[श्री रामेश्वरानन्द]

चाहता हूं कि अभी मंत्री महोदय ने जो महत्वपूर्ण वक्तव्य दिया है, उस का हिन्दी अनुवाद भी होना चाहिये । यह इंग्लिस्तान नहीं है इस लिए केवल इंग्लिश वालों को सन्तुष्ट करने का यत्न नहीं किया जाना चाहिये । हम भी यहां बैठे हैं । यह भारत वर्ष है और इसकी भी कोई भाषा है ।

अध्यक्ष महोदय : आप ने मुझ को एक के लिए लिखा था कि उसका हिन्दी तर्जुमा हो, वह मैं ने कर दिया । इस को भी देख लिया जायेगा । The Hon. Law Minister.

श्री रामेश्वरानन्द : मुझे कई उत्तर नहीं मिला ।

अध्यक्ष महोदय : जो उत्तर दिया जाता है, अगर आप उस को सुनते ही नहीं तो मेरी मजबूरी है, मैं क्या करूं ?

श्री रामेश्वरानन्द : मैं सुनता क्यों नहीं हूं ? बैठा ही इस लिए हूं । मेरे कान बन्द थोड़े ही हैं ?

12.13 hrs.

SPECIFIC RELIEF BILL

Mr. Speaker: The hon. Law Minister.

The Minister of Law (Shri A. K. Sen): Sir, will you please allow the hon. Deputy Minister to move the motion?

Mr. Speaker: There is no harm in it. The hon. Deputy Minister.

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra): Sir, I beg to move:

> "That the Bill to define and amend the law relating to certain kinds of specific relief be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—
>
> Dr. M. S. Aney, Shri Brij Basi Lal, Shri Brij Raj Singh-Kotah, Shri Chattar Singh, Shrimati Zohraben Akbarbhai Chavda, Shri C. M. Chawdhary, Shri B. K. Dhaon, Shri N. R. Ghosh, Shri Abdul Ghani Goni, Shri Harish Chandra Heda, Shrimati Jamuna Devi, Shri Gulabrao Keshavrao Jedhe, Shri Yogendra Jha, Pandit Jwala Prasad Jyotishi, Shri Nihar Ranjan Laskar, Shri Masuriya Din, Shri David Munzni, Shri D. D. Puri, Shri A. V. Raghavan, Swami Rameshwaranand, Shri R. V. Reddiar, Shri A. T. Sarma, Shri S. M. Siddiah, Shri K. K. Singh, Shri Krishnapal Singh, Dr. L. M. Singhvi, Shri R. Umanath, Shri P. Venkatasubbaiah, Shri Asoke K. Sen and the Mover
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> and 15 from Rajya Sabha;
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> 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;
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> that the Committee shall make a report to this House by the last day of the first week of the next session;
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> that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and
>
> that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee . . ."

Shri D. C. Sharma (Gurdaspur): Sir, will the hon. Minister kindly speak slowly? We are not following what he is saying.

Mr. Speaker: That is put down on the Order Paper. For that purpose

he can consult that. For the rest of the speech I will ask him to go slowly.

Shri Bibhudhendra Mishra: .....

"...and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

The law of specific relief, that is, the Specific Relief Act has been in operation in India since 1877. This is a species by itself. It seeks to give to the claimant the very thing that he wants to get, not compensation but that to which he is entitled. It puts the defendant under an obligation to do the very thing for which he is obliged or not to do something. Sometimes, circumstances may arise in which it may become difficult for the defendant to do so. Therefore, by a method of trial and error the Court of Chancery has laid down certain principles and these principles have been codified in this Act. On the whole, as the Law Commission has put it, the Act has been working very well, but there is still scope for improvement. Improvements are of two types. Formal amendments: it is a matter of language. They want to improve the language of the statute. Also, at some places, they want to make the intention clear where there is some doubt about the intention as a result of conflict of decisions, so that the conflicts may be set at rest.

The report of the Law Commission was circulated to the State Governments and almost all the State Governments agreed generally with the principles there. At the outset, let me tell the House that this Bill seeks to incorporate the recommendations of the Law Commission except one, namely the amendment suggested to section 42 of the Specific Relief Act.

