issued, particulars are required to be given in the sale proclamation and lot of evidence starts in that connection. It is not unhealthy that all those procedures should be dispensed with. The procedures are healthy giving to a prospective purchaser the entire data but then the dispute arises as to what data should be given and what not. So far as that position is concerned it causes delay but it can be said that the provision itself is not defective. It is we who make it to prolong further and cause delaying its execution.

Sir, if it be your pleasure then I would like to give two or three points more.

Section 80 of the CPC, instead of being deleted completely recommendation should be brought at par as provided in the other facts, where

a notice is necessary but it is dispensed with or its necessity is done away with in case of emergency if the very purpose of the suit is to be defeated by giving notice. The notice under Section 80 may be insisted upon and a proviso to that effect may be added to Section 80, although it gives benefit seldom to the State yet it is very helpful and I am saying it that after the receipt of the notice under section 80 CPC, some of the disputes are settled even without litigation.

SHRI MOHAMMED TAHIR: What would be the number of such cases?

SHRI K. B. SINHA: It may be few. What will be the form if the institution of suit is postponed for two months. I say exceptions may be made with respect to those cases where the purpose of a suit is defeated, if the notice is given. Such provisions exist in the Municipalities Act or in the Nagar Mahapalika Act. They have said therein that you have to give two months notice but it will not be necessary in those cases where the very purpose of the suit will be defeated if the notice is given. Suppose I have to fight a suit for injunction restraining the Government for terminating my service. If I give two months notice they terminate. What I will do them in the local Acts like the Nagar Mahapalika Act. This is the exception. The officers have been safeguarded otherwise every officer can be sued. There should be a safeguard to it but section 80 as a whole should not be deleted. here should be proviso added to it that in cases of such nature where very purpose would be defeated if the notice is to be given, so the notice is not necessary.

SHRI MOHAMMAD TAHIR: Will you think it proper that mendatory provision be made there saying that two months notice is given and they must dispose of the case within those two months. There may be settlement or something like that or even they should give reply to the party to that effect. They do not give the replies to the party concerned, they do not make settlements. The period of two months is used for the purpose that within this period the matter may be settled and there should be no further filing of the suit. So do you suggest the mandatory provision to compel the Government to send a reply.

SHRI K. B. SINHA: That is very much implied in it. Let there be a specific provision in it. That will not solve the problem Sir. I may also add that now we have a cyclostyled form in the Distt. Magistrate's office saying only two lines;

"Your claim is not admitted or the claim is denied. It is now for you to file a suit which will be defended on your cost".

In some cases where there are persons personally involved or having some conscience. In other subjects or the claim is to the valuation of Rs. 2 lakhs and there is an admitted claim for Rs. 2 thousand so in that event at least Rs. 50 thousand should be paid.

Then Sir I would submit about Section 100. The concurrent finding of the fact should not be looked into but the finding which is not concurrent its reversal should be looked into.

SHRI S. K. MAITRA: So you want to widen its scope.

SHRI K. B. SINHA: Yes, it is very necessary because this provision of section 100 is as a means that larger cases may not go to the High Court and there may not be reversal of their judgement. Now all first appeals, as far as possible, are being decided in such a manner that they are concluded by finding all facts and if the courts have disagreed why should a litigant not have the advantage of having a fact decided by the highest tribunal of the State. Even the Supreme Court has taken in them that if it is concurrent, we would not look into it. If the Supreme Court

even loses the finding of the fact, is the High Court on a higher padestal to revise it which is not concluded by a concurrent finding of the fact? It may increase the work load but after all satisfaction of a litigant is also essential and it cannot be denied. It do not mean to minimise or throw any kind of disrespect—the standard judgement of the Supreme Court are far superior than the judiciary here. They have also to give the minimum quota of two appeals to be decided in a day. If you do not decide two, you will be liable as inefficient. The first appeal in a High Court is heard in two days and the first appeal in a subordinate court is to be decided in half a day. Why should the High Court interfere when the finding is not the concurrent fact.

Then Sir, there has to be some provision in the Code of CPC on the view taken by the S. C. that no commission can be appointed to seize the accounts books. Order 26 provides for appointment of Commissioner but after the view of the S.C. if there is a dispute on account between the two parties, if there is anything on which a party in litigation wants to realize there is no procedure I think or channels to know that on the action of the S. C. the Commissioner can be appointed to seize the account books. In that case the lawyer commissioner has been appointed. He went to seize the accounts but he was beaten and on that a case of criminal type started again and the person went right to the S. C. and it said that the party has committed no fault and the man was not authorised to seize the account books.

The other thing on which I would like to make my submission is about the setting aside of the *ex-parte* order. The view that has croped up is like this. If the case is fixed for pronouncement of judgment only then there is no remedy for a party to have the *ex-parte* orders set aside and order 9 should embody now specially rule 7. A proviso to that effect that even a date fixed for pronouncement of judgement should be deemed to be a date of hearing in the facts, if an *ex-parte* judgement is passed against me, I will come and for setting aside have a decree. In how many cases, on the practical cases the rejection is done. 99 per cent cases are filed within time and are allowed.

SHRI M. C. DAGA: You have said that all the work can be done by a clerk or a UDC or a Reader or a Munsif or the Civil Judge and if the Judge or Munsif does not apply his mind under Order 7 Rule 11, then...

SHRI K. B. SINHA: I submitted in the beginning that the admission of the plaint is made by the judge and not by the Munsarim. If the plaint is scrutinised by the Munsarim he gives his report on the back of it with regard to the cause of action, the jurisdiction and the court fee. Then that report goes to the Presiding Officer and he on being satisfied, he may admit it or reject. He cannot reject unless he hears the plaint. For purpose of admission of the plaint, it always go to him. But there are many things to be done between the stage of admission till the date of first hearing.

SHRI M. C. DAGA: As soon as the plaint is filed, summons are served, suppose an application is filed under Order Rule 11 that it (plaint) is not properly valuated and the court has no jurisdiction, whether the court will debar him...

SHRI K. B. SINHA: All these objections are put in the written statement when the defendant put in an appearance, and when the stage of issues comes in, on all those objections the issues are framed.

SHRI M. C. DAGA: You said that the summons can be served by the Police Agency. In this connection, I would quote what the Law Commission has said in this report... (read out) In view of this observation, you kindly reconsider your suggestion.

SHRI K. B. SINHA: For that we can make a provision by putting the Police agency under the Civil Courts.

SHRI M. C. DAGA: Do you want to retain Section 80 as it is or would you suggest any amendment in it because on technical deficiency, a number of cases have been succeeded.

SHRI K. B. SINHA: There is nothing wanting in it and there is nothing which should be deleted, so far as form of Section 80 is concerned.

SHRI S. N. SINHA: About the scope of Section 100, it has been suggested that the appellate court be empowered to issue a certificate whether the case is fit for appeal...

SHRI K. B. SINHA: So far as certificate of fitness is concerned, we lawyers as a whole have a very sad experience. It is just representing what is provided in the Supreme Court appeals. We have to approach the bench concerned for a certificate whether it is a fit case for appeal or it is a matter which deserves the judgment of the Hon'ble Supreme Court. Then you may analyse or collect the data what is the percentage in which the certificates are granted and what is the percentage in which litigants have to go and move the Supreme Court in Special Leave Petition. I give my judgment and then you want me to certify that my judgment suffers from infirmities which needs a scrutiny by the higher court and then invite criticisms on my inefficiency if the judgment is reversed. So my submission is that for this sort of certificate from the judgment himself, it would be very difficult.

SHRI S. N. SINHA: So you want this section to remain as it is?

SHRI K. B. SINHA: Subject to modification fiindings of fact which is not concurrent can be challenged in the High Court in the Second Appeal under Section 100.

SHRI S .N. SINHA: In that case are you not enlarging the scope?

SHRI K. B. SINHA: Yes, it will amount to that. There are stages even in Second Appeal. One stage is Order 41 Rule 11, where the court has to certify that the judgment is such that the appeal should be admitted. If the judgment is not such on the scrutiny of the court that it should be admitted, the appeal is rejected summarily and so many second Appeal are dismissed summarily even when they involve the question of law...

SHRI S. N. SINHA: In your reply to the question No. 13 you have said that the interim injunction should be granted where the great injustice is like to occur? While granting the interim injunction, will it be necessary to record the reasons for it?

SHRI K. B. SINHA: The reasons are always to be recorded by the Court.

SHRI M. C. DAGA: You say that order 39 Rule 1 should be done away with. But what will happen if there is a strong *prima facie* case and balance of convenience. If all these conditions are not fulfilled then no injunction should be granted.

SHRI K. B. SINHA: That is what order 39 contemplates.

SHRI MOHAMMED TAHIR: You have said about the court fee that it is highest in U.P. Can you let us know something by means of which court fee can be reduced. The Law Commission have said that there should be reduction in the court fee.

SHRI K. B. SINHA: This can be done by making some amendment in the CPC.

MR. CHAIRMAN: Some say that arbitration is not very popular with the parties. What is your opinion?

SHRI K. B. SINHA: It is,

though it contains very few sections and is most complicated and most vague legislation of the country.

MR. CHAIRMAN: On behalf of my colleagues and myself I extend our heart-felt thanks to you for the trouble that you have taken in coming over here and giving your evidence before the Sub-Committee.

[*The witness then withdrew*]

II. Bihar State Bar Council, Patna

Spokesmen:

(1) Shri Satyendra Sahai Verma

(2) Shri Mahendra Nath Saran

(3) Shri Uma Prasad Singh.

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI MOHAMMED TAHIR: Have you submitted any memorandum?

SHRI M. N. SARAN: Yes, we have.

MR. CHAIRMAN: Your State Bar Counsel has submitted memorandum and I would like that point that as your suggestions are there, I would request you to confine yourelf to the points. I would now request you to proceed.

SHRI M. N. SARAN: The first point I would like to submit will be the abolition of preliminary decree from the CPC. I find from the proposed amendment that preliminary decree as such is to be substituted by the word 'order'. In order 34 of the CPC there is no specific provision so far as the rules are concerned. So the abolition of preliminary decree is necessary. We have that in a partition suit. The specific share of the sharers have got to be decided first and the court then proceeds on for taking final decree allotting this property or the other property. So the preliminary decree has to be deleted. That would be in the shape of final decree. What has happened in the partition suit is that at first the share will be determined and what properties are going to be allowed to the parties. There is no provision left now in the CPC in such contingencies and then further in an account suit first it is to be determined whether anything is payable to the plaintiff by the defendants, or whatever it might be. Thereafter the proceedings have to be tackled as to what amount is to be actually payable. If this is deleted then nothing is left in the CPC. How the finality will have to be arrived at unless the final decree has been provided by putting the word 'order'. That will take the position of final decree in a mortgage suit, but not in a partition suit. Therefore I think this deletion is not very healthy or happy as it makes no difference as the main purpose of the Act seems to be to dispose of the suits. But that will not in any way help us rather it may complicate.

Then so far as the causes of delay are concerned, the first cause of delay is that the defendants always try to avoid the service of summons and in that case, of course, process servers are also responsible to a very great extent. Though there is a provision for the proper service and through the Nazir but there is no provision as such that the Process Server

should be punished by the court itself in the event of his failure in serving the process. I think there should be some provision that the process servers should be equally punishable for giving false service reports.

The alternative which I would suggest is that we should have such a provision as is prevalent in our Bihar Ceiling Act that before a suit is filed the party has to send a copy of the pleadings by a registered post to the other party and the registration receipt should accompany the plaint that he has already posted it through the registration post. So I would suggest that here also such a provision should be made.

SHRI S. K. MAITRA: I think a separate machinery has been set up for the purpose and if and when they find that the reports are not correct, the process servers are punished for that.

SHRI M. N. SARAN: I may submit that the Civil Court Registrar has got one of his prime duties to check these process servers but that has not become much effective. He can only check a certain percentage of it.

Now-a-days you find that in our State of Bihar the appeals upto valuation of Rs. 10,000/- are heard by officers of the rank Distt. Judge, Addl. Judge and Addl. Sub-Judge. Addl. Sub-Judge hears the first appeal upto the valuation of Rs. 5,000/-. Our experience shows that when a Addl. Sub-Judge hears appeal against the judgment of a Munsif, the Munsif at that time is promoted to the rank of Addl. District Judge or even the Distt. and Sessions Judge. Now at the time when he is hearing an appeal, it may be a human weakness that the person whose judgement he is hearing in appeal he is already higher in rank and service to him. Therefore, in most of the cases it works injustice. If the second appeal is made more stringent it will not be proper. Therefore the provision of second appeal, it is, is in no way detrimental. So the amendment will not improve the matters in any way.

So is the case with the revision under section 115. This section is sought to be deleted altogether. Now the Supreme Court has also very much limited the scope of the revision. Therefore, this is not going to serve any useful purpose, when there is already provided an alternative remedy in C.P.C.

SHRI UMA PRASAD SINGH: Sir, I would like to impress on you that we should be more anxious for the easy and expeditious disposal of the cases and we may not bother so much for the shortening of the litigation. We should not try to curtail or conceive legislation to defeat or to curtail the rights which have been throughout recognised as civil rights to litigate. This will show that we are more conscious of our rights and, therefore, we litigate. In this country hardly we find cases of torts, while in England and other countries there are a large number of cases of torts. We are not so conscious of our rights and, therefore, our litigation is limited to dispute of land and property. So, therefore, my submission is that our anxiety should be for easy and expeditious disposal of the cases and not to restrict the rights of a citizen to litigate, and our approach should be with this angle of vision.

Regarding Section 80, I may be permitted to say that *prima facie* I also share the view that Section 80 should no longer exist and it should die. But after giving my deep consideration, I revise my view and I am of the firm opinion that Section 80 be retained as it is. Firstly, I see, Sir. the object which is pointed out that the State or public officer should no have a privilege in the matter of litigation as against the citizen, actually this is not a correct

proposition. By Section 80 the State does not command any privilege nor any officer command any special privilege. Secondly my suggestion is that there should be no competition between an individual and the State. The individual must yield to the State because the State stands for the individual .....

SHRI M. C. DAGA: The individual also stands for the State.

SHRI UMA PRASAD SINGH: This is what I was going to say. Actually the purpose of Section 80 is to give an early opportunity to the State to make an amicable settlement. But the object of Section 80 is not being fully achieved because our officers do not take notice of Section 80 seriously. I hardly come across cases where the State came forward to make amicable settlement with the litigants. I may say it may be the misconduct of the officers of the law department of the State if the Department does not behave correct. But for that we cannot delete the Section.

Now I cannot get relief if I am asked to give two months notice under Section 80. I want to protect my client. Therefore, my submission is that if a notice is sent and action is taken jeopardising the interest of the party then that would cause a waver, or you make a provision that in appropriate cases of injunction a notice under Section 80 may be waived. A large number of cases would be instituted against the State for breach of contract and the State would be penalised because of its faulty and negligent officers. The whole order 27 of the CPC and order 28 are special privileges to the State. In the entire order 27 there is a provision beneficial to the State.

My opinion is that a notice under Section 80 ought to be made obligatory with certain exceptions and the exceptions be fully judicially considered as to what should be the case which should be accepted. If my view is not acceptable to you, Sir, then the alternative is that a person filing a notice under Section 80 would be disentitled to the cost of the suit. This is my personal opinion, and not of the Bar Association.

On the point of deletion of section 115 my submission is that in view of Articles 226 and 227 it becomes superfluous. Therefore Section 115 be not retained.

SHRI M. C. DAGA: What is your opinion about the revenue powers being entrusted to the revenue courts?

SHRI UMA PRASAD SINGH: We may like that. There should be some court to do this work.

SHRI S. N. SINHA: What is the next point?

SHRI UMA PRASAD SINGH: My first suggestion is that order 11 of the CPC. be retained. This to be treated as a must in the CPC. I further plead that this be made mandatory. What I have seen is that there is no application of order 11 or 12 of the CPC at least in Bihar. If these could be properly made use of the litigation could be reduced to 1/4th. My submission is that in every case the plaintiff must frame questions and the defendant must be required to answer them, and the trial should remain open only on the points which are denied by the defendant.

For speedy disposal of cases I plead for amendment of the Act. The object cannot be achieved without considerable amendment in the law of evidence. Registered documents are produced in courts and we know that in all the courts there are *Sankat Mochan*. We have to substantiate the primary evidence otherwise it is not relied upon. Suppose I get a reliable document from the office of some government department and then we produce a certified copy of it in the court, but it is not considered sufficient. The

original has to be brought, and someone has to prove it that it is the true copy of the original document and only then it becomes admissible. From this it would appear that the certified copy is not admissible unless the original is brought.

So far as I have been able to understand is this that the whole question is as to how to minimise the litigation so that in a very short time disposal may be made judiciallly, and at the same time what are the remidies. So far as section 80 is concerned my friend has put up his views and we are unanimously of the opinion that section 80 should not be retained. It has been deleted in the Bill, that is a good thing. In a welfare State there should be no difference between an individual and the State. If a suit has got to be filed, no notice is required because that gives a lot of trouble. I will conclude only by saying that we have appreciated that this is being deleted.

So far as the deletion of Section 115 is concerned, of course it has been said by my learned friend but your hon'ble Sirs will kindly appreciate that when the order is without jurisdiction then only 115 interferes. If he order has been passed with material argued in the exercise of the jurisdiction and the court has not exercised then there are three ingredients under which High Court interferes. Now the difficulty remains is that the whole question or the whole decree is before the court either to confer it or to remand it after setting it aside or alter it altogether. If for example a commissioner is appointed in a partition suit, the pleader submits his report under the provisions of the court. The objection is filed and after hearing the objections, the court concerned gives its orders. Now suppose for a moment at present according to the existing provisions of the CPC a revision also lies against that order and when somebody comes in revision then some of the courts are of the opinion that this matter can be decided also in appeal. Now there are others too who say something else. So far as this matter is concerned, if we do not decide it just now then in that case what would be the position. Even if the parties are satisfied then only for the purpose of your giving one power to this or that. The whole case will have to be heard on merit. Your hon'ble Sirs know that in a partition suit only one or two persons are concerned. The whole appeal has to be filed into the High Court and consequently it may take 7 or 8 years to them to decide. Therefore in cases as these are Section 115 is the remedy by which most of the litigation can be curtailed. Not only that but your honours will appreciate that in the supervisory powers which is vested in 222 article of the Constitution, I would like to say that so far as the S.C. is concerned they have got a wider view and similarly so far our Patna High Court is concerned they only interfere when certain rules are not followed. If there is the rule of the Deptt. and that has not been followed they will only at that time say that the rules have no been followed. Therefore, in my humble submission here would be no remedy left to the parties to place it before the hon'ble judges of the High Court or the Supreme Court and at the same time it would not be in the interest of justice to do like that. The expediency of the justice demands that in the revisional jurisdiction they may kindly admit it. They also issue stay order but in the writ cases what happens is that although they are of the opinion that at the time of admission they can say that this and that has been knocked down and they would say that the revenue of the State is short therefore we are not going to stay it. So in my humble submisison I would say that section 115 should be retained.

There is also a partinent question about the survey proceedings. I would now like to make a suggestion

and in my humble opinion it is a valuable suggestion. What happens is this that I am entitled to a particular land or a particular property. Now the survey authorities go there and in this revisional survey all those things are there and they enter something. I may say that in the Bihar Land Reforms Act we have got our alternatives there. There are certain cases that have also got to be decided by the Revenue Courts. Now there are other remedies also and all those are decided summarily. No legal principles are observed either by the officers concerned or no legal evidence is taken resulting thereby that the better remains unsettled. Although I am entitled to the property but still other names are also entered there. The result is that the litigation continues one after the other. If there is litigation between me and some 'H' then the other litigation would be between 'X' and 'Y'. If these records of rights are prepared under the civil proceedings in the Civil Court, as soon as any dispute arises in respect of any property rights the records can easily be obtained from there. The matters can be decided rather conveniently and without any further delay. I would also suggest that in the civil proceedings or in a suit the court should be at liberty that the original records may be called from the Registration Department and as soon as the proceedings are done away with they may be returned immediately. It is not necessary to keep the voluminous record and to preserve it unnecessarily but as and when it is needed by the court, the court may have it and after that the documents should be returned immediately.

III. **High Court Bar Association, Allahabad:**

Spokesmen:

1. Shri K. B. L. Gour, Advocate.
2. Shri S. I. Gupta, Advocate
3. Dr. R. Dwivedi, Advocate.

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even

SHRI MOHAMMAD TAHIR: I want to know about it. Suppose there is a property about which the competent court has given a judgment and according to that judgment the parties are not in a position to have the judgment in practise because in the survey records another mention finds place. What is the remedy then?

SHRI UMA PRASAD SINGH: Sir, I want to make one prayer more. About Section 132, I plead for its retention because that has been deleted in the proposed amendment bill, otherwise a lot of trouble will be there. There will be much humiliation.

MR. CHAIRMAN: We have noted it.

SHRI M. C. DAGA: Now what your Bihar Government says that 50 per cent of the applications under Section 115 are dismissed summarily by the High Court of Bihar.

WITNESS: That may be correct position so far as numerical value is concerned. We do not challenge the figures.

SHRI UMA PRASAD SINGH: That depends upon the attitude of the court.

MR. CHAIRMAN: I on behalf of my colleagues, I extend heartiest thanks to you for your coming over here. If you think that anything is left here which you have not elaborated, I request you to send it to the Lok Sabha Secretariat.

[*The witnesses then withdrew*]

though you might desire the evidence to be treated as congdential, such evidence is liable to be made available to the Members of Parliament.

SHRI M. C. DAGA: We should have a memorandum from them, and then we can examine them at Delhi.

MR. CHAIRMAN: Your memorandum is not with us, so it is very difficult for us to put specific questions. Therefore, I would request you to please submit your memorandum first, we will study it and then call you at Delhi.

SHRI GUPTA: My submission is that evidence of those persons who have greater experience would be required to be taken but such persons do not have sufficient time at their disposal. This is the largest State in India and it has the largest High Court. I would recommend that Allahabad will be the best place for making enquiries from the experienced lawyers. I think there will be no better place than Allahabad where the competent lawyers are available. So I would request to you to make your programme for visiting Allahabad and taking views of senior members of the Bar.

SHRI M. C. DAGA: That would be proper that we should visit Allahabad.

MR. CHAIRMAN: The time at our disposal is very very short. From 18th February the budget session starts and we have to complete our work before the monsoon sets in. So I would request your Bar Association to send their representatives to Delhi.

SHRI GUPTA: We have come from Allahabad and we are going back disappointed. If our evidence is not required, we should have been informed beforehand.

SHRI BEDABRATA BARUA: Still we have half an hour time. My suggestion is that we should get your suggestions in a general way.

SHRI DWIVEDI: In this short time we can give two suggestions. One is about section 115 and the other is about section 100, about which second appeal is going to be entertained by the High Court after a certificate is given that there is a substantial question of law.

As regards section 100 our objection is that there must be the highest court of the State which may consider the question of law. So far as the question of providing that certificate is necessary, that is all right but only that "substantial" word should be deleted, because that would create so many difficulties, and debar a number of people from getting justice from the High Court.

About section 115 the reason which has been given that because there is already supervisory power given under articles 226 and 227 of the Constitution, that will serve the purpose; but in our experience that will not suffice for the simple reason that if in Allahabad High Court if you have to file writ under article 226 or 227 you have to pay a court fee of Rs. 100 and then a lot of typing has got to be done and a lot of papers have to be supplied by the litigant itself. It is not done so when the revision is filed. Therefore, the purpose that the litigation should be less expensive is defeated. Suppose an interlocutory order has been passed then he will go to the High Court under section 115. Under Article 226 or 227 there are orders that no interlocutory order should be interfered with. Therefore, no interlocutory order will go to the High Court. It is, therefore, necessary that section 115 must remain there. But there may be some amendments.

SHRI M. C. DAGA: What are those amendments?

SHRI GUPTA: Section 115 should be amended in such a way that the

supervisory jurisdiction of the High Court undar Article 226 which exists today under the Constitution is available at the district level under section 115. It is almost a parallel thing, making the rugh of work in the High Court less and making justice easily available at the district headquarters. Section 115 in CPC should be parallel to 226 except that the deciding authority instead of High Court should become the district judge. The scope is strictly confined to material irregularities in the procedure adopted, but I wish that sort of jurisdiction of section 115 should be further extended to include within its scope jurisdictional errors as well as manifest errors of the law.

.....such arrears of law which come today be set right. At the High Court level by the High Court under article 226 why should not it be set right at the District level by the District Judge. It should be shaped in such a manner that there may be a preliminary jurisdiction at the district level at the district headquarters. It may be highly conducive to the interest of justice making the work of the H. C. rather easier. It will bring lot of good results and the speedy disposal of the cases. It is necessary that it should be done.

There is another issue also and I can say it out of my 22 year experience of Bar that lot of litigation arises because of two factors, namely (1) incompetency and the (2) that the officers are not involved. The incompetence can be overcome by the assistance of lawyers and I think they are not actually involved in the matters.

Now I would like to say something about section 100. In a state like U.P. which is the biggest State of India, unless questions are intertained by the H. C. there cannot be uniformity of the system. I would say that there are two questions. One is the substantial question and the other non-substantial questions of law. It will be very difficult to bring uniformity because in one district there is one opinion about it and in another there is the other opinion prevailing. My submission is that let the application be certified first, if some one intends to go up for the H. C. There should be a heavy court fee if some one intends to move his application and primarily it should be found out whether that question comes under the perview of the law or not.

SHRI GAUR: I would like to put forth two or three points.

Firstly about Section 100, that it was stated the proposed amendment confining the same to substantial questions of law creates anomalous position as when we say substanial question of law it is some thing more than the question of law and our experience at the Bar had been in respect of errors apparent on the face of the record concerning the writ petitions. That an error is apparent on the face of the record for one Judge while it is not for the other and the standard for the same Judge also differed from case to case and by addition of the word "substantial" the matter is being left to the descretion of the Judge and a question of law may be substantial in one case while it may not be substantial for the other Judge in the other case though the same question may be involved in both and then although the question of law has been wrongly decided depriving a litigant of relief and just because in view of a particular court the question is not substantial, the person will not get relief from the court although the decision is patently erroneous and against the law of the land. The position would create uncertainty in respect of the decision of the case and affect the administration of justice. In view of the heavy burden of court fees specially in this state it was desirable that the Second appeals may only be filed after leave has been granted but then it was also required that it

should be clarified that the appeal would only be presented after the disposal of the leave application within certain period. About the form of certificate to be granted also mentioning the question of law on which certificate was granted and then the appeal be confined at the final hearing to only such question. This amendment will create complication and may tarnish the good name of the administration of justice for the simple reason that an appeal may have 3 or 4 questions of law. Some already decided against the appellant, say by the High Court and the Supreme Court and finally the certificate granted only on one question on which there was no such decision and thus confining the final hearing of the appeal only to that one question mentioned in the certificate. The cardinal principle is to-do justice between man and man in accordance with law of the land but in these circumstances that we every day see in case the opinion of the High Court or Supreme Court has changed by the time the appeal comes up for final hearing which occasionally happens and is not unknown. The questions which now has been decided in favour of the appellant according to law of the land will not accrue to the benefit of the appellant just because he happened to file the appeal some time before the other person. Although both the appeals are being disposed of together.

About the deletion of section 115 C.P.C. the purpose of such deletion as stated is that there is already a similar remedy under the Constitution and the High Court can be approached therein. The consistent view of the courts are that in their extra-ordinary jurisdiction that they would not interfere at the interlocutory stage and with the result that the litigant would be harassed to fight out all the stage before he can approach the High Court or a Higher Court in appeal and then again take remand because the question had been wrongly decided or evidence wrongly shut out or amendments wrongly allowed or issues not framed or the question of jurisdiction wrongly decided. The aforesaid deletion will in any case not reduce the burden of work rather increasing the same and also putting harassment to the litigant and a free hand to the Subordinate Courts without any control of the High Court, till a person comes after two stages. The reasoning for deletion as given also does not appeal as the deletion of 115 C.P.C. at the most may increase the burden of paying court fees on the litigant to have his remedy only by enriching state exchequer which certainly is not guiding factor for the amendments.

SHRI M. C. DAGA: These discussions require lot of discussions.

SHRI GUPTA: There are many suggestions and which were impossible for us to really dictate them in a memorandum.

MR. CHAIRMAN: It would be better in the interest of law if you send your exhaustive memorandum to us at Delhi and appear before the committee.

SHRI GUPTA: We have found innumberable phrases which really increase litigation and it is impossible to make them out in such a short time. Unless some body sits down for 15 days only then he can dictate them.

We might decide to come over to Delhi when you like us to be there but we would insist upon this that you should give us the whole day. It will be only then possible that we can give our suggestions.

MR. CHAIRMAN: I think you have not been able to give your detailed suggestions here. We would request you to appear in New Delhi before the Committee when we invite you.

SHRI GUPTA: We would request if it is at all possible for you to hold a meeting at Allahabad then I think that would have been much better.

MR. CHAIRMAN: On behalf of my collegues and myself I thank you all for your coming over here. The Committee feels that you have not done full justice and that still remains to be done by you.

(The witnesses then withdrew)

IV. Shri O. P. Gupta, Advocate, Allahabad.

(The witness was called in and he take his seat).

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidnece to be treated as confidetial, such evidence is liable to be made available to the Members of Parliament.

Now Mr. O. P. Gupta, you have submitted your Memorandum. Since we are short of time. you please confine yourself to two-three main points.

SHRI O. P. GUPTA: My first point is about the delay and the pending arrears. Allahabad High Court has almost the largest number of arrears at present. So my suggestions are to obviate this difficulty. To remove this difficulty, we have to see what bur aim is. The ideal state in the society should be that nobody needs to go to a court at all. If there is no injustice, no-body will go to the Court. But that will be the ideal state and it is not possible to achieve it. But in order to go in that direction my suggestion is that persons who are found at the end to have come before the Court with wrong pleas or with dishonest motives should be punished and those who have been proved to be honest and true should be rewarded. At present what happens is that if I file a suit for Rs. 1,000/- and I succeed in proving it, then I get a decree for Rs. 1000 plus of course a little cost and all my time and energy is wasted. On the other hand, the person who has been proved to have been wrong, is not penalised. My suggestion is once a man is proved to be right and honest he should get at least 50 per cent additional of the amount he has clainmed. This one suggestion will reduce litigation to half.

In a decree, my suggestion is, some extra amount should be given as a reward to the true person and as a punishment to the dishonest person. This extra amount should be 50 per cent but that can be reduced by the court for special reasons. Secondly after the decree is passed the future interest has been put at the lowest which is at present 6 per cent. In the amendment Bill this is going to be increased. My suggestion is that after a decree is passed future interest should go to 2 per cent per month. Of course, it can be reduced by the court at its discretion. It is just to penalise a person who does not pay, and it is just to end the litigation. Therefore, not only interest but high interest is needed after the decree is passed.

Coming to the execution side it was in 1885 that the Privy Council said that the difficulties of a litigant in India start after he gets a decree. After he gets a decree he has to become a CID man to discover JD's assets. My suggestion is that the judgment debtor must bear all the burden after the decree has been passed. He must go to the court and satisfy the court. After the decree is passed he should be given a short time of two or three months and if does not satisfy the court during this period the a warrant should be issued automatically.

MR. CHAIRMAN: You have given all these things in your memorandum and you are only repeating them. Since we are short of time you need not repeat them.

You can send your further suggestions within ten days if there are any.

Thank you, very much.

(The Committee then adjourned)

GMGIPND —LS 1- 781 LS.—5-9-75 —1100

C. B. II No. 306 (II)

LOK SABHA

JOINT COMMITTEE

ON

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

EVIDENCE

(Volume II)

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NEW DELHI

October, 1975/Kartika, 1897 (Saka)

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Corrigenda

to

the record of Evidence (Vol. II) tendered before the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974.

Page 9, col. 2, line 20, after "is" insert "in".

Page 23, col. 2, line 28, for "failng" read "falling"

Page 25, col. 1, (i) line 12, for "gether" read "shed altogether"

(ii) line 12 from bottom, for "lenienly" read "leniently"

Page 40, col. 1, line 5, for "again" read "against"

Page 45, col. 2, line 15, for "proposed" read "proposing"

Page 47, col. 2, line 19, for "too" read "to"

Page 48, col. 1, line 18, from bottom, for "loose" read "lose"

Page 51, col. 2, (i) line 6 from bottom, for "vib" read "viz"

(ii) line 18 from bottom, for "like" read "lie"

Page 52, (i) col. 1, line 20, for "No Sir," read "No, re-"

(ii) col. 2, line 26, for "simple" read "simplify"

Page 53, col. 2, line 16, for "yill" read "will"

Page 55, col. 1, line 4 from bottom, delete "some"

Page 61, col. 1, line 22, for "Shri E.G. Tiwari" read "Shri R.G. Tiwari"

Page 63, (i) col. 1, delete line 9.

(ii) col. 2, line 21, delete "that"

Page 83, col. 2, line 11 from bottom, for "persin" read "person"

Page 92, col. 1, line 18, for "remain is" read "remain as"

Page 115, col. 1, line 7, for "brifless" read "briefless"

Page 119, col. 2, for "Naya" read "Nyaya"

Page 120, col. 2, line 8 from bottom, for "for" read "fer"

Page 132, col. 2, line 30, for "1968" read "1966"

Page 133, col. 1, line 17 from bottom, for "whercther" read "whether"

Page 137, col. 1, for line 3 from bottom, read "Various hurdles were put. Since then"

Page 147, col. 2, for line 12, read "tigencies. According to the sugges-"

Page 161, col. 1, for lines 21-22, read "case is not in the trial court but in the High Court."

P.T.O.

Page 162, col. 1 -

(i) line 25, for "three" read "there"

(ii) line 5 from bottom, for "Afted" read "after"

col. 2 -

(i) line 10, for "specinc" read "specific"

(ii) line 11, for "lying" read "laying"

Page 164,

(i) col. 1, line 15, for "fact" read "fast"

(ii) col. 2, line 2, for "If" read "It"

(iii) col. 2, line 6, for "of' read "3,"

Page 165, col. 1, line 7 from bottom, for "depresented" read "represented"

Page 166, col. 2, line 4, for "The" read "There"

Page 172, col. 2, line 1, for "clases" read "clauses"

JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

COMPOSITION OF THE COMMITTEE

Shri L. D. Kotoki—*Chairman.*

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29. Shri R. G. Tiwari
***30. Dr. (Smt.) Sarojini Mahishi

---

*Appointed *w.e.f.* 2-12-74 *vice* Shri Prabhudas Patel resigned.
**Appointed *w.e.f.* 20-8-75 *vice* Shri Debendra Nath Mahata died.
***Appointed *w.e.f.* 19-12-74 *vice* Shri Niti Raj Singh Chaudhary resigned.

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@32. Shri Mohammad Usman Arif
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34. Shri Krishnarao Narayan Dhulap
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@@36. Shri B. P. Nagaraja Murthy
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@Appointed *w.e.f.* 11-12-74 *vice* Shri Bipinpal Das resigned.

@@Appointed *w.e.f.* 14-5-75 *vice* Shri Nawal Kishore died.

JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

QUESTIONNAIRE

1. What, according to you, are the causes of delay in civil litigation and what amendments do you suggest to eliminate such causes of delay?

2. Do you consider it desirable to permit the service of all processes on the pleader of a party after the defendant has appeared in the suit?

3. Do you think that a civil proceeding should also include proceedings relating to the preparation and publication of the record of rights?

4. What measures would you suggest to prevent landlords and other persons from instituting suits to defeat the distribution of lands to the landless peasants in pursuance of the land reforms legislations or to evict landless peasants from the lands reclaimed by them?

5. What measures would you suggest to minimise the cost of litigation?

6. What classes of litigants should be given legal aid and what classes of litigants should be provided with all the expenses of the litigation?

7. Do you think that copies of documents and statements of witnesses should be furnished to the parties free of cost?

8. Do you think that preliminary objections should be heard along with the merits of the case?

9. Are the provisions of review necessary?

10. Is section 115 necessary or can it be deleted in view of the fact that a a remedy is available under article 227 of the Constitution?

11. Are the provisions of Order XI necessary?

12. Do you think that greater use may be made of Order XXXVII, so that larger number of suits may be tried under the summary procedure?

13. Do you favour any limitation being imposed on the power of the courts to issue temporary injunctions? In particular, do you favour an amendment to the effect that an *ex-parte* interim injunction should not be granted save in exceptional cases and for reasons to be recorded?

14. What changes would you suggest in the existing procedure relating to the execution of money decrees with a view to avoiding delay and simplifying the procedure?

*WITNESSES EXAMINED

S. No.	Name of witness	Date of hearing	Page
(1)	(2)	(3)	(4)
1	Shri Manohar Sinai Usgaocar, President, Goa, Daman & Diu Advocates' Association, Panaji (GOA).	27-1-1975	2
2	Shri S. Ramachandran, Advocate, Supreme Court, New Delhi.	27-1-1975	12
3	Bar Council of India, New Delhi	28-1-1975	22
	Spokesmen:		
	(1) Shri H. D. Srivastava, Member		
	(2) Shri A. N. Veeraraghaban, Secretary.		
4	Shri S. N. Chowdhury, Advocate, Supreme Court, New Delhi.	28-1-1975	32
5	Shri N. S. Das Bahl, Advocate, Supreme Court, Delhi.	29-1-1975	42
6	Shri K. Subrahmanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.	29-1-1975	52
7	Shri Durjodhan Dash, Deputy Secretary, Law Department, Government of Bihar, Patna.	**17-1-1975 & 10-2-1975	58
8	Shri Moti Lal Khattri, District Government Counsel, Varanasi.	11-2-1975	68
9	Shri Jinendra Kumar, Advocate, Chandigarh . .	29-5-1975, 17-6-1975 & 18-6-1975	84, 152 159
10	Shri Atma Ram, Advocate, Chandigarh . . .	29-5-1975	97
11	Government of Punjab, Chandigarh . . .	30-5-1975	103
	Spokesmen:		
	(1) Shri S. S. Sodhi, Secretary		
	(2) Shri R. K. Battas, Joint Secretary.		

*Contains only the list of witnesses included in this volume. For other witnesses, see volume I.

**See volume I.

(1)	(2)	(3)	(4)
12	Shri Shri Chand Goyal, *Ex*-M.P.	30-5-1975	110
13	Shri Harbhagwan Singh, Advocate, Chandigarh .	30-5-1975	115
14	Shri C. L. Lakhanpal, Senior Advocate, Chandigarh	30-5-1975	117
15	Shri S. K. Jain, Advocate, Chandigarh . . .	30-5-1975 & 17-6-1975	125, 140
16	Shri K. C. Joshi, Lecturer in Law, Kurukshetra University, Kurukshetra.	16-6-1975	129

JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Monday, the 27th January, 1975 from 10.00 to 13.10 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

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3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Sardar Mohinder Singh Gill
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13. Shri Rajdeo Singh
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17. Shri R. G. Tiwari
18. Dr. (Smt.) Sarojini Mahishi

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26. Shri V. C. Kesava Rao

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2. Shri V. V. Vaze, *Joint Secretary & Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

WITNESSES EXAMINED

I. *Goa, Daman & Diu Advocates' Association, Panaji (Goa)*

Spokesman:

Shri Manohar Sinai Usgaocar—*President.*

II. *Shri S. Ramachandran, Advocate, Supreme Court, New Delhi.*

I. Goa, Daman & Diu Advocates' Association, Panaji (Goa)

Spokesmen:

Shri Manohar Sinai Usgaocar, President.

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: I welcome you. Before we proceed, I wonld draw your attention to direction 58 of the Directions by the Speaker under which your evidence will be published. If you desire that any part or the whole evidence should be treated as confidential, we will do so, but even then, such evidence is liable to be made available to Members of Parliament.

SHRI USGAOCAR: I have noted it.

MR. CHAIRMAN: When we were in Bombay, you wanted to come before us, but we could not accommodate you. We are sorry for it, but I am glad you have been able to come to Delhi to appear before us.

You have compiled a very comprehensive memorandum which has been circulated. You are welcome to elaborate any points therein or make new points.

SHRI USGAOCAR: I have already given here some points which the Committee might consider useful. This is based on the experience we have gained from other sets of legislation and other sets of procedure. Of course, the Committee will consider to what extent they are acceptable. Some points we have stressed here

are mostly on the question of avoidance of delay. There are also other aspects of a minor nature which we have given in Annexure III.

I do not say that under the earlier system there was no delay. There was delay, but if by making slight changes, we can avoid delay, we may try to do so.

Besides this, now it is sought to introduce some amendments. If it was possible to have a totally new code as such, it would have been much more desirable because the old code is rather old. We have passed a new legislation concerning the Criminal Procedure Code. In the same way, it would be much better to have a new Civil Procedure Code instead of making some amendments only.

Secondly, if we see the scheme of the Code of Civil Procedure, there are some sections and then there are orders. Basically, the scheme of the Code is that the sections remain unaltered while orders can be altered by rules framed by the High Courts. Our suggestion is that there should not be such a distinction. The entire Code should be framed to form Sections alone. In regard to implementation, powers can be given to the High Court to frame rules. But, whatever is done in the CPC should not be changed, so that there will be uniformity in the law. Whenever a Central Act is enacted, if the rules are made by different amendments, it will not be much desirable. This is the basic suggestion which we have in respect of the amendments to the Civil Procedure Code. The third aspect which we have in mind is this. When we see the scheme of the amendments, the purpose is to cut the number of appeals. We appreciate this because multiplicity of appeals should be avoided and an end should be put to the litigation. For example, in the proposed new Section 100, powers of second appeal have been curtailed. One thing should be noted here. When an appeal is preferred and presented, the party goes because he has to satisfy the order or the decree. This is heard by another experienced person. We would not mind that the finality is given there. But, our stress would be that this appeal should be heard by a collective body. There should be at least three judges. Here, I would like to say that under the earlier system, from the judgement of the civil judge, senior division, the appeal would be preferred to the High Court and it was heard by a bench of three judges, minimum. By this, there will be confidence in the minds of the parties that the problem is examined not by one individual but by a group of persons. I do not say that it is examined by one person, it is less important. Of course, the person may be experienced. But, there is some satisfaction to the parties that the problem is examined and this could be considered as final. This would be much desirable. This is one of the suggestions which we have in mind. Now, with this, I would come to the points which have been stated in our memorandum.

MR. CHAIRMAN: But, Mr. Usgaocar, before you take up the points, I would make a request to you. You have made the first point that although this amending Bill is exhaustive, it is not comprehensive, and therefore, your suggestion is that a new Code should be enacted on the lines of the Criminal Procedure Code. Would it be possible for your organisation, not now, but within a month or so, to indicate to this Committee in what other respects this amending Bill does not conform to your thinking that you have? If you do so, our Committee will be able to make a reference, though it will not be within our competence to suggest a new Code.

SHRI USGAOCAR: Yes. Now, I would like to refer to Annexure III of our memorandum. We have detailed the causes of delay in civil litigation. One of the points mentioned is this. The system of organising the civil procedure as per the

earlier Code which was enforced at that time was that whenever preliminary objections were disputed, once they were decided, it was not possible to reopen the same. Now, even after a decision is given on preliminary points, the matter can be agitated thereafter in appeal against the decree. For instance, if a decision is given on a point of jurisdiction, it is disputed and it is left to be re-agitated even after the decree is passed. This is not a happy situation.

SHRI M. C. DAGA: If preliminary points are raised in regard to jurisdiction or other relevant matters, when the Court gives the decision, the suit is dismissed.

SHRI USGAOCAR: I would put it in a different fashion. If the Court says that it has jurisdiction, thereafter, the suit proceeds. But, the party is not debarred from taking up this point again at the time when the appeal is preferred against the decree. That means, even if the Court has held that it has jurisdiction, the party is not debarred from challenging that point again. This is my point.

MR. CHAIRMAN: Your suggestion is that this should not be allowed.

SHRI USGAOCAR: So that there is finality.

SHRI SISODIA: We could not understand his point very well. When there is a decision against a party, does he mean to say that he should not go on appeal or revision anywhere? What is your point?

SHRI USGAOCAR: Let us say that a decision is given on a preliminary point and the Court gives a finding that the Court has jurisdiction. Of course, the suit does not come to an end; the suit proceeds. Thereafter, the decree is passed. After the decree is passed, the aggrieved party can take up the point of jurisdiction saying that the Court had no jurisdiction. Whatever decision is given by the Court, it is not final and the order can be challenged in the appeal.

SHRI SISODIA: What is your point? Do you suggest that the party should go on revision at that stage or there should be no remedy to the party against the orders passed?

MR. CHAIRMAN: The witness in Annexure III of his memorandum has said:

> "The causes of delay in civil litigation are in our opinion—"

They have itemised the causes. One of the items is in regard to preliminary objections. Their suggestion is this. When preliminary points are agitated again in the final hearing also, delay takes place. They say that once the order is passed, the preliminary objections should not be raised again in regard to jurisdiction or whatever it is. The aggrieved party can go on appeal. But, that is a different matter. Once the decision is taken, that should not be allowed to be agitated. His experience is that, these are raised again and this should not be allowed.

SHRI SISODIA: There are only two remedies. When a suit is pending, if the order is passed against a party, he can go on revision. If he does not go on revision, the point can be raised again in appeal. What is your suggestion?

SHRI USGAOCAR: Revision is not permissible under the new system. Only remedy is appeal. There should be appeal. It is permitted under order 43. That becomes final when it is decided.

SHRI SISODIA: Party should go in appeal there and then and not afterwards.

SHRI USGAOCAR: Yes.

SHRI SISODIA: Whether appeal is there or not what is the difference?

SHRI USGAOCAR: When decision is passed by higher court that court has no jurisdiction. It will be unnecessary to go into the trial if there is trial and thereafter appellate court holds that court has no jurisdiction all the energy spent on this trial will be wasted. That is my submission.

Then, I have suggested about the issues. This is in respect of issues which are framed. They must be considered settled without any change once the trial begins. This is my submission. Even at later change, issues can be changed; there again the matter may be open for the evidence and all that. When issues are raised the party must be given statutory right to raise objections if necessary. Appeal shou'd be provided against that. I don't know whether I have explained properly.

MR. CHAIRMAN: You say preliminary matter must be disposed of. It shall be at the initial stage itself. Pending appeal it should be withheld. And regarding issues to be framed by the court if the aggrieved party has some difference etc. he can go on appeal. Once this is done no further amendment to the issues should be allowed. That way you think it will avoid the delay.

SHRI USGAOCAR: That will avoid the delay. I would say what is the position as per the relevant law. There is appeal against the preliminary order and objections. We can consider it hypothetically. The preliminary objections being considered the suit is dismissed. Appeal should be preferred straightway. In other case preliminary case is not decided finally. Issues were framed. Appeal is preferred from preliminary order. Appeal is preferred and higher court takes time. Therefore appeal should be decided at the same time.

MR. CHAIRMAN: That will also have to be delayed. Till it is finally decided by appellate court, trial court will not be able to proceed at all.

SHRI USGAOCAR: This is only once, even after finalising the issues and not at any other time.

SHRI S. K. MAITRA: Counsel. As soon as preliminary point is decided there should be an appeal against that. The suit is kept pending.

SHRI USGAOCAR: There can be two occasions. If the suit is not finally disposed of, in that case appeal is not framed there. Appeal is pending there. I want to explain this. In the old system the appeal was not directly preferred to higher court; it was in the lower court; that is why there is this difference. This stage would be over when settlement of issues is done finally when deciding objections against the issues.

SHRI S. K. MAITRA: Preliminary point is appealed against. What is the fate of the suit? After the issue is decided then the suit is taken up. Will it not lead to delay?

SHRI USGAOCAR: This is only one appeal which is provided.

SHRI S. K. MAITRA: On preliminary point judgement goes against any party. There is appeal against final decision, decree passed in the suit. If that appellate court points under order 41 rule 23 that the decision on preliminary point was wrong appellate court can reverse decision and send the case back. That reduces the delay. But if there is appeal on preliminary point the suit is held up. Then in either case there will be delay. Hundred per cent cases will be delayed. There are two alternatives. One is whether order is made which is not appealable under Section 105. Revision is there. Even if the power to omit goes, even then in Article 227, there is revision. Suppose, no revision is made, even then, under Sec. 105 of the Code of Civil proce-

dure the order can be challenged in an appeal. Therefore, an appeal is made, and ultimately the suit is decided. Then it comes to the court of appeal. That non-appealable order can be challeged and, if it relates to the preliminary points and a decision of the appellate court on the preliminary point is reversed in the court of appeal, then the court of appeal may send back the case for a trial on merits If it is not decided on merits, there is a possibility that in most of the cases, the judgement of the trial court might be upheld. Only a few cases can come up. But, if the procedure suggested by you is followed, then in hundred per cent cases, they will remain stayed until the decision of the court with regard to the preliminary point on appeal is disposed of. Therefore. this will lead to more delays. They will not solve it.

SHRI USGAOCAR: Our experience is not so.

MR. CHAIRMAN: Anyway, I think, the matter requires an examination. We shall examine the suggestions made by the witness from his experience.

SHRI DWIJENDRALAL SEN GUPTA: Is it your contention that all the preliminary questions as and when raised should be decided by the court in the first instance or whether they should be heard, in the first instance or heard on merits and left to the discretion of the trial court? There are certain matters in preliminary questions which may be almost on the same points and the trial judge goes into the aspects in details. So, whether you will limit the discretion of the judges or you will make that obligatory on the part of the trial judge to hear the preliminary questions in the first instance.

SHRI USGAOCAR: It all depends on whether it is linked up with the facts or not. Of course, if that is linked with the facts, then it will be necessary to deal with them after recording the evidence. But, if that is purely on a point of law, then, it may be decided in the preliminary stage.

SHRI DWIJENDRALAL SEN GUPTA: If it is linked with the evidence for the purpose of the decision on the preliminary questions then evidence relevant to facts is absolutely necessary. It is not possible to decide even on the preliminary points. If it is purely on the points of law, then that has to be decided in the early stage.

MR. CHAIRMAN: Anyway I would examine that aspect. You will kindly take up the next point.

SHRI USGAOCAR: Another point which I had in mind is this. As I have just now explained, the appeals are preferred in the appellate court. Thereafter, the matter is called from the lower court and then the papers are sent to the appellate court. The system which was in force was rather different in nature. The appeal was presented in the lower court; the countermemo etc. were also presented in lower court and then within one month's time everything was despatched to the appellate court. The court again within 30 or 80 days may call for the records from the lower court. The records contained in that file might be quite different. In the appellate court this should not happen. This procedure, according to me, would avoid the delay in the disposal of the appeals at an early stage.

SHRI S. K. MAITRA: It is a matter which has to be covered by the rules of the high court.

SHRI USGAOCAR: I may give you an example. If the provision is made, in the code itself, then of course, the delay might be avoided in the disposal of the case. I may tell you that as regards the implementation hardly there are any rules in the High Court which may enable the appeal court to decide the cases. Of course the code itself is exhaustive and the entire section is contained

in it. You may all feel that the ideas I have thrown are revolutionary. I am putting forward my suggestions to the extent they may be useful to the Committee. It is left to the Committee to decide about these suggestions. I am only making them by way of observations. It is for the Committee to accept or not to accept. I can only give my suggestions for the consideration of the Committee.

MR. CHAIRMAN: I think you have suggested earlier to the committee and this should be implemented instead of leaving it to the various courts to have conflicting rulings. You are suggesting here that these should find a place in the Code itself. We shall examine that suggestion.

SHRI S. K. MAITRA: What is the procedure you want? Is that the suggestion that each case should be sent to the court of appeal?

SHRI USGAOCAR: For example, if a suit is decided in appeal. Within eight days' time the party wants to prefer an appeal. There is a ruling by a judge that whether the appeal is admitted or not, because it is prescribed in the law itself, the lower court has to see to it that the appeal is admitted within 20 days' time. Within the next 20 days, the respondent wants to go in appeal, then the entire case is sent directly to the court for the decision. There the matter is heard. So, the appellate court file would not be separated; there is no register also. In that case the entire records would be sent direct from the lower court to the appellate court.

SHRI M. C. DAGA: I think it is a suggestion worth considering.

MR. CHAIRMAN: When an appeal is filed, the appellate court calls for the records.

SHRI M. C. DAGA: What he says is quite different.

SHRI S. K. MAITRA: It may save time.

SHRI M. C. DAGA: We must give a chance to complete his evidence. Then only we must put the questions.

MR. CHAIRMAN: You may carry on.

SHRI USGAOCAR: In appeal the procedure was rather different. We are drafting in a different fashion. We have to discuss the total evidence. On points of law we have to put everything in the memo of appeal itself. The advantage on this is this.

SHRI T. BALAKRISHNIAH: Why go in for arguments? You suggest like that. But, this cannot be done. How much time would it take for the lawyer to prepare his points and discuss the evidence and every other thing? That cannot be done in the code itself.

MR. CHAIRMAN: We will reserve that to ourselves. We shall discuss that among ourselves. Let the witness say what he wants to say.

SHRI T. BALAKRISHNIAH: You will speak from the practical point of view.

MR. CHAIRMAN: I should make clear one thing. Learned witness is free to make whatever suggestions he wants to make. It is for us to examine them and frame our own opinion. Let there be no argument on that score. You can make your suggestions and we may or may not accept them. This is not the stage for it.

SHRI T. BALAKRISHNIAH: Your suggestions must be useful to this Committee.

MR. CHAIRMAN: We can seek clarification from him to appreciate the points he made. We shall reserve the opinions to ourselves.

SHRI USGAOCAR: In the beginning it was stated that it would be left to the Committee to accept them or not to accept. It is my duty to bring this to the notice of the Committee as to what the procedure is.

MR. CHAIRMAN: That is clear.

SHRI USGAOCAR: The procedure that was there since 1939 had been followed from that time onwards. One of the points stated by me earlier in regard to the causes of delay was that even when an order was passed pertaining to the issues, the order was of this type. As per our system there are issues only and on those issues things are to be decided by the court. Earlier the system was different. In that order there were two points—facts admitted and issues. Advantage of that system was while starting with evidence the parties knew that these were the points admitted and no evidence on that score need be led. The parties confined only to the issues and the evidence did not become lengthy. Otherwise, as per our system, the parties have to lead evidence from para 1 to the last para. The evidence becomes lengthy.

SHRI S. K. MAITRA: May I draw your attention to Order 10 Rule 1? The court can find out as to what are the matters/points admitted. Evidence is taken only in respect of the points not admitted.

SHRI USGAOCAR: At times the party does not put in the Written Statement and comes there.

As per earlier system there was a time limit for filing the Written Statement. The time limit was 10 days in cases which were of the value of less than Rs. 8,000 and 20 days in cases which were of the value of more than Rs. 8,000. In cases where there was more than one party, the date for this purpose of filing the Written Statement was to be taken when the summons were served to the party at the end. In this way there would not be delay in filing the Written Statement by seeking adjournments for filing the Written Statement. Of course, there was a provision, that if a party was unable to submit Written Statement due to some special cause, additional time could be given. If the Written Statement is filed on the day of appearance and the rule is framed as such, this could obviate delays.

SHRI S. K. MAITRA: The Bill says that in certain cases the Written Statement must be filed on the date of appearance of the opposite party.

In some cases Written Statement need not be filed at all. Unless the court is satisfied that there is something to contest the suit, Written Statement will not be allowed to be filed at all. It is in Order 37.

SHRI USGAOCAR: These are in Summary suits and not in normal cases.

SHRI S. K. MAITRA: Even in the case of ordinary suits too it has been laid down in the Bill that Written Statement may be given on the date of appearance of the opposite party. This is the provision under Order 8.

MR. CHAIRMAN: Let us go to item No. 8—period for pronouncing the order or judgement. What is your suggestion?

SHRI USGAOCAR: As per our Civil Procedure Code in force the days allowed for orders in the normal cases are five and for judgement the days allowed are 15 from the date of argument.