So far as the applicability of the Act is concerned, the Act does not extend to the territories formerly known as Scheduled Districts, corresponding to the present Scheduled and Tribal areas. The Law Commission sees no justification as to why the Act should not be made applicable to those areas, since the courts there, though the Act is not applicable, apply the principles of justice, equity and good conscience. Moreover, the Transfer of Property Act which also contains some of the equitable principles is applicable to these areas. The tendency of modern legislation has been that all the Acts are made applicable to the Scheduled District areas. If any difficulty is experienced at any time, there are the provisions of the Fifth and Sixth Schedule of the Constitution under which the Government, by notification, can exclude the operation of the provisions of this Act. That power is always there. Hence, they are of the opinion that this Act should also be made applicable to the Scheduled areas.

One of the most important recommendations that the Law Commission has made is with regard to section 9. Section 9 relates to a suit for possession. When a person is dispossessed of his property, it provides a speedy and summary remedy. But, experience has shown that, though the object was that whatever may happen, the owner or title holder should not take the law into his own hands, this does not provide a speedy remedy at all. Since it has been found that in a suit for possession, the question of title also has to be gone into, it becomes a prolonged litigation and if there is a verdict in favour of the plaintiff, the defendant can again file a suit for recovery of possession on the basis of his title. That has led to multiplicity of proceedings. Therefore, they have suggested that this should be completely omitted. This suggestion has been accepted.

I will refer to another important amendment, that is Chapter VIII of the Specific Relief Act, that is, sections 45 to 51 should be omitted. You will find that this Chapter gives power to the three Presidency High Courts of India, to issue a writ of mandamus. After the coming into force of the Constitution, article 226, they feel that this is not necessary at all. It will be seen that the provisions in this Chapter VIII of the Specific Relief Act

[Shri Bibudhendra Mishra]

confer less power than has been given to the courts under article 226 of the Constitution. Then, again, they are of the opinion that sub-sections (f) and (g) of section 45 are inconsistent with and contrary to the provisions of article 226 of the Constitution. Sub-section (f) reads thus:

> "Nothing in this section shall be deemed to authorize any High Court—
>
> (f) to make any order binding on the Central Government or any State Government.".

Sub-section (g) reads thus:

> "(g) to make any order on any servant of the Government as such merely to enforce the satisfaction of a claim upon the Government.".

The Law Commission feel that the courts should not be restrained from passing such orders, in view of article 226 of the Constitution, and, therefore, these sub-sections are *ultra vires* the Constitution.

Then, section 50 of the Act which was inserted by the Adaptation Order of 1950 nullifies the entire chapter altogether. It says:

> "Nothing in this Chapter shall affect the power conferred on a High Court by clause (1) of article 226 of the Constitution.".

So, for all these various reasons, they have suggested that since now writs are available in many forms besides mandamus, in the Constitution itself, this Chapter need not be retained, and hence it has been omitted.

Then, another important suggestion which they have made is that sub-section (d) of section 56 should be omitted as that is also *ultra vires* the Constitution. It reads thus:

> "An injunction cannot be granted—
>
> (d) to interfere with the public duties of any department of the Central Government or any State Government or with the sovereign acts of a Foreign Government;".

They say that this is inconsistent with the second proviso to article 361(1) of the Constitution. That proviso reads thus:

> "Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.".

The Law Commission have suggested that sub-section (d) of section 56 should be omitted, and that suggestion has been accepted.

Then, I come to section 42 which is one of the most important sections of the Specific Relief Act, about which the Law Commission have made some recommendations which have not been accepted. They are of the opinion that the proviso to section 42 should be deleted. I would read out the entire section. It is as follows:

> "Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.".

Then, the proviso reads thus:

> "Provided that no court shall make any such declaration where the plaintiff, being able to seek

further relief than a mere declaration of title, omits to do so.".

Under the present provision as it stands, where a plaintiff is entitled to some other relief besides a declaration, that relief shall not be granted, and the suit will not be maintainable if along with the prayer for declaration, the relief also is not claimed. They say that there need not be a prayer for further relief, and a declaration is enough, and, therefore, this proviso should not be there. In this connection, I would like to point out that there is a similar provision also in the Civil Procedure Code in Order XI, Rule 3, which says that:

'If a person entitled to more than one relief in respect of the same cause of action omits, without the leave of the court, to sue for any such relief, he shall be debarred from suing afterwards in respect of the relief so omitted.".