MR. CHAIRMAN: Kindly give us a reference in this regard.

SHRI USGAOCAR: I will refer to item No. 1.

MR. CHAIRMAN: You have explained regarding administration.

I would like to seek some clarification. What is your suggestion regarding under appropriate order 'prescribed' or it should be left to the court to take note of it?

SHRI USGAOCAR: It should be prescribed.

MR. CHAIRMAN: Regarding any matter of pleading, this may be allowed to be handled by the administration which you call bureaucratic system but it should be prescribed clearly in the court.

SHRI USGAOCAR: Yes.

MR. CHAIRMAN: I think, so far as delays are concerned, we have discussed enough. As I said in the beginning, your memorandum is exhaustive. All hon. Members have got copies of it. This Committee will surely examine all aspects of it.

SHRI USGAOCAR: You kindly see Annexure III, clause (p). Normally we have seen that the commission is issued and the Commissioner is given the task to examine the witness. The powers of the Commissioner are so limited that his function is only to record the evidence; he has got no power to make a decision. As a result of this, the evidence becomes very lengthy. That is why the earlier procedure was that whenever there is a letter of request to a court, that court would have all the powers for deciding the matter.

MR. CHAIRMAN: You are suggesting that the court will be totally in the dark although it may be within its jurisdiction. Another court may somewhere else issue the commission. The commission is being guaranteed. How do you visualise that the local court will have the power to know about a matter?

SHRI USGAOCAR: Copies of the pleadings are sent so that the court should know the matter.

SHRI S. K. MAITRA: Suppose the power is given to a court. But the Commissioner is examining a witness at some other place. Is it your intention that the Commissioner should be vested with the powers of the court?

SHRI USGAOCAR: The examination must be done by the court itself.

SHRI S. K. MAITRA: Suppose the witness is ill.

SHRI USGAOCAR: At that time, the court will go there. There is no commission for examination of a witness.

MR. CHAIRMAN: For the sake of clarification, this suggestion that you are making, which is very significant in nature is on the basis of the law that is operation in your territory and you are comparing it with the law as it is operating here.

SHRI USGAOCAR: Yes. I am making this suggestion on the basis of the law which is there.

MR. CHAIRMAN: What the court is following in Goa? How is it operating there? That is why you feel that the same improvement should be made here.

SHRI USGAOCAR: Yes. You kindly see Annexure V. There is a special chapter regarding a lost file. For this purpose, one of the points which was made was that when pleading was presented, an extra copy was also given and that was kept in the record. In case the file is lost, that would serve as an authenticated copy in the court's custody.

SHRI V. V. VAZE: What about the documents?

SHRI USGAOCAR: Now, the system of production of the documents is that normally they are presented only when they are exhibited. But that was not the system to give the pleading. You have to file it so that it would form

part of the proceedings right from the beginning.

SHRI V. V. VAZE: What about the list of witnesses?

SHRI USGAOCAR: The party was bound to produce along with the file so that they are kept in court's custody. Any party can peruse them. Otherwise we have to get copies of the pleadings and other documents relating to the record destroyed or disappeared from the parties concerned.

MR. CHAIRMAN: You have mentioned in your covering letter addressed to this Committee that the Code of 1939 was in force in Goa at the time of the liberation and many of its provisions are still in force. We will look into that.

SHRI USGAOCAR: Now, I would like to refer to item 3 of Annexure-II of my Memorandum. This relates to the imprisonment of the persons on account of non-payment of debts. Of course there is an increase in the amount, that is Rs. 200 and this increase is in accordance with the old Civil Procedure. But I would like to make a suggestion here that there was no imprisonment as per the earlier law which was in force on account of non-payment of debts. Here we should make it clear that there should be no imprisonment on account of the non-payment of the debts.

In regard to item 5 of Annexure-II, the powers are given to the High Court and the powers are not given to the Judicial Commissioner's Court. For the entire territory there is only one Judicial Commissioner's Court. Therefore, the powers can be given to the judicial Commissioner's Court which is considered as High Court for the purpose.

Referring to Item 6 of the Annexure-II, in the new order XXXII-A, power is given to the Court for attempts for the settlement. According to this provision it was incumbent upon the Court to assist the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and many times our experience is that with the intervention of the Court the suit has been settled. So, there is no harm if the power is given to the Court.

Regarding item 18 of Annexure-II, we have said that the Review may be necessary excepting in non-appealable cases because when there is a provision for an appeal there will always be an aggrieved party to appear but if it is totally abolished there will be no chance for appeal or review. But in non-appealable cases, review should be permitted.

Then, regarding the court fee payment.

MR. CHAIRMAN: What is your suggestion?

SHRI USGAOCAR: Now, the payment of court fee is made at one time, at the beginning, and the defendant has no burden. The litigation goes on and only if he does not succeed, the court fee is recovered from him. On page 6 of Annexure III of our Memorandum, we have given our suggestions in regard to court fee. This was introduced in 1961. This was not there earlier. This was enacted just six months before the liberation. We have stated here:

> "The Court fee payable in a suit shall be paid in 4 equal instalments; the first, by the plaintiff, when the plaint is presented by him; the second by the defendant when he files his written statement; the third and the fourth by the plaintiff and the defendant respectively, at or before the hearing of the case on merit under Order XVIII."

There is also a responsibility placed on the defendant. This was working better. In this system, only the plaintiff would pay the court fee in advance. The second instalment will be paid by the defendant when he files his written statement. The third and the fourth will be paid by the plaintiff and the defendant.

SHRI S. K. MAITRA: If the defendant is made to pay without any cause?

SHRI USGAOCAR: This will be known only at the time of the hearing.

SHRI V. V. VAZE: When the man has not gone to Court with any prayer, when he has not preferred any counter claim, why should he be required to pay?

SHRI S. K. MAITRA: Sometimes, just to harass him, a suit may be filed. Though he has nothing against him. he will be required to pay the court fee. A frivolous suit may be filed. What will the defendant do in such a case?

SHRI USGAOCAR: Sometimes, the defendant may go and harass the plaintiff and he may take away his property. In such a case, he has also to come to the Court.

SHRI S. K. MAITRA: In such a case, the defendant ultimately will be saddled with the cost. But, in this case, even in the initial stages, the defendant will not be allowed to defend unless he pays the Court fee though he is not at all responsible and the plaint has no legs to stand upon. What will happen to the defendant in such a situation? This will be a plain and simple harassment.

SHRI USGAOCAR: I do not think there will be harassment. It will be known when the plaint is presented.

SHRI V. V. VAZE: Let us say that somebody goes and files a frivolous suit for Rs. 10 lakhs. Let us say, the court fee payable is Rs. one lakh. To make the defendant pay Rs. 50,000 will be plain and simple harassment.

SHRI USGAOCAR: There is a point in this. I appreciate.

SHRI S. K. MAITRA: We can ask anyone to pay court fees provided he has gone to the Court with a prayer for some claim or set off.

MR. CHAIRMAN: Now, so far as the Court is concerned, it is the plaintiff who has to pay the court fee because he has a claim against the defendant. Now, your suggestion is that in certain circumstances, the defendant also must pay the court fee.

SHRI USGAOCAR: This is my suggestion. I have mentioned this in Page 6 of Annexure III of my memorandum. This has been done.

MR. CHAIRMAN: I can assure you that our Committee will examine the suggestions you have made. As I was mentioning, we were interested to know about the civil law that was obtaining in that part of the country. You have been good enough to take the trouble in furnishing certain facts to this Committee. From our side, I would say that we attach great importance to these facts and I assure you that we will examine all aspects very carefully and come to our conclusions and fit them in with the Code that we are examining.

SHRI M. C. DAGA: Adjournments are granted by the judges because they do not want to become unpopular. The Law Commission has also observed:

> "Although under the law, a judge can refuse adjournment on the ground of convenience of the counsel, in practice, he rarely does so. A judge becomes unpopular if he refuses adjournment on such ground. The remedy for this lies in the hands of a powerful and a strong judiciary."

What do you say about this?

SHRI USGAOCAR: I do not think that all the time it is....

SHRI M. C. DAGA: All the time, it happens because he will become unpopular among the lawyers.

SHRI USGAOCAR: I would not say so. There may be a few instances of this type. But, all the judges are not like that. This cannot be said to be a common practice. Our experience is that generally judges do not grant adjournment. The tendency among advocates also is not to seek adjournment. But when we know that there is a possibility of getting things, we also find that there are obligations. It is entirely dependent on the judiciary.

SHRI M. C. DAGA: The question is whether the rule under Order X is mandatory; it relates to the examination of the party. The witness has not said anything about it. Order X will facilitate so many things. This is the observation of the Law Commission as well.

SHRI USGAOCAR: The normal experience in the court is to take the evidence and admit the statements. It takes a lot of time. The defendant is unconcerned unprepared. He cannot make it. It is not possible to make it incumbent. On many occasions, he is illiterate as well.

SHRI MOHAMMAD TAHIR: I want to know something about question 3, from the witness.

MR. CHAIRMAN: In Annexure 3, in reply to question 3, the witnesses have said that it is not clear to them. The question means that an officer should not record what he thinks to be against the judgment of a competent court. It means that the record should not be made against that judgment.

SHRI USGAOCAR: It refers to preparation and publication of the record of rights.

SHRI MOHAMMAD TAHIR: The meaning of this question is that no record should be made against the judgment of a competent court. Suppose there is a judgment of a competent court that such-and-such a property belongs to you. The record of rights should not be prepared against that judgment.

SHRI USGAOCAR: Yes, Sir; I agree with this meaning.

MR. CHAIRMAN: I think we can conclude the evidence of the learned witness, Mr. Usgaocar, I thank you again for coming all the way; and more so far the eagerness and earnestness with which you furnished information to this Commitee. I thank you—and through you, your Association—once again.

(The witness then withdrew).

II. Shri S. Ramachandran, Advocate, Supreme Court

[The witness was called in and he took his seat].

MR. CHAIRMAN: Mr. Ramachandran, I welcome you to our Committee. We expected you to come before us during our last sitting in Delhi; but you could not come. We are now glad that you have been able to appear before us. Before you start giving your evidence, I would like you to refer to Direction 58 of the Directors by set Speaker 58. According to that direction, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. That is the limitation which you have already noted.

Now, Mr. Ramachandran, you have not submitted any written memorandum.

SHRI RAMACHANDRAN: I am sorry, Sir.

MR. CHAIRMAN: It does not matter. You are welcome to enlighten us on any of the points or clauses of the Bill.

SHRI RAMACHANDRAN: Clause 24 at page 103, inserting a new sub-section (1A)—it refers to Section 60 —says that any agreement by any party to waive any exemption shall be void. It is submitted that this new sub-section (1A) is not necessary, when you have referred to the Indian Contracts Act already.

SHRI S. K. MAITRA: Section 23 makes it contract-wise, if any part of it is unlawful; but unless the law says that you should not do it, how would Section 23 be attracted?

SHRI RAMACHANDRAN: On the anology of Section 23, if a particular person says that a particular Section should be exempted; and if there is any agreement relating to exemption. it is also an exemption concerning the two parties. Under Section 62 relating to the right of property, the party might say that it should not be attached. It is also an agreement between the parties and the court concerned.

SHRI S. K. MAITRA: That is not an agreement. If the two parties agree that in spite of the law, it will be subject to attachment, unless a specific provision is made that such a waiver shall not be made, how will section 3 of the Indian Contracts Act become attracted to it.

SHRI RAMACHANDRAN: On the anology of section 23 of the Indian Contracts Act, it cannot be applicable when it is the policy of the Government that it should be exempted for the benefit of the debter.

MR. CHAIRMAN: Section 1A reads:

> "Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of an exemption under this section shall be void."

The witness has taken objection to it. Because there is a specific provision in the Indian Contracts Act, he says that is sufficient that this is redundant.

SHRI S. K. MAITRA: Section 23 of the Indian Contracts Act provides that if any contract is contrary to law or any part of the consideration is unlawful or is opposed to public policy, then the contract is void. This provision says that if the judgement-debter and the judgement-creditor enter into an agreement to the effect that in spite of the law, a particular property will be subject to attachment, that will be void. The point made out by a witness is that such a contract would be opposed to public policy because the law itself says that it will be exempt from attachment. But that is a point which is not free from doubt, and that is why the Law Commission has said that it should be clearly stated that such a contract will be void So, this is not contrary to section 23 of the Indian Contracts Act. It will be supplementary to it.

MR. CHAIRMAN: We will examine that.

SHRI RAMACHANDRAN: In the Notes on Clauses at page 105 on Clause 34, dealing with section 96, it is said:

> "There should be no appeal on facts from decrees passed in petty suits where the amount or value of the subject matter of the original suit does not exceed three thousand rupees, if the suits in which such decrees are passed are of the nature cognizable by courts of Small Causes. The section is being amended to achieve the said purpose."

By Clause 34, after section 96(3) the following sub-section is sought to be inserted, namely:

> "(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cogniz-

able by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed three thousand rupees."

By increasing the pecuniary valuation from Rs. 1,000 to Rs. 5,000, this right of appeal should not be taken away. Even though there is a revision provided in the Small Causes Courts Act under section 25, atleast one right of appeal should be given on questions of fact.

SHRI M. C. DAGA: Whatever may be the amount?

SHRI RAMACHANDRAN: Whatever may be the amount.

SHRI S. K. MAITRA: This is a new provision which is an extension of the principle contained in the Provincial Small Causes Courts Act and in the Presidency Small Causes Courts Act. Under these Acts, if a suit is filed by a Court of Small Causes, there is no appeal, but there is a provision for it in the case of the Presidency Small Causes Courts. There is no revision also, but there is a full Court hearing by the Court itself. So, the same principle has been accepted that where an ordinary Civil Court also tries a suit which is on the nature congnizable by a Court of Small Causes, there should be no appeal. The same principle has been extended and the pecuniary limit has been fixed at Rs. 8,000. Is it the contention of the witness that the pecuniary limit should not be raised, or does he oppose it in principle.

SHRI M. C. DAGA: He says there must be a right of appeal. Why is the limit fixed. That is the trouble. If the decree is for Rs. 1,000, even then he should be allowed the right of appeal.

SHRI S. K. MAITRA: In the case of Presidency Small Causes, up to Rs. 2,000 there is no appeal.

SHRI V. V. VAZE: It can happen that the same Civil Judge is also empowered as Small Causes Judge. If there is no appeal against the orders of the same individual sitting as Small Causes Judge, why should there be an appeal if he is sitting as a regular Judge?

SHRI S. K. MAITRA: If the Court trying the case is not invested with Small Causes powers it tries it in a regular way. If the Judge had been vested with Small Causes Powers, he would have tried it in that way and there would have been no appeal.

SHRI V. V. VAZE: It differs from State to State.

SHRI RAMACHANDRAN: In Madras, Mysore and Andhra there are separate Small Causes Courts and there is separate jurisdiction. In North India, the District Courts are vested with the same powers.

SHRI SAKHALECHA: If there is a uniform code, it would be better.

SHRI RAMACHANDRAN: I feel that it is better to have separate jurisdiction. Clause 39 deals with section 100, sub-section 3 and 5. I feel that this amendment will not serve any purpose because already in section 100 this takes care of itself. So, clauses 3 to 5 will not achieve any purpose.

SHRI M. C. DAGA: Why do you oppose the question of formulating questions and stating reasons for certifying?

SHRI RAMACHANDRAN: In the proposed amendment the High Court certifies that a substantial question of law is involved in this. The nature of this amendment is to avoid delay in speedy jurisdiction. So, my submission is that this is not necessary at all.

MR. CHAIRMAN: I draw your attention to page 106 of the Bill—Notes on Clauses. Here, you will find that Clauses a, b and c of section 100 are very wide in effect and clauses b and c have led to a plethora of conflicting judgements. In dealing with second appeals, the Courts have devised, and successfully adopted, several concepts, such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the Courts below. This has created confusion in the minds of the public as to the legitimate scope of the second appeal under section 100 and has burdened the High Courts with an unnecessarily large number of second appeals. Section 100 is, therefore, being amended to provide that the right of second appeal should be confined to cases where a question of law is involved and such question of law is a substantial one. On these specific reasons for amending section 100, we would like you to enlighten us.

SHRI RAMACHANDRAN: The proposed amendment speaks that there should be an application to be made to the High Court to grant permission just like before coming to the Supreme Court under Article 136. Then the proposed amendment says that there must be an application to be made by the litigant concerned to the Court asking for a certificate to be granted whether it is a fit case and whether a substantial point of law is involved.

MR. CHAIRMAN: Now so far as the proposed section 100 is concerned, the High Court will have to be approached to issue a certificate if the appeal involves a substantial question of law. Then the sub-section says that in an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law on which the certificate of the High Court is sought. Unless a certificate is given, there is no appeal. Only under that certificate the orders seem to follow. In any case, sub-section 5 says that the appeal shall be heard only on the question so certified, and the respondent shall, at the hearing of the appeal be allowed to argue that the case does not involve such question. Therefore, the second appeal is very much restricted, because the certificate is essential in admitting the second appeal.

SHRI RAMACHANDRAN: The main purpose, as I see in the Clauses, is to reduce the amount of work in the High Court by way of second appeals because the language used here is:

> "This has created confusion in the minds of the public as to the legitimate scope of the second appeal under s. 100 and has burdened the High Courts with an unnecessarily large number of second appeals".

The proposed amendment also says that it should be on a substantial question of law. The object is to reduce delay and ensure speedier justice. If an application has to be made to the High Court under the proposed amendment stating whether there is a question of law involved, again there will be more delay for the purpose of getting a certificate. After the certificate is granted, then it will come for hearing. That will be more work to the High Court instead of reducing it.

SHRI T. BALAKRISHNIAH: The object of the amendment is to reduce the work in the High Court. They prescribe that there should be a certificate and all that. That also involves some hardship in getting the certificate and it involves delay. In this case, do you agree to have a revision power in the lower court itself? If there is a question of error on law, why cannot that court which tried the original suit revise

its own order by way of revision? This will also reduce expenditure.

SHRI RAMACHANDRAN: There is already a provision for that—114 CPC read with order 47 CPC.

The object is to reduce delay as much as possible. At the time of second appeal, the High Court may consider that there is no fit case, as it is done in Andhra, Madras and Mysore. The amendment will not serve any purpose.

MR. CHAIRMAN: So far as revision is concerned, there is another provision.

SHRI D. P. SINGH: The overall consideration is that any amendment which is made must have relevance to the objective of cutting out delays and so on. I suppose under rules obtaining in various High Courts, the moment a judgement is delivered, no petition need be filed, but orally a prayer can be made asking for letters patent appeal. That way the delay aspect which you have in mind can be eliminated.

Then under 4(a), which refers to formulating the question, this looks a little odd. When we go to the Supreme Court for that matter asking for leave, in the certificate the Supreme Court does not formulate the question. They merely grant a certificate saying this is a fit case for appeal. Or other things it may go to some other bench. The difficulty I have in mind is this: when a particular question comes to the Supreme Court on a question of law, then the ramifications of the question can be examined and the door is a little wide. If you restrict it, then it will not have the same advantage that a decision of the court will have because it may have wider implications and so many matters will be coming up and be decided. Circumscribing it might rob it of its large purpose.

SHRI RAMACHANDRAN: So far as this is concerned, the second appeal may either come directly from the lower court or it may come directly to the High Court. In that case, the problem will remain: who is to issue the certificate, whether the first appellate court disposing of it or the other, whether he has to give a certificate or the High Court has to be moved on application for the purpose of formulating it. At the time of the second appeal, the High Court consider this aspect whether there is a fit case and a substantial question of law is involved. If that is not involved, they simply reject it. If a substantial question of law and fact is involved, naturally they will have to examine it. In such cases, they do admit it.

SHRI T. BALAKRISHNIAH: The practice in South India is to straightway go in second appeal to the High Court. They consider it.

SHRI M. C. DAGA: What is substantial question of law?

MR. CHAIRMAN: This is an interesting and lively clause where clarification is necessary. Certain things are very clear. First it deals with a second appeal before a High Court. That is sub-section (1) of the proposed section 100.

Then it postulates that the appeal will lie under this new provision only on a substantial question of law. Subsection (2) says that an appeal may lie under this section from an appellate decree passed ex-parte, also.

> "(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law on which the certificate of the High Court is sought."

The section also lays down that the High Court shall formulate that question and state its reasons. Then, the appeal shall be heard only on the question so certified by the High Court. All these restrictions are being laid down under the proposed section.

SHRI S. K. MAITRA: Under the existing law, a second appeal may lie on a question of law. When a second appeal is filed, a preliminary hearing is made by the court under which the court has the power to dismiss the appeal summarily without any reason. But where the court does not dismiss the appeal summarily but admits it, it carries with it the necessary implication that the court is satisfied that there is a point of law to be considered by the court. The change proposed to be made is that the question of law should be a substantial question of law and secondly the court should make it explicit as to what are the questions of law involved and give the reasons. so that the parties may know, when the appeal is heard, as to what are the points of law on which the appeal has been admitted That is the only change. When the second appeal is filed, the advocate has to certify that each of the grounds in the memorandum is a good ground for second appeal. That certificate is already there. Only the subjective satisfaction of the court remains. Instead of making it implicit, the amendment makes it explicit. The witness says it will lead to another application for certification. Suppose the provision is slightly modified and instead of certification, it is provided that at the time of hearing for admission, the judge himself will formulate the points, will the witness be satisfied with that?

SHRI RAMACHANDRAN: When so many grounds have been raised, at the time of preliminary hearing for admission, if the judge says that only on this particular ground you can argue and not on others, that will take away the grounds open to the litigant.

SHRI S. K. MAITRA: If other points are also allowed to be heard at the time of hearing?

SHRI RAMACHANDRAN: The judge on his own cannot formulate that these are the only grounds on which the question of law will be considered. It is left to the litigant and his counsel to find out what is the substantial question of law involved.

MR. CHAIRMAN: Let us confine ourselves to the views of the witness. Members may have their own views but we will come to them at a later stage.

SHRI SAKHALECHA: You have experience in the courts and you know even in seond appeal while admitting, the courts have given very little time. I know this. In Madhya Pradesh High Court admission matters are decided within an hour or even minutes. This provision wants to restrict. At the admission stage do you feel judges can do this work? Will it lead to delay or so? Will it not be a sort of miscarriage of justice?

SHRI RAMACHANDRAN: Certainly not. As for the question of certification is concerned the learned hon. Member, I thing, is an advocate of the Madhya Pradesh High Court. I could only rather feel about it. The judges overwork till 12.O' Clock or 1 O' clock till night. It shows the efficiency of the judge to dispose of the case.

SHRI SAKHALECHA: You are supporting the amendment.

SHRI RAMACHANDRAN: This will not serve the purpose. I have told you so.

MR. CHAIRMAN: He is opposed.

SHRI R. G. TIWARI: Substantial question of law issue is not decided on the basis of merit. Once a bigger coursel appears before court that itself creates an impression that substantial question of law is involved. Dr. Dr. Katju was appearing for a preliminary hearing before the Allahabad High Court once. He knew that the case was weak and perhaps would

not be admitted. He requested Dr. Tej Bahadur Sapru just to sit by his side. When he pnt the case he only referred to the fact that Dr. Tej Bahadur Sapru is also appearing in the case. The moment the judge enquired from him whether he is interested and he replied that he is interested, appeal was admitted.

SHRI S. K. MAITRA: There are two parts, substantive and procedural. He objects to procedural part; on substantive part he has no objection.

SHRI RAMACHANDRAN: If it is mixed question of fact and law it has to be admitted.

SHRI S. K. MAITRA: So far as the substantial power is concerned you have said about this. The rest of it is procedural. But this question is substantive.

SHRI D. P. SINGH: Do you think the word substantial is not correct? Do you want to say that? That is, do you want to say that the word 'substantial' may be deleted?

SHRI RAMACHANDRAN: Regarding question of law, whether it has got substantial question of law or mere question of law, etc. I do not make any difference.

MR. CHAIRMAN: Certain modifications are suggested. Certain deletions and changes are all suggested. Do you agree with Section 100 amendment or do you want.....

SHRI RAMACHANDRAN: I want it to remain as it is.

MR. CHAIRMAN: All right. Let us proceed.

SHRI RAMACHANDRAN: Clause 41. Here, according to Section 96 as proposed to be amended a first appeal will not lie in the case of suits of the nature cognizable by the court of Small Causes when the Value of the subject matter of the original suit does not exceed 3,000 rupees. The said provision however permits a first appeal against the decree with a view to prohibiting a second appeal in such a suit even on question of law.

On this I feel, no amendment is necessary. I am opposed to this.

MR. CHAIRMAN: All right. Please proceed to the next point.

SHRI RAMACHANDRAN: I now come to Clause 45. This is regarding omission of Section 115.

I object to moving of interlocutory applications. There was a conference in Bombay on "Law's Delays" and I contributed a paper in which I have taken objection even to the moving of interlocutory applications.

Coming to section 115 the only object with which it is being removed is that already article 227 exists. According to me, article 227 is a distinct provision under the Constitution which only deals with supervisory functions. Moreover, it is a very costly remedy compared to section 115. So section 115 should remain.

MR. CHAIRMAN: On page 107, notes on clauses, it is claimed that

> "adequate remedy is provided for in article 227 of the Constitution for correcting cases of excess of jurisdiction or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction".

That is why section 115 is sought to be removed. From your experience tell me whether under article 227 the contingencies provided for under section 115 are covered.

SHRI RAMACHANDRAN: They are not at all covered. Article 227 has nothing to do with section 115. Article 227 only deals with books, accounts, etc.

SHRI D. P. SINGH: That is only illustrative and not exhaustive of the scope of jurisdiction of superintendence.

SHRI RAMACHANDRAN: I feel that section 115 should remain. I come to clause 89, dealing with granting of temporary injunctions. Subclause (v) on page 134 reads thus:

> "... such injunction shall not ordinarily remain in force for a period of thirty days..."

Further ruling is that it should not exceed 45 days.

My submission is that as per the decided cases of various courts including the Supreme Court, temporary injunction is granted only if the original suit becomes infructuous. Fixing—time curtails the powers of the court. It interferes with the powers of the Court. It is absolutely on the merits of the case, balance of convenience as given in Order 39. It should be left to the court to give temporary injunction or not. It should be discretionary to the court and no time need be set.

MR. CHAIRMAN: You are opposed to the time limit.

SHRI RAMACHANDRAN: The courts have been given various indirect directions. The time limit of 34 days will not help in the exercise of their discretionary powers.

SHRI D. P. SINGH: This is to curb delays and this time limit will enable the court to re-examine it. Do you not feel that such a provision does help an examination by the court as the other party brings certain facts to the court's notice?

SHRI RAMACHANDRAN: My submission is that courts have been given repeatedly implied directions that temporary injunctions should not be given which is generally in the Northern parts. I give you one instance. I appeared in a Magistrates' court nearly two years back. It was a petty case—election in a Tea Board. The court issued temporary injunction. The plaintiff did not appear. It was suggested to the court if the plaintiff does not appear it should be dismissed. But a short time was given though ultimately I got it dismissed.

After two years again I understand that the Sub Judge, as three or four elections took place, gave some sort of time. If the time as specified is gven, the other party makes another application or by not paying the process fee in time, etc. the time could be increased. The other party may not be in a position to go at all unless temporary injunction is actually served on him and he appears in the court.

I am not in favour of this time. It is left to the Committee to decide.

SHRI D. P. SINGH: The fact is that a date is fixed. It does sometimes make the litigant little more diligent, otherwise he prays for the vacation of the order automatically. Wherever extraordinary powers are conferred on a body—on a tribunal—th e law always makes a provision that there must be some check on that powers for instance the power of the Governor to promulgate Ordinance and so on in the absence of a legislature, as the Constitution has provided, after certain time limit if you do not care to make it into a law, then it will automatically be vacated.

Arbitrary powers are being exercised. It is with that view we would like to have your views.

MR. CHAIRMAN: I would like to supplement.

In the course of your evidence you mentioned that *ex-parte* injunctions are being granted in exceptional cases only. Would you not agree that such extra-ordinary *ex-parte* orders for injunctions should be very very restricted and opportunity should be given to the opposite party at the

earliest to come and contest it and get the injunction vacated. This provision is there to check fraudulent practice. But the opposite party is at the mercy of the court. Apart from that persons seek adjournments. But purely from the justice point of view, would it not be fair of these extraordinary provisions are sparingly used so that the earliest opportunity could be given to the appellant? What is your opinion?

SHRI RAMACHANDRAN: I would agree that there should be some time limit.

Now, let me come to page 135 Sub-clause (vi). It is stated as:

> "There is no conflict on the question whether an appeal may be admittted on some grounds only. But there is a divergence of opinion between the High Courts with regard to the question whether an appeal may be admitted in part only. New rule 12A is being inserted to clarify that an appeal may be admitted in part only and where an appeal is admitted in part, the appellant will not be allowed to argue with regard to any other part except with the leave of the Court."

Here I feel that the words "except with the leave of the Court" will be contrary to the intention of the objective itself because it is only limited to a particular part as such that he may be permitted to argue in the Court. ....

MR. CHAIRMAN: But if the appeal is admitted only on the particular ground, then what would happen to the remaining part?

SHRI RAMACHANDRAN: Here it is restricted and he is extolled for his conduct. He cannot argue beyond the question of sentence.

SHRI MAITRA: The Court admits appeal after hearing the respondent. But some other points might arise after the case was heard. If the Court thinks that some other points afresh might arise, then it can give leave for appeal. The idea is that the powers of the Court is not restricted.

SHRI R. G. TIWARI: When an appeal is admitted on certain specified points, does it not mean that on another point the Court has refused admission? Does it not mean that if the review is allowed, by the same Court in some other case, the same procedure is not followed?

MR. CHAIRMAN: Do you want that this phrase "except with the leave of the Court" should be removed?

SHRI RAMACHANDRAN: Yes, Sir.

SHRI R. G. TIWARI: By implication it means that on other points the Court has disallowed the appeal. That is an implied order.

SHRI RAMACHANDRAN: I agree with you.

MR. CHAIRMAN: I think there is no other point. Now, you have not sent your replies to the questionnaire supplied to you. If it is possibe kindly send your replies as early as possible.

SHRI RAMACHANDRAN: Can I send the replies in a week's time?

MR. CHAIRMAN: Yes, you can do so. So, on behalf of myself and the Committee I thank you very sincerely for the valuable suggestions given in this connection. We are really thankful to you.

SHRI RAMACHANDRAN: Thank you very much, Sir.

[*The Committee then adjourned*].

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Tuesday, the 28th January, 1975 from 10.00 to 13.15 hrs.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2 .Shri R. V. Bade
3. Shri Chandrika Prasad
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shrimati T. Lakshmikanthamma
8. Shri Madhu Limaye
9. Shri V. Mayavan
10. Shri Mohammad Tahir
11. Shri Noorul Huda
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri Satyendra Narayan Sinha
16. Shri T. Sohan Lal
17. Shri R. G. Tiwari
18. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

19. Shri Sardar Amjad Ali
20. Shri Mohammad Usman Arif
21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri Nawal Kishore
25. Shri Syed Nizam-ud-din
26. Shri V. C. Kesava Rao
27. Shri Virendra Kumar Sakhalecha
28. Shri Dwijendralal Sen Gupta

29. Shri M. P. Shukla
30. Shri Awadheshwar Prasad Sinha
31. Shri D. P. Singh
32. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary & Legislative Counsel (Legislative Department)*.
2. Shri V. V. Vaze, *Joint Secretary & Legal Adviser, (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

WITNESSES EXAMINED

I. *Bar Council of India, New Delhi.*

Spokesmen:

1. Shri H. D. Srivastava—*Member*
2. Shri A. N. Veeraraghavan—*Secretary.*

II. *Shri S. N. Chowdhury, Advocate, Supreme Court of India, New Delhi,*

I. Bar Council of India, New Delhi

Spokesmen:

1. Shri H. D. Srivastava
2. Shri A. M. Veeraraghavan

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament. You have not submitted any written memorandum on the Bill. You are welcome to make your suggestions on any of the provisions of the Bill.

SHRI SRIVASTAVA: I submitted a reply to the questionnaire to the Bar Council of India. Somehow or the other it has not been sent to this Committee.

MR. CHAIRMAN: Please pass on your replies later on. We come to No. 1.

SHRI SRIVASTAVA: The number of cases though not of very high valuation has considerably increased. This has resulted in accumulation of cases. Delay is, therefore, inevitable unless the number of judical officers is increased. Mere increase in the number of judicial officers would not do. These officers should not only be efficient, but they should be imbibed with a sense of duty and honesty of purpose. It is, therefore, that they should be adequately paid so that the best of talents should be attracted to the judicial service.

Economic problems and difficulties contribute a good deal to the encouragement of litigation. A tenant for instance of a house or land has no other alternative but to prolong the litigation to ensure his continued occupation for as long as possible be

cause he cannot find an alternative accommodation Economic difficulties should, therefore, be mitigated to ultimately reduce delay in litigation.

Substitution of names of a deceased party takes considerable time. A plaintiff or an appellant should not be required to apply for substitution of the legal representatives of his adversaries. The heirs of an opposite party should be required to get themselves substituted in place of the deceased. within 30 days of the death. At present the limitation for making an application to bring on record the heirs and legal representatives is 90 days.

Delay takes place in the service of process. This may be avoided by ordering service by ordinary mode through process server and by registered post simultaneously.

Commission for examining witnesses should not be easily issued. It is only in genuine cases and for reasons to be recorded that a Commission may be issued.

Defendants should not be permitted to resort to discovery and inspection before filing their written statements.

Courts should curtail unnecessary evidence and this may be achieved to a great extent by having the pleadings clarified on the date of framing of issues.

Adjournments should not be liberally granted and in any case a provision be made that an adjournment shall be refused after a case has been adjourned on three occasions on the request of parties.

The Civil Procedure Code should be so amended as to provide for the Munsarim or any other ministerial officer of a higher rank to take all necessary steps till such time as the suit or appeal is ripe for hearing. This would save the time of Judicial officers.

A lot of time is spent in the decision of questions affecting pecuniary and territorial jurisdiction. All suits should be filed before a responsible ministerial officer and the suit may then be under the Orders of the District Judge sent to a munsif or a civil judge depending upon the valuation of the suit or appeal. This would eliminate return of plaints or appeals for want of territorial or pecuniary jurisdiction and in its wake unnecessary appeal or revision. Where the court fee paid is deficient in such cases, some provision should be made about the transfer of the case to the appropriate court and the party may be directed to pay court fee in that court.

Only in exceptional cases an interim order should be granted. Order 39 should be so amended as to incorporate a provision that it is only for reasons to be recorded in writing and on the existence of a prima facie case that an injunction should be granted.

The answer to next question is yes.

MR. CHIRMAN: Before you take up another question, I would like to suggest to you and through you to your Bar Council that it would help the Committee if you pinpoint all those amendments which are still failng short of expectation. In addition to this, if you also suggest some of the provisions of the existing Code which have not been touched adequately by the Bill before us, that would also help the Committee and we welcome those suggestions. You may take a month or so. If you could give us these suggestions by the end of February, it would help us.

SHRI R. G. TIWARI: For example, an ordinary suit is disposed of by the court within three months. Will this help in early diposal of the cases in the court?

SHRI SRIVASTAVA: Yes, if the time limit is fixed. In the Hight Court, the rules have been framed for the guidance of the juidical officers that they should dispose of a case within a fixed time and submit returns giving reasons as to why a particular case could not be disposed of within the fixed time.

MR. CHAIRMAN: If a time has to be prescribed, what would be the reasonable time?

SHRI SRIVASTAVA: Once a case is ripe for hearing, from that time. six months period should be enough for the disposal of a case by the Munsif and one year for disposal by a civil judge. The prerequisite is that the ministerial officer of a higher rank than the Munsarim should see that the case is ripe for hearing and it is from that time that this period may be reckoned.

SHRI R. G TIWARI: Will it affect the merit of the judgment?

SHRI SRIVASTAVA: I don't think so.

MR. CHAIRMAN: What is your experience after the evidence is closed? The court takes a long time to deliver the Judgement.

SHRI SRIVASTAVA: For that also, a time limit is fixed. If within one month, the judgement is not delivered, then the court is required to rehear the case and give the judgment.

MR. CHAIRMAN: What is the existing practice?

SHRI SRIVASTAVA: Generally, they stick to the time prescribed; one months time is precribed there. I am speking from my knowledge of the civil court rules.

SHRI M. C. DAGA: There is nothing. How do you verify it? Mr. Chairman, how can one say that the time is fixed?

MR. CHAIRMAN: We are hearing the witness that the time is fixed; if it is not, then it is his suggetion.

SHRI SRIVASTAVA: The rule framed by the High Court lays down this.

MR. CHAIRMAN: For the first time the High Court might have fixed the time limit. if not, they should do it. That is the evidence of the learned witness.

SHRI M. C. DAGA: You have referred to Order 11. You say that the inspection of documents should be discouraged. You might have seen the present amendment in the Bill. Kindly read out that on page 29. Please see Clause 64. Do you approve of the amendments suggested therin?

MR. CHAIRMAN: Mr. Srivastava, hon. Member has drawn your attention to this Clause. Have you studied it? If you have not studied it, you can take your own time and then you can give your suggestions.

SHRI SRIVASTAVA: About this, I have said that the provisions of Order XI should not be invoked before the defendant files his written statement. This is what I have said in reply to the first question of the questionnaire But, I have not devoted any attention to this amendment.

MR. CHAIRMAN: You can pass on to the next point.

SHRI M. C. DAGA: On the contrary, it shortens the matter if one is allowed. .. ..

MR. CHAIRMAN: That is our opinion. So. far as the witness is concerned, he has not applied his mind to this particular amendment. You have raised that point. He will examine it and give his opinion.

SHRI SRIVASTAVA: I am making a note of it.

MR. CHAIRMAN: He has made a note of it and he will forward his opinion to us.

SHRI M. C. DAGA: I have another question. If we do not pay them highly, we cannot attract good lawyers to the Munsif and District Courts. Looking to the economic condition of the country, can we have honorary courts?

SHRI SRIVASTAVA: Honorary courts are not supposed to discharge their functions efficiently and they are not likely to create confidence in

the public. We have the experience of honorary courts. Then, they had to be abolished. I am afraid, this institution of honorary magistrates or honorary civil judge does not appeal to me.

DR. (SMT.) SAROJINI MAHISHI: This is a matter of policy. How will he be able to give his opinion on this?

SHRI M. C. DAGA: Then, this Nayaya Panchayates should be aboligether.

SHRI MOHDAMMAD OSMAN ARIF: The witness is now deposing. At the final stage, when we consider the Bill, you can make your comments.

MR. CHAIRMAN: The question is relevant. I will allow the question in this form. Now, the question of quality of judges and the Courts contributing to the delay or otherwise of the disposal of a suit has been raised. It is not possible to have adequate number of qualified judges. That is why, hon. Member has made this suggestion. Would you agree that honorary ourts should be set up becaue of economic stringency so as to avoid delay? You have said that you do not agree with that.

SHRI M. C. DAGA: My third question is in regard to adjournments. I think adjournments are granted by the Courts in order to accommodate good lawyers. Should it be done or not?

MR. CHAIRMAN: Their evidence has been that adjournments should not be granted lenienly.

SHRI M. C. DAGA: Generally, a judge wants to remain popular and therefore he grants adjournment after adjournment in order to accommodate good and standing lawyers. There should be a strict law that no adjournments should be granted.

MR. CHAIRMAN: That is why we have asked the learned witness whether we can make the provision in the Bill itself.

SHRI SRIVASTAVA: The amendment can be put in Order XVII. Now, I would invite your attention to Clause 71. Please see the new provisos (b), (c) and (d) to sub-rule (2) in rule 1.

If I may say so, these three are on the side of severity. After all, the discretion of the Court is there. These new provisions do not take into consideration human considerations.

MR. CHAIRMAN: Mr. Srivastava, we are taking up the general principles as well as the problem of delay. The first question is, how delay can be avoided. These clauses etc. have been referred to by way of illustration. So far as this Order is concerned, Order XVII, where specific amendments have been proposed in the Bill, would you like, at this stage, to offer your comments whether you agree with the provisos (b) (c) and (d)? Do you agree with this or do you think they should be modified?

SHRI SRIVASTAVA: They should better be deleted. The discretion of the Court should not be fettered, to allow adjournment in specific cases.

MR. CHAIRMAN: Mr. Srivastava, you may cover this also in your note which you will send to us. If you agree, it is all right. If you do not agree, in what manner, these should be modified?

SHRI SRIVASTAVA: (c) and (d) should be deleted. (b) alone should be sufficient.

MR. CHAIRMAN: It is being recorded. You may also submit your concrete suggestions.

SHRI R. G. TIWARI: Mr. Srivastava, you will agree that in a proceeding, there are four elements involved, the judge, the lawyers, the parties and the administrative machinery. Can you tell me, which of these are singly or jointly more responsible for causing the delay so that

appropriate provisions against each of them could be made?

SHRI SRIVASTAVA: It is not a very easy question to answer. All these together may be responsible for delay in certain cases. If the judge is inefficient, shirks work, he is responsible. If the ministerial officer does not do his duty, loiters about and wastes his time, he must be held responsible.

Similarly, if a lawyer is habitually inclined to get adjournments, he cannot be exonerated; and the court should know one lawyer from another After all, the lawyers are appearing regularly before the courts; and the courts should be more strict with such lawyers. The fourth factor is about the phrase "party to the proceedings". As I have said, in particular classes of cases, it is, generally speaking, to the advantage of the defendant to protract the litigation. In certain cases, the defendant knows that it is not possible for him to successfully resist the claim. He would naturally like to prolong the proceedings. The court will apply the brake and see that adjournments are not granted to accommodate a party.

SHRI R. G. TIWARI: Would you like to make provisions in the bill for the court to make restrictions?

SHRI SRIVASTAVA: These factors are already envisaged in the amendments proposed in Order XVII. It is always the judge who controls the progress of a suit; and if he is efficient and devoted to his duty, he can very easily enforce the restriction and control the causes for delay.

SHRI R. V. BADE: There are two kinds of lawyers, one interested in expediting the proceedings and the other in delay. Advocates who are interested in delay are those who always defend the side of the defendants. The hon. witness cannot generalize and make certain remarks. There are lawyers who claim to speak for the plaintiffs; and they are interested in expediting things.

MR CHAIRMAN: There may be various temperaments. Some want to expedite; and they always act on the basis of the briefs given by their clients. What is to be done in cases where there is imbalance between the lawyers on either side? Certain measures have been suggested which Mr. Srivastava considers to be strict. On the basis of his experience, how does Mr. Srivastava think that we should deal with such delays as may be engineered by some lawyers?

SHRI R. V. BADE: Expediting things should not be at the cost of the clients. I feel that if the judges are pressed too much, they would not be able to do justice

SHRI SRIVASTAVA: It requires a little more clarification.

MR. CHAIRMAN: In the experience of some hon. Members, there are some lawyers who deliberately try to delay the proceedings. There are lawyers on either side who are very eager to expedite things; and they are linked up with the interests of the clients also. Can the court itself provide against such manoeuvres? What provision should be there in relation to the courts, with a view to eliminating the arduous delays?

SHRI SRIVASTAVA: You have said that there may be certain amendments made in Order XVII. After all, it is the efficiency of the judicial officer which counts; he has to exercise his discretion. If he is efficient, he would naturally be more successful.

MR CHAIRMAN: Admittedly, there is room for feeling that the quality in all the courts is not up to the mark. But can the court make a provision for prescribing a standard and seeing to it that it is maintained—I mean in regard to the quality and efficiency of work in the court; or is it a matter of administration between the Government and the High Court|Supreme

Court? Can the court make provisions to meet all the contingencies which cause delaya and fall in efficiency?

SHRI SRIVASTAVA: If the judicial Officer is up to the mark, he will control the proceedings properly; and it should minimize the delays. He has of course, to file periodical statements.

MR. CHAIRMAN: It is not our question. We have seen that these delays are caused due, among other things, to the inefficiency and low calibre of the judges and other persons who run the court. The pointed question is whether it can be provided by the court itself.

SHRI SRIVASTAVA: It cannot be provided for by the court.

MR. CHAIRMAN: Therefore, some other measures will have to be taken to improve the quality. It is outside the jurisdiction of this Bill.

SHRI SRIVASTAVA: Yes.

In section 2 of the parent Act, the determination of any question under section 47 or section 144 should not be deemed to be a decree. It should be treated as an order from which one appeal may be provided under Order XLIII. That will eliminate delay. Otherwise, if it is deemed to be a decree, there will be a first appeal and a second appeal.

The definition of "pleader" has been left as it is. It should be so amended as to include an advocate.

In Clause 6, in the proposed section 11A, the words "so far as may be" may be deleted. Instead of having the new section 11A, we may add an Explanation to section 11 by which it can be provided that the principle of *res judicate* will apply to execution proceedings as well as to other civil proceedings.

In Clause 9, I would suggest the addition of a new section 21B to this effect. . .

"In case a Court finds that it has no pecuniary jurisdiction to entertain a suit, it shall refer the matter to the District Judge who may transfer the case to a court competent to try it."

This will avoid considerable delay.

SHRI S. K. MAITRA: In Clause 11, a new section 24A is being inserted. That will cover your suggestion

MR. CHAIRMAN: Your suggestion will also be examined, and we shall try to see how the two can be reconciled.

SHRI R. V. BADE: He refers to pecuniary jurisdiction.

MR. CHAIRMAN: The new section 24A is wider.

SHRI SRIVASTAVA: In Clause 16, the new section 35B reads:

"While making an order for costs in a suit or proceeding, the Court may, for reasons to be recorded, require the party to the suit od proceeding who is responsible for delaying, without any reasonable excuse, any step in such suit or proceeding, pay such costs, commensurate with the delay so caused, as it thinks fit, and the costs so required to be paid shall not be included in the costs awarded in the decree or order which is ultimately made in the suit or proceeding."

This is not at all necessary. It is taken for granted that the court cannot stop the delay.

MR. CHAIRMAN: Even now there is a provision for awarding costs for adjournments. This is only a step further, more stringent, that, if the delay is inordinate, further penalty should be imposed, commensurate with the delay so caused.

The existing section 35 states:

"Subject to such conditions and limitations as may be prescribed,

and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid."

Here also the discretion is given. If there is no reasonable excuse, then heavier costs will be awarded commensurate with it. You do not agree with it?

SHRI SRIVASTAVA: No.

Clause 34—*Explanation*—This is likely to cause unnecessary delay in the final disposal of cases. Why should a successful party go in appeal? Any adverse finding given is not binding on him. In the same clause, regarding Rs. 3000/-, there are two aspects of the matter. If there is a question of fact which may not be dealt with on appeal, the parties shall be deprived of a finding on a question of fact by a more experienced officer in a first appeal. So, there is a question of fact and question of law. There should be no discrimination between the two suits? The discrimination, to my mind, is not justified.

MR. CHAIRMAN: What about this amount?

SHRI SRIVASTAVA: Let it be 3000.

Then clause 39—Amendment to Section 100 CPC relating to second appeals. If the High Court certifies that the question involves a substantial question of law. It is very difficult. What may be a substantial question of law may differ from judge to judge. If you will have it, then, please give certain illustrations as to what the substantial question of law. For instance, if a finding has been given which is not supported by evidence, then it will be a substantial question of law. Otherwise, this section read with clause 91 renders the right of second appeal almost nugatory. Therefore, the word 'substantial' may be deleted.

MR. CHAIRMAN: What about the certificate?

SHRI SRIVASTAVA: That again, will be restricting the scope of second appeal. If at the time of final arguments, some important question arises and it requires decision, then the judge will be under a limitation. He cannot go into that question even though he may consider that it is fairly an important question on which the decision should be given.

MR. CHAIRMAN: Do you agree with this provision of certifying by the judge unless no second appeal will lie?

SHRI SRIVASTAVA: When a High Court Judge admits an appeal, it is implicit that he grants that certificate. Why have that formality?

MR. CHAIRMAN: I ask your opinion on this.

SHRI SRIVASTAVA: I do not think it should be there. The formality of granting a further certificate appears to be wholly unnecessary. But, it is very necessary to define as to what a substantial question of law may be. It varies from judge to judge.

MR. CHAIRMAN: This word 'substantial' has been drawn from the Constitution, Article 133. There, this word 'substantial' has been there. Do you oppose this?

SHRI SRIVASTAVA: In the Constitution, the considerations were entirely different.

MR. CHAIRMAN: It seems, you are opposing this provision.

SHRI SRIVASTAVA: We want some modification in this.

MR. CHAIRMAN: Will you kindly send your considered view in a draft form?

SHRI SRIVASTAVA: Yes.

SHRI R. V. BADE: Does substantial question of law mean a mixed question of law and fact or it is more law than fact? There are very many cases where sometimes the High Court says that it is a substantial question of law; in others, it says it is purely a question of fact. In that case, should the High Court give a certificate or not?

MR. CHAIRMAN: He is against certification.

SHRI SRIVASTAVA: I am not in favour of introducing 'substantial' nor in favour of certification by the High Court.

SHRI S. K. MAITRA: Regarding certification, suppose the clause is modified like this: Instead of saying 'certify', if it is said that the court at the time of admitting the appeal shall formulate the points of law on which the appeal has been admitted, will it be acceptable to you? You have already said that when the appeal is admitted, it is implicit that it involves a question of law; only the judge formulates the question of law so that the judge who hears the appeal will know the grounds on which the appeal has been admitted.

SHRI SRIVASTAVA: If the judge formulates the question of law, it may be taken to mean that no other question which may arise at the time of the hearing will be taken up.

SHRI S. K. MAITRA: If it is modified to that extent, will it be acceptable?

SHRI SRIVASTAVA: If it does not mean that other questions of law which arise will not be gone into, I agree.

MR. CHAIRMAN: If the proposed section 10 is modified to take away the word 'substantial', then on certification and the limitation of the points of law, how does the clause differ from the existing section?

SHRI SRIVASTAVA: (a) will be there.

Cl. 40: Letters patent appeal serves a very useful purpose. The High Court lays down the law. It is a division bench hearing of the letters patent appeal. It will in very many cases be conducive to laying down the law by the High Court. There should be no absolute prohibition as envisaged in cl. 40.

Cl. 41: The limit may be Rs. 2,000.

SHRI R. V. BADE: What is the special reason for proposing Rs. 2,000?

MR. CHAIRMAN: That is his suggestion.

SHRI SRIVASTAVA: Cl. 45: Sec. 115 should not be deleted. The alternative suggestion is to have recourse to article 227 which is very much expansive now. This is a check on the vagaries of subordinate courts; so s. 115 may be retained. Already as it is, it is strict enough. Frequent interference under s. 115 does not take place. But if it is possible to make the remedy cheaper by having resort to article 227, you may omit s. 115. This may be possible by amending the High Court rules and making new rules. It is wide enough in scope. My own personal opinion is that article 227 will serve the purpose if the remedy available under it is made cheaper or as cheap as the application under s. 115.

But the consensus of a large majority of the members of the Bar is in favour of retention of section 115.

MR. CHAIRMAN: Apart from the cost, it is claimed in the notes on clauses that the remedies obtainable under section 115 can be had under article 227. Please tell us whether

this claim is justified from your experience.

SHRI SRIVASTAVA: I personally think that article 227 is wider in its amplitude and it should serve the purpose provided the remedy is made equally cheap as an application for revision under section 115.

SHRI SATYENDRA NARAYAN SINHA: How can remedy under article 227 be made cheaper?

SHRI SRIVASTAVA: A petition under article 227 is treated as a Writ petition and the court fee in U.P. is Rs. 100 whereas for an application under section 115, it is only Rs. 10. To make the remedy under article 227 cheaper, the State legislature will have to reduce the court fee. If that is not practicable, please retain section 115.

SHRI M. C. DAGA: Can powers of revision be entrusted to the District Court also under section 115?

SHRI SRIVASTAVA: That should not be done. Experience has shown that exercise of powers of revision under section 115 by a District Judge does not inspire as much confidence as the exercise of these powers by the High Court.

MR. CHAIRMAN: If the court fee for a petition under article 227 is reduced, you will have no objection to the deletion of section 115?

SHRI SRIVASTAVA: No.

MR. CHAIRMAN: Can this power of the High Court under article 227 be entrusted to the District Courts?

SHRI SRIVASTAVA: No. A District Judge cannot exercise jurisdiction under article 227.

SHRI M. P. SHUKLA: Does the witness agree that to make justice cheaper, the court fees should not be treated as a source of revenue but should be levied only to the extent that it is within the reach of the poorest man?

SHRI SRIVASTAVA: If the idea is that court fees should be abolished my answer is 'Yes'.

MR. CHAIRMAN: The Member wants to know whether this revision should be entrusted to the High Court or the District Court.

SHRI SRIVASTAVA: Even if the order is passed by a munsiff and it is sought to be revised, it is better revised by the High Court. In practical terms, the exercise of power under this section by the district judges if I may say so, does not inspire the same confidence and it is not quite as satisfactory as the exercise of that power by the High Court.

Regarding the other points I have made my submissions. I have to say now about Clause 73 on page 38. To this may be added that the parties or their pleaders should be present on the date and time of delivery of judgment and they be informed of their appearance in the appellate court. If other party wants to file an appeal, he may present himself on that date and he can exercise his option. This will minimise delay. Regarding page 39, about the documents, I suggest that the draft of such documents may be prescribed and the details could be settled at the time of execution. This is my submission.

Then at page 48, the particulars given by the judgment debtor and decreeholder may be mentioned to avoid delay. It will be for the purchaser to scrutinise those particulars and make up his mind accordingly. On the same page regarding 58(1), the objection should exclude benami transactions. It should be barred. The purchaser purchases property. Sometimes this is not for himself but for someone else. He will not be allowed to say that he was the real purchaser and the ostensible purchaser was his benami. A similar provision to this effect should be made.

Regarding Clause 26, this is while the suit is proceeding. But after the suit has been decided and a decree has followed, similar procedure will have to apply.

That is my suggestion. If there are other important matters to which my attention is invited by the hon. Members of this Committee, I shall submit my views or clause by clause later on. I know that I have already taken a good deal of your time. I have made my own comments on the variouse clauses. While amending order 29 regarding temporary Injunction on page 74, my suggestion is that while granting a temporary injunction *ex-parte*, the court should be required to give reasons indicating that it applied its mind to the three conditions requisite, namely, balance of convenience, irreparable loss and *prima facie* case were all present before such an *ex-parte* temporary injunction was granted.

One last thing is this. Please see clause 95 on page 80 of the Bill about the decision on a question of law which has been reversed or modified by a subsequent decision of a superior court in any other case shall not be a ground for Review but it should be a ground for review if in ignorance of a previous decision of a superior court, a case is decided.

SHRI R. V. BADE: There is Sec. 3 where it has been stated that the court in all cases except where it appears that the object of the presentation was defeated by the delay, grants an injunction. Notice should be given for this. That is clear according to Sec. 30.

MR. CHAIRMAN: The hon. witness has suggested that the conditions should be clearly stated by the court while passing an *ex-parte* decree.

SHRI R. V. BADE: What the witness said just now is nothing new because it is already there in the section that a notice should be given.

MR. CHAIRMAN: His suggestion is that if it is not there, it should be given. We shall examine it.

SHRI SRIVASTAVA: Before giving a notice sometimes it so happens that the court grants at temporary *ex-parte* injunction. That notice is to follow after an order granting the temporary injunction has been given.

SHRI M. C. DAGA: The court does not give injunction unless it hears.

MR. CHAIRMAN: Those reasons should be recorded.

SHRI SRIVASTAVA: They should be recorded by the court. In a suit, for a permanent injuction, generally speaking, a temporary injunction should be granted. I agree with this.

As regards Clause 95, it is perfectly true that if a subsequent decision of a superior court alters the position, then, it will not be a ground for review.