So, we find virtually the same provision in the Civil Procedure Code, and there is no suggestion by the Law Commission that this provision in the Civil Procedure Code should also be omitted. If the suggestion of the Law Commission is accepted, it would mean omitting this provision from the body of section 42 of the Specific Relief Act. It will work out in a very different way; whereas under the Civil Procedure Code, the parties would be asked to pray for further relief besides a declaration, under the Specific Relief Act, a suit will not fail because there has not been any further relief asked for. Therefore, this suggestion of the Law Commission or this recommendation of the Law Commission has not been accepted.

Further, they want that this section should apply to all legal rights and not to rights of property only. They are of the view that if it applies to all rights, when once a right is declared, probably, that will set all disputes at rest, and there will be no further dispute, because the parties know what their rights are, and there will be less of cases in the courts. It is well known that besides a declaration, section 42 does not confer any other thing. Therefore, even if the right is declared, it does not debar a party from going to court. Here the pious wish that once a right is declared, the party may refrain from going to court may not work out and will result in a multiplicity of proceedings. Therefore, this has not been accepted.

These are, in short, the main recommendations that the Law Commission has made. I do not want to proceed to discuss the formal amendments of sections as this is going to a Joint Committee. With these words, I commend the motion to the acceptance of the House.

Mr. Speaker: Motion moved:

"That the Bill to define and amend the law relating to certain kinds of specific relief be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely: Dr. M. S. Aney, Shri Brij Basi Lal, Shri Brij Raj Singh-Kotah, Shri Chattar Singh, Shrimati Zohraben Akbarbhai Chavda, Shri C. M. Chawdhary, Shri B. K. Dhaon, Shri N. R. Ghosh, Shri Abdul Ghani Goni, Shri Harish Chandra Heda, Shrimati Jamuna Devi, Shri Gulabrao Keshavrao Jedhe, Shri Yogendra Jha, Pandit Jwala Prasad Jyotishi, Shri Nihar Ranjan Lasker, Shri Masuriya Din, Shri Bibudhendra Misra, Shri David Munzni, Shri D. D. Puri, Shri A. V. Raghavan, Swami Rameshwaranand, Shri R. V. Reddiar, Shri A. T. Sarma, Shri S. M. Siddiah, Shri K. K. Singh, Shri Krishnapal Singh, Dr. L. M. Singhvi, Shri R. Umanath, Shri P. Venkatasubbaiah, and Shri Asoke K. Sen and 15 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;

[Mr. Speaker]

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee.".

Does any hon. Member from the Opposition wish to speak? Do I take it that no hon. Member from the Opposition wants to speak?—Shri Man Sinh P. Patel wants to speak.

Shri Man Sinh P. Patel (Mehsana): I welcome this measure. It eliminates so many sections which are redundant according to the suggestions of the Law Commission in their 9th Report. At the same time some new suggestions are also being accepted by the Government as per the Commission's Report.

First of all, I would draw the attention of the hon. House to the dissenting note of Dr. N. C. Sen Gupta regarding section 9, of the original Act. Section 9 in no case ought to have been omitted from this new Bill, because it gives a summary remedy to an owner whose property would otherwise be taken over by a trespasser. For this reason, I also think that the retention of section 9 in this new Bill also is absolutely necessary.

No doubt, the Deputy Minister has said that the Bill is going before a Joint Committee. I would only urge the Joint Committee to look into the dissenting note of Dr. N. C. Sen Gupta. No doubt, the majority decision is in favour of deleting section 9. But as I read section 9 of the original Act, it is worth keeping in the new enactment. Section 9 says:

> "If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof. "

Normally litigation takes a very long time. There are appeals and appeals in different courts. If this section is deleted, the trespasser who has taken over possession by forceful means retains the property for that whole period during which the matter will be pending in the courts of law, which may sometimes extend to even 10 years. If the original owner has some remedy under section 9, the fruits of that possession can also be retained and enjoyed by him on seeking remedy in a court of law.