About the rest of the clauses, whatever information you want me to give, I shall give it in writing and send it on to the Committee.

MR. CHAIRMAN: Mr. Srivastava and Mr. Veeraraghavan, on behalf of myself and Members of the Committee I sincerely appreciate and thank you for the cooperation that you have extended to us by giving valuable informations. I can assure you that we shall examine them very carefully. Regarding your written concrete suggestions to various clauses that we have discussed during the course of evidence, you will kindly forward to us also your replies to the questionnaire. We have also discussed one question regarding the Bill itself. There are other things also which are all in the questionnaire. All these will be considered by us before finalising our views on the clauses.

SHRI R. V. DABE: There is one question that always troubles me. That is regarding Section 18.

MR. CHAIRMAN: He has not said anything. There is another witness waiting. The suggestions regarding other clauses have not been discussed in the oral evidence. The learned witness has already agreed that he will forward to us various suggestions in writing.

Thank you very much.

SHRI SRIVASTAVA: On behalf of myself and Shri Veeraraghavan, Secretary Bar Council of India. I thank you for the courtesy shown to us. We go with pleasant experience of the kindness shown to us by you.

Thank you very much.

(*The witness then withdrew*)

II. Shri S. N. Chowdhury, Advocate, Supreme Court of India

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to made available to the Members or Parliament.

You have not submitted any written memorandum. You are welcome to express your views on the Bill.

SHRI CHOWDHURY: Mr. Chairman and Members of this august body, it is a great pleasure and privilege for me to come before you and whatever I have understood from the practical side I have arranged the suggestions point by point.

Before I start discussion on the Bill, I may be permitted to go into the details on which this Bill has a great bearing.

There are three basic considerations for bringing this Bill—

1. The litigant should get a fair trial.

2. Quick disposal of cases so that justice is not delayed.

3. Procedure should not be complicated & fair deal to the poorer sections of the community.

To achieve these objects. we need efficient legal machinery as also a group of judicial officers to do justice to the millions of litigants

I find that society has not done justice to these judicial officers. Unless these officers are looked after properly, they will not do justice. Through the members of this august body I request that this group of officers must be looked after so that they can do justice to millions of our citizens. My country is powerful and rich enough. These officers may be given proper salaries because the discrimination between a Supreme Court Judge and Munsif is so great —salary of a Supreme Court Judge is Rs. 4,000 to 4,500 as guaranteed by the Constitution, whereas a Munsif gets so little that he cannot keep his body and soul together.

I have seen from my little experience in the lower courts that there is corruption right from the beginning to the end. justice Hedge remarked—it is surprising that still there is any honest Munsif who works from morning till evening. It is so difficult for them to keep their body and soul together. Please look after them. People go to them first and they are the people who will root out corruption. They should be given at least Rs. 2,000 per month as their salary, if not more so that they may root out corruption from the lowest level.

MR. CHAIRMAN: Your idea is that for justice being fair, the courts must be manned by people above board

and in order to ensure that, they should be given reasonable salaries and other amenities.

Do you also suggest that the quality and efficiency of such persons have also to be ensured so that justice becomes fair and just and judges can be above any question?

SHRI CHOWDHURY: I quite appreciate what you have said.

SHRI M. C. DAGA: What is the guarantee that he will not become corrupt, if a Munsif gets Rs. 2,000 per month?

MR. CHAIRMAN: Will mere raising the salary ensure that the persons in the court will not be corrupt?

SHRI CHOWDHURY: If you give good salary, good people will come. I am not suggesting that our munsifs and judicial officeers at the lowest level are always corrupt. They are excellent people. They work so hard from morning till late in the evening But they get so little salary. that they cannot keep their body and soul together. It is very unjust. First you feed them well and then expect them to do well.

SHRI R. V. BADE: From where will the Government bring money? Should the litigation be made costly?

SHRI CHOWDHURY: Our judicial officers are not very much in number all over the country. But surely this amount is worth spending in order to give a clean administration of justice. I think, we can safely forego one or two important dams or steel plants for the time being and give them this benefit. Unless we look after them properly, surely there will be corruption.

MR. CHAIRMAN: You want that the salaries etc. of the munsifs and other judges should be raised so that they are above board and may not take to corruption etc. Should that be met from raising the court fees etc., or should the Government make provision for this by curtailing some other heads?

SHRI CHOWDHURY: Litigation expenses are already very high I think some sort of a Government help will go a long way.

SHRI SARDAR AMJAD ALI: You said that Society will have to do justice to the judicial officers. Would you kindly enlighten us that whatever amenities are being made available to the judicial officers in the High Courts and Supreme Court, are these adequate?

SHRI CHOWDHURY: I would not say 'adequate', but they can at least have a decent life, whereas the Munsifs and other Sub-judges get meagre amount. No man will be able to live a decent life in that money.

SHRI SARDAR AMJAD ALI: I have a very little knowledge about the society in which we live. What is your idea about the facilities given to the Supreme Court and High Court Judges? Are these very little?

SHRI CHOWDHURY: If we can raise these, well and good, if not, I think, some sort of other privileges like rent free accommodation, transport and things like that should be given to them.

SHRI SARDAR AMJAD ALI: In spite of that the number of undisposed cases in High Courts and Supreme Court is very high.

SHRI CHOWDHURY: The litigants go to the courts quite often. Our civil procedures are like that. There is lot of delay in the various processes. More delay means more money to everybody. More adjournments mean more money not only to the lawyers but also to the employees who work there. Intervention of the court should be limited to as little as possible.

As I submitted, if we increase the amenities as well as salaries of these officers, that would go a long way in eradicating corruption. In foreign countries, a mill worker gets more than a white-collared worker. I think, the work of the munsiff or the sub-judge in the court is as important as that of the Supreme Court. Most of the people want to get justice at the lowest level, but they do not get justice. There are 200 adjournments in one case.

SHRI SARDAR AMJAD ALI: Do you mean to say that under the existing conditions, people do not get justice because the amenities and facilities available to the judicial officers are not quite adequate?

SHRI CHOWDHURY: I believe in that. They are the people who will give justice. What do they care whether you get justice or not if we cannot look after them properly. They simply do the routine work.

SHRI MOHAMMAD TAHIR: You said that the salaries of the munsifs and sub-judges should be raised and they should be given other amenities. But there are so many munsifs in our country.

If he wants to increase the salary of that person upto Rs. 2000 then why not increase the salary of other persons such as Deputy Magistrate, Magistrate and BDO. If you do not want to increase their salary, they also want to become Special Magistrate and so on. There are so many sources of justice. I want to know whether you want to give certain amenities and increase the salary of those officers who are doing the work of the court.

SHRI CHOWDHURY: I understand that in different States, there is a division between executive and the judiciary. I would say that the judicial officers should be given some responsible status so that they must feel that they are doing very important work for the society.

SHRI M. C. DAGA: Eighty per cent of our population lives in the villages and generally people go to revenue court. In that case, why not increase the salary of the Sub-Divisional Officer and the Revenue Officer so that we can attract good lawyers also there?

SHRI CHOWDHURY: If we can increase their salary, then nothing like that. They are the most respected citizens. But if we cannot give them, at least let us give to the judicial officers because justice has to be done. If we do not give them, corruption is bound to be there. If there is a quick disposal of cases, if they can get justice in the court, surely they will not take the law into their own hands. We can do our duty honestly only when the belly is full.

MR. CHAIRMAN: I think this is a general question. He has made it very clear that if we want to ensure fair justice, amenities for the persons at least at the lower level should be raised. If it involves raising the amenities of others, that is for the State to look after.

Now, I hope that you must have made a detailed study of the Bill. First of all, I want you to comment on the main controversial clauses. In so far as other suggestions are concerned, I would suggest that you kindly send to us these suggestions in writing by February.

SHRI CHOWDHURY: *Order 5, clause 58.* There is no likelihood of his being found within a reasonable time. This should be omitted. In this respect, I have got some personal experience. What happens is that if we send summons to other party, it will always refuse. Even the postal authority people are bribed not to serve the summons and the court clerk also gets something. If we send a registered letter, even that is also not taken. There should be a provision that the service will have to be served

on any member of the family, whether male or female; it can be done whether there is any likelihood of his being found at his residence or not. If that is done, that is good enough. It should be provided that there should be a simultaneous service—personal service as well as postal service. As far as postal service is concerned, it should be by publication and also at the cost of the plaintiff. If these things are simultaneously done, probably this will expedite the service. As far as publication part is concerned, it can be done in the local newspapers, preferably in Hindi and English and may be also in the local languages.

SHRI M. C. DAGA: If it has to be published in widely circulated newspapers, they will charge Rs. 140—150.

SHRI CHOWDHURY: It is true they charge a little more. I think it is worth spending.

SHRI D. P. SINGH: Don't you feel that this procedure is likely to make litigation extremely expensive to start with?

SHRI CHOWDHURY: There should be discretion. If the plaintiff wants and if he can pay.

SHRI D. P. SINGH: Now, there are different processes. Summons are sent. It goes to him through a letter. If it does not reach him, a registered letter is sent. Then, there is the direct service. Nothing is optional. Then, the procedure is resorted to of publication in the gazette where it is said that it shall be deemed to have been served on the person concerned even if he has no notice.

MR. CHAIRMAN: I would like to amplify this. Can you throw some light from your experience on this? In some cases, service of summons takes even a couple of years. Can we have the comparative figures, the one in regard to the cost involved in the delay by non-service of summons and the cost that will be involved in adopting these three steps simultaneously? In addition, for advertisement, one will have to pay. This will certainly involve cost. Which would be more?

SHRI CHOWDHURY: As the learned Chairman says, the totality of the cost will be much more if these three steps are taken simultaneously.

MR. CHAIRMAN: I will put another question. The main objective of the Bill is to avoid delay. Even though it may be a little more expensive, if these three steps are taken simultaneously, do you suggest that these three steps should be taken simultaneously with a view to eliminating or reducing delay?

SHRI CHOWDHURY: And also Court's time because Courts....

MR. CHAIRMAN: Court's time and the cost of litigation and delay. The main thing is delay with all its ramifications. Do you suggest that these steps might help?

SHRI CHOWDHURY: Yes.

Then, I would like to invite your attention to Page 22 of the Bill, Clause 59. amendment of Order VI. Here, please see the new rule 14A which is proposed to be inserted. This rule to my mind is redundant because already while filing the plaint, the plaintiff gives his address which for all practical purposes will be the registered address. While filing the plaint, the address is given and that should be enough rather than to give the registered address again and all the rest of it.

MR. CHAIRMAN: Mr. Maitra, the learned witness has just now given a suggestion in regard to Clause 59 the new rule 14A. Here, it is proposed that the registered address should be indicated and that should be valid for a period of two years. But, he points out that when the address is already

indicated in the plaint itself, that should be treated as registered address. This is his suggestion. You may kindly explain. He feels that this is redundant.

SHRI S. K. MAITRA: Please see the new rule 2 which is proposed to be substituted for rule 2:

> "2. (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

Therefore, the address is not required to be any part of the pleading. A separate rule has been made that the address is to be given separately for the purpose.

SHRI CHOWDHURY: Then. I would like to invite your attention to Page 24 of the Bill, amendment of Order VII, the Explanation which is proposed to be inserted in sub-rule (1) of rule 10. Here, it is said:

> "Explanation—for the removal of doubts.....The very word 'Explanation' means this. This is not necessary. This is a very minor thing, of course.

Then, I would like to invite your attention to rule 14(1)

> "Where a plaintiff sues upon a document in his possession or power, he will produce it in Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint."

This needs an amendment in the sense that only a copy should always be filed with the plaint and not the original because it has been found that many original documents are lost and it is not possible to get secondary evidence for these documents.

MR. CHAIRMAN: Mr. Chowdhury, so far as this rule 14 is concerned, in the Bill, no amendment is proposed. Your suggestion is that this rule 14 should be....

SHRI CHOWDHURY: Should be amended to give effect to this.

SHRI S. K. MAITRA: Here it is mentioned 'original document or a copy'. If the party is afraid that the original will be lost, he can also file a copy. Where there is likelihood of the original being lost, generally, parties apply for safe custody.

SHRI CHOWDHURY: There will be duplication of work in the sense that Court's time will be wasted. In Calcutta High Court, this is strictly followed. A copy of the document is only to be filed with the plaint. If the defendant requires inspection of the document relied on, he is at liberty to have inspection of the same at the office of the plaintiff's lawyer. He will be entitled to take copy of the document which would bear the signature of the plaintiff's advocate, which shall be taken as authentic and original. If anything suspicious is found like over-writings or otherwise, the plaintiff will have to explain such over-writings and in default the Court will be entitled to make the plaintiff pay the cost which may be reasonable in the circumstances of the case. As soon as the plaint is filed with a copy, the other side has the right to inspect the original at the plaintiff's lawyer's office and he can satisfy himself whether the document is genuine or not. Some responsibility should be given to the lawyers. Otherwise if we have to go to the Court again and again, only time will be wasted. This can be very easily done in the office of the plaintiff's lawyer.

SHRI S. K. MAITRA: In Calcutta High Court, solicitors are there. That is an advantage.

SHRI CHOWDHURY: This is my suggestion. If the learned body thinks that it could be done, perhaps, it will help.

MR. CHAIRMAN: Here, it is optional. Your suggestion is that copy should suffice.

SHRI CHOWDHURY: Then, I would like to invite your attention to Page 28 of the Bill, amendment of Order VIII, the new rule 8A. which is proposed to be inserted.

> "8A. (1) Where a defendant bases his defence upon a document in his possession or power, he shall produce it in Court when the written statement is presented by him and shall, at the same time deliver the document or a copy thereof, to be filed with the written statement."

The documents which the defendant will rely on should not be filed along with the written statement. First, he can file his written statement and after some time whatever documents he relies on can be filed in the department instead of filing it along with the written statement because that will give some time to prepare his documents which he wants to rely on and he can always file this only after service to the other side so that the other side knows what documents he is going to rely on and the filing clerk or the filing officer could inspect these documents, copies of these documents only when it is served on the other side. Here, in this amendment, it is provided that he has to appear along with the written affidavit. I had thought that he should file only a written statement and file the other document only later; and that too, not to the court.

SHRI M. C. DAGA: It is under Order VIII, rule (1). If the documents are not available, how will the court go into the pleadings?

SHRI CHOWDHURY: Once the written statement is filed. he will file his affidavit of documents before he appears. The other side also knows the position. When the other side comes to the court, all the documents are there. The courts can easily frame rules on the basis of the pleadings and documents.

SHRI S. K. MAITRA: In the case of the plaintiff, you had said that he should file the documents. If the defendant relies on the documents, he also files a copy each of the documents concerned. Both the parties are placed at par. You are asking for the plaintiff to do one thing and you do not want to apply that rule in the case of the defendant.

SHRI CHOWDHURY: He has to file the document on which he relies.

SHRI S. K. MAITRA: Whenever a defendant places his defences on a document. he has to file that document. The same argument holds good for the plaintiff as well. Your objection is to the obligatory provision that along with the written statement, a document on which the defendant relies, should be placed. Don't you think that the court exercises the discretion when the party concerned, *viz.* the plaintiff tries to file a document which is not readily available?

SHRI CHOWDHURY: I want to eliminate the court. so that its time is not wasted. He can do it before he comes to the court.

SHRI MOHAMMAD USMAN ARIF: In certain high courts, there are provisions which permit the production of documents by the defence later on; and adjournments after adjournments are obtained on the basis of those provisions. This is to check such adjournments. If the defendant produces his documents on which he bases his arguments on the very same day, it would avoid delay.

MR. CHAIRMAN: I do not think we should labour this point because it is

very simple. He is not objecting to the filing of the document, copy or original. It is only a question of time.

SHRI CHOWDHURY: Coming to Clause 67 at page 31 relating to Order XIX, the issues will be settled by the Court after the pleading stage is over. My suggestion is that copies of the suggested issues should be filed with copies of the other side before the hearing of the suit. At the time of hearing, the issues will be settled by the Court and for evidence another date should be fixed. They should not go on to the evidence straightaway as it is done in Calcutta and elsewhere.

MR. CHAIRMAN: That is generally done. Anyway, that is quite reasonable.

SHRI CHOWDHURY: Clause 69 reads:

> "In the First Schedule, in Order 17I.—
>
> (i) for rule , the following shall be substituted, namely:—
>
> "I.(1) On or before such date as the Court may appoint, and not later than ten days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and to obtain summons to such persons for their attendance in Court."

Here there is a provision for filing a list of witnesses which I think is not necessary because in case any party wants to call any witness or witnesses, it can be allowed on an *ex-parte* application, and the Court will issue summons even during the course of the hearing.

SHRI S. K. MAITRA: It is needed so that they can enquire about the credibility of the witness, the points on which he is going to be examined etc., otherwise the other party will not be in a position to cross examine him.

SHRI CHOWDHURY: Giving a list also helps the other side to buy over the witnesses.

SHRI R. V. BADE: In civil cases, all the cases should be placed on the Table. The party should be taken by surprise.

SHRI CHOWDHURY: In Clause 71 at page 35 it has been very rightly provided that when once the hearing has commenced, it shall be continued from day to day. But on payment of fees for transcription, the Court should furnish copies of the evidence to both the parties immediately because that will help cross-examination.

SHRI S. K. MAITRA: It is already there. He can get certified copies.

SHRI CHOWDHURY: It will be delayed.

SHRI S. K. MAITRA: Why? He can get urgent copies in 24 hours.

SHRI CHOWDHURY: If one gets nothing like it, but some times the hearing is not day to day and as a result of it, it takes longer time. Before trial, the parties should intimate whether they require copies of the evidence.

Secondly, for adjoudnments exemplary costs must be awarded of course at the discretion of the Court. I agree with the provision here.

Clause 73 provides:

> "Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out."

For instance, in the Supreme Court, Justice Alagirisami and others do not read the judgment of all. A copy of it can always be got. They just say a few words that the appeal is allowed or dismissed. So, the judgment should not be required to be pronounced on each issue. It should be enough to say who has lost and who has won. In old rules, Order 21, that is, execu-

tion of decrees, Rule 63 only one relief is there. Here, there should be only one relief instead of two reliefs. If you make an application, you will not be entitled to file a suit.

SHRI S. K. MAITRA: If you turn to 63 on page 49, that is there.

SHRI CHOWDHURY: About 37, I think, some major changes have been made. So far as 37 matters are concerned, the defendants do not got any service. They are very rarely served. Service is so important and most of the time the service never leaves the plaintiff lawyers' room, it remains there and the decree is passed *ex-parte*. I think, one should be very careful about the service, about summons and all that. I think simultaneous service of this might, probably, be held. About bottom page 71, I think. the defendant must have the right to defend without the leave of the court. This is the right of the citizen and this should not be taken away so lightly.

MR. CHAIRMAN: What about the first one?

SHRI CHOWDHURY: That must be there.

SHRI S. K. MAITRA: Where the defendant has no case there, no time will be wasted and these suits should be disposed of as summarily as possible. The power is given to the court. The Court will decide judiciously. This will apply to all. The scope is now being widened so that the dispute can be disposed of very quickly.

SHRI CHOWDHURY: About Order 39, page 74. with great respect, I would say that for anything and everything if we ask the court to give written reasons for doing that, the court's work will multiply like anything. I think, it should be left on the court for a *prima facie* case. The court's hand should not be tied down.

SHRI M. C. DAGA: But the court must apply its mind.

MR. CHAIRMAN: It is a matter of opinion.

SHRI CHOWDHURY: Clause 91—proposed rule 2(1): If for everything. reasons are to be recorded, it will take much time of the court Judges are already overworked. Discretion should be left to them.

SHRI V. V. VAZE: The trend now is to issue speaking orders even in administrative matters, what to speak of judicial and quasi-judicial matters affecting the rights of citizens.

SHRI M. C. DAGA: It helps the Judges to understand the facts of the case. Generally they put their signature on the report of the reader. They must apply their mind to understand the facts.

MR. CHAIRMAN: What about sub-rule (2)?

SHRI CHOWDHURY: I think there the reasons should be given. This is all I have to submit.

MR. CHAIRMAN: We will give you a copy of the questionnaire to which you will kindly apply your mind and give us your written replies within February. You have made a detailed study, but we could disouss only some points. For the others. you kindly send us a note.

SHRI CHOWDHURY: If I write a paper, will it help?

MR. CHAIRMAN: Yes.

श्री बर्डे : ये इतने इम्पोर्टेन्ट विटनेस है और काफ़ी स्टडी किये हुए हैं लेकिन सेक्शन 80 और सेक्शन 115 पर कोई प्रकाश नहीं डाला है ।

MR. CHAIRMAN: Please see section 28 which says that s. 80 of the principal Act shall be omitted. This section requires notice to be served on a government or public officer acting in his official capacity before a suit is instituted. Two months' time is there. This is sought to be omitted.

SHRI CHOWDHURY: I do not agree to equate Government with other citizens in the sense that they are a different clause. Many things can be written for and again. There are many controversial points here.

MR. CHAIRMAN: Kindly cover this also in your written note. Then cl. 45. This seeks to omit sec. 115. This is another controversial issue. You go through the objects and reasons and give your opinion.

Then clause 39 which seeks to substitute the existing s. 100 with a new section. In the existing section, law and usage and other things are provided. Here it has been restricted. Kindly go through the section. Then give us your considered opinion in writing about these modifications proposed.

SHRI CHOWDHURY: Yes. Whatever little help I can give, I will do so.

I am most grateful to you for giving me the privilege of a hearing before you. Than you once again I will do my best.

MR. CHAIRMAN: On behalf of myself and other members, we certainly appreciate the labour you put in and the valuable suggestions you have made. We have not been able to touch on the main controversial points. You have made a detailed study of the working of the Act, So kindly send us your written note on the lines indicated.

SHRI CHOWDHURY: Yes.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Wednesday, the 29th January, 1975 from 10.00 to 12.15 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri A. M. Chellachami
5. Shri Tulsidas Dasappa
6. Sardar Mohinder Singh Gill
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shrimati Savitri Shyam
14. Shri Satyendra Narayan Sinha
15. Shri T. Sohan Lal
16. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

17. Shri Sardar Amjad Ali
18. Shri Mohammad Usman Arif
19. Shri Bir Chandra Deb Barman
20. Shri Krishnarao Narayan Dhulap
21. Shri Kanchi Kalyanasundaram
22. Shri Nawal Kishore
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri Virendra Kumar Sakhalecha
27. Shri Dwijendralal Sen Gupta
28. Shri M. P. Shukla

29. Shri Awadheshwar Prasad Sinha
30. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary & Legislative Counsel (Legislative Department)*.
2. Shri V. V. Vaze, *Joint Secretary & Legal Advisor, (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

WITNESSES EXAMINED

I. *Shri N. S. Das Bahl, Advocate, Supreme Court of India, Delhi.*

II. Shri K Subrahmanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.

1. Shri N. S. Das Bahl, Advocate, Supreme Court of India, Delhi.

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. You have submitted a written memorandum. You have appended our replies to the questionnaire of the Law Commission. You have also sent to us your replies to our own questionnaire. All these have been circulated. You may highlight the suggestions you have made in your oral evidence. I can assure you that all the points you have raised will be carefully considered by us at the appropriate time.

SHRI BAHL: Before I come to the provisions of the Bill, I would like to make a submission about what I feel about law and justice. In LAW, L stands for learning, A for action and W for wisdom. My concept of law is 'learn to act wisely' wise act is that which keeps in view the warning of the past, necessity of the present and consequences of the future. Justice is justice if there is redress of grievance in time. Time is the essence of the relief, else it becomes grief. I am glad that at least the Banglabandhu has acted in line with this thinking echoed my voice, and decided to dispense with the colonial system of justice. Five years ago I had said that unless we have a new CPC aimed at rendering quick justice and in expensive justice, patchwork will not do. What is required today is a radical approach to the problem. I hope most of the members might be Advocates also. The situation which is prevalent cannot be put in black and white, The trouble starts actually at the execution stage. Even at the eleventh hour, when the court has issued a sale certificate, I have come across cases where somebody comes and says 'I am in possession of the property'. Then proceedings go on. Serious thought has to be given as to how we can minimise the time taken in getting justice. There is a proverb in Persian which means that till the medicine for snake bite is brought from Iraq, but in those days there

were no means of communications by that time, the person bitten by the snake would die.

Let us take a dispassionate view of the problem. Amendments just here and there will not solve the problem.

MR. CHAIRMAN: You have raised a general question. I note that even though many of your suggestions were accepted by the Law Commission and also by the previous Joint Committee, you are not satisfied; you are also not satisfied with the present Bill. You say it is a patchwork, done in piecemeal etc. You have enunciated your approach to the whole problem. It will not be possible for us during the course of examination of this Bill itself to accept or consider those things. But because you are so serious about your convictions regarding the code as it should be to subserve the objectives, would it be possible for you to put those things in writing and draft a code for the country. In your memorandum you said you are willing to do it if asked. I do not know what facilities would be needed for that; it is for Government to attend to that. I am putting it in a concrete form. If you can do it, at least posterity can judge them; perhaps sometime it may be adopted also. Generalisation is alright, the approach is alight. but there must be something done to concretise it.

SHRI BAHL: Yes, I will do that.

Now I come to the sections. In section 2 there is reference to extension of the Code except Jammu and Kashmir. Clause 12 pertains to transfer of cases by the Supreme Court. A difficulty has arisen. The Supreme Court has expressed the view in some case that the Supreme Court has no jurisdiction to transfer a criminal case from J. & K. to other States. It came to my notice—I am arguing it on different lines; it also pertains to Jammu & Kashmir.

Because of this difficulty, I have suggested in clause 12 an amendment: "Notwithstanding the provisions of section 2" (3) (a) to (d)...

Please add at the end of clause 12 Section 25(1) the following words:

'or other Civil Court in one State to a High Court or other Civil Court in any other State including Jammu and Kashmir State and Union Territories'.

MR. CHAIRMAN: Your suggestion is that you want under this section to include Jammu and Kashmir State also. But, I am inviting your attention to the whole meaning regarding J. & K. under the Constitution in all laws enacted by Parliament so far. You will find this clause not only in respect of Jammu and Kashmir but you will also find it on the second page of the Bill that certain other areas are also exempted It is left to the States and the union territories to adopt it. For instance, for Nagaland, they have got their own customary civil and criminal laws. Therefore, some mention has been made. As regards J. & K. at present, it stands on a different footing. To bring them within the uniform law of the country is most desirable no doubt. But, won't you agree that until specific things are settled, it might not fit in in Section 25. I am trying to understand it. I am not very clear in my mind. Your suggestion is there and we shall be gald to accept it. The point is whether it would fit in or it will militate against some of the other provisions of the Constitution.

SHRI V. V. VAZE: Mr. Bahl, we would like you to concentrate upon the question of legislative competence of Parliament. You would agree that Parliament will make a law on a subject matter only if the constitution permits it to do so. We would invite your attention to Entry No. 13 of the Seventh Schedule. I shall read out to you:

"Civil procedure including all matters included in the Code of Civil Procedure at the commence-

ment of this Constitution limitation and arbitration.

'The footnote reads: 'not applicable to the' State of Jammu and Kashmir'."

So the matter ends.

MR. CHAIRMAN: Now I seek your advice or opinion on the amendment suggested to Section 20 of the Seventh Schedule.

SHRI BAHL: I shall reply to that. In the Supreme Court, that case will come up. Originally that the Governor-General in Council could only transfer cases. It was subsequently amended and the States were vested these powers. That power is now vested in the Supreme Court under Section 527 Cr. P.C. (old) Section 406 Cr. P.C (New).

SHRI V. V. VAZE: Your suggestion has been taken note of.

MR. CHAIRMAN: Your suggestion is there. That is a desirable thing.

SHRI V. V. VAZE: He sought a reply to that point whether Parliament has got the power or not.

MR. CHAIRMAN: Whether it would involve any amendment of the Constitution with a view to bringing it under the gamut of the court is the limited question.

SHRI V. V. VAZE: The suggestion has been taken down.

MR. CHAIRMAN: What is your next point?

SHRI BAHL: The next point relates to Clause 7, Section 20, Explanation 1. It has been stated therein that 'A corporation shall be deemed to carry on business at its sole or principal office in India.' Previously it was like this viz., 'A corporation shall be deemed to carry on business at its principal office in India.' Some portion of it has now been omitted Now the explanation I read as follows:—

'A Corporation shall be deemed to carry on business at its sole or principal office in India.'

In respect of a case arising at any place, I want to know whether the suit is to be filed at the subordinate office at that place or not. Previously, even where the branch office of the Corporation was situated, the suit could be filed and that was covered by sub-section (3) of Section 20. Now it is proposed that the Corporation shall be deemed to carry on business at its sole or principal office in India. So, now, the branches are sought to be excluded. You can foresee the difficulties which would be experienced by the litigants if only the suits are filed or cause of action is to be taken up only at the principle office. I say that previous Explanation is quite sound.

MR. CHAIRMAN: In other words, you are opposed to this Explanation but you want old Explanation (2) to remain in the present Bill.

SHRI BAHL: Yes, Sir.

MR. CHAIRMAN: Alright. You have no objection to the principle enunciated under the two sub-sections.

SHRI BAHL: No, Sir.

SHRI R. V. BADE: In clause 7, there are explanations given in the Bill.

MR. CHAIRMAN: He has suggested that Explanation (II) should be retained.

SHRI R. V. BADE: What has he got to say about the Explanation given in the para itself,, on page 98?

MR. CHAIRMAN: He says that the branches of the Corporation too should be taken as a place for the purpose of filing a suit wherever the cause of action may arise. He is opposed to the present explanation.

SHRI BAHL: The suit will be limited to the principal office of the Corporation. If that is so, then lot of difficulties will arise.

SHRI R. V. BADE: I shall read out to him Clause 7—Explanation I to the Section 20. It reads as follows:—

> Explanation I to Section 20 provides that, if a person has a permanent dwelling and a temporary residence at different places, he shall be deemed to reside at both the places in respect of any cause of action arising at the temporary residence. It is not clear whether the Explanation is intended to expand the scope of the main part of the section or to limit it. Under the main part of the section, a suit can be filed either where the defendant actually and voluntarily resides or carries on business or personally works for gain or where the cause of action arises in whole or in part. If the object of the Explanation is to indicate that temporary residence is enough to live jurisdiction, then the further requirement as to the cause of action is not intelligible."

MR. CHAIRMAN: He is referring to page 98 of the Bill.

SHRI R. V. BADE: Read the last line ". . then the further requirement as to the cause of action is not intelligible."

What I am trying to point out is this. Previously under the Explanation II, even where the branch office of the Corporation was constituted the suit can be filed as the cause of action was deemed to have arisen even against the Corporation as its place of branch office. Suppose one man resides in the branch office at a place. For the cause of action then arising against the Corporation a suit shall have to be filed at a p'ace where the principal office is situated.

SHRI V. V. VAZE: The hon. Member is explaining to you why this change is necessary. You explained that it shall cause hardships.

SHRI R. V. BADE: The main part of the section provides that where the cause of action arises at a place of the branch office, then the object of the Explanation is this. That Explanation is to indicate that a temporary residence is enough to give jurisdiction. I find that such an Explanation is not harmonious with the main section at all.

MR. CHAIRMAN: The Government's claim is this that because of these things, it is necessary and so they have proposed like this.

SHRI BAHL: No court will take cognizance of notes on clauses.

Here I am proposed an amendment to Clause 8. Instead of having clauses 2 and 3 we can have one clause; we can amalgamate both of them.

Coming to clause 9, I want that the words "limits of its pecuniary jurisdiction" should be added. That is, nobody should be allowed to question the validity of a decree passed on the ground of limits of its pecuniary jurisdiction.

I have proposed a new section 21B. I want that in respect of matters which have already been adjudicated upon by a tribunal, the civil courts should not interfere. Despite the fact that several statutes have barred the jurisdiction of civil courts, even then the civil courts jump in. These tend to prolong the litigation. I have suggested the following new section:

> "The validity of any decree in any similar civil or revenue proceeding shall not be called in question by the parties to the suit in a separate suit except in appeal or in review."

I am having in mind matters involving rent control, land tenure, Bhomidhari, Displaced Persons (Rehabilita tion Compensation) Act and even the Industrial Disputes Act. Our objective should be that justice should be done within the least possible time.

MR. CHAIRMAN: That is the object of the Bill also. I find that in the papers you have submitted to us, these concrete suggestion are not there. May I suggest that after your evidence is over, you may kindly put in your specific suggestions for amending the various provisions of the Bill and send them to us. That will help us to examine the suggestions thoroughly.

SHRI BAHL: Yes, Sir. I suggest amendment to definition as given in Section 42.

MR. CHAIRMAN: You are referring to clause 20 given on page 6.

SHRI BAHL: I have suggested as to which is a competent court.

> 'Competent court means executing court and the court to which the suit or decree is transferred for trial or execution'.

If there is any ambiguity in this execution, when it is transferred there may be difficulty.

SHRI V. V. VAZE: You are putting it so that there may not be any difficulty.

SHRI BAHL: Yes. This may be added as an explanation.

MR. CHAIRMAN: We will examine it.

SHRI BAHL: Then I come to clause 23, Section 58. I suggest the following changes—

> For word 'detention' it may be changed to 'confinement'. For word 'Rs. 50' I suggest that it should be in proportion to the rise in cost of living.

Previously it was Rs. 200|. This amount may be raised to Rs. 1,000 or Rs. 1,500, keeping in view the rise in cost of living.

SHRI V. V. VAZE: Are you opposed to the mode of imprisonment?

SHRI BAHL: I am not in favour of a provision for arrest to a certain extent. But if a man who has to pay Rs. 50,000 does not pay, then coercive measures may yield results. That is why I suggest that the limit should be raised from Rs. 200 to Rs. 1,500.

SHRI R. V. BADE: Tamil Nadu Government has come up with the Bill that nobody should be sent to jail at all.

SHRI BAHL: My approach is also the same. Under the Land Revenue Act the Assistant Collector First Grade can give ten days' imprisonment and the Collector can give imprisonment for 30 days. The period of confinement is longer. It should also be reduced in proportion to the amount and some norms may be fixed because six weeks or six months period is too much.

The argument of Tamil Nadu Government is that the whole law is based on British Law. It is the capitalist law.

MR. CHAIRMAN: Let us not discuss that way.

Let the witness tell us whether he agrees with the provision made by the Tamil Nadu Government or not?

SHRI BAHL: I agree.

MR. CHAIRMAN: If a citizen fails to fulfil the commitments in a decree against him, should he be imprisoned or not? I am asking from the civil liability point of view and as a general principle that should be adopted.

SHRI BAHL: I would submit that you reduce the period of confinement and also enhance the exemption limit.

MR. CHAIRMAN: But the basic principle is whether you agree with that or not?

SHRI BAHL: If anybody is financially weak, that is, the fault of the State.

Clause 24, sub-clause (a): There may be persons with less than Rs. 500|- income, but may not fall in the category of an agriculturist or a labourer or a domestic servant. Therefore, any person earning less than Rs. 500|- should be exempted.

Sub-clause (c): The suggestion is that 'two hundred and fifty rupees and two-thirds of the remainder' should be substituted in place of 'two hundred rupees and one-half of the remainder'. My suggestion is that it should be enhanced to Rs. 500|-.

Clause 27: It is mentioned: "The following clause shall be inserted...

(e) to hold a scientific investigation..." What is meant by it? I have read the exp'anation, but nobody will refer to the explanation.

SHRI V. V. VAZE: During the course of a particular case, some question may arise, where some scientific investigation may be necessary, for example,, quality of the clay has to be determined. Or say in mining operations the percentage of ferric salt or bauxite in an ore may be necessary to be determined. You may have to take sample and find out the percentage.

MR. CHAIRMAN: Please see page 103 of the Bill. It is mentioned:

> ..."The section is being amended to confer a power on the court to issue commissions for conducting scientific inquiries when such an enquiry is needed for determination of any issue before the Court..."

As the Law Secretary explained, a particular suit may arise about the details of clay. In that case, the court will be competent to set up a Commission.

SHRI BAHL: When it relates to account matters, what will happen?

SHRI V. V. VAZE: Even today a commission can be appointed for that. If you want to be specific and something more to be added, it is a different thing. It can be even about flow of water. In that case, a theodolite survey may be necessary.

SHRI BAHL: Clause 29, Section 82: On the basis of Section 80, I propose that it should be deleted. I do not agree with this amendment.

Clause 34, Section 96: The amount may be raised to Rs. 500|- instead of Rs. 300|-.

Clause 47, Section 132: I submit that the protection which is already available to the women should continue.

MR. CHAIRMAN: The proposal is that this section should be omitted. This section reads:

> "Women who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court."

SHRI BAHL: This is sub-clause 48. Here I think the period of 14 days is alright. If it is proposed to be raised on the basis of the practice prevalent in the U.K. that is a different matter.

Then it is stated under Clause 50 as: Sec. (141)

> "*Explanation*—in the section 'the expression proceedings' includes proceedings under Order IX but does not include any proceeding under article 226 of the Constitution."

I do not know why this explanation is necessary.

SHRI V. V. VAZE: What is your suggestion? Should this clause apply or not? It is also a civil proceeding, as a matter of fact.

SHRI BAHL: Section 141 talks of civil proceedings. We have to see the practical position. Unfortunately, nobody has defined it. I am sorry to say this. In the judicial field somebody is taking it in this way and within a month you will find a different view is taken by somebody. So, my submission is that under Explanation the words "but does not include any proceeding under article 226 of the constitution" should be omitted.

MR. CHAIRMAN: Supposing the Explanation is dropped.....

SHRI BAHL: It is not necessary.

MR. CHAIRMAN: The purpose is to exclude this and not to include....

SHRI BAHL: I am submitting the practical difficulties which may arise. It runs counter to the section itself. After all the real interpretation is the intention of the Legislature and the intention of the Legislature is very clear, that is to minimise the hardships to litigants and in our anxiety just to confirm the views of the High Court we should not ignore the real intention.

Clause 51, section 144: I have just made one remark, that is the source of trouble. Sometimes only on the plea of 144 stay orders are not granted by the Court "No you can go in for restitution" Suppose the decision is such that the defendent loose the case. Ultimately the appellant again has to run to the Court to file restitution proceedings not only three or four times but several times. It is a source of trouble. Section 144 is also a cause of delay in the matter of disposal of the case. In the name of restitution, the matter does not cease there but it goes on. The man who has taken the possession, loses the case and the person who had given the possession, although wins the case, again runs to the Court for getting the given possession. This is my general observation'

MR. CHAIRMAN: What are your views?

SHRI BAHL: There should be a norm to the use of powers so far as restitution proceedings are concerned.

MR. CHAIRMAN: When we make a law, we presume that this should be administered by a competent judge.

SHRI BAHL: I am not referring to any particular person.

SHRI R. V. BADE: Please refer to Clause 51—Section 144— at page 108 of the proposed bill. Here the order shall be substituted. This is the view taken because some High Courts and the Supreme Court have taken different views. The bill makers have accepted the rule taken by one High Court.

SHRI BAHL: Firstly, so far as the Allahabad High Court's view is concerned, it is correct in principle. The view taken by Allahabad High Court is the correct view. I am submitting that this exercise of power under Section 144 should be curtailed. Because of it, stay orders should not be delivered.

Clause 53. A new provision has been made. If it applies to a lower court, it will increase the work. This is a prevailing practice in the Supreme Court. If you want to apply it in the lower court, then you will have to provide sufficient staff over there. In the Supreme Court, it is possible. Even in the High Court, there is no procedure for caveat. But practical difficulties will arise, so far its implementation part is concerned.

MR. CHAIRMAN: As far as the Supreme Court is concerned, you agree. But as far as the lower court is concerned, you do not want that it should be implemented there because of certain practical difficulties.

SHRI BAHL: You confine it upto the High Court. I do not want it in the lower court. In the High Court, the work is comparatively less. It is a question of right being given to the other party; it is not a question of power.

SHRI R. V. BADE: You mean to say that the right of the lower court should not be there.

SHRI BAHL: That will create unnecessary work for it and also for the litigants.

MR. CHAIRMAN: Most of your points have been covered in this discussion. Now, you can draft a code and send it to the Committee and we will see what can be done. I appreciate that you are very serious and constantly so for the last several years. If you can put it in a concrete form and send it to us, we will examine it. So far as the general principles are concerned, they are all right.

SHRI R. V. BADE: But the learned witness has not said anything about Section. 80.

MR. CHAIRMAN: So far as the general principles are concerned, he will give us a note and we will see what can be done about them. So far as his memorandum is concerned, we have taken note of what he has mentioned on page 2. You kindly also send us your concrete proposals regarding all clauses so that we may consider them at the appropriate time. You have also mentioned about a new code that you envisage. That is a separate thing. That you may take up at a later stage. But, first of all, we request you to send us all those things mentioned above by 6th February.

Mr. Bade, regarding section 80, he has agreed with its omission.

SHRI R. V. BADE: But what is his experience regarding serving the notice?

SHRI BAHL: My experience is that nobody bothers to reply to Section 80 notice. I have also practised at least in the district courts.

MR. CHAIRMAN: It has not served its purpose.

SHRI R. V. BADE: What about 115?

SHRI BAHL: It should be scored off; it is unnecessary. In 1970, when I appeared before the JC on the Code of Civil Procedure (Amendment) Bill 1968 at that time, I also suggested the same thing.

SHRI R. V. BADE: What is your opinion about the existing Civil Procedure Code which has been there for the last about 70 years?

SHRI BAHL: Age is not the criterion. At the moment, we have to see what the society needs. After all, society is the source of law, not the society which was three hundred years ago but the present society. Under the present-day conditions in which we live, people feel that justice should be done in time and time alone. After all, time is the essence of relief. It is a complicated process which we are having in the country today. Even in other countries, there is a re-thinking about this. I am going to point out about this. There was a delegation from UK recently. Certain Advocates solicitors were visiting the Supreme Court. They were also telling us that their system also requires re-thinking. The mere fact that an enactment has been there for so many years should not be the criterion to uphold it.

SHRI R.V. BADE: What is happening in India? The power of money or the strength of money is very much there in the mofussils. The High Courts are always pressing for the speedy disposal. Do you think that speedy disposal of cases at the cost of justice is good? Do you want that there should be speedy disposal at the cost of justice and at the cost of illiterate persons?

What is your opinion? Eighty per cent of the population in India is illiterate.

SHRI BAHL: I would say that 80 per cent of the people cannot afford to go to the Courts. It is so costly and so time-consuming that one is scared of going to the Courts. May I just read the fore-word which is contained the book entitled 'Critic of English Civil Procedure'. This book is by Sir John Foster KBEQC Chairman of Committee. In the fore-word, Lord Devlin says:

> "I believe that a lawyer would welcome as better than nothing a simple process producing quick results even if it involves a departure from traditional methods."

MR. CHAIRMAN: Your view is supported by the fore-word. Now, I would like to invite your attention to your memorandum, Page 2, wherein you have stated:

> "Omission of Section 115 is all-right. I also suggested in my memorandum dated 28-1-1970. But unless Article 227 is suitably amended I am afraid the proposed Bill will not achieve the object. I rather suggested Revision etc. from interlocutory orders be stopped, as these orders can be agitated in Appeals in view of Supreme Court's decision in 1960(3) S.C.R. P. 590. So far it has been held that scope of Article 227 is narrower than Section 115 of he C.P.C. Hence the difficulty will arise unless Article 227 is suitably amended."

I would request you to send to us, in what manner, in what form, you suggest that Article 227 should be amended. Your agreeing to the omission of Section 115 seems to be conditional upon the amendment of Article 227. I would like to know, in what manner you would like Article 227 to be amended.

SHRI BAHL: I will send this.

MR. CHAIRMAN: Hon. Members, I think, so far as the general principles are concerned, to my mind, the learned witness has covered the main grounds. I have asked him to send us in a concrete form the two things which I have distinctly made out earlier. Hon. Members may seek clarifications.

SHRI RAJDEO SINGH: My point is the most simple one, about arbitration. This is also process. In my opinion, if it is effectively resorted to, that can heal the wounds of justice between the parties. This will also save time and cost. It is also a fact that up to this time, arbitration has not been popular. Do you agree with this?

SHRI BAHL: Yes.

SHRI RAJDEO SINGH: I would like to have your suggestions so that this process can be made more effective.

SHRI BAHL: For that, I think, independent tribunals should be set up. Instead of referring arbitration to all and sundry, there should be arbitration tribunals. At the moment, arbitration is not effective. There are two reasons. You also know it. Sometimes, arbitrators are the persons who are interested in either of the parties. So, my suggestion is that there should be arbitration tribunals and the disputes arising between the parties can be referred to these duly constituted tribunals under the Arbitration Act or a Special Act.

MR. CHAIRMAN: I think you have covered all the questions, not only in regard to the questionnaire from our Committee but the other questionnaire which you have very rightly incorporated here. We are grateful for it. We will take all your suggestions into consideration not only in regard to the present Bill but also in regard to the Code which you will be sending us—I am repeatedly saying this.

SHRI BAHL: I am glad.

MR. CHAIRMAN: I am very much impressed. At page 3 of your memorandum, you have stated:

> "New C.P.C. may be written to achieve the object. My humble services may be availed of for this purpose."

Now, I am trying to take advantage of this.

SHRI BAHL: I am grateful to you. I think I will prove equal to the task.

MR. CHAIRMAN: If you kindly do that, it will be helpful to us and you will have the satisfaction that we have something to work on and see whether it could be simplified. I entirely agree with you that justice should be fair and quick. Justice delayed is justice denied. All these things are there. The question is, whether these provisions are adequate to meet our objectives. Your opinion is that they are not adequate, and therefore, you strongly feel that there should be a new Code. Since you have given some thought to it and put sustained labour in regard to this, it is only logical that you should undertake this task.

SHRI R. V. BADE: Nobody looks to this proverb, justice hurried is also justice denied. It is also there.

MR. CHAIRMAN: Thank you, Mr. Bahl: on behalf of myself and of the Committee for the trouble you have taken now and earlier when you gave evidence before the previous joint select committee. I hope that we will have the satisfaction some day that your labour has been rewarded.

SHRI BAHL: May I reply before leaving, to the point made by the hon. Member *viz*, that "Justice hurried is justice denied?" By this, does the hon. Member mean to say that there should be no hurry? May I quote the case where a person may have to take possession of a house?

SHRI R. V. BADE: Don't take the instances in cities; but take those of the mofussil areas where people have to travel 40 or 50 miles by cart. In such cases, the court might say that there has been delay and that the time is over.

MR. CHAIRMAN: May I amplify the hon. Member's question? Is it correct to understand, when you say that justice should be quick, that it may not be fair and just? When you insist on quick disposal, you do not mean to say—I think—that it would lower the quality of justice. Is this the correct understanding of your position, Mr. Bahl?

SHRI BAHL: You are referring to a case where a person comes from a long distance. I am also a villager and not unmindful of the situation prevailing in the rural areas. In such cases, the fault would lie with the judge and not with the system. There is a provision in the rules of the High Court that the matter should not be dismissed in the early hours of the day. Practically speaking, they are dismissed even in the cities in the early hours of the day due to the personal whims of the judge. There are systems and functionaries. Some functionaries may be good and others, bad. If any judge dismisses cases in the early hours of the day, the fault does not like with the system. It is the fault of the judge since he does not wait for the party. I also realize the difficulties of the villagers. To meet them, we should shift the court to the block-level; *e.g.*, if my information is correct, I think they have been transferred in Punjab and some other States, even to the tehsil-level. But that has nothing to do with the question of meeting out justice.

MR. CHAIRMAN: I think you have made your position very clear, *vib.*, that justice should be made fair, but it should be quick.

SHRI BAHL: Thank you too, Sirs, for the patient hearing.

(The witness then withdrew)

II. Shri K. Subramanyan, Secretary, Popular Hospital Committee, Tiruvilwamala.

[The witness was called and he took his seat]

MR. CHAIRMAN: Before we enter into the evidence properly, I would draw your attention to the direction which governs evidence before our Committee. It says that your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. You shall, however, note that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I hope you have no reservations, Mr. Subrahmanyan.

SHRI SUBRAHMANYAN: No Sir, servations, Sir; I have already noted it.

MR. CHAIRMAN: Are you an advocate?

SHRI SUBRAHMANYAN: No Sir, but I have worked in the high court of Tanzania as a higher executive officer.

MR. CHAIRMAN: It is not necessary that a person giving evidence before us should be a lawyer. Any citizen can do so. We have made it very clear. Now, Mr. Subrahmanyan, we have your memorandum before us. You have also replied to the questionnaire. In this oral evidence, you are welcome to explain or highlight any of the points which you might like us to hear in person.

SHRI SUBRAHMANYAN: I retired from service in Tanzania. After Afrikanization, we had to leave. I am out of profession for the last ten years. I am not employed. I get a pension. As far as the bill is concerned, I consider that the amendments made in the bill have gone very far in reducing delays. I have nothing much to say about them. But what I am worried is that we do not have sufficient number of courts to put this law into practice. What we have at the moment in this country are munsiff courts on *taluka* basis. I am told by an advocate in Wadakkancheri that a simple case takes 5 years in that court to be decided. When I was in Tanzania in charge of a district, I did not allow even a month, after a plaint was allowed.

It is so simple to get a plaint filed and the summons issued. But in India it takes five years, which is ridiculous. It means there is no justice. People outside will wonder what we are doing.

I am very much impressed by the way this has been improved because I find that some of these things are just what we did in Tanzania not now but 20 years ago. I have worked not only on the civil side, I am talking generally about the law. In 1947 itself we had introduced this probation. It is the Indian penal Code and the Criminal Procedure Code which were accepted there. We are going further ahead o simple matters, to make things comprehensible to the ordinary men to enable him to fight his own case without having to go to an advocate. It is not necessary and it will be better to defend a case without an advocate because we may have so many other cases to attend to and he may not want to go the way you want to go.

We live a simple life in which we enter into some transactions with other people. We have got small claims and disputes. It is only the companies which are involved in complicated cases and they can employ advocates or get the case delayed, but for the common man, his immediate need is that he must get the money due to him or that is client should pay him his bills. These are matters which are very important and the cases should not, therefore, be delayed.

SHRI R. V. BADE: Are the people in Tanzania educated or illiterate.

SHRI SUBRAHMANYAN: Many have migrated from India. Even the uneducated people have their own courts in the villages where they

have a civil procedure and get the claims settled. Within radius of four miles you have a Court where you can decide a case up to Rs. 1,000 in value, where they can punish a man in a criminal case with imprisonment up to eighteen months. So, our aim is to get cases settled by a simple procedure. But I find that the Courts are not well placed in this country. We have got a lakh of people in our own *taluk* and we do not have a Court nearby. For that we have to go 51 Kms. and wait day after day to see what happens.

I am the Secretary of this Hospital Committee. We bought land to build staff quarters. Someone is encroaching unlawfully and we wanted to clear him. We compromised by agreeing to pay him Rs. 100 cash compensation and land elsewhere so that he can shift his tea stall, but later on he withdrew. It does not come under the Land Acquisition Act. It is mere trespass. I consulted an advocate and he said that I had to file a case in the Munsiff's Court. I asked him how long it would take and he replied that it would take atleast five years. This is my experience in this country.

I welcome the impovements in this Bill, especially the summary procedure under Order XXXVII, but it should apply to all cases.

MR. CHAIRMAN: If I have understood you correctly, your suggestion is that the Civil Procedure Code should be made as simple as possible, that the Courts should be dispersed in the rural areas, so that they are within easy reach and the disposal of the civil suits and proceedings should be quick so that people get justice without much delay.

Secondly, the citizen or the litigant need not necessarily be at the mercy of the lawyers and should be enabled to appear before the Courts himself and get justice.

SHRI SUBRAHMANYAN: Yes. We know how to take a pill for headache, but we still go to the Doctor. Like that, if people want, let them go to the advocates. So many Negroes, especially ladies who have not seen the outside world, have gone to Courts in matrimonial and divorce cases.

Clause 87, relating to Order XXXVII provides for summary procedure, but it lists various kinds of cases to which it will apply. I suggest that it can be made to apply to any case, according to the choice of the plaintiff. If it goes for defence, then pleading will be necessary, and the usual course will apply.

MR. CHAIRMAN: Initially, all civil suits and proceedings, according to you, should be treated on a summary basis and pleading should start only if they are contested.

SHRI SUBRAHMANYAN: So that the man can get quick redress. If it is an important case and the Court feels that defence is necessary, then the usual course can be adopted.

MR. CHAIRMAN: In Tanzania have they got a Civil Procedure Code.

SHRI SUBRAHMANYAN: They have applied our Indian Civil Procedure Code. They might have revised it now. I have worked on the same Code. My suggestion is that this should not be enlisted in a number of cases.

MR. CHAIRMAN: You said that in Tanzania this was made more simple by necessary modification and you want that this country should adopt that system. That is your main evidence before us.

SHRI SUBRAHMANYAN: Yes. When it comes to the stage of summons, the female members of the defendent could be served.

MR. CHAIRMAN: 'female or household' that should be adequate.

SHRI SUBRAHMANYAN: That is a complete service.

MR. CHAIRMAN: Would you also suggest that along with person's service, service by post should also be there.

SHRI SUBRAHMANYAN: Yes. That means, he gets intimation that there is a case.

MR. CHAIRMAN: You mentioned in your statement that in Munsiff's Court simple cases were pending for five years. What are the various reasons for such delay?

SHRI SUBRAHMANYAN: I do not know.

SHRI R. V. BADE: In India the conditions are different. My area is an *Adivasi* area. There the people are illiterate. They put thumb impression. There, for five miles there is no post office at all. There, the peon goes, takes the signature and comes back. When there is hearing, the summons do not come. If the suit is filed in hundi, then he need not come and the money-lender takes the decree.

SHRI SUBRAHMANYAN: That is why, I said that we must have courts on a local basis.

MR. CHAIRMAN: The Civil courts should be so located that it will come within the reach of the people and courts also should be made so simple that one can have justice from the court direct.

SHRI R. V. BADE: Within how many miles a court should be there?

SHRI SUBRAHMANYAN: Within 10 kilometres distance.

MR. CHAIRMAN: At the moment, all over the country there is a *Panchayati Raj* and some of the States under the *Panchayat* Act, have provided for *Nyaya Panchayat*. Do you agree with this idea?

SHRI SUBRAHMANYAN: These *Panchayat* Courts will have limited jurisdiction. They should be given powers of first class courts.

MR. CHAIRMAN: I think, your suggestion is that there should be *Nyaya Panchayat*, *Taluka Panchayat* then Tehsil *Panchayat* and then District Court.

SHRI SUBRAHMANYAN: Yes.

The fourth question I could not understand. I think, no court should be allowed to interfere with them. Regarding Question No. 5, I will emphasise that the courts should be within the accessible reach of everyone. We cannot condone the court fees, because they will also have to earn some revenue.

MR. CHAIRMAN: Court fees differ from state to state. If they are exorbitant?

SHRI SUBRAHMANYAN: We must have a uniform rate throughout India.

MR. CHAIRMAN: Do you agree to total abolition of court fee?

SHRI SUBRAHMANYAN: No, it will be abused. It must be uniform and nominal.

MR. CHAIRMAN: So far as money suits are concerned, it is a certain percentage of the value.

SHRI SUBRAHMANYAN: I do not agree there. It will be impossible for them to come and sue. He may only get a portion of the amount.

MR. CHAIRMAN: Do you suggest this principle to be adopted in block, *taluk* or *Panchayat* level so far as big suits are concerned? The main object is to see that the common people get quick and easy justice. Complicated, big suits are another matter.

SHRI SUBRAHMANYAN: They can go to district courts. They may need

a specialist, judge or experienced magistrate.

MR. CHAIRMAN: In our country, we are trying to make a distinction between the common people and affluent people. Suppose court fee is fixed accordingly, that for petty cases of the common people, it should be nominal.

SHRI SUBRAHMANYAN: For petty cases, it should be nominal.

MR. CHAIRMAN: I do not know whether it would be feasible.

SHRI SUBRAHMANYAN: Above 3,000 may go to the district court. It will be *ad valorem*. Where the court is within reach of the man, both in regard to physical distance and the expense factor, then the cost of litigation automatically goes down. I do not say advocates are not necessary. They are doing a wonderful service. But advocates should not be made indispensable. They may better go to higher spheres and not waste time on trifle matters.

SHRI R. V. BADE: If advocates are dispensed with, it will be a fool's paradise. The judge may not understand the language of, say, *adivasi litigants*. Suppose a decree is passed on persons living below Rs. 30 or Rs. 40, should they be sent to jail for not paying?

SHRI SUBRAHMANYAN: I see an amendment that no person with a debt of Rs. 250 need be arrested. We can increase it to Rs. 500. They do this in Tanzania.

SHRI R. V. BADE: Should Government provide advocates to those who cannot afford to engage them?

SHRI SUBRAHMANYAN: Once you bring the courts to the block level, naturally some advocates will migrate to those some places. *Adivasis* will get that benefit.

SHRI R. V. BADE: You say advocates should not interfere.

SHRI SUBRAHMANYAN: Not necessarily. Advocates would naturally migrate to the villages, not all, but some.

About free legal aid, nobody should be given it. He can get a loan from a nationalised bank which he will only be glad to repay with interest.

MR. CHAIRMAN: Even if it be a loan, that becomes an aid. Suppose a particular defendant is handicapped. A particular citizen is being harassed by an affluent party. Suppose he cannot defend his legitimate claim due to indigent circumstances?

SHRI SUBRAHMANYAN: It should never be free. He can be helped by nationalised bank or other agency.

About free supply of copies of documents etc. No, the cost must be only nominal, the paper value and minimum time needed to type it.

MR. CHAIRMAN: A certified copy has to be made. This involves cost.

SHRI SUBRAHMANYAN: We only make it when there is a request for it.

SHRI R. V. BADE: Only if they go in appeal, there is the question of copies. In the lower court, there is no question of copies.

SHRI SUBRAHMANYAN: Anybody would like to have copies of proceedings as soon as the case is over. I would like to have a complete record. Only in the case of appeal, you go in for a certified copy of the judgment.

About preliminary objections being heard along with the merits of the case, this has been well done in these amendments. The provision for review is necessary at the block level because most of the *panchayat* court magistrates are unqualified. They may go wrong in matters of fundamental jurisdiction. So review will be necessary only at the block level

over village courts. My request at the end would be that you should make use of your good offices with the Government to establish a civil court at least at the block level. I have been fighting for this by writing to the Ministries of the Government of India, the President of India, MPs and so on.

MR. CHAIRMAN: May I, on behalf of the Committee, thank the witness for the trouble he has taken in appearing before us and giving valuable suggestions?

SHRI SUBRAHMANYAN: I shall be happy if they are implemented. There is nobody above you in this matter. Thank you.

(*The Committee then adjourned*).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Monday, the 10th February, 1975 from 15.00 to 16.30 hours

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Sardar Mohinder Singh Gill
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shrimati Savitri Shyam
15. Shri T. Sohan Lal
16. Shri R. G. Tiwari
17. Dr. (Smt) Sarojini Mahishi

Rajya Sabha

18. Shri Bir Chandra Deb Barman
19. Shri Krishnarao Narayan Dhulap
20. Shri Kanchi Kalyanasundaram
21. Shri Nawal Kishore
22. Shri Syed Nizam-ud-din
23. Shri D. Y. Pawar
24. Shri V. C. Kesava Rao
25. Shri Virendra Kumar Sakhalecha
26. Shri M. P. Shukla
27. Shri Awadheshwar Prasad Sinha
28. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri S. K. Maitra, *Joint Secretary & Legislative Counsel (Legislative Department)*.

2. Shri V. V. Vaze, *Joint Secretary & Legal Adviser (Department of Legal Affairs)*.

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer*

WITNESS EXAMINED

Shri Durjodhan Dash, Deputy Secretary, Law Department, Government of Bihar, Patna.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Dash, before you give your evidence before the Joint Committee, I would like to draw your attention to Direction 58 of the Directions by the Speaker which governs evidence before this Committee. Your evidence will be treated as public and is likely to be published also. But if you desire that any part of your evidence should be treated as confidential, we will do so. Even in that case, it will be made available to the Members of Parliament.

SHRI DASH: I have already noted it.

MR. CHAIRMAN: We have received your written memorandum and also the reply to the questionnaire. Now, you are welcome to elaborate any important point that you have made in your memorandum.

SHRI DASH: As I have already said in my memorandum I have applied my mind to the aspect of delay in the disposal of civil litigations. Therefore, I have made some suggestions as to how to do away with the delay.

There are already several proposals in the draft Bill with which I am in agreement. Apart from that, I have made some other suggestions. The point that I would like to highlight is, whether it is necessary and possible to restrict different parts of a civil proceedings in the court to limited periods. I have suggested that summons issued by the court must be returned after service within 30 days. Any person who is found to be responsible for any delay beyond that period should be punished for disobedience of the order of the court of issue of the summons.

After this is ensured, the next stage is the filing of the written statement by the defendant. At this stage also, a lot of delay is caused due to the fact that the defendant takes adjournments for submitting his replies after filing his written statement. In that case also I have suggested that he should not be given time beyond 60 days. In my opinion, that period is sufficient even in a big litigation to get ready with the written statements.

MR. CHAIRMAN: So, you suggested that a time-limit of 30 days should be prescribed under a new Section 29A. You also suggest for default in serving the summons, the person responsible for the delay bevond that time-limit should be punished.

Then, you have suggested 60 days for filing written statements.....

SHRI DASH: 60 days after the date of the service of the summons.

Then, the further proviso is that the order passed by the court should be final. It should not be appealable. If it is not made final, what happens is that the party interested in delaying the disposal of the suit goes in for revision or appeal. These are interlocutory orders. It will not cause any injustice if at this stage an appeal or a revision is barred or restricted.

MR. CHAIRMAN: You suggest that it should apply to Section 29A where you have suggested 30 days' time-limit.

SHRI M. C. DAGA: This cannot be provided in the Act. It is an administrative matter. The serving of summons is an administrative duty which he has to perform. How can it be incorporated in the Act itself? You mean to say that if he is not able to serve the summons, he should be punished? I say, this is an administrative matter and, generally, the courts do take action. This cannot be provided in the Act itself.

SHRI DASH: If he sends a report that he went to the spot and did not find the defendant and for that he records the statement or signature of witnesses, certainly it cannot be negligence for which he should be punishable. But if a man is responsible for deliberately or wilfully delaying the matter, that is, returning the process within that period after service, he should be made punishable.

SHRI M. C. DAGA: It is a relation between the master and the servant. The Civil Judge can take action against his employee. It is an administrative matter.

SHRI DASH: In all cases it may not be the process server or the process server of the court of issue it may be a process server of a foreign court.

SHRI M. C. DAGA: Regarding the next point, when a summons is issued it is always written there that the party must come on that day with his written statement. And now in the progressive law that we are making we have provided:

"Provided that in appropriate cases the court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons."

SHRI DASH: I have suggested a further proviso after that.

SHRI M. C. DAGA: Why do you say sixty days. What is your criterion for giving 60 days?

SHRI DASH: In my opinion 60 days is a sufficient period to prepare a written statement even in complicated matters.

SHRI M. C. DAGA: That means, the court will get a written statement in 90 days.

SHRI M. P. SHUKLA: Will this section 29A, which the witness is suggesting, be in the amended Bill or where will it be?

SHRI DASH: It will be after section 29.

SHRI M. P. SHUKLA: Will it be section 29A to the Code itself?

SHRI DASH: Yes.

SHRI M. P. SHUKLA: But section 29 speaks of service of foreign summons.

SHRI M. C. DAGA: How can you put this after section 29 which speaks of service of foreign summons?

MR. CHAIRMAN: It should be after section 27.

SHRI DASH: It may be section 27A.

MR. CHAIRMAN: It will be put in the appropriate place but your idea is about time to be stipulated.

SHRI R. V. BADE: Does he mean to say that the summonses which are issued in the mofussil should be returned within 30 days? The summons server is given 10 or 12 summons to be served and not only one summon. Therefore it may not be possible for him to serve all the summons within 30 days. What is his explanation about that?

SHRI DASH: It is the duty of the *Nazarat* to distribute processes to a particular process server in such a manner so that he can serve them within that period.

MR. CHAIRMAN: In other words you suggest an increase in the strength of the process-servers. But your main point is that this time limit should be fixed and adhered to.

SHRI DASH: Yes.

SHRI SISODIA: Regarding this Order 5 rule 1 his suggestion is that in no case the court shall allow time to the defendant beyond sixty days after the date of the service of the summons. Suppose the court has ordered that copies of the documents may be filed but he has not submitted the copies and the defendant is not in a position to file the written statement within the sixty days. In that case, it will create a hardship rather than give any facility or curtail the delaying tactics. What has the witness to say in this connection?

SHRI DASH: A copy of the plaint accompanies the summons and the defendant receives the copy of the plaint along with the summons. That is the rule and after reading the plaint, he can note the claim made against him and then if he has to procure papers and documents etc., and if he has to even call for documents which are in the possession of the plaintiff, he can do it sufficiently and adequately within that period. Even if he is to procure papers from outside or from anywhere-else, he can do it within sixty days. I do not think it will not be possible for the defendant to prepare his written statement within two months after receipt of the copy of the plaint which speaks in full and in detail about the claim levelled against him.

MR. CHAIRMAN: Would you like to give any discretion to the court so that if any reasonable grounds are shown, the court may consider extending this period of sixty days? But your suggestion is that in no case shall the period be extended beyond sixty days.

SHRI DASH: Yes, it is better to have a provision regarding such discretion.

MR. CHAIRMAN: He is agreeable to giving a discretion to the court in exceptional circumstances.

SHRI DASH: You may kindly refer to page 3 of my memorandum—para 5. There I have said that there will be no extension of time except for special reasons to be recorded in writing by the court. Some such provision can be made here also.

SHRI R. G. TIWARI: Clause 29A—in our anxiety to expedite disposal of the cases we should also guard against such provisions which may create undue hardship. The proposal in clause 29A is that the process-servers must return the summons duly served within 30 days.

SHRI R. V. BADE: My submission is that in every court there are two or three process-servers. Especially in the mofussil there are two or three process-servers only and they go on serving the summons from village to village. Then, how can he return it within 30 days? Either we have to increase the process-servers or the Magistrates should use the discretion. Does he say like that?

SHRI DASH: Generally in a court of the Munsif or of the District Judge, the *Nazarath* staff is adequate to serve and return the processes even within three weeks. As far as Bihar, I know and I have the experience that process servers are not expected to remain in the mofussil for more than a week or fifteen days for serving the bundle of processes given to them. The work is distributed in such a manner that the work can be done within a fortnight so that he can return all the processes to the *Nazarath* which sends it to the respective courts.

MR. CHAIRMAN: You still hold the view that whatever may be the administrative improvement that may be necessary, this time of 30 days should be insisted upon?

SHRI DASH: Yes.

SHRI E. G. TIWARI: According to me, there are two major defects in the suggested provision. (1) A stricture or panel action against the process server for the simple reason that he could not serve within 30 days and he could not return it after service. Now, this provision does not take into account the various circumstances which really caused the delay in service. What I am suggesting is that in our anxiety to expedite the proceedings. We should not put harsh provisions. Here is a case where 30 days' limit is given to return the summons served. This provision does not take into account various other factors which are generally responsible for the delay in service. The moment the process-server fails to return it within 30 days he is sought to be punished. I think it is a harsh provision which is being enacted here.

Then, here we have made a distinction between one subordinate officer and an officer who is sitting at higher grade. This distinction is not called for. Why should not the provision specifically say that whoever is found guilty for the delay shall be punished? Why do you want to make a distinction between a senior and a jounior officer?

MR. CHAIRMAN: The suggestion made by the learned witness is that there should be a time limit fixed for the service of the summons. He has also clarified that whatever improvment may be necessary in order to adhere to this time limit, suggested by him, should be done. But the time limit should be adhered to in spite of the difficulties mentioned, the witness still holds to the view that the time limit must be prescribed and it should be 30 days. We will consider your suggestion.

SHRI R. G. TIWARI: If the court itself is guilty, then what will happen?

SHRI DASH: This is in those cases where the process is received by the other outside courts.

We may add 'if anybody is found wilfully negligent'.

MR. CHAIRMAN: 'Any person responsible for delay'— that will be for the court to determine.

SHRI DASH: I have suggested this provision because this will bring about an impression on the mind of the process serving staff that delinquency will be punished.

SHRI R. G. TIWARI: The subsequent suggestion that discretion be given to the court for allowing more time for filing the written statement. This discretion may cause further delay.

MR. CHAIRMAN: The learned witness is not in favour of allowing discretionary powers. If in a case some documents, etc. are to be obtained and submitted, the court may do so.

His suggestion is that 60 days time for submission of written statement is sufficient after due service.

SHRI DASH: Another thing is about the postal acknowledgement.

I have suggested that the court should satisfy itself whether the endorsement on the acknowledgement is authentic and genuine. It has been generally found that the parties come in collusion with the postman and false endorsements are got made.

SHRI M. C. DAGA: How can the court find it?

MR. CHAIRMAN: Please answer the point made by Shri Daga. The court *suo motu* cannot do it. It will result in delays. There is provision in the Evidence Act that when acknowledgement is received, the judge has to believe that it has been received in due course and the signatures thereon are not forged ones.

SHRI M. C. DAGA: If you disbelieve the signatures or have doubts then you will have to change the evidence act. The court on its own cannot doubt it unless the Defendant challenges it. Any way we will examine your point. But adequate provision is there in the Evidence Act.

MR. CHAIRMAN: You suggest at this stage the court should be burdened with the genuineness of the service.

SHRI DASH: Then, Sir, after proposed sub-rule (1) of Rule 17 of Order VI the following proviso be inserted:

> "Provided that no such alteration or amendment of the pleading shall be allowed as will change the nature or subject matter of the suit."

SHRI M. C. DAGA: It is already there.

MR. CHAIRMAN: Rule 17, as it is given general power to the court but the learned witness wants to limit the scope.

SHRI M. C. DAGA: There are authorities of high courts and Supreme Court. No suit is ever amended.

SHRI DASH: I am aware of the fact that there are authorities of the High Courts and the Supreme Court and it is an established principle of law. What I intend is that it should be incorporated in the code itself.

MR. CHAIRMAN: We will examine it.

AN HON. MEMBER: Sir, I think, it is proper time since we are considering major changes in Civil Procedure Code to remove all these orders and make it section-wise provision.

MR. CHAIRMAN: That we will taken up after we finish with the learned witness.

SHRI DASH: Then Sir, after clause (d) of Rule 11 of Order VII the following clause is humbly suggested to be inserted, namely:

> "(e) where any document is relied on in the plaint, the plaintiff fails to comply with the provisions of Rules 14, 15 and 17 of Order VII of the Code."

I want to add this provision for rejection of plaint. There are already four grounds and I have suggested the fifth one. Generally, it is found that documents are relied in the plaint but they are not produced and adjournments are sought for filing those documents and that is one of the causes of delay. Rules 14 and 15 say that the documents shall accompany the plaint but it is generally found they are not filed alongwith the plaint. The plaint should be rejected, if they are not filed.

SHRI M. C. DAGA: I draw your attention to Rule 14. The court says you produce or mention in the list or say it is with somebody else, otherwise it cannot be taken as evidence. Now why should the plaint be thrown out. Suppose I am to produce 10 documents and I am producing 9 documents you say the plaint should be rejected because I have not produced the tenth

document. If it is not with me I shall mention in the list that it is with Mr. so and so.

SHRI DASH: In that case it will not be rejected. Then, Sir, if this amendment is accepted in that case Rule 18 will become redundant.

If additional clause (e) to Rule 11, say 'sixty days'? What is your crite- as suggested by me is accepted, rule 18 of the Order VII will be redundant and may be omitted.

SHRI M. C. DAGA: Rule 18 is very clear. What will happen to clause 2 of the rule.

SHRI DASH: Rule 18(2) may be retained; rule 18(1) will be redundant.

My next point is this. After proposed sub-rule (1), rule (1), Order VIII, this proviso may be added:

> "Provided that no written statement or list of documents of the defence shall be entertained by the Court after 45 days from the date of appearance of the defendant in the Court except for special reasons to be recorded in writing by the Court."

SHRI M. C. DAGA: It is already there.

SHRI DASH: In rule 8, Order XI, I have suggested a proviso. The time-limit already existing is almost ineffective. In Rule 8, there is the period of 8 days, but so many 'eight days' pass without the interrogatories being answered. I have, therefore, suggested that no such time shall be allowed in excess of thirty days on the whole.

What I have attempted is to put time-limit at every stage, so that there may be a feeling in the mind of the court that he has something to do with time factor also.

SHRI M. C. DAGA: Why do you say specifically thirty days here? You have suggested different time limits for various clauses.

SHRI DASH: My main idea is to avoid delay.

Then I have also made a suggestion as far as Order XVII is concerned.

MR. CHAIRMAN: This is all that you wanted to submit.

SHRI SISODIA: The learned witness has suggested so many time limits binding on the parties to the suit. There must be some time limit for the court also in connection with the settlement of issues, because generally the courts are taking much more time. What is his opinion in this respect?

SHRI DASH: Settlement of issues in practice is a very formal affair. It is actually after the written statement is filed that. The date of settlement for issues is then given and formal hearing is made and generally along with the written statement, draft issues are filed.

MR. CHAIRMAN: Even in the matter of settlement of issues, the dates are taken and it is a long time before the issues are finally settled.

SHRI DASH: I have not got the experience in that line.

SHRI R. V. BADE: What about Section 47?

MR. CHAIRMAN: Have you applied your mind to that?

SHRI DASH: No, Sir.

MR. CHAIRMAN: If you want, you can send us a written note later on. Now, I will take your memorandum. Kindly see page 4, paragraph 10 and section 18.

SHRI M. C. DAGA: Under Section 80, can he tell us how many notices he has received in his State within one month and how many of them are answered?

MR. CHAIRMAN: Regarding Section 80, you suggest that it should be retained. The Hon. Member wants to know your experience in settling disputes in your State. The main purpose is to avoid litigation. Whether in your State this Section 80 has been applied?

SHRI M. P. SHUKLA: I want to know the decision of this Committee that was taken in Madras. He cannot tell you at the moment. Whether an action has been taken on this.

MR. CHAIRMAN: I will check it up.

SHRI DASH: In our law department, whenever notices under Section 80 are received, they are examined. Whenever we find that there is something wrong on the part of the Government, we advise the Collector or the department concerned accordingly.

SHRI M. C. DAGA: You kindly give me an instance where you have advised them.

MR. CHAIRMAN: Regarding Mr. Shukla's question, I am checking up with our Secretariat. As far as Section 80 is concerned, the Bill has proposed that it should be deleted. Now, if any State Government wants to retain it, they must satisfy this Committee. If they do not have any suggestion, then we will apply our own mind. But before we do it, we are giving an opportunity to the people to tell us what are their suggestions.

Mr. Dash, in how many cases you have received notices under Section 80 and you have settled the claims? If you have got any suggestion, you can later on send to us.

SHRI DASH: I will send it.

SHRI R. V. BADE: This Bihar trouble and other troubles will not be there if it is there.

MR. CHAIRMAN: So far as the main sections are concerned, you have no other comments to make.

SHRI DASH: No.

Now, Order 21 on page 4 of the memorandum.

SHRI M. C. DAGA: It will take 20 more years to do it.

MR. CHAIRMAN: I have not understood him. Let us understand and then....

SHRI M. C. DAGA: I have understood him.

MR. CHAIRMAN: You are too quick.

SHRI M. C. DAGA: What he suggests is this. He says that if the decree is passed and the judgment debtor does not pay the amount, then, the decree court or the court which executes the decree can enhance the rate of interest. I say that as a judgment debtor, I will never pay the amount; let it be enhanced.

MR. CHAIRMAN: In so far as you are concerned, perhaps, you are right. But, we would like to hear from the witness what he would like our Committee to consider.

SHRI DASH: If he wilfully neglects to pay and hereby compels the application for an execution to be made by the decree holder, in that case, the penal interest will be imposed. This will induce the party to pay before the execution is filed.

SHRI R. V. BADE: My submission is that, in the civil courts, first, when the execution is made and the attachment is made, houses are not there, bullocks are not there, movable properties are not there; he has got nothing to attach, and therefore, he is sent to jail. According to the suggestion in the Tamil Nadu Bill, the payment and the decree should be, what is called, evaporated.

श्री डागा : बहुत अच्छा है, इनका यह कानून मान लिया जाये ।

सभापति महोदय : माने या न माने, यह दूसरी बात है, लेकिन अभी तो इसके बारे में सोचने दीजिये । आप तो बहुत जल्दी सोच लेते हैं हमको भी सोचने दीजिये ।

श्री डागा : इस पर जरूर गौर किया जाना चाहिये ।

MR. CHAIRMAN: I would like to know whether in regard to the penal interest that you have suggested, you would like to make exceptions in cases like this.

SHRI DASH: It wil be difficult.

MR. CHAIRMAN: The question is, whether in such cases, exception should be made.

SHRI S. K. MAITRA: Kindly see Clause 14. Provision is already made. Of course, that will not apply to all decrees. That will apply to some decrees.

SHRI SISODIA: I would like to know from the learned witness whether this suggestion will mean amendment of the decree and whether it will be possible at that stage or not.

SHRI S. K. MAITRA: That cannot be done. The provision is that the Court passing the decree may allow, but the rate of interest in the post decretal period cannot exceed 6 per cent. This Bill proposes an amendment of Section 34 which provides that the rate of interest in certain cases can exceed 6 per cent, but, it should not exceed the rate of interest which is allowed by the nationalised banks.

MR. CHAIRMAN: Mr. Dash, kindly turn to page 5 of the Bill. Please See Clause 14. It is stated here:

"To sub-section (1) of section 34 of the principal Act, the following proviso and Explanation shall be added, namely:—

Mr. Maitra drew your attention to this. Here, the amendment proposed in the Bill suggests some enhanced interest in certain cases But, your suggestion at page 5 of your memorandum is that you want that this penal interest should be made applicable in all cases.

SHRI DASH: This will not cover all cases.

MR. CHAIRMAN: That does not cover. But, even so, certain amendment has been suggested already. You want it to be wider?

SHRI DASH: Yes.

SHRI M. C. DAGA: This is before the suit. He says that after the decree has been passed, if the judgment debtor does not pay the amount to the decree holder, then in that case, the decree holder can pray the Court for increasing the rate of interest. Is it not?

SHRI DASH: When the execution case is filed....

SHRI S. K. MAITRA: That is what he says. At present, the executing court cannot go behind the decree. It cannot increase the rate of interest. But, if the law is changed, that can be done.

SHRI M. C. DAGA: How can this be done? The decree is passed by a competent court. Now, the executing court has got a right to increase the rate of interest.

MR. CHAIRMAN: The Court which passes the decree can itself increase the rate of interest. If we accept this and if it is provided in the Code, the Courts will have to take this into account.

श्री आर० बी० बड़े : हमारा देश गरीब है, हमारे लोगों के पास पैसा नहीं है, एटेचेबिल प्रापर्टी भी नहीं है । ऐसी सूरत में इसको रखने से क्या फायदा होगा—ऐसा तामलनाडु का भी कहना है । मैं जानना चाहता हूं कि आपको इसके बारे में क्या कहना है ?

श्री दास : हमने तो पीनल इन्टरेस्ट का सजेशन दिया है ।

MR. CHAIRMAN: We will consider this aspect.

So far as the questionnaire is concerned, your replies are there. They are very exhaustive. You have already covered some of the things in your memorandum regarding delays etc. You have replied to all other things exhaustively. We will examine all these.

SHRI DASH: I would like to add this in regard to Question No. 10. If Section 115 is retained, the District Judge may also be given the concurrent jurisdiction with the High Court to exercise the power of jurisdiction in respect of suits of a lower valuation, and interlocutory orders should be kept out of its application.

SHRI S. K. MAITRA: This is there in U.P. already.

SHRI DASH: Up to Rs. 20,000, you can do it. Amendment can be made by the High Court.

SHRI S. K. MAITRA: This is a substantive provision. High Courts cannot make it. Only rules....

SHRI DASH: About the limit....

SHRI S. K. MAITRA: Section 115 is a substantive section.

SHRI DASH: I do not say that they can change Section 115.

SHRI S. K. MAITRA: You can make a local amendment of the CPC. This has been done in UP.

MR. CHAIRMAN: Mr. Dash, I would like a little more clarification regarding this Article 227 versus Section 115. It has been pointed out here, in the Notes on Clauses that adequate remedy is available under Article 227 of the Constitution, and therefore, there is no need for retention of Section 115. You also seem to agree with this view. But, in so far as the wording of Article 227 is concerned, as per clause (1), general superintendence is given to the High Courts over the subordinate courts. It seems that the provisions in Clause (2) are of administrative nature, whereas, Section 115 provides for regular proceedings by way of appeal or revision for the irregularities committed by the subordinate courts. Do you think that these things are identical?

SHRI DASH: May not be completely.

MR. CHAIRMAN: Whether after deletion of section 115, adequate remedy will be available under article 227?

SHRI DASH: That is the reason given in the questionnaire and the second reason is my own.

MR. CHAIRMAN: This question has emerged from the last sentence of first paragraph on page 117. I want your opinion on this.

SHRI DASH: That I cannot say because I simply have an idea of 227 as it reads.

MR. CHAIRMAN: I will still request you to apply your mind.

SHRI DASH: I shall apply my mind and send you a reply.

MR. CHAIRMAN: We thank you sincerely and appreciate you for giving evidence. I can assure you that we will examine your suggestions very carefully and we are sending you a communication regarding section 80. Thank you very much.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Tuesday, the 11th February, 1975 from 14.30 to 17.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Sardar Mohinder Singh Gill
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri K. Pradhani
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri Satyendra Narayan Sinha
17. Shri T. Sohan Lal
18. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

19. Shri Mohammad Usman Arif
20. Shri Bir Chandra Deb Barman
21. Shri Krishnarao Narayan Dhulap
22. Shri Kanchi Kalyanasundaram
23. Shri Syed Nizam-ud-din
24. Shri D. Y. Pawar
25. Shri V. C. Kesava Rao
26. Shri M. P. Shukla
27. Shri D. P. Singh
28. Shri Sawaisingh Sisodia
29. Shri Awadheshwar Prasad Sinha

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

Shri V. V. Vaze, *Joint Secretary & Legal Adviser (Department of Legal Affairs).*

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

WITNESS EXAMINED

Shri Moti Lal Khattri, *District Government Counsel (Civil), Varanasi.*

[The witness was called in and he took his seat]

MR. CHAIRMAN: You may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, Mr. Khattri, do you want that your evidence should be treated as confidential?

SHRI KHATTRI: I have no reservations.

MR. CHAIRMAN: You have not sent to us any written Memorandum. If you want you can give your viewpoint in summary before we go to clause by clause.

SHRI KHATTRI: On page two of the proposed Bill, under Amendment of Section 2, the definition of "decree and preliminary or final" has been deleted, but at the same time under Order 20 rules 15, 16 and 18, this provision has not been deleted.

MR. CHAIRMAN: Clause 2, defines decree. They are in the amending Bill. The proposal is that the words may be deleted. That is your point.

SHRI KHATTRI: Because in the Old Order 20, rules 15, 16 and 18 this provision has been retained. This will be contrary to Rules 15, 16 and 18 of the Old Code.

MR. CHAIRMAN: Do you mean to say that if this amendment is retained, then these rules will have to be changed?

SHRI KHATTRI: Yes, Sir.

MR. CHAIRMAN: What is your proposition?

SHRI KHATTRI: My proposition is that this should remain as it is, because in the case of partition, it is desirable that the preliminary decree will be passed.

I would like to invite your attention to Section 37 of the Code.

MR. CHAIRMAN: Are you referring to Clause 18?

SHRI KHATTRI: I am referring to Section 37 of the existing Code. Clause (a) says:

> "Where the decree to be executed has been passed in the exercise of appellate jurisdiction...."

I want that the words 'revisional jurisdiction' should be added. Now, it is proposed to delete Section 115. I am conscious of that. But, there may be various judgements or various orders which are passed under Section 115 and which may be executed. They have to be executed in the trial court and not in the revisional court.

MR. CHAIRMAN: When you are mentioning Section 115, I would like to know whether you agree with the proposal contained in the Bill in regard to this Section?

SHRI KHATTRI: I do not agree with that proposal. But, I will come to that point later on. Here, the words 'revisional jurisdiction' should be there. You have retained this word in the amendment of Section 144, at page 15 of the Bill. There will be revision in the small causes courts also. This has to be incorporated in Section 37 as well.

MR. CHAIRMAN: Your suggestion is with regard to Section 37. In the Bill, only an Explanation has been proposed. They have not touched the Section as such. Your suggestion is that in the main section 37...

SHRI KHATTRI: In sub-clause (a), it should be appellate as well as revisional. This would simplify matters. Now, I would like to invite your attention to Clause 34, amendment of Section 96, where a new sub-section (4) is proposed to be added. Such suits are tried by Munsifs who are recruited immediately after they are appointed. Then, they will become a final Court, of fact. In the existing Code, second appeal on point of law is permitted. This is there already. First appeal should be without any....

MR. CHAIRMAN: With regard to this proposed sub-section (4), are you opposed to this?

SHRI KHATTRI: Yes. The new recruits to judgeship will become the final court of fact,....

MR. CHAIRMAN: Supposing, it is retained, do you suggest any modification except on a question of law? I think, that is your objection. The other objection is in regard to the amount of Rs. 3,000. Are you totally opposed to it?

SHRI KHATTRI: Yes. There must be one appeal on a question of fact. We have experienced this that the new judges and the new munsifs have very little experience and they become the final court of fact. It may cause hardship. Similar powers are always given to senior judges and not to new recruits.

SHRI R. V. BADE: On the question of law or on the question of fact or on both....

MR. CHAIRMAN: He wants both.

SHRI M. C. DAGA: We must have a provision for appeal on facts also.

MR. CHAIRMAN: He is opposed to this proposed sub-section (4) to Section 96. He has also explained, why he is opposed to it. He says that in the lower courts, provision for appeal even on fact should be there.

SHRI KHATTRI: As soon as the Munsif is appointed, he starts deciding cases. If he becomes a final court of fact, it may cause hardship.

Then, about Section 80. I have to say that it should not be deleted as such. In the case of injunction suits and suits where irrepairable injury may be caused, by serving of notice and by waiting, notice may not be necessary. But, in all suits, it is desirable that notice under Section 80 be served.

MR. CHAIRMAN: What is your experience in regard to the operation of Section 80? The question is, whether the State Government have complied with the notice and whether suits have been avoided because of settlements before the proceedings are actually instituted?

SHRI KHATTRI: At least, it has some effect and it starts the thinking in the right direction.

SHRI M. C. DAGA: Generally, we find that whenever we have to sue against the Government, and we serve the notice, on technical grounds, we are thrown out.

MR. CHAIRMAN: That may be. He happens to be the Government Counsel. That is why, I have put

the question. Now Mr. Khattri, is it possible for you to furnish to the Committee a statement regarding the cases in which the Government have complied with the notice under Section 80, settling claims against the Government before the suit is actually instituted? Will you be in a position to give us some statistics regarding this?

SHRI KHATTRI: I joined as Government Counsel hardly a month back.

MR. CHAIRMAN: You can ask the office to collect the figures and send it to us.

SHRI KHATTRI: I do not remember of cases where the Government might have settled. At least, it does give the Government an opportunity to think in the right direction when notice is received.

MR. CHAIRMAN: Mr. Khattri, this is a Government Bill and this is based on the recommendations of the Law Commission. Government themselves have come forward to delete this Section which gives a privilege to the Government. We have to see whether this Section should be retained and if the State Governments want that this should be retained, they should satisfy us, on what grounds, they suggest its retention.

SHRI M. C. DAGA: That is the Law Commission's recommendation. I have continuously for 20 years been a Railway lawyer. In hardly a single case, the Railways have ever sent a reply. After 20 years, the Law Commission has recommended that Section 80 should be deleted.

SHRI KHATTRI: I have also been a Railway lawyer. I can say from my experience that at least 20 per cent of the cases have been settled on notice.

MR. CHAIRMAN: Mr. Khattri, so far as your jurisdiction is concerned, you can send us a note by the end of February as to in how many cases Section 80 has been complied with by the Government and the Government have settled the cases, thereby avoiding unnecessary litigation.

SHRI M. C. DAGA: Have you ever attended to any notice after resumption of your office?

SHRI KHATTRI: I have.

SHRI M. C. DAGA: Whether you have raised any technical objection.

SHRI KHATTRI: At the notice stage, I do not raise any technical objection. I examine the claim. But if a suit is filed, we go into all that.

MR. CHAIRMAN: In the beginning you seem to have said that in the injunctions, this notice should be waived.

SHRI KHATTRI: For that, I agree.

MR. CHAIRMAN: Otherwise, the provision for giving notice to the Government should be retained.

SHRI KHATTRI: Yes.

SHRI R. V. BADE: If no notice is served, will the cases be heard or not?

SHRI KHATTTRI: Those cases will not be heard. If we say that notice will be necessary, the cases will be thrown out unless the notice is given.

MR. CHAIRMAN: On this particular matter, you may kindly send us a draft as to in which form you would like section 80 to be modified.

SHRI KHATTRI: Yes.

Then, I propose that Section 115 be retained.

SHRI M. P. SHUKLA: As regards Section 100, I want to know whether he thinks that an amendment provided in the Bill is an improvement on the original one or not or whether it will involve some more duplication

of propcedures. Instead of reducing the delay, will it enhance it?

SHRI KHATTRI: It is certainly an improvement and this improvement is a welcome improvement. In that case, the questions of law will not be decided by whims of certain Judges in the High Courts.

SHRI M. P. SHUKLA: Don't you think that if the provision in the amending Bill remains, then that will determine the specific question of law and the Judges hearing the case will not be able to go beyond that even if they find that some other question of law is also involved.

SHRI KHATTRI: That question of law has to be mooted out in the very beginning.

SHRI M. P. SHUKLA: Some Judges may come to one conclusion and some other Judges may come to some other conclusion. There may be some other specific questions of law also involved, not the already specified there.

SHRI KHATTRI: It does happen in a number of cases. A provision may be made that the Judge hearing the case may formulate another question of law or he may modify the question of law.

MR. CHAIRMAN: Will that not frustrate the very object of the amendment whereby it is sought to be limited to a specific question of law on which second appeal will be allowed?

SHRI KHATTRI: I agree once an appeal has been admitted, why should the hands of the hearing Judge be fettered?

MR. CHAIRMAN: That is sought to be done by new Section 100.

SHRI KHATTRI: I agree with the hon. Member there. Once an appeal has been admitted, then the hands of the hearing Judge should not be fettered.

MR. CHAIRMAN: You kindly send us a draft as to in what manner you want the proposed new Section to be modified.

SHRI KHATTRI: Yes, Sir. Now I come to the controversial point, clause 45. I proposed that section 115 should be retained. The Supreme Court in various judgements has already curtailed the powers of the court of revision under section 115 and the powers are very very limited. Before the trial judges and judges who are newly recruited so many questions arise. Sometimes, the amendment is refused or a witness is sought to be summoned and is refused. Some such thing takes place. Then it is desirable that it should be corrected at that stage and not at the appeallate stage.

MR. CHAIRMAN: Kindly turn to page 107 of the Bill—Notes on clauses. Here you will find that it is said that the remedies that are available under section 115 of the Code are available under article 227 of the Constitution and therefore, there is no need for section 115. That is the argument. Do you agree that these remedies can be had by an aggrieved party under article 227 of the Constitution?

SHRI KHATTRI: I do not agree with it. In UP, a revision under section 115 lies to the Court of the District Judge and not to the High Court. All the litigants are not rich enough to approach the High Court under article 227. For approaching the High Court a person has to spend not less than Rs. 1,000. So, we shall be denying this right to poor litigants if they are asked to go to the High court under article 227.

MR. CHAIRMAN: Suppose, the cost under article 227 is lower and brought to the level of proceedings under section 115?

SHRI KHATTRI: It cannot be done. Suppose, a person coming from Andhra has to go to Allahabad to file a revision petition. You cannot give him the railway fare or a concession

ticket. And what abaut the lawyer's fees? You may reduce the court fees, but all the other expenses will be there. Then, there may be cases of persons, who may have got a good case for revision but who cannot afford to go to the High Court and file a revision petition. If section 115 is retained, the mistake could be corrected then and there. Under article 227, the scope is very very limited. There is divergence of opinion about article 227.

MR. CHAIRMAN: Does article 227 give remedies that are available under section 115 of the Code? That is the crucial point here.

SHRI KHATTRI: It does not.

MR. CHAIRMAN: We have to be satisfied that the provisions of article 227 do not cover all the remedies that are available under section 115.

SHRI KHATTRI: It does not cover all the remedies.

MR. CHAIRMAN: We have to be clear in our mind whether the deletion of section 115 from the Code will jeopardise the interests of citizens.

SHRI KHATTRI: It will certainly jeopardise and is bound to jeopardise the interests of the citizens.

MR. CHAIRMAN: We will see how it emerges. We will examine it.

SHRI KHATTRI: Then, on page 18, rule 8A is sought to be added. My submission is that this will not be properly used. This provision may be misused more rather than used. This may be permitted in the High Court but not in the trial courts. Suppose, somebody wants to get the hearing of his case delayed, then some other lawyer will apply that his client is interested in the question of law and the matter may be delayed. The Munsif himself does not know much of the law and allowing interveners in such cases is likely to be misused. In my opinion it will not be conducive to the general interest.

Then, at page 19, about rule 10A, which is sought to be added, it may be that the pleader may be interested in the other side.

MR. CHAIRMAN: Should we not presume that the court will not ask a pleader who is already on the other side?

SHRI KHATTRI: Not already on the other side but may be interested in the other side or may become interested in the other side. I can tell you from my experience that no lawyer, who has got some practice, will go out of his way only for the purpose of helping the court.

SHRI R. V. BADE: There are certain questions of law which are very difficult to argue. Suppose, a pleader cannot explain in fully or explicitly. Naturally, the court asks the pleaders or the Bar Association to come and say what they have to say about that.

MR. CHAIRMAN: This is an exceptional case where the party is not represented by a lawyer and a question of law is involved. In that case this discretion is sought to be given to the court to invite any pleader who is definitely not interested in the opposite side. It is only an enabling provision here.

SHRI KHATTRI: In such cases when we find that a junior lawyer is not able to put his case properly, seniors come and help but if this provision is enacted this may be mis-used rather than used.

MR. CHAIRMAN: So far as the principle is concerned, you do not oppose it but you are pointing out a practical difficulty. We will examine it. Please move to the next point.

SHRI KHATTRI: Then at page 26 at the bottom sub-rule 2. There should be provision—at least of an affidavit or some evidence. Assuming it is a false case and the summons have been suppressed, at least three should be some statement on oath of the plain-

tiff on record. The plaintiff should be asked to prove his case on the affidavit at least.

MR. CHAIRMAN: You want that the complaint made in the plaint should be supported by affidavit.

SHRI KHATTRI: Or as in Bihar the procedure is that the pleading is verified on oath.

Similarly, at page 29—6(a) also the affidavit is necessary.

MR. CHAIRMAN: What is an affidavit. It is an oath before a first-class Magistrate.

SHRI KHATTRI: But then action can be taken if it proves to be false.

MR. CHAIRMAN: It is a very valid point. Merely on a statement, the court should not go to pass a decree. There should be an affidavit.

SHRI KHATTRI: I propose an amendment under Order 9 Rule 13. Sometimes it so happens that summons are sent. They are returned by the Defendant. Ultimately insertion is given in the newspaper. Exparte decree is passed. Execution proceedings start. The property of the Defendant is attached. When the property is likely to be sold, the Defendant appears at that stage. He gives an application under Order 9 Rule 13 saying that he did not receive any summons and he had no knowledge of these proceedings. My suggestion is that in such cases the proceedings may be stayed and decree should not be set aside. As the Plaintiff has by that time spent a lot of amount, he will have to start afresh if the decree is set aside.

SHRI R. V. BADE: According to this order when an ex-parte decree is passed, we apply for setting aside the proceedings. The proceedings are set aside. But what the learned witness says is that the proceedings should remain to the stage where those had already reached.

श्री खत्री : जब प्रापर्टी अटैच हो जाती है, उस स्टेज तक प्रोसीडिंग्ज को स्टे रखा जाये, जब तक कि फाइनल डिक्री न हो जाये । अब यह होता है कि एक्स-पार्टी डिक्री को सेट एसाइड करा कर प्रापर्टी को बेच दिया जाता है । देहात में प्रापर्टी को अटैच कराने में बहुत सी प्राबलम्ज का सामना करना पड़ता है और उसमें बहुत खर्चा भी होता है । उस सारी स्टेज को वाश आफ़ क्यों कर दिया जाये ? मेरा कहना यह है कि डिक्री को सेट एसाइड न किया जाये, बल्कि सिर्फ़ उसकी एक्सीक्यूशन में सस्पेंड कर दिया जाये ।

MR. CHAIRMAN: Your suggestion is that if the application is entertained the proceedings should be stayed and not washed away. The execution should not be proceeded with but should be stayed at that stage.

SHRI R. V. BADE: If once the Order is.....set aside, how can the proceedings go on?

SHRI V. V. VAZE: Mr. Chairman, Sir, what the witness wants to say is that a case may arise when a person by fraud gets an attachment before judgement without showing the ground for it. Defendant is a solvent man. The Plaintiff tries to get summons issued. Somehow the summons are not served. After giving an insertion in the paper, the plaintiff seeing the solvency of the Detendant manages to get attachment to a particular piece of his property. If the Defendant comes and says I am prepared to give defence and in case the decree is ultimately passed I will satisfy it, why do you attach my property?

SHRI KHATTRI: The judgment debtor does not bother upon a particular stage. When the Plaintiff has

spent a lot of amount and has reached a stage of getting his property sold, then only the defendant comes. My suggestion is that the proccedings may be deferred if the amount in cash equivalent to the claim is deposited in the court subject to the final decision.

SHRI V. V. VAZE: It means whosoever comes to the court, should have sufficient money with him for depositing it in the court.

SHRI M. C. DAGA: Order 38, Rule 1 says—where the court is satisfied. by affidavit or otherwise the Defendant with intent to delay or wants to avoid...

SHRI KHATTRI: That is for attachment before judgment.

SHRI V. V. VAZE: It can happen that averments of the plaint are such that the decree may not be passed at all. It is an ex-parte decree. There may be something which is against public policy or that the limitation has been falsely shown or that an acknowledgement has been falsely shown. There should be on averment and an affidavit.

SHRI KHATTRI: I have made myself clear that the proceedings should stay at a stage when the application has been given. If *prima facie*, the suit is not maintainable, the suit will be dismissed.

SHRI V. V. VAZE: Till the suit is dismissed, the property will remain under attachment.

SHRI KHATTRI: It is for the defendant to get that released by depositing the entire amount in the court. In a large number of cases, the amount spent by a decree holder in the execution proceedings goes waste.

MR. CHAIRMAN: Your suggestion is this. A decree is an ex-parte decree and on that basis execution proceedings have already started. At this stage, the judgment debtor comes to the court and he approaches the court for setting aside the ex parte decree. Nobody knows, what the decision of the court will be. Your proposal is that pending the disposal of this objection, the execution proceedings should not be quashed, but kept in suspense till the disposal of the hearing of the objection.

SHRI KHATTRI—No Sir, under the present law, the execution proceedings remain stayed. As soon as an application is filed and usually the judgement debtor applies that the execution proceedings may be stayed, these are stayed; otherwise the proceedings go on. Even after the ex parte decree is set aside, the proceedings of the execution should not be washed off.

MR. CHAIRMAN: Why?

SHRI KHATTRI: Supposing I file a money suit and it is decreed and the execution proceedings have gone upto a certain stage, lot of money has been spent and ultimately a decree is passed, then the decree holder has again to start from that very stage.

MR. CHAIRMAN: If the decree is retained in the modified form, the execution proceedings will proceed, but if the ex parte decree is dismissed?

SHRI KHATTRI: The suit is again heard in that case.

SHRI M. C. DAGA: Once the property is attached, it should remain attached till the final decree is passed.

MR. CHAIRMAN: Please send us a draft of what you want to be modified.

SHRI R. V. BADE: There are so many Sections that may be required to be amended. Order 21 is there. Let the witness say, what other amendments would be necessary if his suggestion is accepted.

SHRI KHATTRI: I will examine that. I do not think, any amendment of Order 21 will be necessary.

Page 32, clause 69, Order XVI. I suggest that there should be a discretion for the court to refuse to summon a particular witness.

SHRI M. C. DAGA: It is already there. "The court may, for reasons to be recorded, permit a party..."

SHRI KHATTRI: It is for 'dasti' summons. My submission is that the court should have the discretion in refusing to summon a particular witness.

I will give you an instance. A suit was filed by a Chowkidar against the University that his services have been wrongly dispensed with. He gave a list of witnesses and in that list he wanted to summon the daughter of the Registrar etc. The court appeared to be helpless. With great difficulty, I could get an order from the court that these witnesses should not be summoned.

SHRI SYED NIZAM-UD-DIN: How the court will decide? The purpose will be shown against the witness.

SHRI KHATTRI: Normally nobody takes objection, but if someone wants to summon the daughter of the plaintiff for examination, objection will be there and the court should have the discretion in refusing to summon the witness.

SHRI V. V. VAZE: Is it not presumed under Rule 2 that when the court has the power to permit, it has the inherent power to disallow?

SHRI KHATTRI: No, Sir. It does not cover. Kindly read further.

> "(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned."

And then summons had to be served anywhere. The Court can refuse the summons even in such cases.

MR. CHAIRMAN: We will have to look into that as to whether it is already covered or not.

SHRI V. V. VAZE: Carriage of the case always rests with the Presiding Officer and he must pass such orders u/s 151 CPC as subserve interest of justice.

SHRI KHATTRI: By the proposed amendment, elaborate powers are being made and on account of these elaborate powers, the party can call upon all the witnesses that are mentioned in the list, for which the Court is obliged to summon all the persons.

MR. CHAIRMAN: Is it your suggestion that in this new Rule 2, power for allowing or disallowing and how the list of witnesses to be summoned under the issue of the Court, is clearly stated.

SHRI KHATTRI: Yes. Sir, that is clearly stated. Then, let me refer you to Section 72. It is stated as follows:

> "3A. Where a party himself wishes to appear as a witness he shall so appear before any other witness on his behalf has been examined, unless the Court for reasons to be recorded, permits him to appear as his own witness at a later stage."

I do not know why this provision is made here. A party has summoned a number of witnesses and he has also come. Naturally if a party likes that all those witnesses should be summoned and examined, this should be done. I have not been able to appreciate the reason for this amendment.

SHRI M. C. DAGA: Generally it happens because when a party comes to the Court he discloses all the facts.

SHRI KHATTRI: All the facts have been disclosed and the documents are there. But why the party should be called upon?

SHRI M. C. DAGA: It is better if the Court can form its own opinion.

If the main witness comes before the Court, he gives all the details of the suit, he narrates the whole case and gives all the facts and then the Court can say: 'I don't require so many witnesses because the party has given the statement'. So it is always better to examine the party first.

SHRI KHATTRI: In order to prove his case, the plaintiff had to be examined himself and three more persons, one of whom may be an expert. the other may be a businessman. Now, this rule says that he has to examine the plaintiff or the party first and then other witnesses. It is a long case and his statement will take a day or two and all those people will have to be kept waiting and they have to come to the Court every day.

SHRI R. V. BADE: Where the party wishes to appear as witness before any other witness could appear.....

SHRI KHATTRI: The order of witnesses who have to appear should be decided earlier.

SHRI R. V. BADE: It is not mentioned in the clause.

SHRI KHATTRI: But we have been presenting it. What happens actually in Court is that when there are lots of disputes the party is clever enough to get the list of witnesses prepared.

SHRI R. V. BADE: Why should the party be at the mercy of the Court?

SHRI KHATTRI: If the party has to put up his case, why should the right and privilege of the party be taken away?

MR. CHAIRMAN: What do you want to suggest here?

SHRI KHATTRI: I want that this clause should be deleted. It serves no purpose.

MR. CHAIRMAN: The learned witness wants that the proposed rule 3A should be deleted.

SHRI R. V. BADE: This is only an enabling provision.

MR. CHAIRMAN: He says that it should be the privilege of the party and not of the Court, to present his witnesses any time he wants.

SHRI KHATTRI: I am mentioning about the order of witnesses.

MR. CHAIRMAN: The question whether the witnesses should be examined first in the middle or in the end, should be left to the party. This is what he says.

SHRI R. V. BADE: I would invite the attention of the witness to the existing rule 3 of Order XVIII. Supposing, the witness wants to come to the Court and say something, I would like to know whether he wants that they should be produced before the plaintiff furnishes his evidence.

SHRI KHATTRII: That is not the point.

SHRI R. V. BADE: If you read rule 3 of Order XVIII.....

SHRI M. C. DAGA: Hon. Chairman has put one question in regard to the Privileges of the party. What are the privileges of the party?

SHRI KHATTRI: Privilege means, the witness has come from outside...

SHRI M. C. DAGA: May be. Ten witnesses might have been called. Why should he not appear first so that the Court may pin him down?

MR. CHAIRMAN: The suggestion of the witness is that the discretion should be given to the party.

SHRI KHATTRI: I will explain it further. A rule has been laid down that the party has to appear at the discretion of the Court. As a party's counsel, I know that the most difficult part is to procure the attendance of witnesses. For instance, I can tell you that it is very difficult for a person

to get the witnesses to attend the Court.

SHRI M. C. DAGA: The Court may also say that the plaintiff has already made admissions before the Court, and therefore, it will not hear the witnesses.

SHRI R. V. BADE: Where the party himself wishes to appear as a witness, he shall so appear. That is incumbent on the party. Does the witness want that the plaintiff should be examined at the end of the whole thing, at the end of the whole evidence.

SHRI KHATTRI: I have been misunderstood. What I want to say is this. The party has to come to the Court every day for the conduct of his case. But, if there are witnesses in attendance in the Court why should not those witnesses be examined first, why should not the party be allowed to examine those persons who are in attendance?

SHRI SYED NIZAM-UD-DIN: It may be so arranged that on the day when the plaintiff or the defendant has to appear as a witness, the other witnesses may not be summoned on that particular day. They may be distributed. We have this experience. Written statement is generally prepared by the client. The parties do make improvement by their own statements upon the plaint itself. Sometimes the Court gets better enlightened from the statements of the parties than that in the plaint or in the written satement. I think it is better that the parties appear first.

MR. CHAIRMAN: Kindly see page 117 of the Bill-Notes on Clauses. Clause 72-sub-clause (ii):

"New rule 3A is being inserted to provide that a party who wishes to be examined as a witness should first offer himself for examination before the other witnesses are examined."

The actual clause here gives the discretion to the Court for reasons to be recorded, to permit the party to appear as his own witness at a later stage also. This has been provided. After all this discussion, do you still want the new rule 3A should be deleted?

SHRI KHATTRI: Yes.

MR. CHAIRMAN: It should be left to the party to examine the witnesses any time?

SHRI KHATTRI: The order of examining witnesses.

MR. CHAIRMAN: It comes to that. The party is required to furnish the list of the witnesses and the Court has to summon them. In regard to the appearance of witnesses, your suggestion is that the party should have the discretion to examine any of the witnesses in any order not necessarily according to the order in the list, including himself. He may be examined in the beginning, in the middle or in the end.

SHRI KHATTRI: Yes.

Then. I would like to invite your attention to Page 40 of the Bill—Order XXA—rule 2—Pleader's fees. There should be an exception for lawyers appearing on behalf of the Government or Corporations appointed by the Government. In these cases, sometimes, fees are paid to Government counsels even after ten years of the decision of the case. They cannot file a certificate before the case is decided.

SHRI M. C. DAGA: They must be settled before the lawyer is engaged by the Government.

SHRI KHATTRI: Fees are settled. But, the certificate cannot be granted. In the Civil Rules of Allahabad High Court, an exception has been made. It has been provided that in case of counsels of Government or Corporations, the certificate need not be filed.

SHRI M. C. DAGA: Do the counsels charge according to the rates?

SHRI KHATTRI: Government always pays according to rates. Even in the case of other pleaders, fees are not paid immediately.

SHRI M. C. DAGA: Suppose a person has filed a suit against the Government for Rs. 1 lakh. How much lawyer's fee will the Government pay?

SHRI KHATTRI: As prescribed under the rules of the High Court.

SHRI M. C. DAGA: What is that? Can you give me?

SHRI KHATTRI: On the first Rs. 5000—7½ per cent. On the next 15,000—3 per cent. From Rs. 20.000 to Rs. 80,000—1½ per cent. And beyond that—3/8 per cent.

MR. CHAIRMAN: Does it differ from State to State?

SHRI KHATTRI: I do not know. I think it is almost uniform. In all High Courts the fees are prescribed.

MR. CHAIRMAN: In case the Government Pleader's receipt or certificate is not possible because the payment is made long afterwards, how should it be considered?

SHRI KHATTRI: Even if a lawyer gives a certificate for Rs. 10.000 in a suit, the court will not accept. The cost is awarded as per rules framed by the Court.

SHRI M. C. DAGA: What about the constitutional cases which the lawyers conduct?

MR. CHAIRMAN: Here, the only point that the learned witness is making is that so far as the Government Pleaders are concerned, in their cases, this production of a receipt or certificate will not be possible. In that case what should be done?

SHRI KHATTRI: There should be an exception in the case of Government or a statutory corporation.

MR. CHAIRMAN: What critaria should be prescribed?

SHRI KHATTRI: The scale of fees has already been prescribed in all the High Courts.

MR. CHAIRMAN: According to that prescribed rate, the costs should be awarded by the court?

SHRI KHATTRI: Suppose a lawyer demands Rs. 10,000. That much will not be taxed. It is according to the value and the rules framed by the High Court. If you so desire, I will send you the general rules (Civil) of the Allahabad High Court.

MR CHAIRMAN: Kindly send it.

SHRI KHATTRI: On page 46, in rule 48, I have proposed that the words 'engaged in any trade or industry' be deleted. This will cover corporations like Universities also. Suppose decree is against an employee of a University...

MR. CHAIRMAN: A University is not a corporation. It is a society.

SHRI KHATTRI: It is a corporation formed by the Government.

MR. CHAIRMAN: We will examine this.

SHRI KHATTRI: Then on page 55, clause 10(8) sub-clause (2) you say that where the pleader on coming to know of such a death does not inform within a reasonable time, the court may order payment of costs. Is it not a clause which is useless.

MR. CHAIRMAN: Useless or harmful?

SHRI KHATTRI: Normally, in 99 out of 100 cases the pleaders go and inform the court that so and so is dead.

MR. CHAIRMAN: It is now sought to be made obligatory.

SHRI KHATTRI: Then, the decree will be passed personally against the pleader.

MR. CHAIRMAN: If the cost is imposed on the pleader and if the pleader does not pay, it will be realised as arrears of land revenue.

SHRI KHATTRI: Then we would be creating more problems than we solve..

श्री आर० वी० बडे : कोर्ट में ऐसा होता है—हमने मध्य प्रदेश में देखा है—जैसे अहमदाबाद में बोहरा जी मर गये, तो उन्होंने कहा ठीक है, अगर एडवोकेट कहता है — मर गये तो मर गये ।

MR. CHAIRMAN: The only point here to be seen is: whether the pleader should be under this obligation to inform the court about the death.

SHRI KHATTRI. This is a point of discipline. We cannot deal discipline that way.

SHRI D. P. SINGH: Usually what happens in cases of this nature is that when a matter is seriously taken up and the pleader of the other side and everybody is ready, sometimes it so happens that the lawyer appears before the court and says that he has no instructions because the client is dead and so on thereby putting the other party to loss and harassment. Is not the whole purpose of this legislation to curtail possible delays in time? This is only one attempt to minimise the possibility.

SHRI KHATTRI: Suppose the pleader comes to know of the death only ten days before. Will it not be delaying matters further?

MR. CHAIRMAN: The object of this is to help in eliminating any delay.

SHRI KHATTRI: I do not dis-agree with the spirit behind it.

SHRI R. V. BADE: What is the purpose of Order XXII? It is written there that the pleader shall inform the Court about the death of the party. Naturally, pleader will say that he is dead.

MR. CHAIRMAN: The right is there but how to impose the right?

SHRI KHATTRI: मुफस्सिल कोर्ट में लायर्स के पास क्लाएन्ट आम तौर से तारीख पर आते हैं, अब कोई मर गया तो लायर को खबर करने कौन आयेगा ?

MR. CHAIRMAN: These are the things which we have to examine.

SHRI KHATTRI: It is going to create more problems and the first problem will be to hold an inquiry.

MR. CHAIRMAN: First of all,, it will have to be proved by the pleader that he knows about it.

SHRI KHATTRI: इसकी एन्क्वायरी होगी, उसके बाद प्लीडर को सजा होगी ।

श्री डागा : लेकिन अगर प्लीडर झूठ बोलता है, तब ?

श्री खत्री : लेकिन प्लीडर को कैसे मालूम होगा ।

Suppose, the defendent knows about the death, then instead of inquiring into the case, the Court will have to start the inquiry.

MR. CHAIRMAN: Do you agree with this proposition that the pleader is supposed to know that his client has died?

SHRI KHATTRI: I do not deny that obligation. I entirely agree with the spirit behind it. But instead of solving problems this will create more problems.

MR. CHAIRMAN: Here the limited question is whether the pleader knows about the death of his client

SHRI KHATTRI: We are assuming that he has come to know. Then unscrupulous parties will start litigation with the lawyers. Then there will be scuffle between the lawyer and the party. So it is only dragging the lawyer unnecessarily. This is highly undesirable. The pleader should not be penalised at the party's cost.

Now on page 74(3)(a) "Where an injunction has been granted without giving notice to the opposite party" I want to amend 'without giving an opportunity of hearing the opposite party'. The reasons are that under the proviso just prior to it, a party has to give notice of the injunction application to the other side before filing a petition and if the notice has been given or supposing a notice might be there on that very day or any other party has given notice on that very day and the Government Counsel says that he will require ten days time, the case be fixed accordingly, but in the meantime the injunction is granted to the party. Where injunction has been granted without notice this will lapse after 30 days.

MR. CHAIRMAN: Will that not frustrate the very purpose of the injunction?

SHRI KHATTRI: Suppose only one hour before the filing of the injunction application, the notice is given to the other side. It is not possible for the other side to be ready with an objection. The notice is there but he cannot present his case. He cannot file his objection immediately.

MR. CHAIRMAN: You take the case of deportation.

SHRI KHATTRI: An *ex parte* injunctions may be granted in that case.

There are two types of injunctions. Even interim injunction may be *ex-parte* or after hearing the party. If it is a case of deportation or demolition, than *ex parte* injunction may be granted. I do not deny that. But hearing of that injunction matter has to be made expeditiously.

3A, sub-clause (a) says that an injunction application has to be disposed of within 45 days. If we retain the words "giving notice", it may mean that since the plaintiff had notice at the time when an injunction was passed, that injunction will continue indefinitely. The defendant will not have the right of hearing.

SHRI D. P. SINGH: If you put the words "proper opportunity", then it will be exposed to all kinds of comments, that there was an opportunity but not a proper opportunity, not an adequate opportunity. We are dealing with a matter in urgency. An *ex parte* injunction is given. If the person subsequently does not serve notice to the other side or does not take any steps, automatically, the consequences will follow. That will put him on guard to be vigilant and take proper steps. If the word "notice" is replaced by the word "opportunity", then the whole purpose will be defeated. It will be exposed to all kinds of comments.

SHRI KHATTRI: I think, I have been misunderstood. The previous rule requires that before an injunction application is filed, the plaintiff has to give notice of the filling of injunction application to the other side. There is a proviso;

> "Provided that where an injunction is granted without notice to the opposite party, the Court shall before granting such injunction, require the party praying for the injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party or, where such delivery is not practicable, a copy of the application together with the documents and affidavit on which the applicant relies and a copy of the pleadings has been sent to the opposite party by registered post.

Now, you assume a case where the notice has been given to the defendant only on that very day when the application is being filed. a minute before

filing the application. I am taking a case where a notice has been given on that very day. The injunction that has been passed, although it is not an *ex parte* injunction in terms of 3A, will not lapse and it will continue by virtue of the last proviso that this shall not be varied or set aside.

MR. CHAIRMAN: It says:

"Where an injunction has been granted without giving notice to the opposite party..."

SHRI KHATTRI: It should be:

"...without affording an opportunity of hearing to the opposite party."

If we use the words "without giving notice", it will be incongruous. It does not fit in with sub-clause (a).

MR. CHAIRMAN: Does not "giving notice" presume that the party on whom the notice is served is free to come and raise an objection?

SHRI KHATTRI: But he should have some opportunity adequate opportunity, to come and raise an objection.

MR. CHAIRMAN: From the date of the receipt of the notice, he should be given a period of time, say, 15 days, whatever the time, so that he can file his objection and then he can be heard.

SHRI KHATTRI: That will be very proper.

SHRI D. P. SINGH: What is your objection to the present form?

SHRI KHATTRI: Here, Section 3A is being added providing that where an injunction has been granted without giving notice to the opposite party, it will lapse after 30 or 45 days as the case may be. Even if the notice has been given to the opposite party, the party may not have been able to put his case before the case. In that case also, an injunction should lapse and the opposite party should be given an opportunity of hearing.

SHRI D. P. SINGH: Why? Is it not a provision which operates to the benefit of the defendant? After all, if, he does nothing, if no steps are taken, automatically it is vacated after 30 days.

SHRI KHATTRI: Assuming that the notice has been given to the plaintiff, in that case, the injunction will not lapse. Rule 3A, sub-rules (a) and (b), will apply only when no notice is given; but if a notice is given and the defendant has had no opportunity to put forward his case, the injunction will not lapse. So, it should be "without an opportunity of hearing" and not "without giving notice".

SHRI D. P. SINGH: If it is not heard and disposed, it lapses. I do not see any incongruity. I am not getting the logic behind your suggestion.

SHRI KHATTRI: Under the previous proviso the plaintiff has to give notice to the other side before the court grants an *ex parte* injunction; it is obligatory on the plaintiff to serve notice on the defendant. Now the defendant has notice of the application when the *ex parte* injunction is passed but has had no effective hearing. He may be present when the injunction is granted, but he has not been able to put in his case. The injunction has been passed after notice but without hearing the other side. That injunction shall not lapse by virtue of sub-rule (a) and (b) and cannot be varied on account of the proviso sought to be added to rule 4.

SHRI D. P. SINGH: If an injunction is granted after notice, the other party knows about it and it does not lapse.

SHRI KHATTRI: And it cannot be modified.

SHRI D. P. SINGH: If the other party has notice, whether he has

agitated it or not, it does not lapse. It is only where he does not have notice and an order of an arbitrary nature is passed that it lapses. It is just logical. Without notice it lapses; if the other side knows about it, it does not lapse. It is a clear distinction.

SHRI KHATTRI: But the other party has had absolutely no opportunity to represent.

SHRI D. P. SINGH: No application can be heard without notice to the other side. That is provided. If the other party has notice, it may or may not choose to appear before the court. If an order is passed, such an order does not lapse.

MR. CHAIRMAN: These are only provisos to cover exceptional cases. The main thing is in the Code and that is not sought to be amended at all. Rule 3 still remains and it is not sought to be modified. In the normal course a notice will be issued, but in exceptional cases without notice even the injunction is allowable. That is why this proviso has been sought to be put in here. Normally, temporary injunction has to be given only after notice is served on the opposite party. What you are suggesting is that an opportunity of being heard should also be provided for here. We will examine that aspect.

SHRI KHATTRI: I want to make one more suggestion and that is about appeals. Why can we not simplify the procedure of filing appeals. For instance, let the appeal be permitted to be filed in the trial court itself. The copy of the judgment should be made available to the parties within three days. Now that an appeal has been provided to the judgment itself, a decree need not be prepared; the judgment will contain the operative part. It should be made incumbent that the copy of the judgment shall be delivered to the parties within three days of the delivery of the judgment and any party, which is desirous of filing an appeal, files the memo of appeal in the trial court itself with notice to the other side. The trial court will then send it to the appellate court. This will cut delay and avoid effecting of the service to so many persons. A copy of the judgment and the decree need not be filed with the memo of appeal.

MR. CHAIRMAN: What about the admission of the appeal?

SHRI KHATTRI: First appeals are not admitted; they are as a matter of course. Because it is on a question of fact and of law both, first appeals are filed as a matter of right.

SHRI R. V. BADE: The witness perhaps thinks only about big cities like Patna, Lucknow, Delhi etc. In the mofussil the lower court pleaders will not file the appeal at all. There the advocates are quite different. Therefore, better advice will be had if the appellate court is not the lower court.

MR. CHAIRMAN: You may take the advice there but file it in the lower court.

SHRI KHATTRI: Up to Rs. 20,000, appeals are filed in the District Court itself; it is only beyond Rs. 20,000 that appeals are filed in the High Court. Cases beyond Rs. 20,000 are hardly 100 in a year in a district, but there may be tens of thousands of cases where appeals are filed in the District Court itself. So, we may provide that where an appeal has to be filed in the District Court, the memo of appeal may be filed in the District Court itself.

MR. CHAIRMAN: That court will forward it to the appellate court for hearing etc.

SHRI KHATTRI: The Court will forward the records. There will be no question of filing the judgment and all that; only a memo of appeal will be filed within the period of

limitation in the trial court itself. It will cut out delay.

SHRI D. P. SINGH: This is a very good suggestion, I must say. This may be helpful in cutting out delay.

MR. CHAIRMAN: I think, under some legislation that provision is there.

SHRI KHATTRI: The memo of appeal is filed in the High Court and it is forwarded to the Supreme Court.

MR. CHAIRMAN: What about income-tax cases?

SHRI D. P. SINGH: In the case of income-tax appeals, you file an appeal before the tribunal, they state the case and send it to the High Court. So, this may be considered.

MR. CHAIRMAN: I am not very clear but I think so far as income tax appeals are concerned, if within the prescribed time and in the prescribed form the appeals are filed, the income-tax officer himself forwards them to the Assistant Appellate Commissioner and then the date is fixed for hearing. That is the procedure if I am not mistaken. Your suggestion is that here also a provision should be made that the first appeals may be filed with the trial court which will forward it to the higher court. We will examine it.

SHRI D. P. SINGH: At the present moment there is a lot of hardship. They insist on a copy of the decree also.

SHRI KHATTRI: Everything is there on the record of the file of the case.

MR. CHAIRMAN: We will examine.

So far as the few things that have emerged are concerned, you will kindly send us your written comments and drafts where you would like us to pin-point. You have made very valid suggestions and you could help us, and your drafts will be welcome. We have issued a questionnaire and I do not know whether you have received it. It is of a general nature. There also we will welcome your written reply in due course by the end of the month. Regarding Section 80, statistical information, if you can collect, we will welcome that also.

I on behalf of myself and also the Committee thank you for your co-operation. We will examine all your suggestions very carefully.

SHRI KHATTRI: Thank you for giving me a patient hearing.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE II OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Thursday, the 29th May, 1975 from 10.00 to 13.00 hours in Committee Room 'A', Punjab Vidhan Sabha, Chandigarh.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri M. C. Daga
3. Shri Dinesh Joarder
4. Shrimati T. Lakshmikanthamma
5. Shri K. Pradhani
6. Shri Rajdeo Singh
7. Shri M. Satyanarayan Rao
8. Shri Sidrameshwar Swamy
9. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

10. Shri Krishnarao Narayan Dhulap
11. Shri Kanchi Kalyanasundram
12. Shri V. C. Kesava Rao
13. Shri Awadheshwar Prasad Sinha
14. Shri Mohammad Usman Arif

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary & Legislative Counsel*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

WITNESSES EXAMINED

I. *Shri Jinendra Kumar, Advocate, Chandigarh.*

II. *Shri Atma Ram, Advocate, Chandigarh.*

I. Shri Jinendra Kumar, Advocate, Chandigarh.

(The witness was called in and he took his seat).

MR. CHAIRMAN: I welcome you behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you spe-

cifically dsire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI JINENDRA KUMAR: Sir, I have seen this direction and I have signed it.

MR. CHAIRMAN: You have not submitted your written memorandum.

SHRI KUMAR: The draft Bill was received by me very late. I have not been able to go through even the entire Bill. I will make my suggestions regarding whatever I have gone through.

MR. CHAIRMAN: If you like to supplement whatever suggestions you give to-day, you may do so by sending us a written note at the latest by the end of May, 1975.

SHRI KUMAR: I will send you written note by the 15th of June, 1975. I can also appear before the Committee at Delhi if the Committee so desire.

MR. CHAIRMAN: That we will decide. I think you have got the draft Bill before you. On which clauses of points you want to give your suggestions.

SHRI KUMAR: There is very peculiar thing with regard to section 2 relating to the definition of decree. My submission is that the definition of decree as given in Section 2(2) should be amended like this:—

> "Decree means such operative part of any judgment as conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit....."

I would submit that it is superfluous thing to have separate decree sheet in regular suits. If we can do without formal decree sheet in matrimonial matters what is the reson of having this in civil suits. The operative portion of the judgment should operate as decree.

MR. CHAIRMAN: We will take note of it.

SHRI KUMAR: Then I would like to say something regarding section 2(17) where the definition of 'Public Servant' is given. The definition of 'Public Servant' as given in the original Act is quite lengthy. My view is that the purpose of such like enactments should be to simplify the procedure of courts as far as possible and further more the provisions should be curtailed to the minimum. With this end in view the definition of 'Public Servant' as given in the original Act should be amended like this:—

> "Public Officer means any person or Officer in the service of the Union Govt. or any State Govt., or of any Union Territory, whether receiving any salary or not, whose duty is to perform any public duties".

SHRI SATYENDRA NARAYAN SINHA: That will include everybody including Members of Parliament.

SHRI KUMAR: The Members of Parliament etc. may be exempted by putting some saving clause.

SHRI M. C. DAGA: Don't you find any difference between 'Public Servant' and 'Public Officer'.

SHRI KUMAR: Even Clause IV servant is a Public officer. Why should we have this distinction of officer and Servant in this democratic set up.

SHRI MOHAMMAD USMAN ARIF: Do you mean to say that 'Pub-

lic Servant' and 'Public Officer' carry the same meaning.

SHRI KUMAR: Yes sir.

MR. CHAIRMAN: What have you to say about persons working in Semi-Govt. bodies.

SHRI KUMAR: So far as those are concerned they are not 'Public Officers".

MR. CHAIRMAN: Under the statute there is Panchayati Raj Act. Whether the persons working in Panchayati Raj Bodies etc. will be 'Public Officers'?

SHRI KUMAR: Yes sir, if he is discharging public duties.

Sir, I am suggesting that there should be proper definition of public servant. A lengthy definition has been given in clause (17) of section 2.

MR. CHAIRMAN: Your suggestion is that there should be small definition.

SHRI KUMAR: Yes Sir. The definition should be like this that "public servant" means any person or officer in the service of the Union Government or any State Government or any Union Territory whether receiving any salary or not, whose function is to perform any public duties.

SHRI M. C. DAGA: Is there any consideration of remuneration?

SHRI KUMAR: No. Sir. I have already stated whether receiving any salary or not.

MR. CHAIRMAN: There may be many honorary officers.

SHRI KUMAR: Yes Sir. I include them also.

SHRI AWADHESHWAR PRASAD SINHA: Is he to perform any public duty?

SHRI KUMAR: Yes Sir.

SHRI DINESH JOARDER: What duty will come under the meaning of public duty?

SHRI KUMAR: Sir, there is no such definition about this in the original Act or Amended Bill. So, the definition of public duty may also be incorporated, if so liked.

SHRI DINESH JOARDER: It has been mentioned in Section 2(17) (h) of the original Code about it. If a person is in the service of the Government, in that case the definition of duty is not essential.

SHRI KUMAR: Sir, Section 2(17) (h) reads as under:—

'Every officer in the service or pay of the Government, or remunerated by fees of commission for the performance of any public duty.'

SHRI DINESH JOARDER: Every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty mean that he receives certain fees, remuneration or commission. You have just stated that certain persons do not drew any remuneration. Who are those persons?

SHRI KUMAR: Sir, the criterion, according to me, is to perform public duty whether the person concerned receives any salary or honorarium or does not receive any salary or honorarium. I want to quote an example of Raja Surindera Singh, who was Minister quite some time back. As a Minister, he was charging only Re. 1 in token of salary. According to me, he does not wish to burden the Public Exchequer, but nevertheless he was discharging the duties of Minister. So, the main criterion should be performance of public duty.

SHRI DINESH JOARDER: Certain pay or fee has been fixed for that

category of persons. Whether they draw it or not that is their liking?

SHRI KUMAR: Sir, there were Sub Registrars in the Registration Department and they were not drawing their pays. Previously, there were honorary Magistrates. They were not paid any salary. Nevertheless they were public servants.

MR. CHAIRMAN: Your objection is not to include all this, which has already been mentioned in Section 2 (17), in the definition of public servant. and the main objection is that it is a lengthy one. We, however, will examine it.

SHRI KUMAR: Sir, in connection with Stction 20 of the original Act and clause 7 of the amending Bill, it has been stated that explanations I and II should be deleted and the further explanations should be substituted. I want to say the Explanation II of the Original Act should be retained and the proposed Explanation No. II should be made Explanation No. III. The original Explanation I should also not be deleted and it should remain.

MR. CHAIRMAN: Mr. Kumar, you want to say that Explanations I and II of the existing Code be retained.

SHRI KUMAR: Sir, I only say that Explanation II should be retained because it has been deleted according to the amended Bill.

MR. CHAIRMAN: It is proposed that the existing explanations I & II will go for the new explanations. Your suggestion is that explanation I of the Bill should be retained. Explanation II of the Code should be retained and Explanation II of the Bill should be made No. III. In this way, there will be three explanations.

SHRI DINESH JOARDER: What will be the material difference?

SHRI KUMAR: Sir, the material difference will be that not retaining Explanation II of the original Code will create some complications.

SHRI DINESH JOARDER: The witness means that both the explanations should be retained.

SHRI M. C. DAGA: He says that this portion should be added and this portion should be deleted. He should submit his amendments in writing otherwise it will create confusion and it will be difficult for us to apply our mind.

SHRI KUMAR: Sir, the original explanation is already there.

MR. CHAIRMAN: Whatever the learned withness has stated that is on the record. Its copy will be circulated to the Members, as usual. A copy of the same will also be sent to the learned witness for making corrections, if any. In this particular case, I have already requested him to send a note in this respect.

SHRI KUMAR: That I will do so, Sir. But it is practically impossible for me to send 75 copies, as desired.

MR. CHAIRMAN: I know your difficulty. You may send one typed copy.

SHRI DINESH JOARDER: Have you suggested that the proposed explanation No. I should also be retained.

SHRI KUMAR: Sir, the explanation No. 1 should be retained. Explanation No. 2 should also be there. Provious explanation No. 2 should also be incorporated; that should not be deleted *in toto*.

SHRI M. C. DAGA: What is the difference between explanation No. 2 in the previous bill and explanation No. 1?

SHRI KUMAR: Sir, according to explanation No. II, 'A corporation shall be deemed to carry on business at its sole or principle office in India or, in

respect of any cause of action arising at any place where it has also a subordinate office, at such place'. This explanation which has been proposed not suited in recovery cases?

MR. CHAIRMAN: Do you think explanation I of the Bill and explanation II fo the code are identical and these should be retained?

SHRI KUMAR: Yes, Sir. I want that explanation I of the proposed Bill and explanation II of the orginal Act should be retained. That will do the needful.

MR. CHAIRMAN: Do you want that both of these explanations may be clubbed together?

SHRI KUMAR: Yes, Sir. That is my submission; otherwise it will be very difficult for a suitor to follow that man where the principal office of the Corporation is situated. A contract may be entered into in Punjab and the principal office of the corporation may be situated in Nagaland or in Rajasthan. In such cases a suitor should be allowed to file a suit where the cause of action arose and where the corporation does carry on its business whether it is a principal office or not. That should be incorporated here.

SHRI S. K MAITRA: According to section 20, a suit can be filed at three places, namely where the defendent voluntarily resides, or carries on business or personally works for gains, or where the cause of action arises in whole or in part. In the case of a corporation, it will have a domicile at the place its principal office is located. But as regards the cause of action, no change has been made in the Bill so that a suit may be filed where the cause of action arose wholly or in part.

The first part of the existing Explanation is, no doubt, useful since where a corporation has its main office at any place (in India). it is to be deemed to carry on its business there, irrespective of the nature of the work that is actually carried on there.. But the latter part of the second Explanation is otiose. If no part of the cause of action arises at the place of the branch office, the corporation cannot, as the wording now stands be said to transact business at the place. In the presence of clause (c), the purpose of the second part of Explanation 2 is obscure. Where the suit is instituted at a place where a corporation has a suboddinate office, the court cannot dispense with the requirement that the cause of action must arise at such a place. If no part of the cause of action arises at a branch office of the corporation, a suit is not maintainable in the court of that place. The latter part of the second Explanation, therefore, serves no useful purpose.

SHRI KUMAR : It should not be there. If any suit is to be filed against the Union of India, it can be filed in any State.

SHRI S. K. MAITRA: That is according to the amendment of Article 226 of the Constitution.

SHRI KUMAR: Sir, here I would like to say that the Corporation should not be placed at a higher pedestal. It should be in the same position. If a person is resident of Punjab and the principal office of the Corporation is situated in Kerala, that man will have to go to Kerala even if the cause of action does arise in Punjab. That will be very difficult. If any office of the Corporation is there in Punjab, the persin should be entitled to file a suit there also. For the Corporation, it will not be very much cumbersome to defend the suit there. The Corporation can defend the suit if the cause of action does arise in Punjab and any office of the Corporation be situated in Punjab.

MR. CHAIRMAN: Will it not be simple to suggest that because of the

explaination you have given, Explanation. I should go and the Explanation II of the Code should be retained because Explanation restricts the scope of the application of this.

SHRI KUMAR: Yes, sir. I have also to say something about section 21. At page 3 of the Bill it is stated that "Section 21 of the principal Act shall be re-numbered as sub-section (1) of that section, and, after sub-section (1), as so re-numbered, the following sub-sections shall be inserted...."

Here I submit that the proposed sub-section (2) be omitted totally and if not, then the words "or as to the competence of a Court with reference to the pecuniary limits of its jurisdiction" should be added to sub-section (1).

I think, there is no need to add sub-section (2). Instead, the very purpose can be served with these words: "or as to the competence of a court with reference to the pecuniary limits of its jurisdiction". The proposed sub-section (2) and the existing section is exactly the same, except one or two words. So, instead of having a sub-section, the same purpose can be served by having one section and adding these words, as stated above.

SHRI M. C. DAGA: I request you to apply your mind to the amended clause (2) at page 4 of the Bill.

SHRI KUMAR: Sir, this is totally a different affair. What I am saying is that supposing there is a case in the Punjab and Haryana territories. The Subordinate Judges of Second Class are competent to hear suits up the value of Rs. 5000 and Sub-judges of the first class are entitled to hear suits upto any value. So, the result is that if a suit of the value of Rs. 15,000 is filed before a subordinate judge of the second class then he will be competent to hear that suit.

SHRI M. C. DAGA: In that case, you can transfer that suit.

SHRI KUMAR: No, sir. It cannot be transferred

MR. CHAIRMAN: You are only suggesting that Sub-section (2) of Section 21 should be re-numbered as sub section (1) with the addition of the words, as already explained by you?

SHRI KUMAR: Yes, sir. If at all it is needed. Sir, my submission is that the objection with regard to the pecuniary jurisdiction should not be taken as lightly as the objection with regard to the territorial jurisdiction because pecuniary jurisdiction is totally different and nature of that jurisdiction is also totally different. So far as the question of territorial jurisdiction is concerned. that is only of a formal nature. The Court of a Subordinate judge second class at Chandigarh has the same jurisdiction to try the suit as the court of a Subordinate judge of second class in Kerala. There should not be any diffrence between the two because the Sub judges are of the same category. But so far as the question of pecuniary jurisdiction is concedned, that would make a difference because there are quite a few cases are which are instituted only before the courts of a District judge and supposing that type of suit is instituted not before the Court of a District Judge but before the Court of a Second Class Subordinate Judge, that will be the question of pecuniary jurisdiction. That is why I say that this proposed Sub-section (2) should be deleted altogether. If at all it is to be retained, the words suggested by me may be incorporated in Sub-Section (1).

SHRI M. SATYANARAYAN RAO: What are your complete suggestions with regard to the pecuniary jurisdiction.

SHRI KUMAR: Sir, it is the inherent power of the Court. It is only the territorial jurisdiction which is not the inherent power but the pecuniary jurisdiction is always the inherent power of the Court. So far as the Hgh Court of Punjab & Haryana is concerned, this Court does not have any original jurisdiction so far as the trial of original cases are concerned except of course of the company law matters and the matters under articles 226 and 227 of the Cons_ titution, and certain other things. As far as the pecuniary jurisdiction of this Court is concerned, this High Court does not have any case of that type whereas Delhi High Court has. With the result that if a suit of Rs. one lakh is instituted in the court of a Sub_Judge Third Class, that Court will have no pecuniary jurisdiction. The pecuniary jurisdiction only vests in the High Court.

So, I would again submit that this sub-clause should not be there altogether.

MR. CHAIRMAN: Your first objection was that it should be less cumbersome and expeditious. Therefore do you not think that objection should be taken so that it can go to the competent Court.

SHRI KUMAR: With regard to this I would submit that this thing is quite right so far as the territorial jurisdiction is concerned. I would rather submit that these words should be deleted because once trial has taken place, there cannot be consequential failure of justice. I have been at the bar for about 31 years. During this period I have not come across a single case where it has been held that due to lack of territorial jurisdiction failure of justice has taken place. Therefore, these words should not at all be there so far as the territorial jurisdiction is concerned. But so far as the pecuniary jurisdiction is concerned I have very serious objection to that. There is inherent lack of jurisdiction in it. The procedure for trial in the High Court case is quite different from the procedure in the trial of Subordinate Court. Therefore, my submision is that the words, "unless there has been a consequent failure of justice" be omitted.

MR. CHAIRMAN: Please proceed to your next point.

SHRI KUMAR: Sir, now I would submit about Section 34 of tht Principal Act. Proviso to Sub-Section (1) is being added in the Amendment Bill. It is as follows:

> 'Provided that where the principal sum adjudged exceeds rupees ten thousand and the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.'

My suggestion in this respect is that in the Proviso to Sub Section (1) instead of "interest at contractual rate" it should be "interest upto the rate of 12-1/2 per annum."

SHRI M. C. DAGA: There is a specific suggestion that the rate of interest should be 12½. This is in relation to the liability arising out of a commercial transaction. Why should it not be 12 per cent per annum.

SHRI KUMAR: Sir, I have no objection to it. My submission is that contractual rate of interest should not be there because some times the person is under a very high obligation and the interest charged may be 2 per cent or 3 per cent per month. Incidents of this type are not lacking. When exorbitant rate of interest is charged, too many anomalies come up. The hon. members of this Committee may be knowing that during the regime of late Sir Chhotu Ram in Punjab in Thirties, the contractual rate of interest was very high and

the poor agriculturists were very much burdened. The contractual rate of interest should not at all be there. It is likely to be oppressing in many cases.

SHRI M. C .DAGA: A sum of Rs. 10,000/- is not taken by poor people.

SHRI KUMAR: In these days of high prices, ten thousands is not a very big amount. We are to protect the interest of everybody.

SHRI M. C. DAGA: If the money is taken for commercial transaction, he will earn profit out of it.

SHRI KUMAR: Such a person will go to litigation only if he is unable to pay. It may be due to dire necessity, untoward incidents or happenings. A person in normal conditions will never go in the Court. He will go to the Court if he is faced with his back on the wall. I would say that contractual rate of interest should not be there.

MR. CHAIRMAN: Your suggestion is that either it should be 12½ per cent or the bank rate. The contractual rate of interest should not be there.

SHRI KUMAR: Yes, Sir.

Now I would like to submit about Section 39. I have read the amendment to this Section in the Bill. My submission is that Section 39 as being amended should be retained and another sub-section should be added as sub-section (4): "In case a decree is transferred to any other Court, it shall be sent to the District Judge if the transferee Court is under the jurisdiction of the same District Judge and in all other cases to the High Court. If the transferee Court is subject to the jurisdiction of a different High Court then the High Court may send it to the High Court which has jurisdiction over the transfree Court and the later High Court will then send it to the transferee Court." This is with regard to transfer of decrees. If the Court which passes the decrees wants to transfer that decree to another Court then instead of taking a lot of time, if the transferror Court and the transferee court are in Chandigarh, then the tansferror court should be entitled to send the decree to the transferee court direct. This is my suggestion.

SHRI AWADHESHWAR PRASAD SINHA: Will you kindly explain why you insist on this procedure.

SHRI KUMAR: In order to curtail difficulties, I want the procedure to be simplified.

MR. CHAIRMAN: The learned witness has not objected to the provision of proposed amendment. What he has suggested is that in addition to this there should be another sub-section. He wants another saving clause.

SHRI KUMAR: The sub-section (4) should be like this:—

"(4):—In case a decree is transferred to any other court, it shall be send to the District Judge if the transferee Court is under the jurisdiction of the same District Judge, and in all other cases to the High Court. If the transferee court is subject to the jurisdiction of a different High Court then the High Court may send it to the High Court which has jurisdiction over the transferee Court and the later High Court will then send it to the transfree Court".

MR. CHAIRMAN: Have you any thing more to say?.

SHRI KUMAR: Now I want to say something regarding Section 42 of the original Act (Clause 20 of the Bill). The proposed addition as given in clause 20 of the Bill is not need?ed. To my mind the following words should be added in Section 42 of the Act, after the words "The Court executing a decree sent to it shall have the same powers in executing such decree':—

"including the power to transfer the decree to some other court for execution"....

The idea is that if the transferee Court comes to the conclusion that it is not in a position to execute the decree it will be able to transfer it to some other court itself. Now I will make my submission with regard to Section 60. Part (c) of Section 60 reads as under:—

> "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

This has been confined to agriculturist alone. This concession should be given to other persons as well and instead of the words "an agriculturist", the words "judgement debtor" should be substituted. The base is very sound according to me. We are not here only for safeguarding the interest of agriculturists alone. The base is to safeguard the interest of everybody whether he is an ordinary labourer or worker in a factory or he may be an agriculturist.

MR. CHAIRMAN: A general provision is already there. You are asking for an exemption. The proposed amendment here is in clause (c), for the words "an agriculturist" the words "an agriculturist or a labourer or a domestic servant" shall be substituted.

SHRI KUMAR: Sir, I want to say that instead of the words as quoted by you the words "judgement debtor" should be there.

MR. CHAIRMAN: This comes under sub-section (1) of Section 60. This adjustment will not apply here.

SHRI KUMAR: Sir, this will be doing an injustice to others.

MR. CHAIRMAN: Should this concession be given to all judgement debtors?

SHRI KUMAR: Yes Sir.

SHRI M. C. DAGA: The judgement debtor may be a rich man.

SHRI KUMAR: Sir, I think every person should be given one residential house. Everybody should have a shelter.

SHRI AWADHESHWAR PRASAD SINHA: You are more progressive person.

SHRI KUMAR: Sir, everybody should have one residential house because this is a Welfare State and we are to work so that the law should not take away this shelter.

SHRI M. C. DAGA: Suppose the house is very costly, may be of 5 to 10 lakhs.

SHRI KUMAR: Then Sir. you may add something more to his need.

SHRI M. C. DAGA: If the person concerned is a very rich man then a house should be provided.

SHRI KUMAR: Sir, I beg to differ with you. We have agriculturists and whose houses are better than those of hon. judges of High Courts and Ministers, etc.

SHRI AWADHESHWAR PRASAD SINHA: We are interested in weak persons.

SHRI KUMAR: Sir, you will bear me out that the judgement debtor is a week person. Only a person who will not be able to pay his debt will become a judgement debtor.

Sir, my next point is about Section 80. This section has been deleted and this is a very progressive step.

So far as Sections 91 and 92 of the Original Act are concerned, this is very good that these have been amended. I would submit that Section 93 should also be amended in the light of amendments carried out in Sections 91 and 92.

MR. CHAIRMAN: You want consequential changes and these will be done.

SHRI KUMAR: Alright. Sir.

Now I will make my submission in connection with Section 99-A. 99-A has been added. In fact, this is not needed and instead the following words be added in Section 99 itself after the opening words "no decree":—

"or order in execution"

So, 99-A is redundant and there will be no need of adding this.

Sir, with regard to Section 100, I want to submit that this is one of the most important topics for which I am giving my views. Section 100 itself is quite harsh. I want to say that instead of making it more stringent it should be rather liberalized and the question of fact also should be open for the examination by the High Court in a Second Appeal. The reason is simple. Let us take Section 100 as proposed. Now I would submit that it will be putting a cart before the horse rather to say that this Section has been enacted. It will be making very stringent provision and I would submit that this Section should not be added. The existing Section 100 should be retained as it is and rather it should be liberalised and interference on questions of fact must be allowed in R. S. A. at least in cases of difference in the lowest two courts. Otherwise there is no point in retaining Section 100 and making it restricted to the questions of law. When the entire case is open to the examination by the High Court in second appeal and it sees what findings have been given by one Court and what by others. In cases of misreading or misinterpretation of the material on the record, the High Court do interfere in the second appeal. The Supreme Court has laid in quite a number of judgements that the questions of facts are not to be interfered with by the High Court in second appeal. So, I would submit that there is no point in making this provision of law so stringent. The questions of fact can be made open to be examined by the High Court because otherwise that would give a handle to the corrupt persons to make every question a question of fact.

SHRI AWADHESHWAR PRASAD SINHA: Why not third appeal?

SHRI KUMAR: Sir, the second appeal is there but why then have an appeal at all.

My submision is that Section 100 which is being sought to be made very drastic that should not at all be done because that will tend to give a free handle to the corrupt judicial officers.

MR. CHAIRMAN: Under sub-section(1) of section 100, the only condition is of the word 'substantial' where the question of law is involved. If that word 'substantial' is omitted, then have you any objection.

SHRI KUMAR: That is already there in that section.

MR. CHAIRMAN: Have you any objection regarding other definition of this Section.

SHRI KUMAR: Yes, Sir.

MR. CHAIRMAN: Are you opposed to the proposed new section in any form and you want liberalisation of the existing action to make it more clear?

SHRI KUMAR: Yes, Sir.

Regarding Section 100A, I submit that the proposed Section 100A should not be there. Letters Patent Appeals are permitted only if the Single Judge certifies it to be a fit case for being heard by a Division Bench. Therefore, I say that so far

as the Letters Patent Appeal provision is concerned that should be retained and Section 100A should not be there.

Section 19 is alright. Regarding Section 103, I want that the original Section 103, which is already in existence, that should be retained. In view of my submission in respect of Section 100, the old Section 103 is a necessity.

MR. CHAIRMAN: Do you want the existing one to be retained?

SHRI KUMAR: Yes, sir.

Regarding Section 115, I also want the old section to be retained. Because, some time it so happens that many a times the Courts make such glaring blunders that the very purpose of the suitor is defeated. Sometimes, it so happens that a person is not able to produce evidence due to minor lapse on his part. Supposing to—lay by a man comes to the Court and instead of catching the Bus, he misses the Bus. He does not reach in time. There the Court closes the evidence. He makes an application that instead of closing the evidence, permission may be given to examine the witnesses. The Court says that your evidence stands closed and that you cannot be given any opportunity. Then there is no remedy before him except to go in for appeal. Thus a lot of time of the Court is taken and it results in multiplicity of proceedings. The powers of revision are already very restricted and revisions are entertained by the High Courts only in restricted type of cases. Therefore, I want the old section 155 to be retained.

MR. CHAIRMAN: You please read last sentence of the Bill at page 107; "In fact, in many cases, the object of parties in moving the High Court for revision is to delay the progress of the proceedings. In view of the fact that adequate remedy is provided for in article 227 of the Constitution for correcting cases of excess of jurisdiction, or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction, the section is no longer necessary and is, therefore, being omitted."

SHRI KUMAR: Sir, this is a provision of the Constitution and it will be restricted to a very limited type of cases where the question of jurisdiction or failure of jurisdiction is there. I have just now cited a case of person whose evidence is closed due to a minor lapse on his part. Article 227 of the Constitution will not be able to give him full protection because it will be no question of jurisdiction at all. The jurisdiction vests in the Court. The Court thinks that an opportunity has already been given. Some-times it so happens that the Courts are in a hurry and they want to get rid of cases or there is connivance between some groups or parties. They say that better you have the case dismissed in default and get it revived in the next month.

Sir, the remedy provided under Article 227 is too much cumbersome. The procedure for filing the revision petitions involve less costs of the clients concerned. So I want this section to be retained.

MR CHAIRMAN: Article 227 is like this.

'(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

In this article, the general power for superintendence is illustrated in clause (2).'

Section 115 has got a limited scope. It reads as under:

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit."

When it is claimed that the same facility can be had under article 227 of the Constitution, therefore, there is no need of this section.

SHRI KUMAR: Sir, I have submitted my viewpoint. The help which can be had under Section 115 is not available under article 227.

MR. CHAIRMAN: Next point please.

SHRI KUMAR: Sir, now I would like to submit about Section 119. It reads as follows:

"Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witness, etc., etc."

After the word 'original', the words 'or appellate' should be added. This is with regard to persons appearing in the Courts. So it should not be made subject to original civil jurisdiction alone. The word appellate jurisdiction should also be there.

MR. CHAIRMAN: Alright. Next point please.

SHRI KUMAR: Sir, Section 132 is with regard to women. This provision has never been abused so far as my experience at the Bar goes.

SHRI M. C. DAGA: Ladies are very progressive. These ladies who happen to be the members of this Committee are not going to protect those women. They would rather like them to come out.

SHRI KUMAR: We have got personal liberties. If one wants a particular way of life we cannot object to it. This provision of law should be retained. It is not at all offensive. If somebody does not want to avail of this provision, she may not.

MR. CHAIRMAN: Alright. Please proceed to your next point.

SHRI KUMAR: Sir, now I would submit about Section 141. It is as under:

"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

My suggestion is that it should also be made applicable to proceedings under articles 226 and 227 of the Constitution. It should read like this at the end:—

"...including all proceedings with regard to Articles 226 and 227 of the Constitution and all other proceedings of a civil nature before the High Court."

These words should be there. At some places the High Courts have held that the Code of Civil Procedure applies to the proceedings and some Courts have held that it does not apply. The Code of Civil Procedure is quite comprehensive. It should be made applicable to all types of civil proceedings.

SHRI M. C. DAGA: It is also there.

SHRI KUMAR: My submission is that it should be made applicable to all proceedings of civil nature.

SHRI M. C. DAGA: It means you want to bind down the Court.

SHRI KUMAR: Some times a court says we will evolve our own procedure. It may lead to incogruous results. Therefore, it should be applicable to all proceedings of civil nature.

SHRI M. C. DAGA: It is going to lengthen the proceedings.

SHRI KUMAR: My suggestion is that it is not going to lengthen the proceedings. It should be made applicable by the Statute itself.

MR CHAIRMAN: We have to examine other witnesses also. It will be very helpful if you kindly make it convenient to come to Delhi on 17th of June, 1975. Will that be suitable to you.

SHRI KUMAR: Sir, I will be able to come. I have to submit about three sections now. Let me finish them.

MR. CHAIRMAN:: While coming to Delhi, please bring your written statements. You may finish your points about the Sections.

SHRI KUMAR: Sir, I will now submit about Section 144. My suggestion is that after Sub-section (2), the following proviso be added:

"Provided that a suit so instituted may be treated as an application under this Section with the leave of the Court."

Under Section 47 there is a provision that the remedy available under this section will not be available except through an application and if any application is filed it may be treated as a suit. There may be a similar provision so far as section 144 is concerned.

MR. CHAIRMAN: Next point please.

SHRI KUMAR: Sir, my next submission is regarding Section 145. At the end another Proviso should be added. It is as under:

"Provided further that the execution of the decree or order is not capable of being executed against the principal party."

This is with regard to the sureties. This is a section on which I would like to lay particular stress. This section is very much abused. My submission is that the liability of the surety should start only if the principal party is not available or able to perform his obligations.

SHRI M. C. DAGA: It will take years to effect the recovery. The surety should fully realise his responsibility before standing surety to anybody.

SHRI KUMAR: It will mean that you are trying to dissuade a person coming to the help of another person. He gives helping hand to the principal party. He does not come in his place *in toto*. We should try to encourage the helping nature.

My next suggestion is in regard to section 149. This will be my last submission. Section 149 reads as under:

"Where the whole or any part of any fee prescribed for any document

by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion,....'

My suggestion is that the words 'in its discretion' should be replaced by the words:

'On being satisfied that the non-payment of such court fee was trivial or *bona fide* or on account of sufficient cause.'

The absolute discretion of the Court should not be there. I am very particular about this section. Just a few days back I came across a case in which an hon. Judge of this High Court non-suited an appellant on the simple ground that the court fee paid on the decree-sheet was less by one rupee. The poor fellow must have paid the court fees, he must have given Rs. 500 to the Lawyer. At the final hearing if this is detected that the court fee paid by him is less by one rupee his appeal is thrown out. Therefore, I submit that the provision should be like this:

The words "in its discretion" should be replaced by the words:—

"On being satisfied that the non-payment of such court fee was trivial or *bona fide* or on account of sufficient cause".

SHRI M. C. DAGA: Does the Judge exercise discretion judicially or arbitrarily.

SHRI KUMAR: Discretion is always judicial.

MR. CHAIRMAN: Mr. Kumar, we are thankful to you for giving evidence before us. Now we will hear you at Delhi on the 17th June, 1975. In the mean time you may send your written suggestions to us.

(*The witness then withdrew*)

II. Shri Atma Ram Advocate, Chandigarh.

[*The witness was called in and he took his seat.*)

MR. CHAIRMAN: On behalf of this Committee, I welcome you for tendering evidence before us. We are sorry that we have kept you waiting. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI ATMA RAM: Sir, I agree with what you have read out.

MR. CHAIRMAN: We have not received any written memorandum from you.

SHRI ATMA RAM: Sir, I was asked to give my reply to the questionnaire and that I have brought.

MR. CHAIRMAN: Your written reply is before us and it will be circulated amongst the members of the Committee in due course. In addition to what you have given in writing if you want to say anything more you may do so.

SHRI ATMA RAM: Sir, in my opinion Clause 39 of the Amending Bill relating to the amendment of Section 100 of the C.P.C. is unwarranted. Section 100 itself provide enough restrictions for second appeal not to be admitted on frivolous grounds. Therefore it does not require any amendment. It should remain as it is. This amendment is not only not desirable but involves cumbersome procedure. The appellant will first have to apply for permission being granted to prefer an appeal, if he is allowed to do so, it will add one

more hearing to the hon. Judge of the High Court, if he is not permitted hearing, then this provision is useless, arbitrary and depending upon the sweet will of the Judge. What will be the use of having such a provision. So my view is that Section 100 of the C.P.C. should remain as it is, otherwise you will be making the District Judges who are not competent, arbitrary and autocratic.

Then I pass on to Clause 40 of the Bill which seeks to add one more Section 100-A to the present Act. To my mind this also should not be brought on the statute. The provision of Letter Patent appeal should remain is it is . Letter Patent appeal is not competent unless the Judge who decided the appeal certifies that it is a fit case for appeal under the Letters Patent. Therefore, that restriction is already there. The number of such appeals cannot be large in view of this condition imposed. So far as Writ Petitions are concerned, in this High Court, these are admitted by Division Bench and these are decided by an Hon. Judge in Single Bench. Therefore, this being in the original exercise of jurisdiction of the High Court, appeal under the Letters Patent would lie otherwise judgment and decree of the Single Judge would be final. Therefore the delegation or retention of the present legislation would be relevant so far as second appeals are concerned. In second appeal the precedent is that it has to be certified by the judge deciding the appeal that it is a fit case for appeal to the Letters Patent.

Now I pass on to Clause 63 of the Bill. By experience I say that plaints and written statements are drafted by lawyers. He naturally withholds points which may be detrimental to the interests of his party. This rule should be made mandatory that the parties should be examined. This would cut short litigation and delays would be very much removed. Therefore, the parties should be examined and not their counsels.

SHRI M. C. DAGA: You mean that the counsel should not be present in the court.

SHRI ATMA RAM: I don't say that they should not remain in the court. That is not my point. My point is that the parties should be examined and not their counsels.

SHRI M. C. DAGA: Why the counsel should not be examined.

SHRI ATMA RAM: Because the plaint or written statement is drafted by him. He withholds certain points which may be detrimental to the interests of his party.

Then I pass on to Order 12 rule 5. In my view, Order 12 rule 5 should be made stringent. It relates to admission or denial of facts by a party. If it is made stringent it would obviate delays.

Now I come to Section 115 of the C. P. C. By deleting this section and by providing this remedy under Article 227 of he Constitution of India, the scope of interference will be enlarged, otherwise the purpose is the same. It can very well be deleted.

SHRI DINESH JOARDER: If we delete Section 115 and resort to remedies under Article 227 of the Constitution of India, will there be any material difference so far as procedure, costs and time is concerned.

SHRI ATMA RAM: Sir, I don't think it will make any difference in respect or delay or cost.

SHRI M. C. DAGA: Section 115 entrusts power to the District Courts. It has been done in UP. What is your view about it?

SHRI ATMA RAM: Sir, we are not very competent at present. Time is not ripe to entrust all the authority to the District Judges. In respect of applying judicial mind, it will be more autocratic by entrusting power to the District Judges.

SHRI M. C DAGA: I think hardly few cases come under this section.

SHRI ATMA RAM: Section 115 has its own limitations. Therefore, judicial petition has to be decided. Revision petition also happens to be decided. In actual practice, if an hon. Judge, after reading the petition and hearing the Counsel feels that justice has not been done to the petitioner, he finds out loopholes in the four corners of Section 115. If he is satisfied that justice has already been done, he does not try to bring it under section 115. This invariably happens.

SHRI DINESH JOARDER: The matter which has been provided in Section 115 also covers the matter of Article 227 or the scope of Article 227 is wider. What is your view?

SHRI ATMA RAM: Sir, Article 227 is wider, larger in interference. Interference under Section 115 is very limited.

To my mind the Court is given the power to set aside the order of the lower court under the provision of the superintendence over lower court. That provision is not under section 115. That is why I should say the scope of interference under Article 227 is wider.

SHRI V. C. KESAVA RAO: Should Section 115 of the original Code be retained here?

SHRI ATMA RAM: If the intention is to enlarge the scope, I hould say, it need not be retained.

MR. CHAIRMAN: Will you agree with the proposed amendment that this Section 115 of the principal Act be omitted?

SHRI ATMA RAM: Yes Sir.

MR. CHAIRMAN: It has been mentioned at page 107 of the Code of Civil Procedure (Amendment) Bill that "in view of the fact that adequate remedy is provided for in article 227 of the Constitution for correcting cases of excess of jurisdiction, or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction, the section is no longer necessary and is, therefore, being omitted." Are you agreeing with this proposal?

SHRI ATMA. RAM: Sir, I think I have already replied this question. Where an hon. Judge feels that injustice has been done to the petitioner, he tries to bring it within the four corners of Section 115. If he is satisfied, he throws it away.

MR. CHAIRMAN: The number of such petitions is much or less.

SHRI ATMA RAM: Sir, the number of such petitions is very few.

MR. CHAIRMAN: What about the cases of Article 227?

SHRI ATMA RAM: Sir, small number of petitions come under Article 227.

SHRI M. C. DAGA: Section 100 has been amended in the light of Article 133. Will this not serve the purpose of the Article?

SHRI ATMA RAM: Sir, Article 133 relates to only making an application for leave to appeal to the Supreme Court. Appeal to the Supreme Court is not ordinarily competent under Article 133 from a judgment or decree of an hon. Judge. Therefore. it has no relation. Appeal to the Supreme Court lies only against a judgment or decree passed by a Division Bench or full and not a Single Judge. Therefore, Section 100 and Article 133 have no connection.

MR. CHAIRMAN: I read an amendment to Article 133—

'An appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies:

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court. These are the two things under which one can go to the Supreme Court.'

SHRI ATMA RAM: Has this amendment been passed?

MR. CHAIRMAN: Yes Please.

SHRI ATMA RAM: There does not seem to be any conflict between Section 100 and Article 133 (1).

MR. CHAIRMAN: In view of the provision of Article 133 of the Constitution of India, whether we need the proposed amendment of Section 100?

SHRI ATMA RAM: Sir, so far as Article 133 (1) is concerned, it does not make any difference whether Section 100 is allowed to remain as it is or is amended.

SHRI M. C. DAGA: The Law Commisison, in its fifty-fourth report on the Code of Civil Procedure, 1908 has made the following recommendation (Page 76):—

"It is in the light of the amended Article 133 that we propose to approach the question about the scope of section 100 of the Code as it should be after it is amended. It would be noticed that clauses (a), (b) and (c) of section 100 to which we will presently refer, are, in a sense, very wide in effect. In fact, as we will have occasion to point out, clauses (b) and (c) have led to a plethora of conflicting judgments and it may be safely stated that ingenuity of the lawyers determined to seek admission for second appeals of their clients in the High Court, coupled with judicial subtlety which generally believes that even an erroneous finding of fact does, on the ultimate analysis, lead to injustice. has unduly and unreasonably widened the horizon of section 100. It is easy enough to understand what a point of law is; but in dealing with second appeals courts have devised and successfully adopted several other concepts, such as a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the courts below. This has created confusion in the minds of the public as to the legitimate scope of the second appeal under section 100 and has burdened the High Courts with an unnecessarily large number of second appeals."

View of High Court Arrears Committee

The High Court Arrears Committee was quite clear in its view that the primary cause of the accumulation of arrears in the High Courts is the laxity with which second appeals are admitted without serious scrutiny in the light of the provisions of section 100 of the Code.

SHRI ATMA RAM: Sir, the Hon'ble chief Justice of India paid this High Court a visit recently. The President of the Bar Association of the Punjab and Haryana High Court, in his address, submitted that first rate persons are not elevated to the Bench. He made it a point in his address. It would be seen that the scope of clause (a), (b) and (c) of Section 100 to which we will refer is very wide and, in fact, clauses (b) and (c) have led to very conflicting judgments. The ingenuity of the lawyers depends upon the admission of second appeal of the clients in the High Court. In fact, the fault lies with the lower judiciary. It is neither the fault of a Judge nor of a Counsel if the judgement of facts of the learned district Judge is reversed. It is not wrong. I say reversed because then it falls within the ambit of Section 100(a), (b) and (c). It is the fault of the lower judiciary. This is what I want to say.

SHRI M. C. DAGA: The High Court will have to apply its mind again to the facts of the case as well as to the law.

SHRI ATMA RAM: Suppose a judgement is reversed. I am not saying that it is wrong. The learned District Judge had applied his mind to the law but not to the facts of the case and the Judge of the hon'ble High Court admits what is wrong with it. Should he allow the injustice done to stand?

SHRI M. C. DAGA: He must apply his mind to the facts as well as to the law.

SHRI ATMA RAM: Law has to be applied to the facts of a particular case. Facts come first. But if a District Judge had not applied law to the facts of the case, it is to be admitted by the High Court under clause (b) and (c) of Section 100. I have already stated honestly that if a Judge thinks that justice has not been done, he will issue a notice for admission under section 100 as well as Section 115. If he thinks that justice has been done, he will dismiss it. Invariably that is the reaction of the mind of an hon'ble Judge. If he thinks that justice has been done, he will dismiss the second appeal as well as the revision petition. That is the point before you.

SHRI M. C. DAGA: A search for truth has to be made.

SHRI ATMA RAM: Not for truth but for justice according to law. Sir, I have stated by my experience of more than 41 years. Nothing against any individual but I may submit that the recruitment in judiciary is very bad. Before 1962 there was three years course for law and now it has been cut down to two years course with the result that no-body reads C.P.C. and they are declared Adovcates.

SHRI M. C. DAGA: It is a scientific age. We must go advance.

SHRI ATMA RAM: Sir, they have no experience. They have only done two years course.

[The Sub-Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE SUB-COMMITTEE II OF THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Friday, the 30th May, 1974 from 10.00 to 13.45 hours in the Committee Room A, Punjab Vidhan Sabha, Chandigarh.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri Chandrika Prasad
3. Shri M. C. Daga
4. Shri Dinesh Joarder
5. Shrimati T. Lakshmikanthamma
6. Shri K. Pradhani
7. Shri Rajdeo Singh
8. Shri M. Satyanarayan Rao
9. Shri Madhu Limaye
10. Shri Sidrameshwar Swamy
11. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

12. Shri Krishnarao Narayan Dhulap
13. Shri Kanchi Kalyanasundaram
14. Shri V. C. Kesava Rao
15. Shri Awadheshwar Prasad Sinha
16. Shri Mohammad Usman Arif

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri H. L. Malhotra—*Legislative Committee Officer.*

WITNESSES EXAMINED

I. Government of Punjab, Chandigarh

Spokesmen:

1. Shri S. S. Sodhi, *Secretary.*

2. Shri R. K. Battas, *Joint Secretary.*

II. Shri Shri Chand Goyal, Ex-M.P.

III. Shri Harbhagwan Singh, Advocate.

IV. Shri G. L. Lakhanpal, Senior Advocate.

V. Shri S. K. Jain, Advocate.

I. Government of Punjab, Chandigarh.

Spokesmen:

1. Shri S. S. Sodhi, *Secretary.*

2. Shri R. K. Battas, *Joint Secretary.*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: I welcome you on behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. S. SODHI: Sir, I have no objection in this regard.

MR. CHAIRMAN: Have you sent your written memorandum to the Committee?

SHRI S. S. SODHI: Sir, we have already sent 75 copies of the memorandum to the Committee.

MR. CHAIRMAN: We have not received till today. We, however, will check it up.

SHRI S. S. SODHI: We have suggested a draft for the amendments to be made.

With regard to Section 80, our proposal is that it should be retained because the Government requires two months time to make up its mind whether the case is to be settled/decided or contested. We need this much time for the process of decision making in the Government clearly requires it.

MR. CHAIRMAN: It has been proposed that this Section 80 of the principal Act should be omitted and the view of the Punjab Government is that it should not be omitted. It should be retained. What are the reasons for not omitting this Section?

SHRI S. S. SODHI: Sir, the reason is that time must be made available to the Government to decide whether to defend or settle a case and that is why we seek that it should be retained.

MR. CHAIRMAN: What is your view in relation to settlement of cases? How many cases have been settled at your end where the persons have not gone to the Court when noticed under section 80 were received.

SHRI S. S. SODHI: Sir, there are cases which have not been dealt with in the manner in which the spirit of the law requires them to be dealt with it. My submission is that Section 80 if be correctly utilized, would be most useful.

MR. CHAIRMAN: I would like to know how many notices have been received and replies under section 80 or C.P.C. during the last one year.

SHRI S. S. SODHI: Sir, at present, this information is not available.

MR. CHAIRMAN: Please supply this information to the Committee within three months.

SHRI S. S. SODHI: Alright Sir. We will send this information to the Committee within three months.

SHRI M. C. DAGA: I would like to know when the notice is served upon you under section 80, whether you look upon the technicality of all the ingredients of section 80 or simply apply your mind on the basis of equity and justice.

SHRI S. S. SODHI: Sir, it should be on the basis of equity and justice.

SHRI M. C. DAGA: How many cases have been settled by you personally.

SHRI S. S. SODHI: Sir, the Director. Prosecutions, deals with this matter and L. R. does not deal with it in Punjab.

SHRI M. C. DAGA: It has been mentioned at page 22 of the 27th Law Commission Report that "when section 80 was originally enacted, India was a dependency under foreign rule and the main function of the Government was the maintenance of law and order. India is now a free country and a welfare State. It engages in trade and business like any other individual. A welfare State should have no such privileges in the matter of litigation as against a citizen, and should have no higher status than an ordinary litigant in this respect.". It is often mentioned that 10 per cent notices are replied and 90 per cent are not replied. Is it not so?

SHRI S. S. SODHI: Sir, if a notice is correctly dealt with then it is desirable to retain Section 80.

SHRI M. C. DAGA: Both the Law Commissions have discussed this matter elaborately and they say that we must do away with this Section with the simple reason that Government should not be treated at a different level.

MR. CHAIRMAN: The hon. Member has referred the views on the basis of Law Commission Reports. You want that provision of Section 80 should be retained and not omitted. In this connection you have to make a strong case and for that you should furnish the statistics say of one year or so alongwith a detailed note to the Committee within a period of 15 days.

SHRI S. S. SODHI: Alright Sir. I will submit the necessary reply within 15 days.

My next point is that of Order 22. According to this bill, efforts have been made to make it easier for the legal representatives to be brought on record but the responsibility for bringing the legal representatives on record continues to be of the plaintiff or appellant. The proposal of the State Government is that this burden should be shifted from the plaintiff to the legal representatives themselves. This matter was discussed in the meetings of the Rules Committee of the High Court and the draft which I have just now circulated is basically the idea of the High Court. Suitable amendment is however needed in it because there in the rules of the High Court no provision where the legal representative happens to be a minor and this draft seeks to cover this omission. The basic idea is that the Court should be specifically empowered to examine any person with a view to finding out whether the defendant has died or not? If dead, when he died. Who are his legal representatives? Whether any of the legal representatives are minors? If an application is made by any legal representatives to be brought on record, he is brought on record. Where it is a case of a minor legal representative the Court shall *suo motu* implead him as a party to the

suit after making an enquiry, as to who would be a proper person to be appointed as his guardian.

Now, Sir I will read the suggestions of the State Government.

Rule 2. This is repetition of the existing provision. There is no change in rule 2.

2. Procedure where one of several plaintiffs of defendants dies and right to sue survives—

"Where there are more plaintiffs or defendants then one and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the serviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

Rule 2-A is a new provision.

'Every Advocate appearing in a case who becomes aware of the death of a party to the suit (whether he appeared for him or not) shall as early as possible give intimation about the death of that party to the Court and to the person who is *dominus litis.*"

Rule 2-B is again a new provision.

'2-B. The duty to bring on record the legal representatives of the deceased defendant shall be of such legal representatives themselves and not of the person who is *dominus litis.*"

4. Procedure in case of death or one of several defendants or of sole defendant.

The existing provision is as under:—

'Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

This is the existing provision. The new provision is:

(1A) The Court may at any time examine any person for the purpose of ascertaining—

(i) whether or not a defendant in a suit has died and if so, when?

(ii) the legal representatives of the deceased defendant; and

(iii) whether any of such legal representatives is a minor and if so, who would be a proper person to be appointed as guardian for the minor in that suit.

(IB) Where a legal representative of a deceased defendant is a minor, the Court shall implead him as a party to the suit *suo motu*, or on the application of the minor or any party to the suit.

(2) Any person so made a party may make any defence appropriate to this character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1) and the inquiry, if any, under sub-rule (1-B) does not show that there is any legal representative of any deceased defendant, who is minor, the Court shall proceed with the suit and judgment shall be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

(4) If a decree has been passed against a deceased defendant, his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware

of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.

(4A) Where a decree has been passed against a deceased defendant and his legal representative was a minor at that time, the Court shall set aside the decree qua him on such terms as to costs as it deems fit, provided that he makes an application for the setting aside of the decree within 3 years of his attaining majority.

(5) Before setting aside the decree under sub-rule (4) and (4A) the Court must be satisfied *prima facie* that had the legal representative been on the record, a different result might have been reached in the suit at the time of the passing of the decree.

Sir, these are the suggestions of the State. We want these to be considered.

SHRI S. K. MAITRA: You are throwing the onus on a party who is not interested in the results of litigation. The procedure which you have prescribed will instead of reducing delay, cause delay. In sub-rule (4) you have suggested:

'If a decree has been passed against a deceased defendant, his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.'

Almost in every case the defendant will take advantage of this.

SHRI S. S. SODHI: Sir, this has to be read with sub-rule (5).

SHRI S. K. MAITRA: That is there but it will cause delay. In 99 per cent cases the decree if passed, will be set aside by the Court of appeal or revision and no purpose will be served.

SHRI S. S. SODHI: Sir, when a person knows that there is litigation against him and it may result in a decree against him, then he would undoubtedly think it fit to appear before the Court.

MR. CHAIRMAN: Are these suggestions of the Punjab Government based on the rules made by the Punjab & Haryana High Court?

SHRI S. S. SODHI: Yes, Sir.

MR. CHAIRMAN: Have the rules come ito force in Punjab?

SHRI S. S. SODHI: Yes, sir.

MR. CHAIRMAN: Since how long these are in operation?

SHRI S. S. SODHI: Sir, these have come into force in February. this year. Only a short time ago. There is an obvious omission with regard to minor even in these rules. These rules do not provide as what is to be done in their case.

SHRI M. SATYANARAYAN RAO: What is the object of this provision?

SHRI S. S. SODHI: Sir, these rules will apply not only to a plaintiff but also to the appellant. Suppose an appeal is filed in the High Court to-day, it will take many years before that case comes up. According to the present position, it has to be ascertained by the appellant whether the respondent is alive and if he dies where and who his legal representatives are?

SHRI M. SATYANARAYAN RAO: The appellant might be knowing about it? He is interested in the litigation.

SHRI S. S. SODHI: Sir. it is very difficult to find out as to where the legal representative of the respondent are and what are their addresses.

SHRI M. SATYANARAYAN RAO: In that case it will be very difficult if he is not present. He may be away from that place.

SHRI S. S. SODHI: Sir, then he comes under sub-rule 4 and 5.

SHRI M. SATYANARAYAN RAO: The very purpose is defeated. It will cause delay.

SHRI S. S. SODHI: Sir, we recognise that there may be delays in this case also. This is another system which deserves giving a trial. If the person knows that he is going to suffer a decree by not being present, he will appear in the Court. To-day the position is that it is to the advantage of the defendant not to appear. No decree will be passed in that case.

SHRI M. C. DAGA: I want to know whether the Punjab Government agrees with the proposed amendment already made in the Bill or not?

SHRI S. S. SODHI: We disagree sir. That is why we have put forward this proposal.

SHRI M. C. DAGA: What are the reasons for the same?

SHRI S. S. SODHI: Sir, we want a basic change. According to the change which is proposed in the Bill, the basic responsibility continues to be of the plaintiff. So far as clause (2) is concerned there is no change. The change comes with the case where the surviving defendant or sole defendant dues that is where we will bring an outsider into the suit.

SHRI M. C. DAGA: If the plaintiff is interested in getting a decree against the defendant, it is his duty to submit as to who is the legal representative of the defendant.

SHRI S. S. SODHI: A person who succeeds to the rights of a deceased defendant, let him also face the liabilities. If he does not like to come before the Court then he suffers a decree. If he is hurt by the decree then let him come to the Court and get it set aside. We file appeals in the Court. It takes years before they are heard. We have this difficulty here. How can we find out who has died and who are the legal representatives of the deceased defendant and where they are.

SHRI M. C. DAGA: The procedure that you have suggested will be very lengthy. It will take years together for the Court to come to a decision. Enquiries will have to be held to ascertain if he is the legal representative.

MR. CHAIRMAN: The view of the Punjab Government has been explained and it is on record. We will examine it.

SHRI DINESH JOARDER: Please give your comments about the amendment suggested in the Bill.

SHRI S. S. SODHI: This is certainly an improvement on the existing provision.

SHRI DINESH JOARDER: What are your views about the responsibility that has been shifted to the pleader?

SHRI S. S. SODHI: I feel that this shifting of responsibility upon the lawyer in the proposed amendment is going to create trouble. The judges will become unpopular with the lawyers.

MR. CHAIRMAN: You have made certain suggestions to be incorporated in the bill relating to the order XXII. May I know whether you are totally opposing the proposed amendment to this bill?

SHRI S. S. SODHI: Sir, we are not totally opposing it.

MR. CHAIRMAN: With reference to the Clause 76, please send your written comments within 15 days to the Committee as to which points you

agree and what suggestions you want to make. It will be easier for the Committee to consider it. Please also send the statistics regarding section 80. This will be helpful to us.

SHRI S. S. SODHI: Alright Sir. My next suggestion is with regard to Clause 63 relating to order X. The provision being made in the Bill is:

> "2. (1) At the first hearing of the suit, the Court—(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court as it deems fit; and"

Our suggestion is:

> '2(1).....
>
> (a) shall with a view to elucidating matters in controversy in a suit, examine orally such of the parties as it deems proper.

MR. CHAIRMAN: The main idea is that if the party is present, let the Court examine it straight-away otherwise he can be called by the Court.

SHRI S. S. SODHI: Yes, Sir. My next submission is in regard to Clause 68 relating to Order XV Rule 2. The existing provision is as under:

> "One of several defendants not at issue. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgement for or against such defendant and the suit shall proceed only against the other defendants."

This deals with the initial stage of the suit. Our suggestion is:

> "Where there are more defendants than one, and any one of the defendants is not at issue or as a result of compromise or otherwise ceases to be at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgement for or against such defendants and the suit shall proceed only against the other defendants."

This will be an additional provision.

MR. CHAIRMAN: We will consider it.

SHRI S. S. SODHI: My next suggestion is about Order XVII Rule 3. This is clause 71. About this provision no change has been suggested in the bill. We want to suggest a change in it. I may read out the existing rule:—

> "Court may proceed notwithstanding either party fails to produce evidence etc.—where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

There is a conflict of authority with regard to the meaning of the word "forthwith". Most of the High Courts have taken this view that it means the same day, take the position where there is a plaintiff who produces sufficient evidence on record to enable the Court to decide the case in his favour before the defendant has been called upon to give evidence and there is then some formal evidence which he withholds. The case had been adjourned for formal evidence at this stage. He does not produce the formal evidence. The Court can proceed to decide the case. The decision in such a case would be in favour of the plaintiff because there is no evidence against the plaintiff. What we propose is as under:

> "Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses. or to perform any other act necessary to the further progress of the suit for which time has been allowed, the Court may notwithstanding such default refuse to grant further time

for that purpose and proceed with trial".

The Court may not give judgment on the same day. We want to do away with the word forthwith.

SHRI M. C. DAGA: If the word trial is there it means the matter is open. Once the matter is open, the parties can again come to the Court and tell that such and such things prevented them from giving evidence.

SHRI S. S. SODHI: If the plaintiff provides all evidence but withhold some formal part of it the Court then gives judgment. He is the person who commits the default and he then gets the decree in his favour. I am dealing with the stage before the defendant has been called upon to give evidence.

MR. CHAIRMAN: Your difficulty is with regard to the word 'forthwith'. According to you that has been interpreted by the courts to mean the same day. But how does it help the defaulting party.

SHRI S. S. SODHI: It helps in this way. Supposing the plaintiff has produced his main evidence and leaves aside some formal evidence. The evidence which has come on record is unrebutted because the defendant has not given his evidence. That unrebutted evidence may be sufficient to decide the case in plaintiff's favour.

MR. CHAIRMAN: Your remedy seems to lie in providing here that the Court shall grant adjournment.

SHRI S. S. SODHI: The court may close the evidence of plaintiff but permit the defendant in such a case to give his evidence.

MR. CHAIRMAN: Will you please send us a written note about the interpretation of the word 'forthwith' by different High Courts, giving also the citation of the cases. You may also point out that the controversy about the interpretation of the provision of Order XVII, Rule 3, stands unresolved by the present Bill.

SHRI S. S. SODHI: Sir, I will send this note to the Committee.

MR. CHAIRMAN: What is your next point.

SHRI S. S. SODHI: Finally I have to say about Clause 72 of the Bill. This is regarding evidence being taken down in English. The provision in the Bill is as under:—

> "Where Eglish is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down."

Now this relates to cases where the evidence is given in English. What we suggest is that there should be a provision for recording the evidence in English with the consent of the parties even where such evidence is not given in English.

SHRI M. C. DAGA: If the language of the Court is not English then what to do.

SHRI S. S. SODHI: That is an administrative matter. I visualise this situation. Supposing a Court in Madras is to record the evidence of a Punjabi, who only knows Punjabi. Now the question arises in what language the evidence is to be taken down. It cannot be taken down in Punjabi. If all the parties agree that it should be taken down in English, there should be no objection.

SHRI M. C. DAGA: Suppose a Punjabi gives his evidence in Madras and he does not know English then who will translate his evidence?

SHRI S. S. SODHI: Sir, the Court will have to appoint an interpreter.

MR. CHAIRMAN: We are thankful to you and the Punjab Government for the co-operation given to us and I assure you that we will examine what you have stated during the course of discussion.

[The witnesses then withdrew]

II. Shri Shri Chand Goyal, ex-M.P.

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you on behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI SHRI CHAND GOYAL: Alright Sir. I have no objection to it.

I am also grateful to the Members of the Committee for giving me time.

At the very outset I would submit that this Bill will go a long way in avoiding delay in litigation and providing opportunity to a poor man to have a fair trial. I think I was a Member of the Committee which had gone into this Bill but could not submit its report because of the dissolution of the Parliament. I find that this Bill is a greater improvement on all previous Bills which had been framed from time to time. I especially welcome certain features of this Bill. For instance, the omission of Section 80 of the C.P.C. When somebody has to file a suit against the Government or the Government official, he has to give a notice under Section 80 C.P.C. This is a very healthy and welcome feature in deleting the section. Similarly, the power which is being vested in the Supreme Court to transfer cases from one State to another which previously vested in the Government is also a welcome feature. My next point is that of principle of *res judicata*. I welcome its applicability, execution proceedings and also a provision for appeal. For instance, for a particular issue, the finding is against the party but the judgment and decree are in his favour then he has also been given the right to file an appeal challenging that particular aspect which was not previously there. This is also a very welcome step.

Then looking into the present rate of interest, the rate of interest on decretal amount was less previously, but this has been enhanced and brought it at par with the commercial interest. This is also a welcome feature. More freedom has been provided from attachment. For instance, all salaried persons were being excluded. Previously, the salaries of Government and Local Bodies employees were only immune from attachment, but now it is being extended to other employees also and even the amount which is immune from attachment is being enhanced. I think this is quite in tune with the socialistic pattern which we want to gradually develop. This is also a good feature. Previously, there used to be passed two decrees, preliminary decree and final decree in certain type of suits, that used to delay proceedings. This is a very wise step that there will be only one decree and the preliminary decree will no longer be there.

Now, I have objections to certain provisions. For instance, Section 2. This Act is being extended to the entire country except the State of Jammu & Kashmir, some areas of Andhra Pradesh and Nagaland State. I feel that in the interest of the

integrity of the country, this exception should not be given to some areas of the country. It is, therefore, desirable that when we are bringing an amending measure that should apply to the entire country. It is a simple procedural law and I would suggest that there should be an amendment in this Section 2 and this exception should be done away with.

Now there is another feature, that is, second appeal. Second appeal only lies if the High Court certifies that a substantial question of law is involved. I submit that the position is that the finding fact comes first from a trial court then an appeal is preferred before a District Judge. He gives his finding fact. Sometimes, there are differences between these finding facts. There is no difficulty if the two courts have arrived at one finding fact then there should be no second appeal. But in cases where two findings of fact differ with each other, for such cases, there must be a provision for a second appeal even that may be at the cost of litigant. Only about some months back, the Chief Justice of the Supreme Court came to Chandigarh and I called upon him. I said to him that this is a fact that justice delayed is justice denied. In the Punjab High Court, the R.S.A. was filed in 1964 and that was decided now after 10 years. So, delays have to be cut down and justice has to be made speedy and less costly. I do not find many steps which have been taken to make justice less costly. No doubt, there is very good provision that a poor man has been provided lawyer and even the definition of a pauper has been substituted by an indigenous person and his assets can be of Rs. 1,000/-. He can file a pauper suit. A provision has been made in this regard. But the rate of court fee is so high that something has to be done to reduce it. Exhorbitent fees are charged from poor clients. There is no restriction, no regulation about this. In this direction something should be done. It is the duty of the welfare State to provide justice to every citizen without charges. If some charges have to be recovered these must be the minimum. In order to reduce the court fee and regulate the fee of lawyer something should be done so that justice becomes really cheap. I was submitting about second appeal. Second appeal will only lie where the High Court certifies that substantial question of law is involved. I can understand the attempts of the framers of law to shorten the period of litigation. In some cases, injustice has been done. Unfortunately, the reputation of judiciary at all levels is not above suspicion because of economic difficulty. Every day we hear that the District Judges would give finding in favour of the party after accepting money.

SHRI M. C. DAGA: Has this corruption come even at the High Court level?

SHRI SHRI CHAND GOYAL: I do not think that this thing has come upto the High Court now. But if we do not improve the service conditions of the High Court Judges, it may travel even upto the High Court Judges. So far as Subordinate Judiciary is concerned, enquiries have been made against District Judges, some are found guilty. They are made to resign. They are removed from service. This is a common feature. They can give a finding on facts after accepting illegal gratification.

Therefore, I feel that some provision should be made that where the finding on facts is different, in those cases second appeal should be allowed. At present, what is being provided in the Bill, second appeals will only be entertained if the High Court certifies that a substantial question of law is involved; otherwise it will not be entertained. So, atleast till that time justice is done in the

trial Courts or even by the District Judges, second appeals should be allowed and the condition that if the 'High Court certifies that the case involves a substantial question of law' should not be there. This is one suggestion which I want to make before the hon'ble Members of this august body.

Regarding Section 115. I may just refer to the past history of this provision. The 4th Lok Sabha Committee was asked to consider the previous Bill and as a Member, I appeared before the Committee for full one day. I succeeded in persuading the Members of the Committee that this Section 115, which deals with the 'Revision' must be retained.

SHRI M. C. DAGA: Do you hold the same view to-day?

SHRI SHRI CHAND GOYAL: Yes, Sir. I hold the same view today. The scope of Section 115 is already very much limited. Revisions are allowed only in cases where there is no exercise of proper jurisdiction or wrong exercise of jurisdiction or where there is material irregularity in the exercise of jurisdiction. Only in such cases this Section is involved. I do not think that in not more than 20 to 25 per cent cases these revisions are entertained in limni otherwise these are dismissed. I know the anxiety of the Committee and of the framers of this Act that beause of the existence of Section 115, cases are sometimes delayed for a considerably long time and even the revision petition takes 2-3 years. But we have also to consider that in some cases justice may not be done if Section 115 is totally abolished from the Code. I feel that the scope may be narrowed down but the Section should not be completely wiped out.

SHRI M. SATYANARAYAN RAO: Are you not aware of Article 227 of the Constitution?

SHRI SHRI CHAND GOYAL: That is just superintendence of control. That does not serve the purpose of Section 115. I have already stated this in the 'Objects and Reasons' that this is not a revisional power in that sense. This is just superintendence and control.

Now I have to say something about Section 76 at page 54 of the Bill. This deals with abatement and where we are feeling that great hardship is done in many cases because of this provision of Order 22 which deals with abatement. In reading it now with Section 76 hardship, to a certain extent is removed. Now it says that if it was not in the knowledge of the plaintiff or if he did not know about the death of a particular defendant and because of his ignorance, he could not bring it to the notice of the Court, therefore, the suit will not be abated. This is one aspect of the problem. Another aspect is that in a number of cases the plaintiff or the appellant is aware that the defendant is dead or one of the defendants is dead but he does not know that it is his duty to bring it to the notice of the Court about that death otherwise his suit will abate. So, in order to have the abatement of the suit, something has to be done where it is the ignorance regarding the death of a particular defendant or respondent or the ignorance is regarding the steps he is supposed to take. There should be a scope for that hardship.

SHRI M. C. DAGA: Ignorance of law is no excuse.

SHRI SHRI CHAND GOYAL: That is true.

SHRI M. C. DAGA: Generally the Lawyers work on behalf of plaintiff.

SHRI SHRI CHAND GOYAL: Lawyers can hardly know that a particular defendant is dead. He does not know so long as his client does not inform him.

SHRI M. C. DAGA: For this purpose, we have made certain amendments.

SHRI SHRI CHAND GOYAL: That I am accepting. Sir, that 50 per cent injustice has been removed. But my other point is that sometimes it takes six months for a litigant to come to his lawyer. They come from far off villages and entrust their case to the Lawyer and immediately after the filing of an appeal the respondent dies. Now the litigant comes to know that the respondent is dead but he does not know that he has to intimate the Court about his death otherwise his appeal will abate. He does not know this legal aspect

SHRI RAJDEO SINCH: It is expected that the client will discuss this matter with his lawyer and he will consult the consequences of a death of a party and inform his lawyer in this way.

SHRI SHRI CHAND GOYAL: Sir, there are hundred such like cases where the lawyers tell their clients that because you have not brought it to my notice that the defendant is dead, your appeal must fail. Law is such that we cannot help people had to suffer because of the illiteracy and unawareness of the legal procedure.

MR. CHAIRMAN: The learned Counsel has brought this point to the notice of the Committee and we will consider it. Now you can take over your next point.

SHRI M. SATYANARAYAN RAO: You have suggested some amendment. What have you to say in that respect?

SHRI SHRI CHAND GOYAL: Sir, my final suggestion is regarding Order V 'Issue and Service of Summons'. We see that clever respondents manage to delay the service by paying something to the Server and they manage non-service of the summons. Therefore, if we make a provision of service by registered post, that should be considered to be good enough.

SHRI RAJDEO SINGH: Parties be held responsible for bringing their witness in the Court.

SHRI SHRI CHAND GOYAL: This is good, Sir.

SHRI M. C. DAGA: It is now provided at page 21 of the Bill:

"The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 199 (both inclusive), also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept the service at the place....."

SHRI SHRI CHAND GOYAL: Is it in addition?

SHRI M. C. DAGA: What you have said, that will serve the purpose.

SHRI SHRI CHAND GOYAL: Sir, it is a good suggestion that the responsibility must be of the party. When he thinks that it is the headache of the Court, he manages that summons are not served and sometimes it takes 1-2 years.

If they refuse to come, is it expected of them that they will depose in favour of the party at whose instance they refused to come.

SHR V. C. KESAVA RAO: If they come to Court they may give evidence.

SHRI SHRI CHAND GOYAL: Service will be effected by the Court. But the responsibility must be thrown on the party. He can say that unless the Court summons him he would not go. That is understandable. But service having been effected, this is the duty of the party to produce them. This is all I had to submit.

MR. CHAIRMAN: Your evidence seems to have two parts. In one part you have supported the measures being taken/amendments proposed in the Bill. In the second part you have

raised certain objections and have suggested certain improvements. If you send us within ten to fifteen days which section|clause|rule you would suggest to be improved, it would be a great help to the Committee.

SHRI SHRI CHAND GOYAL: I will do it, Sir.

May I make one more submission. You are proposing to do away with the L.P.A. i.e. appeal against single Judge to a Bench. In the Supreme Court, these cases are heard by two Judges/Bench. Now that we are doing away with this procedure, we may propose that initially also these cases be heard by two Judges.

MR. CHAIRMAN: We will welcome a suggestion from you. You may send us your written comments about the modifications|improvements that you want to be made. I would put you a question relating to Section 115. It has been claimed that the provision of Section 115 is covered by article 227 of the Constitution. They do not say that this section is not necessary and may be omitted. In the proposed Bill it is sought to be omitted. We are very much concerned about it. We want to be clear about it. Your comments about this section will also be welcome.

SHRI SHRI CHAND GOYAL: Alright Sir.

SHRI M. C. DAGA: Did you apply your mind to the report of the Law Commission regarding Section 115 when you were holding the same view?

SHRI SHRI CHAND GOYAL: I did not apply my mind to article 227 of the Constitution. I concentrated mainly on the causes of injustice. If section 115 remains in existence cases of injustice can be set right. I do not consider that article 227 of the Constitution can serve the purpose which is being served by Section 115 of the Code of Civil Procedure. This is my view. Since the Chairman has directed me, I will make further study and send a note in this respect to the Committee.

SHRI RAJDEO SINGH: Are the arbitration proceedings becoming popular with the parties?

SHRI SHRI CHAND GOYAL: No, Sir.

SHRI RAJDEO SINGH: To avoid a lot of bitterness in the parties, would you suggest something so that the arbitration proceedings become popular with the parties.

SHRI SHRI CHAND GOYAL: It will be a very good thing if arbitration proceedings become popular. Arbitrators are honest men. They are in the know of facts. In the Courts, people can tell lies and give false evidence. A person who acts on the site knows the conduct of the parties better. But we find that this has not become popular.

SHRI M. C. DAGA: In Uttar Pradesh and Bihar, the powers under section 115 of the Code of Civil Procedure have been entrusted to the District and Lower Courts. Do you appreciate it? Their argument is that it will save expenditure and delay. As soon as a Munsif passes a judgment, they can go to the District Court.

SHRI SHRI CHAND GOYAL: Sir, I do not know anything about those Provinces. But so far as our State is concerned, the reputation of the Subordinate judiciary is not in very high frame. Either we have to create some sort of All India Service, like Indian Administrative Service and young men are recruited. They will reach the High Cout within 20 to 25 years. He will feel satisfied. But here we find briefless lawyers being appointed High Court Judges over-night. Those lawyers who through their practice earn 10 to 15 thousand rupees per month are either not willing to become Judges or they are not offered. Faith in judiciary is a must for smooth working of democracy. I

think it is our duty to place before this august body all the facts. It will not serve a useful purpose if we hide something.

SHRIMATI T. LAKSHMIKANTHAMMA: You have said that brifless lawyers are appointed as Judges. Is it correct?

SHRI SHRI CHAND GOYAL: I told it to the Chief Justice of the Supreme Court of India that appointments are not being made on merit. These are being made on considerations other than merit. This is very unfortunate. Some of those Judges are making fool of themselves on the High Court Benches.

SHRI M. C. DAGA: After retirement they are given Govt. Jobs.

SHRI SHRI CHAND GOYAL: That is also very bad.

MR. CHAIRMAN: This has been admitted by the Judges of the Supreme Court also that some of their colleagues are not upto the mark.

SHRI SHRI CHAND GOYAL: I may not bring in politics. After the supersession of the three Judges of the Supreme Court, faith in judiciary is shaking from day-to-day. Those who flatter the Chief Justice or p. v frequent visits to their places are elevated to the Benches.

SHRI M. C. DAGA: There should be no court fee at all. What do you say about it?

SHRI SHRI CHAND GOYAL: Like free education and free medical aid, it is the duty of a welfare State to provide free justice to public.

MR. CHAIRMAN: We are grateful to you for your valuable suggestions. I can assure you that our Committee will be benefited by your experience in the previous Committee as well as by the evidence that you have given. We will consider it very carefully.

SHRI SHRI CHAND GOYAL: Thank you, Sir, I am grateful to all the members of this Committee.

[*The witness then withdrew*]

III. Shri Harbhagwan Singh, Advocate

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: I welcome you on behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI HARBHAGWAN SINGH: Sir, I have no objection to what you have read out.

MR. CHAIRMAN: You have not sent us any written memorandum. You are welcomed to give your evidence now.

SHRI HARBHAGWAN SINGH: First of all I would like to say some thing about Section 100 of C.P.C. It is under this Section that second appeals lie to the High Court. To my mind the jurisdiction of the High Court under Section 100 of the C.P.C. should be widened rather than restricted. Especially in those cases where the trial court and first appellate court differ on facts, appeal should lie to the High Court on facts also. In those cases where there is concurrent finding of two courts on fact, the present jurisdiction of the High Court should be maintained.

MR. CHAIRMAN: You do not agree with the proposed new Section 100.

SHRI HARBHAGWAN SINGH: Certainly not. I am saying just the contrary. Here they have restricted the jurisdiction of the High Court. To my mind it should be widened.

MR. CHAIRMAN: Do you mean to say that the original Section 100 of the C.P.C. should be expunged.

SHRI HARBHAGWAN SINGH: Sir, it should be amended.

MR. CHAIRMAN: You have said that the scope of Section 100 should be widened. In what manner should it be widened?

SHRI HARBHAGWAN SINGH: Where the two lower courts *i.e.*, the trial court and first appellate court have differed on question of fact, appeal should lie to the High Court on fact also in addition to law.

MR. CHAIRMAN: Will you please send to the Committee a written note in this respect.

SHRI HARBHAGWAN SINGH: I will send it.

MR. CHAIRMAN: What is your next point?

SHRI HARBHAGWAN SINGH: My next point is regarding Section 115. To my mind it should be retained. For instance if at an initial stage some illegality or some material irregularity has been committed by a court and the High Court is not approached, then in the end it will be very difficult in most of the cases to remedy that mistake which has been committed in the initial stages. For instance, some objection regarding territorial matters or jurisdiction of the court has not been decided or it has been wrongly decided or the onus of proof has been wrongly put on a party, then if it is to be heard finally in appeal and the court feels that mistake was committed, then the entire proceedings shall have to be quashed. It means lot of expense for the parties and lot of difficulty for the litigants.

MR. CHAIRMAN: Since the remedies which are available under Section 115 of the C.P.C. are also available under Article 227 of the Constitution, it is proposed to omit Section 115 of the C.P.C. What you have to say about it.

SHRI HARBHAGWAN SINGH: Sir, Article 227 of the Constitution provides extraordinary constitutional remedy. It is not a remedy which should be resorted to in every matter. The Code of Civil Procedure should be self-contained. Moreover the scope of Article 227 of the Constitution is narrower than Section 115 of the C.P.C.

MR. CHAIRMAN: If Section 115 of the C.P.C. is dropped will there be any material difference as against Article 227 of the Constitution of India so far as procedure, time and costs are concerned. What is your experience.

SHRI HARBHAGWAN SINGH: So far as cost is concerned, there will not be much difference, but to my mind the jurisdiction of the Court under Section 115 of the C.P.C. is wider than under Article 227 of the Constitution. It is only in exceptional cases that remedy under Article 227 of the Constitution is resorted to. When we are preparing a Code which is supposed to be self-contained, why to keep a lecuna here. This is my view.

MR. CHAIRMAN: So you want Section 115 of the C.P.C. to be retained.

SHRI HARBHAGWAN SINGH: Yes Sir.

SHRI M. C. DAGA: In Uttar Pradesh under Section 115 power has been entrusted to District Court.

SHRI HARBHAGWAN SINGH: I agree that this power can be entrusted to the first appellate court.

MR. CHAIRMAN: What is your next point.

SHRI HARBHAGWAN SINGH: My next point is about abatement. There have been some amendments about abatement in the rules made by our High Court. To my mind it should be the duty of the party who wants to be impleaded as legal representative of the deceased party to come forward and put in a petition for being impleaded otherwise he should suffer a decree.

MR. CHAIRMAN: You agree with the rules that have been made by the Punjab and Haryana High Court.

SHRI HARBHAGWAN SINGH: Yes Sir.

IV. Shri C. L. Lakhanpal, Senior Advocate, Chandigarh

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: I welcome you on behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI C. L. LAKHANPAL: Sir, I have no objection to it.

MR. CHAIRMAN: What do you want to say about the amendments proposed in the Code of Civil Procedure (Amendment) Bill, 1974?

MR. CHAIRMAN: What is your next point.

SHRI HARBHAGWAN SINGH: My next point is about Letters Patent Appeal. There is a provision for such appeals under the Constitution. If there are Writ Petitions, then appeal automatically lies as a matter of right. Why should we take away this right under the Code of Civil Procedure. Appeal under Letters Patent will lie only if the Judge who decided the first appeal certifies it to be a fit case for appeal under the Letters Patent. There will be very few Letters Patent appeals. So this provision should remain. It has served useful purpose.

MR. CHAIRMAN: On behalf of this Committee I thank you for appearing before this Committee for giving evidence. I can assure you that we will certainly consider your valuable suggestions.

(*The witness then withdrew*)

SHRI C. L. LAKHANPAL: Sir, what I feel about this proposed Code of Civil Procedure (Amendment) Bill is that it has touched only a fringe of the problem and it does not really solve the whole problem. The real difficulty in the original code of civil procedure is that it was meant for the past when the economy of the country was primarily agricultural and the things could proceed leisurely and cases could be adjourned for months together. People could wait for getting their rights decided for a decade or so. But today we are in an atomic age and this economic age has entered into an atomic age where people want to have their rights decided speedily and their rights should be determined finally within three to four months. The basic procedure has not been altered. Substantial change is required. But the same old thing is there. Plaint is filed. Written statement is given. Issues are framed. Witnesses are summoned and when witnesses do not come for

Examination, the cases are adjourned. So, this proposed Bill will not solve the problem. What I propose today is that once a suit is filed it should be the duty of the plaintiff to get immediate process for serving summons on the defendant|witnesses. The Court should help him in the service of summons. It should take 8 to 10 days. Counsel is engaged. Instead of filing a statement formally in court, the statement should be filed before the time of hearing in the Court. One copy should be kept in the office of the Court and another copy should be delivered to the counsel of the plaintiff. He can immediately file an application in the same way. If both the parties agree, issues may be framed then and there. If they do not agree, a date may be fixed for framing of issues. Once that date is fixed, the process of the Court should be available to the parties for summoning the witnesses, but it should not be responsibility of the Court itself or the officials of the Court to serve the summons. If a particular man avoids the summons, warrants may be issued, but it should be party's duty to see that the summons are being served. Then time should be fixed for the trial.

SHRI M. C. DAGA: It will be difficult in the case of Government servants.

SHRI C. L. LAKHANPAL: Sir, the process of the Court should be available for them. So, it must be the responsibility of the party to bring their witnesses to the Court except in the case of Government servants. In their case the process should be served through the Agency of the Court with the help of the party concerned.

SHRI S. K. MAITRA: Summons can be issued through the registered post.

SHRI C. L. LAKHANPAL: Sir, unfortunately, in our country, the postman can record something else for Rs. 5.

SHRI S. K. MAITRA: A provision is there in this connection.

SHRI C. L. LAKHANPAL: Maybe but once the report of the postman is there that is enough. The postman can record that he has refused or something else.

So, what I was submitting is that at this stage some drastic overhaul of the Code is required. As far as the trial of the suit is concerned, what happens is that. 50 cases are listed before a Sub-Judge. When the turn of the case comes the reader is obliged or somebody's palm is greased for good or bad reason. In this way, the clever defendant can easily delay the case for a couple of years. I am aware of cases where suits were filed in 1967 and we have not yet gone into framing of issues.

SHRI M. C. DAGA: It all depends upon the ability of the Judge. If there is a competent judge who can deal with the case quickly.

SHRI C. L. LAKHANPAL: Sir, there are hundred and one provisions which can be utilized for delaying the cases. An application is given. Order is obtained and those orders do not serve.

SHRI M. C. DAGA: It entirely depends upon the ability and competency of the Judge. If he orders, he should see that his orders have been served. Why should he depend upon the Reader and others?

MR. CHAIRMAN: Your point seems to be that the existing procedure attributes to delaying proceedings. Do you agree with the hon. Member that competence of the Presiding Officer will go a long way in avoiding the delay?

SHRI C. L. LAKHANPAL: Sir, my point is that Munsif or Sub Judge can certainly cut down the delay, but the delay is there. It is true that a very competent judge can perhaps deliver the goods, but even then there are difficulties which have been created by this Code.

MR. CHAIRMAN: So far as the Code of Civil Procedure is concerned in which provisions you would like to make amendments?

SHRI C. L. LAKHANPAL: Sir, I am coming to that.

About adjournment of cases I want to say that no case should be adjourned except in cases of natural calamity or for some unforeseen reasons.

MR. CHAIRMAN: Do you agree with the objects of the Bill or not? You are explaining that the provisions made in the Bill are not adequate. The Committee would very much appreciate if you point out the provision and in what manner you would like to make it?

SHRI C. L. LAKHANPAL: Alright Sir. I now come to the specific provisions. First of all I want to comment on the proposed Section 11-A, clause 6 of the Bill. Part (a) "every proceeding in execution" is alright. So far as part (b) "every civil proceeding other than a suit" is concerned, I would submit that this term "civil proceeding" would require clarification. We do not know what is "civil proceeding". Proceedings before the Administrative Tribunal or Industrial Court are civil proceedings. The term "civil proceeding" is very vague. Supposing the proceedings are to be decided by an Arbitrator. Will that principle of resjudicata apply to this proceeding also? That fact is not clear. The Arbitrator gives an award. He can simply award Rs. 10,000 from the defendant to the plaintiff without giving any reason. The issue may be there but he announces an award and does not give any reason. This matter may have to be examined.

SHRI M. C. DAGA: If a Panchayat gives an award, will it be a civil proceeding or not?

SHRI C. L. LAKHANPAL: Sir, it is not clear whether it will be a Civil Proceeding or not.

SHRI M. C. DAGA: Supposing a Naya Court gives an award. Will it be a civil proceeding or not?

SHRI C. L. LAKHANPAL: Sir, in Hoshiarpur district, this type of litigation is going on. A person says that I am the owner of this mango tree. I am entitled to get fruits from that tree. This matter is in the jurisdiction of the Panchayat. The issue involved is that the land on which the tree is that land belongs to the plaintiff or the defendant. The Panchayat gives its decision. Now will those proceedings be covered by the Civil Proceedings.

SHRI M. SATYANARAYAN RAO: The decision of the Panchayat is not covered by the Civil Proceedings.

SHRI C. L. LAKHANPAL: Are you sure that the Arbitrators' award is being made the rule of the Court or not. There are so many proceedings *i.e.*, proceedings of the Industrial Tribunals, Labour Courts, which are going on in the Civil Courts.

I draw your attention to Explanation No. II, Page 3 of the Bill:

> "In a suit for recovery of money, based on contract, the cause of action shall, in the absence of any term in the contract to the contrary, be deemed to arise in part at the place where the person to whom the money is due under the contract, actually and voluntarily resides, or carries on business, or personally works for gain."

This is some-thing revolutionary. A man sitting in Calcutta or in Madras or in Bombay can file a suit against a man in Chandigarh. The cause of action may have arisen wholly there. It will be deemed to have arisen there. Supposing a suit of only Rs. 200/- is there. The man sitting at Chandigarh has to go to Calcutta and the travelling expenses may come even 3-4 thousand rupees.

SHRI M. C. DAGA: Because it was a case of contract.

SHRI C. L. LAKHANPAL: Sir, For a suit of recovery of money, the contract does provide the cause of action. The cause of action shall, in the absence of any term in the contract to the contrary, be deemed to arise in part at the place where the person, to whom the money is due under the contract actually and voluntarily resides. The cause of action will be deemed to have arisen there.

SHRI M. SATYANARAYAN RAO: There will be difficulty for the plaintiff also. He shall also have to travel from one place to another.

SHRI C. L. LAKHANPAL: At present the provision is that wherever the cause of action has arisen, suit can be filed there. Supposing I have a vengeance against my cousin who is sitting in Madras. I file a suit of five thousand rupees. He has to come to Chandigarh to defend himself and spend 5—7 thousand rupees as travelling expenses. Will it not be a case of abuse. Therefore, I suggest that this explanation should be deleted.

Now I have to say something about clause 8 of Section 21, page 3 of the Bill. Here we are dealing with widening the scope of the *res judicata* also. This matter requires examination because a sub-judge 4.h class, whose jurisdiction is upto Rs. 1000/- he gives a decree of one lakh rupees. The Court is competent because the pecuniary limits of the Court and jurisdiction of the Court are there. The territorial jurisdiction cannot be questioned. At the time, when the suit is filed the amount is one thousand rupees. But later on when valuation is made and the accounts have gone into, it becomes one lakh rupees. No objection has been taken earlier to the pecuniary jurisdiction of the Court because at that time the value was correctly assessed and the decision was *res judicata* also. This clause should be so amended as to provide that type of justice in the jurisdiction of the court.

No objection with regard to Clause 8 (3) page 3 except that there is one typing error 'executive Court' instead of Exective Court.'

Clause 12 I have to say nothing on it. It is correct but this should be 25A and the original Section should also remain. Supposing that a High Court Judge himself feels that this case should go out of the limits of the High Court, why should it be prevented from doing so.

SHRI M. C. DAGA: Suppose the High Court thinks that it is a lengthy case. it should be transferred to another High Court.

SHRI C. L. LAKHANPAL: Sir, I have not come across a single case of this type at the High Court level.

SHRI M. C. DAGA: It has happened in Rajasthan.

SHRI C. L. LAKHANPAL: Sir, it is very exceptional that this power is used. Why should it be taken away from the Judges.

SHRI M. C. DAGA: Supreme Court can transfer case from one High Court to another High Court.

SHRI C. L. LAKHANPAL: Sir, I am not contesting the power of the Supreme Court. That should be there. But why should the power given under the original Section 25 be taken away. Let the powers remain with both. There is another safeguard provided. The High Court can transfer the case to another High Court with the consent of the State Government.

MR. CHAIRMAN: How does the State Government come into the picture in the matter of civil suits between the parties at the time of transfor of the case from one High Court to another High Court?

SHRI C. L. LAKHANPAL: Sir, to that extent State Government may not come into the picture. I agree that the State Government should be kept out of it but the power of the High Court should remain.

SHRI M. C. DAGA: It is written at page 100 of the Bill 'Clause 12' Besides the State Government does not seem to be the proper agency for exercising the power of transfer of cases. Section 25 is therefore being substituted by a new section which provides for the transfer of the power to the Supreme Court. The existing powers vest in the State Government. Further the new section covers the transfer of cases to the High Court from any civil Court. Thus the new section has wider scope.

SHRI C. L. LAKHANPAL: Sir, the intention of the framers of this Bill is to give wide powers to the Supreme Court and take away the powers of the State Government. Let it be so. But my submission is that meanwhile the power of the High Court may not be taken away. You are not adding something to the Section. You are substituting it. New Section 25(A) is being brought. Section 25 is being repealed.

MR. CHAIRMAN: The question is of taking away the power of the State Government to transfer cases from one High Court to another High Court.

SHRI C. L. LAKHANPAL: The original section gives the power to Sta e. The new section provides this power to the Supreme Court.

DR. (SMT.) SAROJINI MAHISHI: Instead of leaving to one High Court to decide if it belongs to the jurisdiction of another High Court, it is better to leave it to the Supreme Court to decide.

SHRI C. L. LAKHANPAL: Is the jurisdiction of the High Court consciously being taken away?

DR. (SMT.) SAROJINI MAHISHI: It is not taking away of power. It is just getting a better authority to do it.

SHRI C. L. LAKHANPAL: My submission is that the power should remain with High Court as well as Supreme Court. State Government should not figure in it. I agree to this extent.

MR. CHAIRMAN: We will consider your suggestion.

SHR C. L. LAKHANPAL: Now I would like to submit about clause 23. In sub section (1) in clause (a), for the words "fifty rupees, for a period of six months, and", the words "one thousand rupees, for a period not exceeding six months, and," shall be substituted. My submission is that 1000 rupees under the present level of inflation is much less. It should be 5000 rupees.

For clause (b) the following clause is proposed to be substituted:

"(b) where the decree is for the payment of a sum of money exceeding two hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:",

It should be deleted. If the decree is Rs. 201, he can be put behind the bars. This limit of 200 rupees is very low. My suggestion is that if a person owes more than Rs. 5000, he may be detained in a civil prison. But below that amount and just for Rs. 200, a man should not be detained in civil prison.

MR. CHAIRMAN: Some improvement is being made. If a decree is less than Rs. 200 there should be no detention.

SHRI C. L. LAKHANPAL: I am opposed to this detention. The minimum limit should be Rs. 5000. Similarly in clause (1A) instead of Rs. 200 it should be Rs. 5000. This will be consequential.

I strongly endorse the omission of Section 80. It is a good step.

In sub-section (2) of Section 82 for the words "such report" the words "such decree or such extended period

as may be fixed by the Court in any particular case" are being substituted. This is a welcome step. But it does not go far enough. The decree should by itself be sufficient information. Government is represented in the Court. Why give power to the Court to extend the period of three months. They can comply with the decree within three months.

MR. CHAIRMAN: We will examine it. Next point please.

SHRI C. L. LAKHANPAL: I would now submit about clause 31. In (1) (b) "...with the leave of the Court, by two or more persons...". I would not say not related to each other as husband and wife. Two persons can file a suit and if those persons are husband and wife, the whole idea is two independent minds consulting each other and deciding to file a suit. The matter may concern public nuisance. These persons not related to each other should be there.

In clause 32, Section 92, sub section (1) for the words "consent in writing of the Advocate-General,", the words "leave of the Court," are being substituted. My suggestion is that it should be "leave of the Court granted after hearing the defendants". *Ex-parte* leave is obtained and suit is filed. Once the defendant is given an opportunity, he should be given an opportunity to oppose the leave also.

My next submission is about Clause 34, section 96. In sub-section (1) of section 96, the following Explanation is being inserted at the end:

> "*Explanation.*—A party aggrieved by a finding of a Court incorporated in a decree may appeal from the decree in so far as it relates to that finding, notwithstanding that by reasons of the finding of the Court on any other issue which is sufficient for decision of the suit, the decree, wholly or in part, is in favour of that party."

This will have further consequences. Even a successful party would be forced to come up in appeal in those very proceedings unless all the issues are decided in its favour in that case. Instead of reducing the litigation in these Courts, it will rather increase.

MR. CHAIRMAN: Your suggestion is that no option should be given to him.

SHRI C. L. LAKHANPAL: Once you give him right of appeal on a particular finding, he is forced to come up in appeal. Because of this reason I am against it. Now I come to clause 34 of the Bill. It is provided in this Clause, "No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small clauses, when the amount or value of the subject-matter of the original suit does not exceed three thousand". In my opinion the limit should be one thousand rupees and not three thousand rupees.

Now I turn to Clause 37 of the Bill. It is written therein as under:—

> 'Provided that nothing in this section shall apply to non-joinder of a necessary party."

This provision will create unnecessary complication. This provision is, therefore, not necessary.

Now I come to the main Section 100 of the C.P.C. Here much has been said. This is a very controversial matter. It is provided in Clause 39 of the Bill as under:—

> "Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court certifies that the cases involves a substantial question of law."

The history of this case is that during the British Regime courts were presided over by Judges who were not very much conversant with local conditions or type of witnesses appearing before them and they thought they should confine themselves to question of law. Now the situation has changed. The High Court is presided over by Indian Judges. They understand local conditions and the type of witnesses they examine. To tighten this clause and say that even on question of law, appeal will only lie to the High Court if it is certified by that Court that the case involves a substantial question of law, I think this is wholly uncalled for. What we fear is, unfortunately, we do not have that standard of Subordinate Judges which this new clause envisages. In most cases appeals are decided by Senior Sub-Judges. They are from the cadre of Subordinate Judges. It means that appeal will be final because High Court will not certify in 99 per cent cases.

MR. CHAIRMAN: It means you are opposed to this new Section 100.

SHRI C. L. LAKHANPAL: I am opposed to this. The right of appeal should not only be confined to question of law but it should be extended to question of fact also.

MR. CHAIRMAN: So far as new Section 100 is concerned you are totally opposed to it. You have vehemently argued in favour of retention of Section 100 with modification. You also want that it should be specifically provided that second appeal will lie on question of fact also irrespective of the fact whether the Judges below have given concurrent finding on facts or not.

SHRI C. L. LAKHANPAL: In cases where the finding is not concurrent, the finding of fact should be particularly gone into by the High Court. In cases where the finding is concurrent, the second appeal should be entertained in certain specified circumstances.

MR. CHAIRMAN: What have you to say about Clause 40 of the Bill i.e., proposed new Section 100-A.

SHRI C. L. LAKHANPAL: The provision of Letters Patent Appeal should remain. Letters Patent appeal is not competent unless the Judge who decided the appeal certifies that it is a fit case for appeal under the Letters Patent. Therefore, that restriction is already there.

MR. CHAIRMAN: What have you to say about Section 115 of the C.P.C.

SHRI C. L. LAKHANPAL: I am opposed to the idea. It is true that Section 115 is often abused. This is true it is used for delaying proceedings. To take away Section 115 totally will be too drastic a remedy which is worse than the disease.

MR. CHAIRMAN: You want Section 115 to be retained in modified form.

SHRI C. L. LAKHANPAL: It should be retained as it is. The courts should be more strict about Section 115.

MR. CHAIRMAN: Since Article 227 of the Constitution of India provides the same remedy which is provided by Section 115 of the C.P.C., what is the necessity of retaining the latter.

SHRI C. L. LAKHANPAL: The remedy provided by Article 227 of the Constitution is all together a discretionary remedy and that too is confined to the superintendence of the Court. The High Court may refuse to exercise power under Article 227 of the Constitution of India.

MR. CHAIRMAN: So, you want Section 115 of the C. P. C. to be retained.

SHRI C. L. LAKHANPAL: Sir, although there is a little over-lapping between Section 115 of the C. P. C. and Article 227 of the Constitution still I want Section 115 to be retained

Sir, Section 132 has been proposed to be omitted. Right of exemption from personal appearance in the Courts may not be given to the advanced women but it should be there for the women of backward areas like some part of Haryana. You may specifiy some area in this respect. This right of protection should not be taken away. Now I come to the proviso of rule 9. Rule 9 reads as under:—

> "No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

The proviso which has been added to this rule is like this "Provided that nothing in this rule shall apply to non-joinder of a necessary party." In this connection may submission is that the opportunity should always be given to plaintiff to bring the necessary party on record.

MR. CHAIRMAN: Should this proviso go?

SHRI C. L. LAKHANPAL: Yes Sir, this proviso should go and the opportunity should be given to the plaintiff to bring the necessary party on record.

Now these orders from 5 onwards require entire redrafting because in this connection I have said at the outset that it should always be the responsibility of the party to have the opposite party served the summons. He may obtain the assistance of the Court. The delay should be cut down.

MR. CHAIRMAN: You have stated that the Code requires lot of modification. It is possible for you to point out the improvements which you want to make in the Code and send the same to the Committee in writing. The proposal should be concrete and send the same to the Committee within a fortnight.

SHRI C L. LAKHANPAL: Alright Sir, I will send the written reply within 15 days.

SHRI M. C. DAGA: I think both the parties should be called and there should be pre-trial conferences between the parties before entering the trial and settle the matter.

SHRI C. L. LAKHANPAL: This will be a compromise. It is a good move if it materialises. I think, we cannot make a provision in the Code in this regard.

SHRI M. C. DAGA: We can deal with such cases of family matters.

SHRI C. L. LAKHANPAL: Sir, in family matters the disputes are of peculiar types. There is some sort of sweet hostility between the parties. They love each other and they hate each other. There it may be possible and I have tried this in many cases.

SHRI M. C. DAGA: It has been mentioned at page 14 of the Law Commission Report that "In America the same object is achieved by what are know as pre-trial conferences. The relevant rule relating to pre-trial conferences is in the following terms:—

> In any action the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider—
>
> (1) the simplification of the issues;
>
> (2) the necessity of desirability of amendment to the pleadings;
>
> (3) the possibility of obtaining admission of fact and of documents which will avoid unnecessary poor.
>
> (4) the advisabilty of a preliminary reference of issues to a master of findings to be used."

There are some provisions under Order XXXIIA at pages 63-64 of

the Bill. in connection with the above said matter. So, it is possible for the Court to assist the party of going in for a settlement instead of going in for the trial. The Judge can sit and discusss the whole matter. He can examine the documents and the relevant statements if recorded and then can settle the issue.

SHRI C. L. LAKHANPAL: If he is honest then he can settle it.

MR. CHAIRMAN: The Hon. Member draws your attention to the Report of the Law Commission and the provisions at page 64 of the Bill for the pre-trial conferences with a view to arrive at the settlement of cases between the parties. You should apply your mind whether you agree to it or not and send the same to us along with the other modifications which you want to make in the orders of the Bill in writing.. .and we will examine this.

SHRI C. L. LAKHANPAL: Alright Sir. I will send the reply.

MR. CHAIRMAN: If you have any written reply to this questionnaire, you send us alongwith other notes.

SHRI C. L. LAKHANPAL: Right, Sir.

MR. CHAIRMAN: Will it be possible for you to come to Delhi on the 16th June?

SHRI C. L. LAKHANPAL: Yes, Sir. I can come. The High Court is closed now-a-days.

DR. (Smt.) SAROJINI MAHISHI: Send your suggestions earlier so that a copy may be circulated amongst the Members.

SHRI C. L. LAKHANPAL: Alright, Sir.

[The witnesses then withdrew]

V. Shri S. K. Jain, Advocate, Chandigarh

[The witness was called in and he took his seat]

MR. CHAIRMAN: I welcome you on behalf of this Committee for giving evidence before us. Before you get your evidence recorded, I would like to make it clear that the evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential I would also like to make it clear that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. K. JAIN: Sir, I have no objection in this regard.

MR. CHAIRMAN: You have sent us a written memorandum also.

SHRI S. K. JAIN: Yes, Sir.

MR. CHAIRMAN: That memorandum has been circulated to our Members and we have gone through it.

SHRI S. K. JAIN: Sir, with your kind permission I want to emphasise two points. This C. P. C was enacted in 1859 by the British Government and I think at that time the object of the enactment of the legislation was to strike at the morality of the Indian people. The foremost object of the legislation should be to instil confidence in the general public and to raise their moral standard. I think and I very respectfully submit that the present C. P. C. and the amendments do not serve these objects. The present C. P. C and the amendments suffer from the same infirmity. I have been practising at the Bar since long and I say without fear of contradiction that a vast majority of the parties and the Witnesses are false. Unless you produce false evidence rightful claim cannot succeed in a Civil Court. Therefore, it needs complete overhauling. A new C. P. C. should come into existence with two objects. The administration of justice should be cheap, expeditious and it should instil confidence in the general pub-

lic. I wish to add here that there should be an effective check on the judicial pronouncements of a Judicial Officer who gives judgements after getting some bribery, or on the basis or recommendations or for some extraneous considerations. Without fear of contradictions. I can make one submission that at present the moral stature of the Judiciary in Punjab is not very high. There is ample corruption amongst the Judicial Officers and their integrity is very much doubtful. If you wish me to illustrate my viewpoint, I may not be able to do it but some times the judgments do speak. Very recently, our High Court has compulsory retired Judicial Officers including District Judges, the reason being that their reputation was not above board.

SHRI M. C. DAGA : You want to say that there is a defect in the procedure and that is why this C. P. C. had failed to do justice?

SHRI S. K. JAIN: Yes, Sir. There is a defect in the procedure. The administration of justice is based on one thing that the fact has to be proved by evidence.

SHRI M. C. DAGA: Is it not dependent on the ability and competence of the Presiding Officers?

SHRI S. K. JAIN: Sir, the Presiding Officer dealing with the case does not know where the truth lies. He has to ascertain the truth. In many of the cases, the witnesses are not present at the time of actual occurrence. So, either there should be an effective check on the witness not to give a false statement or, otherwise, this sysetm has to be scrapped. I can say without fear of contradiction that in civil cases 80-90 per cent witness do not speak the truth. Therefore, I submit that the administration of justice should have two objective i.e. moral standard of the society and an effective check on the deliberations of the Judicial Officers.

SHRI M. C. DAGA: Does this fault not lie on the Bar also. Do you hold them responsible for this?

SHRI S. K. JAIN: Sir, the Lawyers also play an important part in corrupting the morale of the people when they tutor false witnesses. We have to adopt some *via.media* to check the practice which is prevailing throughout the Country.

SHRI MOHAMMED USMAN ARIF: What do you suggest for this?

SHRI S. K. JAIN: Sir, I would submit that the Government should utilise the services of the Public Relations Officers to preach the people by going in the villages and cities not to give false statements for the sake of administration of justice. I hope we can go a very long way to achieve our object. It may take 50 or 100 years but we have to make a beginning on this thing.

MR. CHAIRMAN: So far as your answer is concerned, our question is how to do it. The Law Commission has gone into it several times for amending this Code of Civil Procedure. This Bill is also based on the report of the Law Commision. May I request you to group your ideas. Framing a new code will take lot of time.

SHRI S. K. JAIN: If I do not make any boast give me one clerk, one stenographer, I can give you a complete new Civil Procedure Code in six months time.

MR. CHAIRMAN: You will appreciate that so far as the scope of this joint Committee is concerned in considering this Bill, we have certain limitations. We will surely consider the suggestions that have been put before us by you and by others also.

SHRI S. K. JAIN: That would not be possible. We have to educate the public. Public opinion has to created

amongst the members of the Bar not to indulge in unethical practices.

MR. CHAIRMAN: The time at our disposal is quite limited. I am quite aware that you want to enlighten the Committee on various aspects of the Bill. The whole Committee will be meeting in Delhi on 16th and 17th June, 1975. You may kindly come to Delhi and make your submissions.

SHRI S. K. JAIN: It would be my great pleasure and privilege to place my views before this august body. The present C. P. C. can be cut down to one half without damaging the basic structure of administration of justice. It can be made more expeditious and cheap. It is a heaven for the dishonest judicial officers and dishonest litigants. We have to eliminate it. I want to emphasise on this one point. You have taken away the right of second appeal. It is nothing short of perpetuating corruption in the lower courts. This abolition of right of second appeal will altogether shake the confidence of the general public in the administration of justice, people have confidence in the High Court. My view is that it should be broad-based. More powers should be given to the High Court.

MR. CHAIRMAN: I thank you very much on my behalf and on behalf of the Committee.

SHRI S. K. JAIN: I have to make one more submission. We are here as Advisors to this august body. The invitation letter and the instructions issued to witnesses need a little change. I expect that invitation letters to Advisors would be little more dignified.

MR. CHAIRMAN: I will look into it. Thank you very much.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Monday, the 16th June, 1975 from 10.30 to 12.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Shri Tulsidas Dasappa
7. Shri Dinesh Joarder
8. Shri B. R. Kavade
9. Shrimati T. Lakshmikanthamma
10. Shri V. Mayavan
11. Shri Mohammad Tahir
12. Shri Noorul Huda
13. Shri Rajdeo Singh
14. Shri M. Satyanarayan Rao
15. Shrimati Savitri Shyam
16. Shri R. N. Sharma
17. Shri Satyendra Narayan Sinha
18. Shri C. M. Stephen
19. Shri T. Sohan Lal
20. Shri Sidrameshwar Swamy
21. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

22. Shri Sardar Amjad Ali
23. Shri Mohammad Usman Arif
24. Shri Bir Chandra Deb Barman
25. Shri Krishnarao Narayan Dhulap
26. Shri Kanchi Kalyanasundaram
27. Shri B. P. Nagaraja Murthy
28. Shri Syed Nizam-ud-din
29. Shri D. Y. Pawar
30. Shri V. C. Kesava Rao

31. Shri Dwijendralal Sen Gupta
32. Shri M. P. Shukla
33. Shri D. P. Singh
34. Shri Sawaisingh Sisodia

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary & Legislative Counsel*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

WITNESS EXAMINED

Shri K. C. Joshi, Lecturer in Law, Kurukshetra University, Kurukshetra.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Mr. Joshi, on behalf of myself and members of this Committee, we welcome you to our midst. Before we enter into your evidence, I draw your attention to Direction 58, which says that your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of your evidence is to be treated as confidential. Even then, your evidence is liable to be made available to the Members of Parliament. I hope you have no objection.

SHRI K. C. JOSHI: No, Sir. There is nothing confidential in what I say.

MR. CHAIRMAN: You have submitted to us a written memorandum. You may speak on any of the points raised by you.

SHRI K. C. JOSHI: With your kind permission, I would like to invite your attention to Clause 23 of the amending bill in which section 58 is sought to be modified. What is mentioned in page 7 of the bill is Explained at page 102 thereof. It totally ignores the constitutional philosophy aimed at ensuring liberty to the citizen. I submit that we should reduce the period of detention from six months to 3 months under clause (a) of section 58, and to 3 weeks under clause (b). In fact, there are ample grounds for jeopardizing the liberty of the individual under the wide-reaching arms of the executive in the guise of Defence of India Rules, Maintenance of Internal Secretary Act etc. The period of detention is still kept as six months. I think it should be reduced to 3 months. When the Code was originally framed, we were under alien rule. We should now do some justice to the citizen.

MR. CHAIRMAN: We will consider these suggestions.

SHRI K. C. JOSHI: Thank you, Sir. Now about Clause 27, section 75. The power of the court to issue commissions to perform "any ministerial act' in clause (g) may either be changed into "to perform any other act"; or the word 'ministerial', may be defined. If you look to the dictionary, you would find that the literal meaning given to the word 'ministerial' is different from what that word means under the administrative law. In the CPC, to my knowledge, there is no definition of the word 'ministerial'; and in the Indian Interpretation Act, the General Clauses Act, 1897 the word 'ministerial is not used. We should, therefore, define it ; or we may leave it to the discretion of the court.

MR. CHAIRMAN: These are additional clauses that are proposed in the bill. Your point is that in the proposed clause (g), instead of the words "to perform any ministerial act", the words "any act" should be there.

SHRI K. C. JOSHI: Or, the word 'ministerial' in this context, should be defined.

MR. CHAIRMAN: This is in regard to the appointment of a commission. The existing provision under section 75 provides for examining any person, making a legal investigation etc. You want that either the word "ministerial" should be defined or the word "ministerial" should be deleted.

SHRI K. C. JOSHI: Yes. Instead of "ministerial act', it should be "any other act".

MR. CHAIRMAN: You want to amplify the scope.

SHRI K. C. JOSHI: It is for the consideration of the Committee.

SHRI M. C. DAGA: I could not follow.

SHRI K. C. JOSHI: The word "ministerial" in sub-clause (g) of Clause 27 of the Bill is an ambigous one. If you look to the literal meaning of the word in the dictionary, it is something different i.e. referring to the Government etc. If you look to the administrative law books, the "ministerial act" is that act where there is no discretion involved. The C.P.C. does not define the word ",ministerial" neither in the Act nor in the Bill. If there is no definition, then the general rule of interpretation is to look to the General Clauses Act. That is also silent about it. Therefore, my suggestion is that either the word "ministerial" should be defined in the Bill itself or instead of "ministerial act", it should be "any other act".

SHRI SAWAISINGH SISODIA: If that suggestion is accepted, it will widen the scope. I do not think there will be any necessity of sub-clauses (e) and (f) also.

MR. CHAIRMAN: We will see that it at later stage.

SHRI K. C. JOSHI: If you think that this is widening the scope, then you may define the word "ministerial" in the Bill. Otherwise, it will be open to wide interpretation. There should be a definite meaning given to the word "ministerial" in the Act. It should be defined and made clear. Otherwise, the courts may interpret it in different ways.

MR. CHAIRMAN: We will examine that.

SHRI K. C. JOSHI: Now, I come to Clause 28, Section 80 CPC.

I would like to invite your kind attention to the fact that I am not a practising lawyer but an academic lawyer. The CPC is known more to the people who are practising in the courts. I discuss the subject in the class. From that point of view. I am making some of these suggestions.

As regards Clause 28 Section 80 CPC,

SHRI DWIJENDRALAL SEN GUPTA: Mr. Chairman, Sir, we just now put some questions on item No. 7 of his memorundum. He has now gone over to item No. 8. What about item No 6? He has not said about that. I want to put some questions on that.

MR. CHAIRMAN: There is item No. 6 of your memorandum regarding sub-clause (1A), Clause 24. What about that?

SHRI K. C. JOSHI: As I already submitted, I had left these points to my colleague, Shri S. K. Singh. I think, he must have taken them up. I am only taking up those points which concern me.

MR. CHAIRMAN: Mr. Sen Gupta, this is a joint memorandum. Mr. S.K. Singh appeared before the Committee at Chandigarh. He is confining to the points which Mr. Singh did not refer to.

SHRI DWIJENDRALAL SEN GUPTA: As regards this, he is not offering any comment or clarification

SHRI K. C. JOSHI: I am not able to offer any comment or clarification.

MR. CHAIRMAN: Mr. Joshi, as regards item No. 8 of your memorandum, you have welcomed this deletion.

SHRI K. C. JOSHI: The removal of the incongruous provision contained in section 80 of the C.P.C. is heartening, but the spirit of the reform has not come up enthusiastically. The purpose of the notice under section 80 is "to make amends or settle the claims', but this purpose has been defeated (Law Commission of India, Fourteenth Report, pages 475. 76 and Twenty seventh Report, pages 22 and 38). It has been used as a technical device to defeat the just claims of citizens (Union of India vs, Chattar Singh, A.I.R. 1973 P & H 339. In this case, notice under section 80 was not given to the Post Office Saving Bank Account Clerk for the wrong payment from the pass book of the respondent. The High Court dismissed the suit on this ground. It is, therefore, difficult to justify the existence of clause 101(2) (h) which provides that the omission of section 80 shall not apply to or affect any suit instituted before the commencement of Clause 28.

Secondly, section 80 which puts much hardship on the litigant in civil cases where the Government is a party, should be deleted straightaway pending comprehensive changes. The C.P.C. (Amendment Bill has been lingering since 1968, and it may take some time more. When many far-reaching changes can be introduced even by ordinances, there does not seem to be any convincing reason to ignore the genuine difficulty of the citizens in a democratic set-up.

MR. CHAIRMAN: Would you consider, as an independent academician of civil law, that the Government, being a complicated and complex machinery, requires little more time than an ordinary individual citizen in arriving at a settlement of the Government so desires? Even conceding that in most of the cases the purpose of section 80 has been defeated, would you agree that this is a healthy provision to give an opportunity to the Government to settle a claim before a suit is actually instituted to avoid costs of litigation etc?

SHRI K. C. JOSHI: I agree with you fully.

SHRI M. C. DAGA: What was the decision in the case cited by you?

SHRI K. C. JOSHI: A person had deposited money in the Post Office Savings Bank and his passbook was misplaced and the money from his account was wrongly withdrawn due to the negligence of the post office clerk. But the postal authorities said they were not liable. He went to the court and the court dismissed his claim merely on the technical ground that the Government employee should have been served a notice of two months under section 80. This is how the just claims of the citizens are defeated. Therefore, I suggest that this provision should be deleted before the comprehensive changes contemplated are introduced, and it should also be given retrospective effect, so that pending claims may not be defeated.

MR. CHAIRMAN: In conformity with the first para of your memorandum, you suggest that the omission of section 80 should also be given effect to immediately.

SHRI K. C. JOSHI: It is something more than that. The application of this omission shall come into force according to this clause.

You kindly look to Clause 101, sub-clause (2)(h) of this Bill on page 89. It says:

> "The omission of section 80 of the principal Act by section 28 of this Act shall not apply to or affect any suit instituted before the commencement of section 28; and every such suit shall be dealt with as if section 80 had not been omitted."

If you delete this Section 80 today, it shall apply to those suits which are instituted today; it shall not apply to those suits which were instituted earlier. My suggestion is that it should also apply even to those suits which were instituted earlier.

MR. CHAIRMAN: You are objecting to this also. Mr. Daga, are you in agreement with the witness?

SHRI M. C. DAGA: He says that it should be retrospectively applied.

MR. CHAIRMAN: Mr. Joshi, I would like to have your opinion on a piece of legislation which may be very healthy and necessary and yet, for some reason or other, might not have been implemented or brought into operation. For instance, there are Untouchability Act and Prohibition Act. There are so many social legislations that have been enacted, but they have not been brought into operation. There are other reasons for omission of this clause. Supposing it is implemented and the legitimate claims of the citizens are settled because of this notice, I want to know whether that provision should remain or should be omitted? I am trying to draw your attention on the analogy.

SHRI M. C. DAGA: In 95 per cent cases, people always serve notices.

SHRI K. C. JOSHI: It is the will of the people that matters most in modern times. First of all, we have to assess the need of the people whether they like it or not. Therefore, if we simply enact a law, that is not sufficient. I agree with you.

MR. CHAIRMAN: We will examine it.

SHRI K. C. JOSHI: (*Clause* 3) (*section* 86).

The basic object of change appears to substitute state for ruler because of the changed political philosophy of the contemporary era (*vide* notes on clauses at p. 104). While the change is desirable, it might raise certain problems. States are represented in international relations either by a ruler as in U.K. or by elected heads as in India or U.S.A. or by self imposed heads as in case of dictatorship. Ruler or head of the State, therefore, are synonymous in modern international society so far as their privileges and immunities are concerned. Therefore, instead of changing the word "ruler" to "state", it may be changed to 'head of a state'. This may be more appropriate. There are many cases. For example, what had happened in a case quoted in American Journal of International Law, pages 100-101 (1968). In this case some wrong was done to an aircraft belonging to a corporation in the United States. Subsequently, they instituted a suit against King Faisal, who was the Head of the State. Of course, when the suit was instituted, the diplomatic agent of Saudi Arabia represented to the Federal Government by saying that the ruler was immune from the jurisdiction of the Municipal Court. As hon. Members know, there are two types of courts in the United States —the State Courts and the Federal Courts. In that case, the Secretary of State had issued a letter to the court on the basis of which exemption was granted. The international law recognises the immunity of the ruler as a head of the state. No distinction is made between a ruler and a head of a state in respect of their appointment or election. Therefore, my submission would be that

instead of changing the word 'ruler' to 'state', it may be changed to 'head of a state', whether it is a ruler or elected head.

Additionally a state may pass through a stage where there may be two claimants; one, in *de facto* control and other in exile. In the case of Cambodia, it has happened before recent changes took place. If immunity is confined to a State and not to a ruler or the head of the State, it may be anomalous. A country may like to grant *de jure* recognition to the ruler in exile and *de facto* recognition to the ruler in factual control of the State concerned because that is also possible.

Then, in the modern international law, there are non-State entities also. I am a teacher of international law and this has occurred to me and I just submit it for the consideration of this august body. For example, there are non-State entities, like the United Nations Organisation (U.N.O.), the International Court of Justice (I.C.J.) the I.L.O., the W.H.O. which have assumed very much importance in the international relations. Therefore, a mention about the position of such entities in clause 30 may be considered. They could be covered by special enactment or governed by special law or whatever it is.

MR. CHAIRMAN: Wherether the word "State" will not include the head of the State. When the State is sued, it will be sued in the name of the head of the State or other persons who represent the State In the Bill, it is proposed to make the scope wider by bringing in the State instead of the ruler of the State. If you say that it should be the head of the State, it cannot be uniformly applicable to all the States.

SHRI K. C. JOSHI: Suppose there is a State of which "Mr. "X" is the ruler. Now, due to some turmoil or revolution, he leaves the country. Our country wants that we must keep relations with that person because of diplomatic reasons. But he is not having the control over that State. Our nationals may be there: our properties may be there. Therefore, we have to give *de facto* or *de jure* recognition to him. Unless and until *de facto* or *de jure* recognition is granted to a person, we cannot ask him to take care of our people and property. You are confining it to the State. But he does not represent the State. That is my point of view.

MR. CHAIRMAN: I draw your attention to the 54th Report of the Law Commission, p. 61, recommendations, for change in terminology.

SHRI K. C. JOSHI: I agree with that. In fact, I discussed the matter with a Member of the Law Commission. He said that this was a complicated matter and, therefore, they did not consider it in detail. I think, this is a practicable thing. India may recognise a particular ruler and he may leave the country and, for diplomatic reasons, we may still continue to say, he is the ruler. Unless and until we recognise that ruler, some difficulties may arise. So, I request that this august body may examine this point also.

MR. CHAIRMAN: We will examine that.

SHRI K. C. JOSHI: I come to Section 87 which is not covered in this Bill. In view of the proposed changes in Section 86, consequential changes might be necessary in Section 87. It provides that a ruler shall be sued in the name of his State This "shall" has been construed as mandatory, according to A.I.R. 1938, P.C. 65. When you are deleting the word "ruler" I think, a suitable change should also take place here. This is only a consequential change.

MR. CHAIRMAN: What about Section 87A?

SHRI K. C. JOSHI: I have not examined that.

Then, I come to Clause 41, Section 102 C.P.C. This is only a formal thing. The limit of Rs. 3,000 proposed appears to be based on the recommendation of the Law Commission *vide* their 27th Report, p. 17 made in 1964. Since then the value of the rupee, as we all know, has gone down considerably. Hence, this limit may be enhanced to Rs. 5,000.

Coming to Clause 47, Section 132...

SHRI DWIJENDRALAL SEN GUPTA: Why do you make no comment as regards the old Section 115, our proposed Clause 45?

MR. CHAIRMAN: The learned witness, Mr. Joshi, has twice drawn our attention to this fact that he is making submissions on the points which he has studied. He does not want to refer to any other points mentioned in the Memorandum. He has left those points to his other colleague

SHRI DWIJENDRALAL SEN GUPTA: As regards item 8 of the Memorandum, he says, "It is gratifying ..." As regards item 10, he says, "We welcome ...". As regards the old Section 115, Clause 45, he might say, "It is gratifying or welcome or unwelcome ...". He should make some comment on it. Why is he silent about that?

MR. CHAIRMAN: Kindly refer to p. 14, Clause 45.

SHRI M. C. DAGA: He, also, agrees with the Bill.

MR. CHAIRMAN: That is your view-point. Mr. Gupta wants to know specifically whether the learned witness has anything to say in this regard.

SHRI K. C. JOSHI: Section 115 may be omitted.

MR. CHAIRMAN: That is what is proposed in the Bill. Have you examined this Section?

SHRI K. C. JOSHI: We have not made any comment on it.

MR. CHAIRMAN: The Hon'ble Member there has drawn your pointed attention to the fact that there is a proposal here to omit Section 115 and has asked whether you want to make any comment on it.

SHRI DWIJENDRALAL SEN GUPTA: He has made a comment about Clause 8 and about 12, that it is welcome. So, here also he might say whether it is welcome or unwelcome. gratifying or not gratifying etc.

MR. CHAIRMAN: Let the learned witness understand your question and give his reply.

SHRI DWIJENDRALAL SEN GUPTA: My question is very simple. You have supported the Law Department in regard to so many Sections and have given your comments also. So, is it your evidence that you have not applied your mind to Section 115? You are a Professor of Law, and that Section is the central point of this Bill.

SHRI K. C. JOSHI: My submission is that Law is such a vast subject and the Hon'ble Member will agree with me that even for a person who teaches law, to know everything is impossible and improbable. Moreover, I would submit to the Hon'ble Member and to you, Mr. Chairman, that I am teaching Administrative Law and International Law. I had submitted my thesis, and in that connection I had occasion to study a report of a Joint Committee of Parliament before which Hon'ble Members like Shri Purshottamdas Trikamdas and Shri Setalvad etc. had placed their views. This prompted me for evidence, but this is the first time that I am appearing before a Committee of Parliament. Even in the subjects I am teaching, *viz.* International Law and Administration, I am not a master; it is very difficult to be a master. This is a subject more

suitable to persons actually practising in the Courts because many things are brought out only through practice. Therefore, I am not claiming to be an expert ...

MR. CHAIRMAN: I think that is sufficient. He has made it clear that he has not applied his mind to the other aspects. He is making his submissions only on those points on which he has comments to offer and I think we should be satisfied with that. Let us go to the next point.

SHRI K. C. JOSHI: I will now go to Clause 47, Section 132. This concerns the appearance of women as witnesses in the courts. Here, I would say that while women have changed their status to a great extent, a lot of them in our country still remain in seclusion. Therefore, compelling them in all circumstances to depose before a court may amount to a revolutionary change. Moreover, a witness should be able to withstand the virulent cross-examination of a lawyer when he is in court. Therefore, my submission is that the change should be gradual and stage by stage. Initially, women who are educated and have entered public life or who are willing to depose before a court of law should be compelled to give evidence. I agree that there is a lot of change in the position of women today; but still, if you go to the villages you will see that they are still illiterate and do not want to give evidence. Even men, for that matter, don't want to go to a court of law and stand in the witness box. Therefore, my submission is that this change should not be applied immediately to all women; only certain selected women should be taken in.

MR. CHAIRMAN: Section 132, as it is worded, is only an enabling provision; it is not compulsory. For those who want to appear before the court, there is no bar, and those who don't want to do so are not to be compelled. So you want this Section to be retained?

SHRI K. C. JOSHI: My submission is that all women should not be under compulsion; those who volunteer may be allowed.

SHRI M. C. DAGA: But the Judge will not be in a position to find out attitude of the witnesses if they don't appear in the court. And after these 27 years, why should there be a distinction between men and women? Even the Prime Minister has appeared before the Court.

SHRI K C. JOSHI: Of course that is a good argument, but may I submit that simply by their appearing before the Court, the Judge will not know the mind of the witness. because going to the court itself is a psychological thing and if they are to face the cross-examination of professional lawyers, I think it becomes very difficult for women. Especially, those from the villages cannot stand this top cross-examination. Of course your point is quite right but, still these 27 or 29 years is nothing; I don t think any important change has come about.

SHRI M. C. DAGA: The Judge must have an opportunity of observing at least the manner or delivery of evidene by a witness. Nowadays, the seclusion of women is completely inconsistent with the social philosophy and the changing customs and manners of the present day. I think no serious hardship is likely to be caused by the removal of the present exemption.

SHRI K. C. JOSHI: I agree with you fully, but let us not ignore the practical part of it. Theoretically, there are many things; but look at the actual position of the women in the villages. They don't go out; they are so shy. Even if they know, they don't want to depose before a court. This is only my submission and it is not necessary that it should be accepted; but that is what I feel.

Now I will pass on to the next point, Clause 48 (Sec., 135A), I apologise to the Hon'ble Members for saying something in opposition regarding the imprisonment of Members of the elected bodies. Section 135 of the C. P. C. *inter alia* provides for exemption of Members of Legislatures and Parliament from arrest and detention during the period of 14 days before and after the sitting of the House. This period is being enhanced to 40 days simply to bring the practice in conformity with that in the House of Commons. The reason for putting 40 days in England probably was that it was the actual time which was required to reach Westminster from the farthest place [Goudy v. Duncombe (1847) I Exch. 430:435 per Chief Barron of Exchequer chamber]. But the circumstances have changed and even in England the thinking has been to limit the privileges. Here I would invite your kind attention to Bernett Cocks in Foreword to the *Law of Parliamentary Privileges in U.K. and in India* by P. S. Pachauri (1971). Therefore, there is no logical reason to extend the period from 14 days to 40 days; in fact, the period should be slashed down to ten days. In India the members can reach the legislative bodies within ten days. To enhance this period to 40 days without any logical reason. is, perhaps, too much.

One aspect of this limit is legislative competence. The subject is covered by entry 74 of List I, entry 39 of List II and entry 13 of List III of the Seventh Schedule,. probably, the Parliament would be competent to enact a uniform law in view of entry 13 of the Concurrent List.

My submission here is that there is no logical reason in saying that, because in the United Kingdom it is 40 days, in India also it should be enhanced to 40 days. If you look to the evolution of British Parliament, you will find that the Parliament there emerged as a representative of the people in the real sense; it had to face a virulent opposition from the absolute monarch and the various instrumentalities created by the monarch. Here the position is different. As I have submitted in my articles relating to privileges of Members of Parliament, I consider these to be essential, but not in this way. A Member of Parliament or Legislature requires the privileges not in his own individual capacity but because he happens to be a Member of Parliament or Legislature. The privileges are given to him, so that he can discharge his Parliamentary functions effectively. There is absolutely no logic in saying that, because it is 40 days in England, here also it should be 40 days. There is no need to enhance it to 40 days; in fact, it should be cut down to ten days.

MR. CHAIRMAN: I am trying to understand you. Your contention seems to be that, even though in the case of British Parliament it may be 40 days, in our country it should not be so, and you have urged that even this period of 14 days is long and that it should be reduced to ten days. You also say that this liability is not as a Member of Parliament but as an individual citizen and. therefore, it should not be a matter of privilege. . .

SHRI K. C. JOSHI: In most cases, what happens is that it is taken as if it is a personal thing and not as a Member of Parliament. I have read in the papers. It is always taken as if it is a weapon which he can apply in all cases. I can understand that, if a Member has to attend a sitting of the Parliament, he should get precedence in air-booking; but if he goes there to meet his friend casually and the other person has to reach his destination because somebody is seriously ill, he should not be given precedence even though he may be a member of Parliament. He should himself realise this. It may be 14 days or even 20 days in deserving cases. But you cannot make it 40 days. There is no logical reason for that. The privilege may be used, but it should not be abused. In jurisprudence, there is no right

without a duty. Every member of Parliament or Legislature should know what his duty is.

DR. SAROJINI MAHISHI: Our offical in the Law Ministry wants to know about the provisons in the Constitution on this.

SHRI K. C. JOSHI: I have already made my submission regarding legislative competence. Articles 105 and 194 deal with privileges, power and immunities. The Members are given freedom of speech in Parliament, etc. In other respects, it is said that the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution. These are not codified because they were in a hurry. Anyway, this is a wider subject. My only point here is this. Theprovision of 40 days is there in England because the logic was that it was the actual time which was required to reach Westminsters. Moreover, as you know, the British people are more conservative.

MR. CHAIRMAN: It is a matter of principle. As a member of Parliament, he has to perform certain duties and, therfore, he should not be brought under arrest for certain days. Your objection is not merely against the increase to 40 days, but you have suggested that it should be reduced. Why not reduce it to nil?

SHRI K. C. JOSHI: Some time has to be given, so that the Members of Parliament may not be debarred from attending the meetings etc. In fact. this convention has been there for a very long time. The King in England never wanted them to be assembled. very long time. The King in England as a convention it has continued. Some time has to be there.

Now my next submission is with regard to Clause 79, Order XXVII Rule 5A is a new clause and it provides that where a suit is filed against a public servant for a tort alleged to have been committed by him in his official capacity, the Government shall be joined as a party. It appears that non-joinder of Government will amount to be fatal to the suit. This is so because the word 'shall' will be construed by the courts as mandatory. It may be difficult for an individual to know whether the wrong done to him by a Government servant is in the official capacity or in his private capacity. The law of Governmental liability in tort is already rudimentary in India. Therefore, it is submitted that a proviso may be added to this rule providing that failure to make the government a party in such cases will not affect the suit.

The word 'shall' will be construed as mandatory by the courts. 'Shall' normally is taken as mandatory; the word 'may' be used.

I would like to make a submission regarding Clause 5B(i). This rule is a welcome addition. But instead of confining it to those cases where Government servant is a party, it should be introduced as a rule of general policy. In some western countries and in the USA, out of court settlement practice has succeeded. I would like to invite your kind attention to 33 US CA Section 596. It provides that where the Government requires private property for public purposes, Government shall in all cases negotiate and only when the negotiations fail, the case would be taken to the court of law. Negotiations by the government in cases of land acquisition have been made compulsory. Such techniques may also be useful in India. If conciliation and pre-trial conferences are introduced as obligatory for suits upto Rs. 1000/-. the delays can be effectively checked. In UP, the percentage of regular suits instituted in subordinate courts in 1949, 1966 to 1968 was 90 per cent, 72 per cent; 79 per cent and 78 per cent respectively. It means, majority of the suits are

upto Rs. 100/-. For this information about U.P., my source is unpublished Ph. D. thesis submited by me on 'Socio-Legal Implications of Vicarious Liability of State for Torts committed by its servants with Special Reference to India' submitted to Kurukshetra University (1974).

Sir, if it is made obligatory that conciliation and pre-trial conferences and negotiations shall take place in suits upto Rs. 1000/-, I think, much of the court work could be reduced. This can be done through various agencies. My submission is that in all cases, where the value of the suit is Rs. 1000/- or less, it should be made obligatory through the provisions of law that it should be tried through negotiations.

That is all, I want to submit.

MR. CHAIRMAN: On behalf of my colleagues of the Committee I sincerely appreciate the co-operation that you have extended to this Committee. The Committee will examine the suggestions that you have made. I thank you again for taking the trouble of coming over here.

SHRI K. C. JOSHI: This was my first chance to appear before the Parliamentary Committee.

MR. CHAIRMAN: We appreciate the labour that you have put in.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

Tuesday, the 17th June, 1975 from 10.30 to 13.00 hours.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri Chandrika Prasad
5. Shri A. M. Chellachami
6. Shri M. C. Daga
7. Shri Tulsidas Dasappa
8. Sardar Mohinder Singh Gill
9. Shri B. R. Kavade
10. Shrimati T. Lakshmikanthamma
11. Shri V. Mayavan
12. Shri Mohammad Tahir
13. Shri Noorul Huda
14. Shri K. Pradhani
15. Shri Rajdeo Singh
16. Shrimati Savitri Shyam
17. Shri R. N. Sharma
18. Shri Satyendra Narayan Sinha
19. Shri C. M. Stephen
20. Shri T. Sohan Lal
21. Shri Sidrameshwar Swamy
22. Shri R. G. Tiwari
23. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

24. Shri Sardar Amjad Ali
25. Shri Bir Chandra Deb Barman
26. Shri Krishnarao Narayan Dhulap
27. Shri Kanchi Kalyanasundram
28. Shri B. P. Nagaraja Murthy
29. Shri Syed Nizam-ud-din
30. Shri D. Y. Pawar
31. Shri V. C. Kesava Rao

32. Shri Virendra Kumar Sakhalecha
33. Shri Dwijendralal Sen Gupta
34. Shri M. P. Shukla
35. Shri D. P. Singh
36. Shri Sawaisingh Sisodia

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary & Legislative Counsel.*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

WITNESSES EXAMINED

I. Shri S. K. Jain, Advocate, Chandigarh.

II. Shri Jinendra Kumar, Advocate, Chandigarh.

I. *Shri S. K. Jain, Advocate, Chandigarh.*

[*The witness was called in and he took his seat.*]

MR. CHAIRMAN: We heard you at Chandigarh. Although this is a continuation, I would like to draw your attention to Mr. Speaker's direction, which governs your evidence. The evidence which you tender will be treated as public unless you desire that all or any part of the evidence is to be treated as confidential. Even though you may desire that to be kept as confidential, that is likely to be made available to Members of Parliament. You have said that you have no objection to any part of the evidence being made public. We have received your supplementary memorandum also. These are being circulated to Members. You may emphasise the salient points and then Members may like to put some questions. The Committee met at Chandigarh and Mr. Jain appeared before us there. We wanted him to come here and he has come now. He has given supplementary memorandum. He is before us this morning to continue his submission before the Committee.

SHRI S. K. JAIN: Thank you, Mr. Chairman and Members of the Committee. At present I would like to emphasise some of the points that I have submitted in my second memorandum. Now one thing is clear. This CPC was given to the country about 116 years ago by a ruling nation to a subject nation. Now the social condition in India is altogether changed and this fact in itself is corroborative of my statement that the Civil Procedure Code given by a ruling nation must undergo complete change, complete overhauling. It should be made consistent with the social conditions. The litigants howsoever respectable he was, was not treated with dignity by the courts. And this is one of the reasons why they took a vindictive attitude and this was taken both by the litigants and the public at large. They never, so to say, cooperated with courts That is the first thing that I would like to submit, Sir. The form of summons issued to witnesses should undergo a complete change. Instead of commanding him to come to the courts, a request should go to him, to help in the administration of justice and if you give such sort of dignified treatment he will certainly coopeate with the courts; he will help the administration of justice and he will not give false statement. So, I

have given in my second memorandum a form in this respect. I have also suggested that the present form of oath may be changed. The present form has lost its meaning. We should have some other effective form of oath and I have suggested that the oath administered to witness shall be, I swear in the name of my religion or in the name of God that I will speak the truth, nothing but the truth, the whole truth and I will not utter a word which is false or untrue. If I do. so, I stand condemned and let the wrath of God almighty fall on me. It may be something like that. And, at the same time, the witness should be given respectable treatment. He should feel that as an Indian citizen, as a free citizen of India, it is his duty to help administration of justice and he should feel that that way it is beneficial to him and to the country at large. If such sort of VIP treatment is given, he will cooperate with courts. Even if he came with idea of giving false evidence he will change his mind. I have already made one suggestion at Chandigarh that Government departments should take steps to educate the public at large. So far as the parties are concerned, at present, I respectfully submit that the system is as follows. When every person goes to Court, he files the plaint. A copy of the plaint goes to the respondent, defendant. He comes to the Court and another date is given for counter application, then another date for statement and sometimes another date for striking out issues. This is the system at present. This entails about 4-5 hearings. I have suggested that all this can be done in one hearing and the superfluous procedure should be eliminated. What I have suggested is that whenever a summon is issued or a copy of the plaint is given to the defendant, a week in advance, he should give a copy of his reply to the plaintiff and his counsel and there should be a mandatory provision that on that date, the Court would record the statements of the parties or the counsels present, strike out issues and at the same time, after striking out issues, ask them to give the names of the witnesses which they want to produce in support of their case. That will eliminate to a very great extent efforts on the part of the parties to give false evidence because nobody would have come prepared for that purpose. They would not be able to contact their witnesses and if at the earliest opportunity we pin them dwon to a certain position, to a very great exent, it will help in eliminating false evidence. This is the suggestion which I would make at present. At the same time, we have to take some deterrent measures for checking this false evidence. For that, I have suggested one thing. The Courts, while recording the statements, should serve a mild warning also that in case they give false evidence, they are liable to be prosecuted. The Civil Courts should be invested with summary powers to punish a person who is giving false evidence. At present, the procedure is too long and too lengthy. We rush to the Courts. Then, there is a very long drawn-out procedure to prosecute the witnesses. Therefore, if we adopt this procedure, just as a provisional measure, I am of the opinion that to a great extent, we shall be able to achieve our objective of eliminating falsehood by parties and witnesses.

The second thing that I would suggest in this is that the present procedure is too lengthy. There is a lot of repetition in the Civil Procedure Code. The addition of two words, definition of the word 'civil' proceedings' as inclusive of proceedings in appeals, suits, [illegible] and supplementary proceedings and one section that the procedure relating to the disposal of suits shall apply, as far as possible, to the disposal of other civil proceedings would eliminate automatically hundred rules in Order XLI and others because Order XLI is more or less a repetition of the order dealing with the disposal of suits.

Then, there is Order XXII in the Civil Procedure Code which is an Order dealing with abatements. 'Aba-

tement' is a technical word which means that if a party to a suit or an appeal is dead and no legal representative has been brought within 90 days, then, the suit or appeal is liable to be dismissed. In fact, according to the latest Supreme Court judgement, ignorance of death is no plea and more or less suits are dismissed as a matter of course. The State Exchequer is the biggest loser in this case. I had a very bitter experience in dealing with a case in which I was appearing on behalf of the Punjab State. The property involved was about Rs. 10 lakhs. The other party died about ten years back, because a case ordinarily does not go before the High Court before ten years with the result that the appeal was dismissed. Private parties somehow or the other are able to know about the whereabouts of the heirs of the deceased party. But, the State does not. Therefore, I have suggested in my previous and second memorandum that this Order XXII dealing with abatement should be completely eliminated and it should be left to the heirs to come on the record. Our Punjab and Haryana High Court has taken a step in this direction and they have amended Order XXII in this respect, of course, not whole-hog but to a great extent. So, I would suggest very respectfully and humbly that this is a negation of Justice, and therefore, Order XXII should be completely scrapped and I would press this point with all the enthusiasm at my disposal.

Now, one of the very dangerous principles which we have suggested in the amending Code is the limiting of the right of first appeal and taking away altogether the right of second appeal in the High Court. At present, the provision of law is that on a question of fact and law, first appeal lies and the first appellate Court is entitled to go into questions of law and fact. But, in the High Court, only on a question of law, appeal lies. Now, both these rights are being taken away by the amending Code. In all cases of the small cause nature, on a question of law only, first appeal is maintainable and not on a question of fact, and the right of second appeal on both, question of law and question of fact, has been taken away with the provision that there should be a substantial question of law. Substantial question of law has not been defined. Here, I must say that in 999 cases out of 1000, the High Courts have almost rejected that no substantial question of law is involved. If the object of the amending Code is to cut down and eliminate litigation, I would suggest two alternatives. One alternative that I would suggest is, as is obtaining in the case of disputes between capital and labour where there are conciliation boards, we can have conciliation courts or arbitration boards. There should be one court in every district where people could go before rushing to the regular civil courts for having their matters decided amicably on a nominal court fee or with very little expense. If we have this system, I am sure 25 per cent of the cases in the civil courts can be easily reconciled and disposed of by conciliation courts or arbitration courts. This is an experiment which I would suggest and it is worth trying.

MR. CHAIRMAN: Mr. Jain, I think your suggestion regarding this conciliation or arbitration boards is a stage prior to the institution of the suit.

SHRI S. K. JAIN: Yes. Let it be optional. If a person, before rushing to the regular civil court, wants to go to a conciliation court, he should be permitted to go. If there is a provision and if people know that....

SHRI M. C. DAGA: It should have unlimited jurisdiction.

SHRI S. K. JAIN: Yes. Or, we can say, with a limited jurisdiction of some cases beyond a certain value. This is a matter of detail. At present, your honour knows very well that the court fee in Punjab and Haryana is very heavy and more often than not, people have not got the capacity to rush to the law courts. If we have

such a system, as I have suggested, people can make use of that by spending a little money and the expenses of the State can be met by certain levies. That would be a better remedy to cut down litigation instead of curtailing the rights of rightful claimants in cutting down the rights of appeals. That is a dangerous precedent, which with all the earnestness at my disposal I will not countenance and I may submit that I have the mandate of the High Court Bar Association to press this point before this august body not to countenance the two provisions of the amendment to sections 96 and 100. Rather our submission is that section 100 should be more broad based.

There was a system prevalent in the PEPSU courts that if two courts disagreed, the right of appeal was not limited to questions of law; questions of fact were also open. A similar provision should be made in the Civil Procedure Code. I already submitted without fear of contradiction that the reputation of the judiciary in Punjab and Haryana is not very high and is not enviable; and taking away the right of first appeal and second appeal will be perpetuating corruption. The only way to give clean administration to the country is to give wider powers to the High Court, the widest possible powers that can be given. Similarly the amended code takes away the right of revision under section 115. More revisional powers should be given to the High Court. In many cases, if these powers are more broad based, justice will be done.

The main object of administration of justice should be to cut down litigation. The object should be to give the due to the rightful claimants and that can be done in some cases, not by the trial courts, not by the first appellate court. I am sorry to say that the vast majority of litigants have lost faith in the integrity of the first court and the lower courts below. It is fortunate that there is some respect for the High Courts still. If the system of administration of justice that is given to the country accelerates or accentuates corruption and immorality, I do not think that the country needs such a system of administration of justice.

In the present state of affairs there is complete protection under the law to the presiding officer, however ill-conceived malicious, wrong or incorrect a judgement may be; it may be the result of graft or illegal gratification. Neither the Government nor the litigant has any redress.. There is an Act which is called Judicial Officers Protection Act which gives complete immunity to all the presuming judicial officers throughout India. I do not want any change in that. What I have suggested, which I would reemphasise, is that if in appeal the first appellate court or the High Court comes to the conclusion that a judgement is the result of graft or illegal gratification the High Court should have power to go into the conduct of the judicial officer after issuance of notice to him if necessary. Such a provision in the CPC will be a great check on the integrity of the judicial officers. Simultaneously I have suggested that if we can take action against litigants against witnesses, why not against judicial officers or lawyers who are known as officers of the court and whose duty is to assist the administration of Justice, and if they are guilty of unethical conduct or professional misconduct. Their cases could also be referred to the High Court or to the Bar Council for suitable action. We must provide drastic remedies in the Act. That is the only way which can act as a deterrent for the public at large and the machinery also, including lawyers, judicial Officers, etc.

MR. CHAIRMAN: You have pointed out in your memorandum and here also that the Code is a very old one and needs modification to suit present day needs. You must have noticed that the Law Commis-

sion in several reports had done that exercise and the present Bill is based on those reports, four of them, the latest is the 45th report.

SHRI S. K. JAIN: With the utmost respect, I should say the Law Commission has not directed its attention towards this aspect at all.

MR. CHAIRMAN: You must have noticed that there is a provision in the Bill for pre-trial conciliation. Would you suggest that this may further be amplified and modified? If the parties come to a settlement that way, the matter ends there; otherwise the other process starts.

SHRI S. K. JAIN: That is the idea.

I have to make one more submission. The CPC is already too lengthy and cumbersome. By this amendment, we are not shortening it; we have made it more cumbersome and more lengthy. I have submitted two draft proposals of amendment of orders 16 and 21 in my second memorandum. I shall of course touch upon this point later on.

MR. CHAIRMAN: You have made another point in regard to the bulk of the judiciary, lower courts. You have suggested some remedies. Apart from that, have you applied your mind how the standard and quality of the lower judiciary could be improved?

SHRI S. K. JAIN: I have something startling to say about that and I will deal with it when I deal with High Courts and delays. Even if you double the High Court judges' salary, first rate people will not be attracted because the disparity between their income and pay of judges is so great.

SHRI SISODIA: You have said that Order XVIII should be completely overhauled because "the present oath administration to witnesses has lost its sanctity and force". What is your suggestion in this regard?

SHRI S. K. JAIN: I have already said that instead of the present procedure, a letter of request should go to the witness requesting him to help in the administration of justice. If you give him respectable treatment, the witness will co-operate. A mild warning should be given that if the witness makes a false statement, he is liable to prosecution and the civil court dealing with the case should be given summary powers to punish him. This is the legal method. The administrative method is to educate the public.

MR. CHAIRMAN: You mean, the moment a witness tells a falsehood, the court should summarily try and punish him then and there?

SHRI S. K. JAIN: That is a matter of detail whether he should be punished then and there or later. But the discretion should be given to the Presiding Officer to conduct each case according to its nature. We cannot lay down any hard and fast rule.

SHRI M. C. DAGA: An amendment is sought to be made introducing "pre-trial conferences" whereby the court can bring both the parties together to discuss and decide certain matters. Do you feel this is a good thing?

SHRI S. K. JAIN: No. If the preliminary conciliatory matters are to be decided by that very court, that court will not be in a position to decide the case because that would lead to transfer application, in view of the fact that in some form or other, the court will express its opinion in favour of one party or another. Therefore, these conciliatory measures should be completely detached from the civil courts and should be entrusted to persons who may not be judicially competent but who are in a position to bring about a compromise.

SHRI M. C. DAGA: Even in the arbitration courts, the judge can become partial.

SHRI S. K. JAIN: If an arbitrator becomes partial, we have no check. We have to have faith in the integrity of human nature. My experience is, more often than not non-judicial officers who are appointed as arbitrators do act according to their own conscience. If the court is appointed as arbitrator, there will be very few cases where the arbitrator would be dishonest. This is an experiment worth trying.

SHRI M. C. DAGA: Both the 27th and 54th reports of the Law Commission have said that we must do away with section 115 and they have given reasons for this. What is your view about this matter?

MR. CHAIRMAN: Your main argument seems to be in favour of deletion or remission of section 115 and the witness in his memorandum suggested that section 115 should be retained because adequate remedies were not available under article 227.

SHRI S. K. JAIN: I respectfully disagree with the Law Commission for the simple reason that the matter can be taken to the High Court for final decision. Therefore, there will be greater number of appeals to the High Courts if this section 115 is taken away. Therefore, to say that very few revisions were accepted is no argument to abolish it but this is an argument in favour of retaining it. Secondly, the Supreme Court has said that under 227 there are limitations. Under 115, the powers though restricted, are a bit larger. Article 227 is not an alternative of section 115. Even there, I humbly submit that the Commission has not suggested that 227 is an alternative for 115. To eliminate 115 will result in greater number of litigation than at present.

SHRI M. C. DAGA: Clause 39, section 100, on page 13—second appeal—if we do away with this clause 4, will you agree with this amendment or not?

SHRI S. K. JAIN: According to this amendment you are taking away the right to appeal. Then clauses 2, 3, 4 and 5 must go.

SHRI SYED NIZAM-UD-DIN: Are you satisfied with the present law?

SHRI S. K. JAIN: Wider powers should be given to High Courts. Even on this question the same power that was given to the PEPSU High Court should be given to the High Courts. If this suggestion is not acceptable, the present powers under no circumstances be cut down.

SHRI M. C. DAGA: According to our learned witness the High Court should be flooded with second appeals.

MR. CHAIRMAN: He has made that very clear.

SHRI R. G. TIWARI: I presume that you were under emotion when you made the remark that the existing Civil Procedure Code did not suit the present conditions of Indian society. But while dealing with the matter you had made very cursorily a few changes in the whole of the Code. You are aware also that the CPC is one of the most comprehensive law that has been provided to the Indian society and the basic approach of the Code is to provide all contingencies that appear in civil litigation. I would like to know whether you could point out specific provisions which could be totally ignored without prejudicing the security and safeguards for the proceedings in the courts.

SHRI S. K. JAIN: If the submissions that I am making are acceptable in principle,, then by and large I would submit my later memorandum to this august Body for consideration.

SHRI R. G. TIWARI: You have given only one suggestion in that background.

MR. CHAIRMAN: Mr. Tiwari, this is the second part of Mr. Jain's evidence before us; the first part was given when he appeared before us at Chandigarh. He wants the Code to be changed completely. He has got some ideas; and as requested by me he has put some of them in concrete form during the interval between the meetings at Chandigarh and Delhi. He says that they are indicative. He says that if given time, he would be in a position to furnish us concrete proposals on how this Code should be modified, to suit his ideas.

SHRI R. G. TIWARI: I was not present at Chandigarh; and as such, I plead ignorance to what he had said there. The basic approach of Mr. Jain seems to highlight the change of social order now, compared to what it was when the Code was originally framed. This apart, he has not made any suggestion, as far as I am able to see from his notes and papers.

SHRI S. K. JAIN: You are very much right. At present. I have made three suggestions. The time and facilities at my disposal for dictating and typing things out, are not adequate. I had submitted earlier at Chandigarh—which is recorded—that if you can give me one stenographer and a clerk, I would give you a completely new CPC in six months, according to my viewpoint.

MR. CHAIRMAN: The witness has made a suggestion to the Committee; and it is for the Committee to consider it. I cannot commit myself to anything. The witness has illustrated as to how this Code should be amended.

SHRI S. K. JAIN: I am a practising lawyer. I owe a certain duty to my clients. I have to spend time in the courts; and to prepare cases in my home. apart from domestic duties. I am not a man in very affluent circumstances. And I do not have much time.

MR. CHAIRMAN: Mr. Jain, it is clear that you are not satisfied with the amending bill before us. It does not suit your views. You say it does not cover all the provisions; I mean the suggestion or illustration you have given on how the Code should be modified. We appreciate your limitations and note your request for certain facilities. There the matter remains. Now, Mr. Tiwari.

SHRI R. G. TIWARI: In your supplementary memo., you say that "Section 151 should be more broad-based and the following should be added to it." In that context. you suggest leaving the whole matter to the discretion of the judge. Would you not agree that there has got to be some definiteness in the matter of procedure? Otherwise, the whole thing would be in doldrums and put the parties into trouble.

SHRI S. K. JAIN: At present we have a number of legislations; e.g. we have the Rent Act where no procedure is laid down. Every court has to evolve its own procedure in dealing with the respective cases of the parties. Our experience during the last 30 years shows that all the parties are probably satisfied with the procedure, which is consistent with equity, justice and good conscience. I had said that this CPC is too rigid. leaving very little discretion; and the rigidity leads to injustice and to delays. On fundamentals, we can lay down certain provisions for the court to follow; but not on procedural matters such as the issue of commissions, inspections, etc. At present, if a man wants to delay the case, he gives a list of 10 witnesses—witnesses located at Calcutta, Bombay, Madras etc. and asks the court to issue the commissions. The court is bound to do it and has no option because under the law, a person who is living at a distance 200 miles away, cannot be compelled. With the result, the time taken for making submissions will be many years and the dishonest litigant will thrive. If we invest the court with discretion to issue commissions in particular cases, it will facilitate matters. The object

is to do justice expeditiously and cheaply. That is the whole object of the administration of justice, which the present Code is not fulfilling. This object is the real aspiration of the litigants.

SHRI R. G. TIWARI: It is not enough for a person to be living 200 miles away. The party has also to convince the court that he is a necessary witness.

SHRI S. K. JAIN I have got the CPC with me; there is no such provision.

SHRI R. G. TIWARI: Your second suggestion is that the examination in the court should be substituted by an affidavit. I think you are taking away the right of the other party to scrutinize the evidence by saying so.

SHRI S. K. JAIN: I did not say so. The right of cross-examining is not taken away. But in many cases of formal witnesses, there is no cross examination by the parties. The saving of time of the courts is there.

MR. CHAIRMAN: The suggestion of Shri Jain is for an addition to section 151. He does not want the existing section 151 to be altered. Section 151 gives inherent power to the court. It says:

> "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court."

He wants to add:

> "In trying a suit or other proceedings the court shall have power to take any appropriate steps for determination of the matter in issue by adopting the procedures consistent with equity, justice and good conscience and not specifically prohibited by any of the provisions of the Code."

What is he suggesting? He is suggesting an amplification of the existing provision.

SHRI M. C. DAGA: On the hand he says the judiciary is completely corrupt. On the other hand, he says it should be given more powers.

SHRI R. G. TIWARI: Section 151 gives ample powers to meet all concorrupt. On the other hand, he tion of Shri Jain, it will be left to the discretion of the court.

MR. CHAIRMAN: But he has mentioned that they should not be inconsistent with the Code. We will examine that.

SHRI R. G. TIWARI: Shri Jain suggests that the moment a court comes to recognise that a witness has given false evidence, the judge will be entitled to take action against him. Who is going to decide that the evidence is false or true evidence? Unless that stage is over. I think it would be putting the cart before the horse to suggest taking suitable action for giving false evidence.

SHRI S. K. JAIN: It will be after the disposal of the case and not during the pendency of the case.

SHRI R. G. TIWARI: Then, a person against whom you have made a charge should know that a charge is being levelled against him.

SHRI S. K. JAIN: He will be given due notice. I have only enunciated a principle. Details of its implementation can be worked out.

SHRI R. G. TIWARI: Then regarding misconduct by the lawyer, it is suggested that it should be taken to the High Court or the Bar Council. It is already provided.

SHRI S. K. JAIN: There is no such provision in the CPC. It is left to the

party. My object is to put some sort of restraint on the four elements who figure in the administration of justice *viz*, the litigant, the witnesses, the lawyer and the court. If you accept the principle, the details can be worked out.

MR. CHAIRMAN: You have enunciated a principle. We have heard your evidence and it is on record. We will have to deliberate on that amongst ourselves at a later stage before taking a decision. So, at this stage we cannot commit ourselves either way.

SHRI R. G. TIWARI: What the witness is suggesting is already provided in the law. It is not something new.

MR. CHAIRMAN: He wants that to be incorporated in the Civil Procedure Code.

SHRI R. G. TIWARI: On page 4 of the memorandum, at the top it is mentioned about Order 41:

"The procedure for deciding of appeals shall be the same as for disposal of cases as far as possible."

SHRI S. K. JAIN: At present we have got the procedure dealing, with the disposal of cases, which starts from Order 1, and continues till Order 20, where the final judgment is delivered. A notice is issued, a person comes and if he is absent, dismissal for default is given. The same procedure is reproduced in Order 41, dealing with cases. This is nothing but repetition of the previous orders. If you want, I can send you a concrete re-drafting later on.

SHRI B. P. NAGARAJA MURTHY: In page 2 of your memorandum, you have suggested a new form of oath. What is wrong with the existing form of oath, and what is the improvement that you have made in the changed form of the oath?

SHRI S. K. JAIN: I have suggested that the witness should be given respectable treatment, and his co-operation should be sought.

Secondly, the oath that is administered to the witness at present is:

"मैं जो कुछ कहूंगा, धर्म से सच सच कहूंगा।"

हमारे हरियाणा और पंजाब में इस तरह की ओथ ली जाती है।

There should be some provision to deter witnesses from giving false evidence. That is the only object.

MR. CHAIRMAN: We will examine it.

SHRI M. C. DAGA: Do you think that lawyers should also take that oath?

SHRI S. K. JAIN: Lawyers are not witnesses. Our duty is to assist the court.

SHRI M. C. DAGA: Not to tutor the witnesses.

SHRI S. K. JAIN: Unless the witnesses are tutored, I can assure you that no rightful claimant will ever win his case.

श्री महावीर प्रसाद शुक्ला : हमारे उत्तर प्रदेश में जो ओथ ली जाती है वह इस तरह से है : मैं खुदा को हाजिर-नाजिर जान कर जो कुछ भी कहूंगा सच कहूंगा, सच के अलावा कुछ नहीं कहूंगा।" उर्दू में इस तरह से ओथ ली जाती है और हिन्दी में इस तरह से ओथ ली जाती है :

"मैं परमेश्वर को साक्षी समझ कर जो कुछ कहूंगा सत्य कहूंगा और सत्य के अलावा कुछ भी नहीं कहूंगा।"

श्रीमूल चन्द डागा : और यह भी हो कि अगर झूठ बोलूंगा, तो बिजली ऊपर से गिर जाये।

SHRI DWIJENDRALAL SEN GUPTA: There is no sense in taking the oath because false evidence is

given even after that. So, this oath business should be dispensed with.

MR. CHAIRMAN: I think you have made your suggestions.

SHRI S. K. JAIN: I seek your permission to deal with two points in the questionnaire. I wish to emphasise only two points. The first point is that in the trial courts, most of the time is wasted because there is no stenographer. Witnesses are recorded by the courts in long hand. If the stenographers are provided to the courts, then a lot of time can be saved and copies made readily available to the parties. This will eliminate delay to a very great extent. Adjournments are granted frequently as a matter of course. As far as possible, adjournments should be minimised. They should be penalised with very heavy cost and in certain cases deprived of the cost also. The whole atmopshere is rotten. We have to take some stringent measures so that in course of time people will become aware of these things.

So far as the High Court is concerned, I have to make one submission. As far as the system of appointment of judges is concerned, at present, the States play a very important role. I submit that the States should have no say in the matter of appointment of the High Court judges. This matter should be exclusively left with the Chief Justice of the High Court and the Supreme Court. The role played by the States should come to an end. Secondly, the right type of people are not attracted to the bench. I may be excused if there is anything wrong. I would submit that the judges are not appointed on merit; these are more or less political appointments. At present, what is happening is that the deserving people are ignored. The offers go to the persons who are not in the front line. After their acceptance, the offers go to the persons who are in the front line. Obviously, they will refuse the offers.

As far as the emoluments of the judges are concerned, these are low I am not prepared to say anythin on this point.

MR. CHAIRMAN: You mean to say that their emoluments are low as compared to the earnings of the lawyers from whom these judges are recruited.

SHRI S. K. JAIN: You give then double the emoluments. The first rank people will not care to come to the bench because their income is tenfold what the judges are getting. I have got one submission to make. This august body is aware that a practice is obtaining in the English Bar, in the United Kingdom and I understand in America also that if an offer is made by the Government to a lawyer to serve the Government in a particular capacity, that offer is not rejected; but it is accepted. We should try to evolve a convention here among the legal profession that if an offer is made to a person by the Government to serve the public in a particular capacity, that person should not reject that offer.

MR. CHAIRMAN: Do you mean to say that it should be made compulsory or obligatory in the Advocates Act?

SHRI S. K. JAIN: That may be struck down on account of Article 14. The question is that it is much better if the Government in consultation with the Supreme Court or the Bar Council of India can evolve such a convention among the legal profession. In this way, Government's purpose will be served. We have to inculcate in the mind of the public at large, particularly this legal profession that they owe some duty to the Government and to the public at large. Though they will be making some financial sacrifices in the larger interest of the nation or public, they will be doing more good to themselves and then to the public at large. I think our members of the

Bar, who are leaders, will gladly respond to this suggestion of the Government, if made in the right sense.

SHRI M. P. SHUKLA: You have stated that there has been something wrong going on with the appointment of the judges by the State Governments. What has happened during the past 25 years? Is it not for the people of Bar themselves to evolve a convention that first-class lawyers should, as the rules exist, accept the offer when it is made to them, as they do in England and never reject it? If it is done, then probably there might be some stress on the State Governments not to do otherwise.

SHRI S. K. JAIN: If there is coordination between the Government and the legal profession, probably that will facilitate the work of evolving this convention. But if the matter is left only to the sweet will of this legal profession, probably they will never think of it. We have to persuade them; we have to make efforts, because it is very difficult for a human being to bear financial losses. Therefore, we have to impress upon them in the name of the country and for the cause of the national outlook. If an appeal is made by our learned Prime Minister for its consideration, I think, it is not difficult to evolve this convention. This is my humble submission.

SHRI M. P. SHUKLA: Monetary considerations are not the only reasons for the members of the Bar, who are first-class lawyers, to reject the offers. There are other reasons also. It is a matter of honour rather than a matter of earning money, as they do in England. If it is done by the Government strictly everywhere, then probably they will not refuse it. If it is made a place of honour and that will be done by the Bar with the cooperation of the Government then probably they will not refuse it.

SHRI S. K. JAIN: Let the Prime Minister make an appeal and see the reaction of the lawyers.

SHRI R. G. TIWARI: You have said that proper persons are not selected for the post of Judges of the High Courts. . .

SHRI S. K. JAIN: I have not said that.

SHRI R. G. TIWARI: Something like that. May I suggest a way out? Will it be proper to contact the Bar Association or the Bar Council and seek their recommendation in cases of lawyers to be put on the Bench? Can you vouch safe that the selection made by the Bar Council will be fair and independent?

SHRI S. K. JAIN: I will not countenance this suggestion. The consultation of the Bar Council should not come into the picture on account of factions which exist almost in every Bar Association. I think the proper authority is the Chief Justice of the Supreme Court and the High Courts. No third person should come into the picture.

MR. CHAIRMAN: You have made your position clear.

SHRI S. K. JAIN: The second point that I want to deal with is that at present, under article 226 of the Constitution a large number of writs are filed in the High Courts and the major number of them is about service matters. There is no specialisation or demarcation in any of the High Courts of India as it is obtaining in England. Every judge of the High Court is considered as an expert in any branch of law, whether he is dealing with that or not. For that, I have suggested, there should be a clear-cut demarcation and specialisation in the High Courts for attending to service matters. Bench should be constituted which should deal only with service matters. Let that period be two to three years. The moment they get specialisation, the cases will be disposed of expeditiously. Now, if the case goes to a Judge

who knows the service law, he will take just two to three hours to decide that case. If that case goes to another Judge who has never dealt with service matters, it will be a week before he can dispose of the case. This is my experience of the High Courts.

There is one thing more that I want to say. At present, the High Court time is upto 3.30 or 3.45 P.M. It should be 4 P.M.

One more suggestion I want to make about High Court Judges. I do not know whether this august body is aware of it or not that convention has been established by the Chief Justices of the various High Courts that every Judge of the High Court should dispose of at least three to six cases a day. But I regret to say that this is not adhered to faithfully. I say, there should be some guide-lines laid so far as the disposal of the cases by the High Court Judges is concerned.

SHRI DWIJENDRALAL SEN GUPTA: The suggestion of Mr. Jain to the effect that there should be Benches consisting of persons specialised in their own branches of law is a good suggestion. But it pre-supposes recruitment of the Judges on certain specialised basis. Unless the recruitment of the Judges is on the specialised basis, there cannot be formation of Benches on specialised basis. Hence, I understand, Mr. Jain incidentally wants to suggest that there should be recruitment of Judges on specialised basis so that his suggestion can be given effect to.

MR. CHAIRMAN: Mr. Jain, your suggestion is that the Benches should be constituted on certain specialised basis. It presupposes that Judges should be recruited on the specialised basis, so that the Benches can be constituted on that basis.

SHRI S. K. JAIN: Supposing in the High Court there are some vacancies and we have no Judges who have specialised in Income-tax, law, then we can have the recruitment of Judges on the specialised basis and recruit judges who know about the Income-tax law.

SHRI K. PRADHANI: In reply to Q. No. 4 of the Questionnaire, Mr. Jain has suggested that there should be a provision in the C.P.C. to prevent landlords from instituting cases against landless cultivators occupying Government land or land belonging to landlords. I will make a submission in this respect that there are specific Acts, the Land Reforms Act, the Tenancy Act etc. where there is a specific provision covering occupied land belonging either to the Government or to a landlord. So what is the necessity of having this general provision in the CPC again?

MR. CHAIRMAN: As there are specific Acts covering these tenants who occupy lands, the Hon'ble Member wants to know why you want to put it in the Code again.

SHRI S. K. JAIN: Not in the CPC but in the various laws that deal with it generally.

MR. CHAIRMAN: The broad question regarding your idea of a new Code is a matter for the Government to consider. Our Committee will also examine it when we discuss the various aspects of the evidence before us.

May I, on behalf of myself and of the Committee, thank you very sincerely for the pains you have taken, both at Chandigarh and here also, to apprise the Committee of the various implications of the Code and for your suggestions. I can assure you that we will examine them very carefully I thank you, once again.

SHRI S. K. JAIN: I feel very grateful, Sir.

(The witness then withdrew)

II. Shri Jinendra Kumar, Advocate, Chandigarh.

(The witness was called in and he took his seat)

MR. CHAIRMAN: You were before us at Chandigarh when we discussed the Sections.

The Orders are left over for discussion now. Before we take your evidence, may I refer you again to the direction which you have already noted that your evidence will be treated as public and is liable to be published. You don't want any portion of your evidence to be treated as confidential?

SHRI JINENDRA KUMAR: No, Sir.

MR. CHAIRMAN: For the benefit of the Members who were not present at Chandigarh, I may say that Mr. Kumar had made some submissions so far as the Sections are concerned. We need not refer to them again, as they will be circulated to the Members.

Now, you may make your submissions regarding the Orders.

SHRI KUMAR: Yes, Sir. But before proceeding to that, I would like to make one submission. I had already made my submissions regarding the Sections part of it, but I have one more Section which I would like to be added.

MR. CHAIRMAN: Which Section?

SHRI KUMAR: It is a new Section to be added as Section 159. This is about consolidation of suits, because it very often happens that a number of suits regarding the same subject matter are filed which are sometimes consolidated and sometimes not consolidated, because there is no other provision in the CPC for consolidation of suits as such. The provisions of 151 in this regard are sometimes utilised and sometimes not utilise and many times it leads to an abuse of that process. So I have suggested that a Section should be added regarding consolidation of suits as follows:

> "When common questions of law and facts are involved in two or more suits, the Court may order that the trial of all these suits be consolidated and that the proceedings be recorded in one of such suits".

MR. CHAIRMAN: Between the same parties?

SHRI KUMAR: Regarding the same parties, I have got another Section.

MR. CHAIRMAN: So here the parties are different?

SHRI KUMAR: Yes. I came across a case sometime ago in which one landlord who had a number of persons as tenants filed separate suits against them numbering twelve or thirteen. They were not consolidated. So some suits went to one court and others went to other courts with the result that different types of judgments were passed in these cases. Only a common question of law arose in these cases.

Then, there was a big landowner in Haryana whose land was declared surplus. That land was taken and distributed among the tenants. But when he died, the heirs and successors filed a suit against each one of the tenants saying that the owner was not a big land-owner, that the land could not be declared surplus and that the tenants should not have been re-settled. Twelve separate suits were filed. Some suits went to one particular judge and the other suits went to another judge. In one particular set of cases they were consolidated and of course one common order was passed; but so far as the other cases are concerned, they are still pending because the judge was different and he had to adjust his schedule according to his volume of work.

MR. CHAIRMAN: You have drafted that part of the Section?

SHRI KUMAR: Yes, Sir. It is as follows:

"When common questions of law and facts are involved in two or more suits, the Court may order that the trial of all these suits be consolidated and that the proceedings be recorded in one of such suits".

MR. CHAIRMAN: If it is in the same Court?

SHRI KUMAR: I have another sub-section which will be sub-section (2):—

"If more than one suit are filed in respect of the same subject matter by different parties, the trial of all the suits shall be consolidated and the proceedings shall be recorded in the suit which has been announced earlier as having been filed in the court of competent jurisdiction".

The second sub-section is with regard to that matter where the subject-matter is the same. There is a dispute about a house. One party says that the specific performance of the agreement of the sale should be ordered with regard to the house, and the other party says that this contract should be rescinded, or there may be another counter suits. This sub-section only suggests that these suits should be combined.

MR. CHAIRMAN: All right; we shall examine that.

SHRI DWIJENDRALAL SEN GUPTA: Where the questions of law are the same, it is alright. But about the question of facts being the same, how can a judge understand without going into the facts, that the facts are the same? So, it becomes a question of enquiry and after enquiry alone, the court can say that the facts are the same. In fact, each party may adduce evidence and the case may be prolonged or delayed also. There may be several parties and the several parties may adduce several types of evidence, and the whole case, instead of being simple may become complicated. Have you considered that aspect?

SHRI KUMAR: Yes, Sir; I have. In the case which I quoted, the landlord's averment was that the deceased land-owner was not a big land owner and that the land declared surplus was wrongly declared so. This was one aspect. The second thing was that the plaintiff had said that, because the land which was declared surplus was wrongly declared so, the resettlement of all those defendants in those different cases, on that particular land, was illegal . These are questions of law and facts. Resettlement of those tenants is admitted. I may point out that in all these cases, the averments with regard to defendants as well as with regard to plaintiffs are practically the same; the only variation is variation of names or areas. That safeguard can be made there. If on the examination of the plaint and the written statement, the Judge finds that they should not be consolidated. they may not be consolidated. If the hon. Member feels that there may be this type of difficulty we can have that safeguard. I have only suggested this as a normal rule.

MR. CHAIRMAN: We shall examine this. You may go to your next point.

SHRI KUMAR: This is with regard to rule 8. The proposed sub-rule (3) reads as follows:—

"Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit."

Here, at the end of this, I suggest that the following words may be

added, namely, "at any stage". A few months back, in the High Court I came across a case where a particular suit was filed by some landowners of a village saying that a particular person had occupied the common land of the village and that suit was filed on behalf of the entire village community by four persons. Later on, that one individual, the defendant, won over those four persons and they made an application to the High Court for withdrawal of their suit. They came to me and said that they had come to terms and that they would like to withdraw the suit. Accordingly, I filed an application because I had to believe them. The application was filed, but fortunately for me and for those persons, the application was filed as 'ordinary' and not as 'urgent'. If it had been filed as an 'urgent' one, it would have been fixed for the next day. But it was 'ordinary', where it normally takes 15 days. On the third day, certain other persons of the village came to me and said that those four persons had defrauded the entire village community and one of them was the *Sarpunch* of the village. So, I had to file an application for withdrawing that withdrawal application. In that case, because that suit was a representative suit, if the other persons were entitled to be included as parties, then no difficulty would have arisen. I filed an application on behalf of the other persons and with great difficulty the judge allowed the other persons to be impleaded in place of the persons who wanted to withdraw the suit and the withdrawal of the suit was set aside. Therefore, I would like these words to be added at the end, namely, 'at any stage.'

The proposed sub-rule (5) of this very rule reads as follows:—

> Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit."

I suggest that these words may be added here, namely, 'or such other persons who want to join as a party.' For example, in the case of the village community, some other persons might be more useful. If anybody wants his name to be added, it should be allowed. Also, there should be one more explanation added at the end. There is already one explanation. That explanation should be following should be included as Exnumbered as Explanation 1, and the planation 2, namely, The provisions of rule 10, sub-rule 4, Order 1, will not apply to a person auded under sub-rules (3) and (5) above." The person becomes a party to the suit normally from the date on which his name is added. My suggestion is that, in the case of representative type suits, that person should be deemed to be a party not from the date on which his name is added but from the very beginning because he was already represented.

My next submission is that the proviso which has been added to Rule 9 of this Order should also be added to Rule 13.

Order 5: Here, I have one or two suggestions. In Order 5, there is Rule 20 which may kindly be seen. I suggest that after proposed subrule 3, after the words 'order of the court' the words or the postal endorsement mentioned in Rule 19-A' should be added. When the registered letter is received back and it says that the defendant has declined to accept it, that should be taken as sufficient and these words should be added here.

Order 6: Rule 1 says that the pleadings shall mean, plaint or written statement. I submit that the words or replication' should be added at the end, because that is also part of the pleadings. It comes in reply to the written statement filed by the defendant. If in the written state-

ment, some new averment is there, the plaintiff is entitled to give his reply to the averments made now. That should be treated as part of the pleadings.

Rule 14 in the same order: It deals with the varification of the pleadings. There is a proviso in this rule. I submit that in the proviso after the words 'it may be signed' the words 'by his pleader or' may be added.

Rule 17: It relates to amendments. Sub-Rule 2 has already been added. This is at page 23. I submit that another sub-rule, sub-rule 3, should be added as under:

> 'For the purposes of limitation, the amended pleadings shall be deemed to have been instituted in the court on the day when the application for amendment was filed, so far as the amendment is concerned.'

I came across a suit recently. The suit was filed in a court in 1960. That was a suit with regard to very huge amount of property and the parties were big landlords. After some time one person died, then another died and the case has lingered on and is still at the trial stage. After a lapse of 14 years, at the end of 1974, the plaintiff moved an application for amendment, saying that because of cause of action which had arisen in his favour, he should be allowed to make an amendment. The amendment was allowed by the court, and the objection that was taken by me was that so far as these amendments were concerned, they would make the suit barred by limitation. The court did not express any opinion on that and said that it would be considered at a later stage. I would submit that the litigation has already continued for 12 years. Today it is at the trial stage, tomorrow it can come at the appellate stage. In the High Court it may take a number of years. After that he makes an application for an amendment. As is customary in our courts the application may be allowed. Sometimes the amendments have been allowed in the Supreme Court. I got cases in which amendment was allowed after a lapse of number of years. I submit that sub rule 3 should be added.

Order 7 Rule 11

There is a proviso which has been proposed in this rule and this is at page 25:

> Provided that the time fixed by the Court for the correction of the valuation or the supply of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.'

Instead of words "cause of an exceptional nature" it should be "sufficient cause".

The uniform policy of the framers of the law has been that the party's right should not be defeated merely by technicalities. We are to do justice and the courts are keen to do justice to the parties. It should be "sufficient cause".

Rules, 14, 15 & 18 should be deleted. They should be deleted because there is already a provision in Order 13 Rule 1. They are merely duplication of Order 13.

Order 9

I submit that after Rule 12 a further rule 12 A should be added. Rule 78A should be as under:

> No case shall be dismissed in default of appearance and no exparte proceedings shall be ordered by the court until after the half of

the court working time of that day has expired.

many times it happens that some unscrupulous judicial officers take into their head that they have to dispose of as many cases as possible. It happened in one or two cases that the case was called at 10 A.M. and the person concerned did not appear nor his lawyer appeared because he was per chance late by about five or ten minutes.

MR. CHAIRMAN: Why not till the rising of the court, why upto first half?

SHRI KUMAR: That will be better. But such a latitude must be given.

Order 12

With regard to Order 12 another rule 10 should be added:

"The admission made by or on behalf of the party to the suit may be made use of by the opposite party during the trial of the case without any further proof."

This is with regard to admissions and there is no such provision in this code that the admissions made by one party can be made use of. This particular provision of law will go a long way and it will also reduce the time that may be taken in proving certain facts. The admission is the best proof of evidence and no further proof can be there.

Order 13

Under Order 13 Rule 9—this is the order to which I referred sometime earlier and there are quite a number of provisions with regard to production of documents in the case. Here I submit that under Rule 9 after the words "receive back the same" the following words may be added at the end:

"after attested copies thereof have been filed on the record of the case".

MR. CHAIRMAN: Suppose there is a book of accounts or any voluminous document, then how is it possible?

SHRI KUMAR: A certified copy of that document or of that portion which is relevant should be prepared. The original may be returned only after the certified copy has been placed on the case record.

The documents concerned will be in respect of that portion which is relavent to that particular case.

SHRI M. C. DAGA: There is provision already that the document may be returned.

SHRI KUMAR: Even after the suit is over, when the party takes the original document, a copy of that must be in the record, in order to keep the record perfect. That was what I was saying. There are number of high courts; there are no uniform rules. This is the case in respect of the courts.

MR. CHAIRMAN: That is all right. You may proceed further.

SHRI KUMAR: Please see Order 14. This is at page 31 of the Bill. Rule 2.(2) is there. What I have pointed out is that the payment of the court fee should always be treated as preliminary issue. For example after the trial for one year the court comes to the conclusion that court fee is not proper and the suit is rejected on that circumstance alone. If he does not pay court fee, suit cannot proceed. The same should be treated as preliminary ground. It should be decided as such. There are quite a number of cases. Objection with regard to court fee should be treated as preliminary objection and decided as such. I submit, the provision should be clear in this regard on payment of court fees. Subclause (c) should be added regarding payment of the court fee. Of course, court fee is State subject. But take rejection of the claim on the ground of nonpayment of court fee. In one particular case it is Rs. 500, in another, 5000 and in another it may be Rs. 100 or so. If the person does not pay court fee the claim is likely

to be rejected under this order. That is my submission that the decision of court fee, question must be at a preliminary stage.

SHRI M. C. DAGA: As soon as the claim is submitted the clerk has to submit his report. If the court finds it is undervalued it is likely to be rejected.

SHRI KUMAR: The clerk does not have proficiency in law etc. Many times objections are taken by the opposite counsel. In Haryana and Punjab what happens is this. Suits are filed for injunctions and value of the suit now for the purpose of court fee is the value of the property itself and formerly this was Rs. 13:00 paise. That is to say if property is worth 5 lakhs, he has to pay court fee on *ad vlorem* value of 5 lakhs. Clerk of the court does not raise any objection or he does not know this thing; he is not a technical person; he does only superficial checking. This is what I would like to point out. So what I say is, this should be treated as preliminary issue.

MR. CHAIRMAN: If you can stay for a day we can hear you tomorrow. You have other points to make.

SHRI KUMAR: Yes, Sir.

MR. CHAIRMAN: We will be adjourning now and we will meet tomorrow at 10-30. Thank you. Please come tomorrow.

SHRI KUMAR: Thank you. I will continue tomorrow.

(*The Committee then adjourned*)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974.

Wednesday, the 18th June, 1975 from 10.30 to 12.30 hrs.

PRESENT

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri Narendra Singh Bisht
4. Shri A. M. Chellachami
5. Shri M. C. Daga
6. Sardar Mohinder Singh Gill
7. Shri B. R. Kavade
8. Shrimati T. Lakshmikanthamma
9. Shri Mohammad Tahir
10. Shri K. Pradhani
11. Shri Rajdeo Singh
12. Shri M. Satyanarayan Rao
13. Shrimati Savitri Shyam
14. Shri R. N. Sharma
15. Shri C. M. Stephen
16. Shri T. Sohan Lal
17. Shri Sidrameshwar Swamy
18. Shri R. G. Tiwari
19. Dr. (Smt.) Sarojini Mahishi

Rajya Sabha

20. Shri Sardar Amjad Ali
21. Shri Bir Chandra Deb Barman
22. Shri Krishnarao Narayan Dhulap
23. Shri Kanchi Kalyanasundaram
24. Shri B. P. Nagaraja Murthy
25. Shri Syed Nizam-ud-din
26. Shri D. Y. Pawar
27. Shri V. C. Kesava Rao
28. Shri Virendra Kumar Sakhalecha
29. Shri Dwijendralal Sen Gupta

30. Shri M. P. Shukla
31. Shri Awadheshwar Prasad Sinha
32. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra, *Joint Secretary & Legislative Counsel*

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

WITNESS EXAMINED

Shri Jinendra Kumar, Advocate, Chandigarh.

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Mr. Kumar, we are in continuation of your evidence. So, the Direction governs your evidence. You may kindly begin from where you left yesterday. I think we were dealing with Orders and rules. We went, I think, as far as Rule 16.

SHRI KUMAR: We have covered 16. I was dealing with Order 17. As regards this, there is a proviso added by the amendment bill.

MR. CHAIRMAN: Are you referring to page 35 of the Bill—Clause 71?

SHRI KUMAR: Yes, Sir. Here there is a proviso added to sub-rule (2) as follows:—

"Provided that,—

(a) When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the Pleader of a party is engaged in another Court, shall not be a ground for adjournment."

Sir, I submit that these provisions are going to be rather too stringent because, you know very well that so far as the trial courts are concerned, no lawyer worth the name or of any calibre worth the name has only one individual case in a particular day and, if this proviso is added it would mean no advocate will be able to attend all cases on a particular day. Therefore, I submit that this would be a negation of justice. So far as these matters are concerned, even during the present days, the courts are not feeling any difficulty at all because of the accommodation that is being given to the lawyers.

MR. CHAIRMAN: Mr. Kumar, do you agree with the first proviso—(a)?

SHRI KUMAR: No, Sir. I have stated that it should be deleted *in toto* because, it will many times lead to abuses of powers.

MR. CHAIRMAN: Then how are you going to curtail the delays?

SHRI KUMAR: With regard to that, I would like to submit that, as a matter of fact, the delays are not at the trial stage. That much delay is

there at the High Court stage. You will hardly find any case going beyond two years and, in very exceptional cases, it may go beyond that period in the trial cases.

So far as the trial case is concerned, that does not last that long—excuse my saying so—because I have been at the bar for the last 32 years and, out of 32 years, I devoted my twelve years exclusively to the trial courts. It was only after completing my work for 12 years on this that I have shifted to the High Court. And during the period of 12 years, I hardly came across any case which lasted that long or beyond two years or three years at the most.

SHRI DWIJENDRALAL SEN GUPTA: Mr. Kumar, the point here is very simple. The C.P.C. has its own objective. The lawyers have to fit in not only for their own interests but also for the interests of law. I say that the objective of this amendment to C.P.C. is to curtail the delay and, at the same time, justice may be cheaper. How do you expect that to be done pursuant to the present amendment? Do you think that this proviso should not be there and the sub-section should not be there?

SHRI KUMAR: As I have submitted earlier, the lawyers go there for the sake of earning their livelihood. That is true. But, at the same time, the primary objective of the appearance of any lawyer in a particular case is also to help the litigants. It is also a fact that the court gives some time to lawyers. Sometimes two or three lawyers are also engaged in a case. The purpose is to give the best type of legal advice to the litigant. This is the object. It is not for the advantage of the lawyers. I am saying that this should not be there. This is only for the benefit of the litigant concerned because the litigant engages a particular individual as his lawyer in whom he has faith. The element of faith is a very necessary thing so far as the conduct of the case is concerned. And if the lawyer is unable to present himself at a particular time when the case is called on for hearing and if the court asks the litigant to proceed with the case, it will be doing rather a grave injustice to the client. The lawyers cannot, possibly, be present at the two places at one and the same time.

MR. CHAIRMAN: Mr. Kumar, what the hon. Member wants from you is this. Is it not a primary duty of a lawyer also when he takes a brief and when the hearing commences, that he should be present? If he says that he has to attend in different courts, does it not mean that he wants the hearing of the case to be adjourned simply because of this reason?

SHRI KUMAR: As I was submitting earlier, it is in very very rare cases, that it takes a long time in the trial stages. The hon. Member just now pointed out that the time taken is two generations when that is not required at all for the case. But that much delay is causes only at the higher levels.

MR. CHAIRMAN: Mr. Gupta, I am now trying to elaborate your point. A lawyer very well knows that a case is fixed for hearing in a particular court on a particular day. When it is provided for that the hearing will take place, is it not expected of that particular lawyer even when he has other cases in civil courts, to make arrangements beforehand? Why should he tell that because he has got the case in another court the hearing should be adjourned? When a hearing has already been fixed beforehand, why should it again be adjourned?

SHRI DWIJENDRALAL SEN GUPTA: I am a lawyer and my experience in the Supreme Court is that the Supreme Court does not adjourn the cases on the plea that the senior has got another case in the court.

SHRI KUMAR: So far as that is concerned, there is no objection. There cannot be any difficulty to give time. Arrangements can be made

beforehand one or two days in advance so far as trial stages are concerned. But, I was submitting that I have got the exerience of the courts at the trial as well as the high court stages and I am quite often appearing in the Supreme Court also. You must have also seen me, quite often appearing in the court.

SHRI DWIJENDRALAL SEN GUPTA: It is no good arguing for the monopoly of some lawyers, namely, taking too many cases and not doing justice either to the client or to the court. Now, this can be curbed by this provision besides the delay being controlled.

SHRI KUMAR: The position is—as I was saying, most of the time which is taken for the disposal of the tell os how long it may take for the hearing of the case?

MR. CHAIRMAN: Now, in a particular court where this exigency arises and if a lawyer is allowed to get an adjournment on that score can you us how long it may take for the hearing of the case?

SHRI KUMAR: This type of thing does not come to happen in the trial court because the lawyer is interested in disposing of his work. I may only point out that by giving this provision the courts will get a handle to misuse the power.

MR. CHAIRMAN: Please go over to the next point.

SHRI KUMAR: With regard to Order 17, my submission is, that a further rule 4 should be added. There are only three rules in the existing order. I submit the fourth should also be added. It should read as follows:

> "Rule 4. A party against whom an order under Rule 2 or 3 has been made, may apply to the court to have that order set aside and the court may, subject to such terms as to costs as it may deem fit, order that the proceedings taken under Rule 2 or 3 above be set aside and the defaulting party religated to the same position as if the order under rule 2 or 3 above had not been passed, provided that no such order shall be passed unless the court is satisfied that there was a sufficient cause for the default."

In a particular given case which I came across, this particular thing came to my notice that the order passed by the court was that a particular party was given time to make payment of court fee and that party did not appear in the court and no court fee was paid. So, the court ordered: "Nobody appeared. Nor the court fee paid. Dismissed." That was with regard to the case of plaintiff. Then he made an application for restoration of the case. But there is difference of opinion amongst various High Courts as to whether in such cases an application for restoration under Order 9 lies or an appeal lies. Appeals are likely to take a long time in disposal. My suggestion is that provision should be made saying that any order passed under 17(2) and (3) shall be treated at the same level.

Now, I come to Order 18. Here I submit that these words should be added. "A note of such inspection shall form the part of the record of a case." There should be made a provision in the rule itself that the judge shall maintain record of various inspections on the record of the case. At present it is not done. Inspection note should be there as to the position seen on the spot.

Then, I come to Order 20. I have nothing to say about Order No. 19. As far as Order 20 is concerned my suggestion is that in the proposed Rule 5A, the following words should be deleted:—

> "Except where both the parties are represented by pleaders."

Because sometimes lawyers are representing some other parties and are thus busy.

SHRI DWIJENDRALAL SEN GUPTA: The purpose is, when the pleaders are there, they can instruct their clients about the limitation and

the forum of appeal. They need not be present at the time of the delivery of judgement. That is why, this provision is proposed. Where the parties appear in person and no lawyer is there, they may not be conversant with the law. That is why, this provision has been proposed.

SHRI KUMAR: Here, the words are 'are represented'. This will be a sort of discrimination. I would say one more thing. Sometimes. the parties are represented by lawyers who are novices and these novice lawyers do not know ABCD of law. I am saying this will full sense of responsibility.

MR. CHAIRMAN: You need not go into that. Your suggestion is that it should be a general provision, whether one is represented by the lawyer or not. We will examine that.

SHRI KUMAR: Further, the Court should make a note thereon of having said this thing to the concerned parties, in the record of the case. Three is one more submission which I would like to make. Excuse me saying so. The Advocates Act of 1960, which has been passed by Parliament, has resulted in a situation where such lawyers go to the High Court level and Supreme Court level who do not know anything. I am not casting aspersions on anybody.

MR. CHAIRMAN: Mr. Kumar, when we are suggesting a general provision, we need not unnecessarily call in question the competence or the quality of either the judiciary or the advocates.

SHRI KUMAR: Certainly not. I am not doing that.

MR. CHAIRMAN: You have made the point. Your suggestion is that it will be better to make a general provision. We will consider that.

SHRI DWIJENDRALAL SEN GUPTA: Mr. Chairman, this provision relates to appeal. Afted a judgement is given, the matter has got to be considered from different aspects; for example, whether the appeal lies or not. There may be matters, where. unless there is a substantial question of law, appeal will not lie, In regard to the question whether there is a substantial question of law, the lawyer will have to guide the client and not the Court. Secondly, the question whether the matter will be brought up to first appeal will be decided by the parties. This is for a specinc and limited purpose. This is for giving a little guidance. Lying of appeal is one thing and the merits of the matter is another thing. There are many complications. Here, we are only indicating that which any lawyer is supposed to know. A lawyer, however novice he may be, is supposed to know that as against this judgement, where the appeal lies and what is the limitation. He will see the law book himself.

SHRI M. C. DAGA: What is the necessity of this amendment?

MR. CHAIRMAN: The learned witness is not questioning the necessity of this amendment, But, he is only pointing out that it should be made a general provision, whether a party is represented by a lawyer or not. But, Mr. Sen Gupta has pointed out that in the case of parties who are not represented by lawyers, this provision may be necessary. But, even there, he has got a doubt whether a particular Court should be burdened with this responsibility of saying whether the decree or order is appealable and if it is appealable, to which Court that appeal lies and further, the time limit for that appeal. These are the things that are provided in this amendment. You are not questioning those things. What I would suggest to Mr. Sen Gupta is that we will consider these things later on. So far as the learned witness is concerned, his suggestion is limited that it should be applicable to all parties and all cases. We will examine that.

SHRI KUMAR: In criminal cases, where a death sentence is pronounced on a person, a provision is made in the Criminal Procedure Code that the person concerned would be told by the Court concered that he can file an

appeal to the High Court within such and such period of time. That provision is there. It is a healthy provision whether a person is represented by a pleader or not. I would say. it would curtail much of the litigation. I have seen some cases, where no appeal lay and even then an appeal was filed in the High Court .

MR. CHAIRMAN: That is a matter for us to examine. We will have to examine other implications.

SHRI M. C. DAGA: Mr. Chairman, the Court may also commit a mistake.

MR. CHAIRMAN: Mr. Daga, let us confine ourselves to the submissions made by the learned witness. He has welcomed this provision. We may have doubts. We will examine this at the appropriate time. At the moment. we have to consider whether this point made by the learned witness is clear to us. To my mind, it is clear. He wants to make it general.

SHRI KUMAR: Then, Sir, I come to order XXI, It is a very lengthy order with regard to the execution of decrees. Here. I have got quiet a few suggestions. There is new rule 22A which has been proposed. I say that there is no necessity for this Rule. In my submissions which I will make just now, I will suggest that the provisions of Orded XXII should be deleted and I will give the reasons also for that when I come to that. But, here at this moment, suffice it to say that in view of those submissions, this proposed new rule 22A is not at all needed. This is because of two reasons. First of all. provisions of Order XXII, substitution of legal representatives do not apply to execution proceedings at all. There is rule 12 in Order XXII which says that the provisions of Order XXII, do not apply to execution proceedings. Therefore for that reason also, new rule 22A is not at all necessary. Execution proceedings can still go on whether the legal representatives of the deceased judgement-debtor have been brought on the record or not. Secondly, there should not be any provisions for abatement and the provisions of Order XXII should be scrapped. I will give my reasons later.

In Rule 35, which deals with decree for immoveable property. after sub-rule (3), I want that the following sub-rule (4) be added:

> "The executing court may, for reasons to be recorded. order that the possession be delivered with the help of the police and in that case, the officer entrusted with the execution of warrant of possession shall be accompanied by the officer in charge and other police personnel of the police station concerned, at the time of execution of the warrant of possession."

I am suggesting this because I know from personal experience that many times hindrances are put on the execution of the decree. The warrant of attachment and delivery of possession is entrusted to the *nazir* of the court. He goes to the tehsildar and the matter is entrusted to the *kanungo* and the *patwari* goes with him. Unless the kanungo is offered handsome money. even if there is the slightest obstruction, he will say, "there is likelihood of breach of the peace and I would not deliver possession." At present, there is provision to give police help. The High Courts have made certain rules and that takes a lot of time.

MR. CHAIRMAN: It says " possession thereof shall be delivered." So, it is enjoined upon the court to see that possession of the property shall be delivered. It also says,

> "if necessary. by removing any person bound by the decree who refuses to vacate the property."

What more do you want?

SHRI KUMAR: The *bailiff* does not have the necessary force at his command, if he goes single-handed.

MR. CHAIRMAN: We will examine your suggestion.

SHRI KUMAR: Rule 84 of Order XXI needs some amendment. It is with regard to deposits. I want that instead of 25 per cent, it should read "such sum not exceeding 25 per cent as the officer conducting the sale might accept". Sometimes a fraction of a rupee has to be paid. The High Courts have held in certain cases that even if the tender money is deficient by one paise, it will not be a valid tender. It should be left to the discretion of the officer conducting the sale. There should not be any hard and fast rule. In the alternative you can say, "between 20 per cent and 25 per cent".

MR. CHAIRMAN: If you say that, you will lose your argument.

SHRI KUMAR: I do not think it should be less than 25 per cent. I only say that it should be left to the discretion of the person concerned.

The Rule 86 of this very Order. I say that at the end of this Rule the following proviso should be added:

> "Provided that before taking any action under this rule the court shall give the purchaser an opportunity to make good the deficiency within a period of seven days."

As I stated earlier also, sometimes it so happens that the person by chance may deposit one or two rupees less as a tender and so that should not be made stringent because even if the tender is less by one paise he will invite the forfeiture of the amount.

MR. CHAIRMAN: That is already provided there.

SHRI KUMAR: No. Sir, that is not there. It is only with regard to re-selling and forfeiture part of it and the property has to be resold. I have been at the Bar for the last so many years and I know that this rule has been interpreted in this manner.

MR. CHAIRMAN: You want that 7 days should be given.

SHRI KUMAR: Yes. Now Rule 90. I have added further a few words. It consists of only one sub-rule and two sub-rules have been added by the amending act. I submit that at the end of sub-rule of the following should be added:

> "Unless the Court is satisfied that he was prevented from doing so due to a sufficient cause."

Because sometimes, it so happens that the party concerned is out of station and sufficient cause comes in its way. So, sufficient cause should be provided there. Then Rule 92, sub-rule 2, after the words on the part of the depositor' the following should be added—

> "or on account of a sufficient cause."

This sufficient cause should be there.

Now about the proposed rule 98. It has been framed newly, in place of the previous rule; I would like you to see sub-rule (2) thereof, in the bill. After the word 'behalf' occurring in the fourth line thereof, I feel that the following should be added:

> "or by a person to whom the judgment-debtor has transferred the property, after the institution of the suit in which the decree was passed."

This will make provision for the rule of *lis pen-dens* as it is commonly called. Rule 98, as proposed, says that the suit might be pending on a particular day, and on the next day, the person concerned might transfer the property to somebody else. The implication of rule 98 is that that transferee will be entitled to cause obstruction. My idea is that the transferee will not be able to put obstruction in the way.

Let us now turn to Order XXII, which is very much objectionable, as far as my viewpoint is concerned. I

feel that we should add these words, at the end of rule (1), viz.

"and the name of the legal representative may be substituted for the name of the deceased at any stage of the trial."

MR. CHAIRMAN: Mr. Kumar, you need not explain your suggestions; they are clear enough. You can elaborate if any Member seeks clarification.

SHRI KUMAR: Some explanation is very necessary so far this particular suggestion of mine, dealing with abatement proceedings is concerned. I will not take much time. This part of the abatement proceedings leads firstly to multiplicity of proceedings and then to a lot of delay; and no useful purpose is served.

MR. CHAIRMAN: You do not want this provision to be there, i.e. you want that there should be no abatement.

SHRI KUMAR: Yes Sir; I will relate one particular case. It was a second appeal; and in both the courts, the client had lost. I argued the case before the division bench of the Punjab High Court. My appeal was allowed. A lot of time had been taken up till then. About 7 or 8 years had passed, after the filing of the appeal. The appeal was allowed and the client was very happy. After 2 months, I received a notice from the court; the opposite party had moved an application that in that particular case, such-and-such a respondent had died 3 years back; and that no person having been impleaded in his place, the case had abated. I tried to prevail upon the judge to stick to the allowing of the appeal. I did not succeed. The appeal had to be dismissed. If a person is depresented by a lawyer or even otherwise, he himself comes to the court or sends his son or somebody to the court and the court is seized of the case, no useful purpose will be served by having recourse to the provision of abatement. More so, when this provision of abatement does not apply to execution proceedings, revision proceedings and writ provisions and various types of proceedings. It does not serve any useful purpose.

MR. CHAIRMAN: So far as Order 22 is concerned, clause 76 suggests certain amendments. You don't agree with them?

SHRI KUMAR: No, I do not agree with them.

MR. CHAIRMAN: So far as existing Order 22 is concerned, you have suggested some addition to rule 1. We have noted that. So far as rules 2 to 12 are concerned, what is your position?

SHRI KUMAR: Rules 2, 3, 4, 6, 9 and 12 should be deleted.

MR. CHAIRMAN: What about rule 4A. Do you want that to be retained?

SHRI KUMAR: Yes. I say that existing rule 4 should be deleted but rule 4A should be incorporated as rule 2.

The explanation proposed to rule 9 is not at all needed. Rule 10A which has been proposed is not needed.

In Order XXVI, rule 9, after the words "net profits" I want to add the words "or for producing before the court some document or other material pedtaining to the case". At present there are no such provisions and the courts are taking shelter under section 151. If any particular material is needed, the court should be competent to issue a commission for that purpose.

In Rule 18 of Order XXVI I submit that another clause should be added at the end as follows:

"except where the court, for reasons to be recorded, decides that the presence of the parties or any one of them be dispensed with."

MR. CHAIRMAN: What about sub-rule (2)?

SHRI KUMAR: That is different. Under sub-rule (1) it has been made obligatory.

MR. CHAIRMAN: Your suggestion is that it should not be made obligatory?

SHRI KUMAR: Yes. This question arose in a case recently. A landlord filed an ejectment application against his tenant saying that the tenant has not used the shop in question for the last six months and that it is lying closed. He applied for a commission and the commission went to the spot and found that is was really closed and there was much dust inside. So a decree was passed for ejectment. In the appellate court objection was taken that the tenant was not given an opportunity to appear before the commissioner. His contention was allowed on that score alone and the ejectment order was set aside. But, in this case, if he had been given notice, he would have cleaned the shop and would have given the impression that it is being used. In that case, the very purpose of the commission would be defeated. So, I say that it should be left to the discretion of the court, for reasons to be recorded.

Then I come to Order No. XXXII A further amendment should be made to rule 1. I want to add at the end the words:

"the next friend shall, until his removal, retirement or death continue as such throughout all the proceedings arising out of the suit, including the proceedings in appellate or revisional court or any proceedings in the execution of the decree passed in this case."

The are no such provisions now and only by convention it is being done.

SHRI M. P. SHUKLA: Has any difficulty arisen because of the absence of such a provision?

SHRI KUMAR: If the next friend who has been appointed neglects to file the appeal, or he has been won over by some person, the minor son is not left with any remedy whatsoever. He losses all rights, because he is bound by the actions of the next friend. So, these words should be incorporated, which will fit in with the other suggestions which I am going to make later.

Then I come to rule 5 of Order XXXII. It now consists of two sub-rules and a further sub-rule should be added as follows:

"(3) If the next friend or guardian refuses or neglects to file any appeal or revision or to take any other steps in relation to the case any other person may, with the leave of the court, file an appeal or revision or other proceedings for and on behalf of the minor and thereafter he shall continue to be the next friend or guardian until his retirement, removal or death as case may be."

This provision is very necessary for the reason that I have alredy mentioned. In one case when the guardian of the minor did not file an appeal in the court, and it was filed by some other person on behalf of the minor, that appeal was dismissed on the short ground that the person concerned had no competence to file the appeal. Even though it was a good case. the High Court refused to go into merits.

MR. CHAIRMAN: Actually rule 9 is wider and covers your point but

you want it to be added here also. We will consider it.

SHRI KUMAR: Rule 9 deals only with plaintiff minor and not with defendant minor and does not deal with the matter suggested by me. If the case is pending, then the guardian or the next friend can also be removed, but if the litigation has come to an end in the trial court, no apeal can be filled unless the next friend or guardian is removed. That is why I have suggested this sub-rule.

In rule 11 I suggest the addition of a new sub-rule as follows.

> "After the minor has attained majority, the court may on an application made to it by the guardian or by the minor, permit the guardian to retire, and allow the minor defendant to defend or continue with the suit.'

With regard to the plaintiff minor there is such a provision but with regard to the defendant minor there is no such provision now.

In Order XXXIII in rule 3 of a pauper has now been described as an indigent person. I welcome this amendment and submit that presentation in person mentioned in the existing rule should be dispensed with. The man is already a pauper and he cannot undertake further expenses. Therefore, this rule should be worded like this:

> "The application for pormission to sue an indigent person may be filled by the applicant in person or through an authorised agent, who can answer ....attended in person"

To my knowledge a person residing in Allahabad had to go to Punjab High Court because of the present rule.

There should be a consequential amendment to rule 4 because there is no quesion of the person concerned being allowed by the court to appear.

Under the proposed rule 15A it is not obligatory on the court to grant time. It should not be left to the whim of the court to give him time or not because I have come across some cases in which the trial court did not give time and the person obtained time by filing a revision petition in the High Court.

There are certain reported cases of mine also this points.

Order 34: In the proposed Rule 10A, Here, after the words "at the time of the institution of the suit" add the following:—

> "Order within the time allowed by the court for the purpose."

Order 38. Rule 1:—I submit that clause (c) should be further added. Since there are only two clauses (a) and (b), I submit that a third clause 'c' should be added and it should be as under:—

> "(c) that the defendent is not possessed of any property or other means to satisfy the decree that may be passed against him."

Order 39. On page 74, kindly see (iv). It says:

> "(iv) to rule 8, the following proviso shall be added, namely:—
>
> "provided that where an injunction is granted without notice to the party, the Court shall, before granting such injuction, require the party praying for the injunction to file an affidivit stating that a copy of the application for injunction has been delivered to the opposite party or, where such delivery is not practicable, a copy of the application togther with the documents and affidavit on which the applicant relies and a copy of the pleadings has been sent to the opposite party by registered post."

I submit that this is not a proper provision because if this provision is added, it will lead to abuse of the

process of the court or rather it will amount to negation of the existence of the clause. I will give you one example. There was a person who had a very big mango garden in the district of Ambala. That garden was yielding him an income of Rs. 10,000 per year from the mango trees. Just in the vicinity of that garden, a brick kiln was started about 100 yards away. As a result of this, smoke started coming out of it with the result that the mangoes were damaged. That man filed a suit against him asking him to refrain from doing it. This was done at least a month before the preparation for firing had to take place and the other party came in collusion with the judge with the result that no order was passed. When the order was passed on that particular date his brick kiln was fired, I opposed to this provision. It is only in emergency that such thing should be done.

MR. CHAIRMAN: You are not opposed to the existing rule 3. It is based on how that notice should be given. But you are opposed to the notice being given.

SHRI KUMAR: The existing rule 3 is a discretion given to the Court. But if the proposed proviso to rule 3 is allowed to remain there, then it will be obligatory on the part of the court to send it the notice.

Proposed Rule 3A: I submit further that rule 3A which has been proposed is not also a healthy provision. If after the end of 30 days, there are two holidays, then what will happen? The entire purpose will be frustrated. I see that this provision has been made only to see that this injunction is not abused and that it is decided at an early date. I suggest that the matter should be decided within 30 days except when there are some reasons to be recorded. Normally speaking, it should be decided within 30 days. The object of the proviso to rule 3A will be served by adding this provision which I am suggesting at the end of the existing Rule 4:—

> "and such application will be decided within 30 days except when for reasons to be recorded, the court decides to delay the decision;"

Rule 7: In this existing rule, instead of the words "preservation or inspection," the following words should be substituted:—

> "Preservation or inspection or keeping the account of mesne profit."

Supposing with regard to a particular property which is very the subject matter of litigation, the defendant is in possession of it, he will try his utmost to delay the decision of the court. But the plaintiff will try that the court should give its decision earlier. Therefore, the man who is not in possession of that property will be put to inconvenience, and to safeguard his interests these words should be added.

Also, I suggest, sub-clause (d) may also be added further as under:

> "(d) order any party to submit to the court the accounts of the mesne profits for its examination."

Then, I come to Order XLI. The proposed sub-rule (3) reads:

> "Where the appeal is against an order made in execution of a decree for payment of money, the appellant shall within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect there of as the Court may think fit."

The following words may be added here:

> "unless the court for reasons to be recorded waive the compliance of this condition."

The proposed sub-rule (3) (1A) says:

"Where the appellant fails to make the deposit or furnish security specified in sub-rule (3) of rule 1, the Court shall reject the memorandum of appeal."

This will be a rather too stringent provision. This is not a good provision. In some cases, it may do good. But it should not be made stringent like this that for every person it will be obligatory. My suggestion is that it should be like this:

"unless the court, for reasons to be recorded waive the compliance of this condition."

At the end of the existing sub-rule (3) of Rule 3 the following words should be added:

"and the amended memo of appeal shall be deemed to have been filed on the date when it was first filed in the court."

Many times, it happens that the amendment is of a formal nature When the court points out some amendment in the memo, it should be taken in that very spirit and it should be deemed to have been filed on the date on which it was originally filed.

SHRI M. P. SHUKLA: Why do you suggest this? Which section of the society will be benefited by it?

SHRI KUMAR: If a person against whom a decree has been passed is not in a position to make the payment—he is a pauper or deficient in some other way—if he makes an application to the court and if the court exercises judicial discretion, the compliance of this sub-rule can be waived. It should not be made a stringent provision that in every case it should be complied with.

SHRI M. P. SHUKLA: In what way, it will benefit the weaker sections of the society?

SHRI KUMAR: It will benefit the weaker sections of society. They will be able to file an appeal without depositing the money and they will be able to invoke the mercy of the court.

SHRI M. P. SHUKLA: It is not the weaker sections of society which avoid the execution of decree. It is the stronger sections of society which also do it. Let them make a deposit. Is that not your experience as a lawyer at the Bar?

SHRI KUMAR: It should be left to the discretion of the court.

SHRI M. P. SHUKLA: Would you suggest the same thing in the case of income-tax appeal also? There also, an assessee has to deposit money.

SHRI KUMAR: At the present moment, we are not dealing with the income-tax provisions. Even in income-tax cases, sometimes, some people are genuinely unable to pay the amount. There can be some genuine cases. It can be done there also.

MR. CHAIRMAN: You want discretion to be given to the Court.

SHRI KUMAR: Yes, Sir.

Rule 11—*Proposed sub-rule* (4).—At the end of the proposed sub-rule (4) same words as suggested by me to be added after proposed sub-rule (3) of rule 1 should be added, *viz*:—

"Unless the court for reasons to be recorded waives the compliance of this condition."

Then, I come to rule 12A which has been proposed. It says:

"The court may, at the time of admission of an appeal, direct that

the appeal be admitted in part only or on specific grounds only and where such an order is passed, it shall not be open to the appellant to argue the appeal on any other part or to urge any other ground of appeal, as the case may be, without the leave of the Court."

I submit that this should not be the provision at all because, sometimes, a particular point does not strike the lawyer concerned and the Court also sometimes becomes stingy and many times it depends upon the mood of the Court whether the case should be admitted or not. On one particular point, the Court may think that the case is fit enough to be admitted whereas at the last moment, at the time of arguments, it may turn out to be a flop and some other point might be discovered.

I would submit that this should not be there. Once the appeal is admitted, it should be open to be examined in all aspects. Why make it stringent this way? This would mean a negation of justice. I submit that this provision should be rather liberalised because the function of the courts is to administer justice and nobody should be deprived of justice by mere technicalities of law.

Now Sir, I come to rule 27. In this rule clause (aa) is proposed to be added. I submit that from this proposed clause the words "notwithstanding ..... or" should be omitted.

In one case which I myself conducted in the High Court some time ago, the lawyer who had conducted the case in the lower court omitted to file an extract of the Jamabandi and these records were cent per cent in favour of the person concerned. But because they were not produced in the lower courts, the High Court did not allow them to be produced in the High Court despite feeling that it was of unimpeachable accuracy and they were very much in favour of the appellant.

SHRI M. C. DAGA : So you want this to be omitted?

SHRI KUMAR: No, Sir, I submit that a further clause (c) should be added: "The evidence sought to be produced is likely to result in a reversal of the judgment or decree appealed from."

SHRI M. C. DAGA : Then the whole chapter will have to be re-opened.

SHRI KUMAR : No, Sir, the whole chapter will not be re-opened. The High Court also examine the entire case in any case, and if the document also goes before the Court and it is of unimpeachable authenticity, why should the person concerned not be given the benefit? Why should his claim be defeated on the ground of mere technicalities that it had not been produced earlier?

SHRI M. C. DAGA : The words used are "notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not be produced by him ..."

SHRI KUMAR : It should not be "not within his knowledge". In the case I have mentioned, the persons brought copies of the documents and gave them to their lawyer ...

SHRI M. P. SHUKLA : If the Jamabandi documents were the basis of my case and I didn't file them in the lower court, how can you say that they were within my knowledge. If they were so important is to result in likely reversal of the judgment, how could I not file them if they were within my knowledge?

Of course it is all right to say that they were not available at that time, that they were old and that with all due care and sincerity they were not found. The Jamabandi records are always available for one, two or three years. In my State there was

a rule that up to twelve years they should not be destroyed. So it is possible that he could not lay his hands on them at that time and therefore could not produce them, and that he could get them later. The Patwari papers are always available.

SHRI KUMAR: It is true that they are not destroyed, but in this particular case which I have mentioned, the documents were secured by the claimant and handed over to the lawyer. They were lying in the brief of the lawyer all the time but the lawyer concerned, due to some mistake on his part, did not produce them in the lower court and so the High Court did not allow them to be produced.

SHRI M. P. SHUKLA: Then it was mis-conduct on his part.

SHRI KUMAR: May be, but the punishment given here recoils on the litigant. Do we have to punish the litigant for the fault of the lawyer? The object of the provisions of law is to help the litigants and not to punish them for the misconduct or neglect of their lawyers.

SHRI M. P. SHUKLA: If the documents were handed over to the lawyer and the lawyer was not able to file them at the time of the hearing of the arguments ...

SHRI KUMAR: They were in his brief; they were throughout with the lawyer.

SHRI M. P. SHUKLA: We are also in the know of the things you are mentioning; we belong to the same profession.

MR. CHAIRMAN: What does the clause say?

SHRI KUMAR: It says that the party seeking to produce additional evidence shall establish that, notwithstanding the exercise of due deligence, such evidence was not within his knowledge or could not be produced by him at the time when the decree against him was passed. In the case I have given just now as an illustration that particular individual exercised due deligence; he gave the papers to the lawyer concerned but the lawyer, owing to some neglect on his part or due to his being overbusy, did not produce them.

SHRI M. P. SHUKLA: There is a provision relating to damages. He can be sued for damages and prosecuted for misconduct.

SHRI KUMAR: That can be done but it will not give relief to the poor litigant. The lawyer may suffer. ....

MR. CHAIRMAN: So what is your suggestion? You are opposed to this (AA)?

SHRI KUMAR: Yes, because it says that unless he establishes that, in spite of his exercising due deligence, such evidence was not within his knowledge, it cannot be produced.

SHRI M. P. SHUKLA: Here itself, we can add 'not due to his fault.

Would you agree if it is stated,". . due to the negligence or wilful default of his counsel or the person prosecuting the case on his behalf. ."?

SHRI KUMAR: With great respect I would submit that it is very difficult for a poor litigant to prove that the counsel was negligent. Negligence is a thing which cannot be proved by any amount of evidence; it can only be inferred. For that reason, it should not be made very stringent. It should be made liberal, so that if the court thinks fit it may be allowed.

MR CHAIRMAN: What is your suggestion?

SHRI KUMAR: My suggestion is that the words "notwithstanding .... or" should be omitted.

"could not be produced" should be sufficient.

I further submit that another clause, Clause (c), should be added to rule 27, as follows, namely, "the evidence sought to be produced is likely to result in the reversal of the judgment or decree appealed from".

MR. CHAIRMAN: Alright, Proceed to the next point.

SHRI KUMAR: Then I come to Order XLII. In the Bill it is proposed that, after rule 1, the following rule shall be inserted, namely.:—

"(1) Where an appeal from an appellate decree or order is admitted, the Court admitting it shall record its reasons for so doing.'

I submit that this is wholly unnecessary. It will result in waste of time. It should be omitted.

MR. CHAIRMAN: What about the next one, namely,

"It shall not be necessary for the Court to record reasons for not admitting an appeal from an appellate decree or order."

For non-admission, do you think that the reasons should be recorded?

SHRI KUMAR: If that is done, it will be good.

MR. CHAIRMAN: Suppose the word 'not there is omitted to mean that 'it shall be necessary for the Court to record reasons...' , would you welcome it?

SHRI KUMAR: If that is done, it will be good; I will welcome it.

MR. CHAIRMAN: Alright. You may proceed to the next.

SHRI KUMAR: Order XLII, rule 1. The amending clause says that clauses (b), (e), (g), (h), (m), (o) and (v) shall be omitted.' I submit that clases (b), (e), (g), (m) and (o), should be retained; in other words, all of them excepting (h) and (v) should be retained because sometimes the court asks him to reply to such and such questions and the person concerned is perplexed or he may not have the proper advice Then his pleadings are struck off. He should be given an opportunity to file an appeal against that.

Order XLIV. The proposed rule 2 says:

"Where an application is rejected under rule 1, Court may, while rejecting the application, allowing.

Here , the word 'may' should be substituted by the word 'shall.'

Then I come to Order XLVII. Here the Explanation reads as follows:—

"The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment".

I submit that the word 'not' in ..shall not be a ground..should be deleted; it should be '..shall be a ground..' because the necessity of filing an appeal against that order will be taken away; instead of filing an appeal he will seek relief from that very court and will get justice.

My last submission is with regard to page 88 of the amending Bill Section 101 enumerates a number of clauses, one by one. I submit that the purpose will be met if only one clause is added and that should be like this, namely, "The provision introduced by this amending Act shall not affect any proceedings taken or instituted before the amendments were introduced."

That is all.

MR. CHAIRMAN: My self and my colleagues in the Committee and also in the Sub-Committee which met at Chandigarh sincerely express our appreciation for the labour that you have taken to study this Bill and also the Code and for having given to the Committee the benefit of your vast experience. I can assure you that we shall examine all your suggestions very carefully. Thank you for the trouble that you have taken.

SHRI KUMAR: Sir, may I express my thanks to the hon. Committee? I have brought with me the proposed amendments, but there have been some last minute changes. I may, therefore, be permitted to have them typed and send them to you by post tomorrow.

MR. CHAIRMAN: Alright.

(The Committee then adjourned)

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