Two new clauses are being added to the law by the amending Bill, namely clauses 19 and 21. As far as I can see, clause 21 is a bit mysterious. It reads:

> "Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—
>
> (a) possession, or partition...."

Here, the words "in an appropriate case" are not necessary at all. There is already the word "may". So, when a petitioner or a plaintiff goes before a court of law, it should not be necessary for him to show that it is an appropriate case. It is always the inherent right of the court to take it up when it knows that there is a fit and proper case. Therefore, these words are not necessary.

Not only that. The discretion allowed to the courts will also sometimes be misunderstood. The cases in which the court may use its discretion are given in clause 19:

> "(2) The following are cases in which the court may properly exercise discretion not to decree specific performance...."

Clause 19(1) states:

> "(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."

After this comes sub-clause (2), which contains three sub-divisions. Not only that, there are Explanations added. As I see it, the whole of clause 19(2) is redundant. Sub-sections (1), (3) and (4) of section 19 should be sufficient. The cases in which discretion should be used by the court should not be defined by the legislature, as it would lead to interpretations or meanings of the intentions of the legislature which will give scope to the courts to decide them, and it will thus invite unnecessary litigation on these points. Giving full discretion to the courts, then explaining that discretion by some rules and then further limiting them by certain Explanations will result in a very ambiguous legislation, so that different courts at different stages will take different views, and thus there will be an increase in litigation.

Now, coming to the drafting of the Bill, the Law Commission has left it to the official draftsmanship. I find so many redundant words still in this Bill which could have been avoided. The original Act was drafted in 1877. When the word "shall" is not to be used, the word "may" is used, and when "may" is used it is not necessary to have words like "in an appropriate case". The meaning of expressions like "discretion of a judicial nature" or "sound principle of equity in law" have been established and everybody knows when a court should act. So, these words need not be used. As I understand it, there seems to be a lot of bad legal draftsmanship. So, undoubtedly, the hon. Law Minister who is eminent in his own practice, will see to it that certain words are not unnecessarily repeated here in 1962, the fifteenth year of our freedom.

The main object of this amending Bill, as I understand from the hon. Deputy Minister, is that multiplication of suits should be eliminated. Certain rights found in the existing Specific Relief Act are retained in the new Bill and the court is also empowered to allow certain pleas of defendants, so that unnecessary litigation may be avoided.

So far as the Specific Relief Act is concerned, it is a difficult proposition to a lawyer himself; and to a common man it is further difficult. The main spirit behind the Specific Relief Act should be that there should be faith created, in the common parlance of the business community. There should not be great hardship or embarrassment in taking to the process of law for the performance of an agreement enforceable under a contract. It should not be difficult for the owner who seeks to secure possession or to have a right established.

Certain explanations have been put under different sections. And, as I said previously, judicial discretion is sought to be restricted. We should leave a fairly wide scope for the exercise of the judicial discretion so that it may not lead to unnecessary litigation or unnecessary embarrassment to the person who prefers the process of law. It should not be denied simply because the law is not well drafted.

I welcome this Bill. I understand that previously also in 1960 a similar

[Shri Man Sinh P. Patel]

Bill was introduced. There have been so many reports of the Law Commission for new legislation but the new Bills are not coming in right earnest. Normally, Government should not take more than a year or two to bring in legislation after the Law Commission reports. I myself, a new member of the House, have received so many voluminous reports of the Law Commission. But new Bills according to the recommendations of the Commission are still not being introduced.

We know that after independence the whole atmosphere has changed and the spirit of the law is also being tried to be interpreted by the courts in a different manner. As my hon. friend explained, so many provisions of existing laws are redundant and contrary to the Constitution of India. So, codification and simplification of law should start as early as possible. I would be glad if new Bills or amending Bills are introduced in a short period after the reports of the Law Commission are issued.

Shri P. R. Patel (Patan): Mr. Speaker, Sir, I take this opportunity to offer my views on the Bill. I do not wish that the debate should collapse and I venture to express my views.

Mr. Speaker: If we were the American Congress I should have come down and put somebody else here.

Shri P. R. Patel: Sir, I practised on the civil side and I know the complications of this Specific Relief Act. There are doubts and doubts and contradictory decisions of the different High Courts. And, it is very good that the Law Commission had offered their views and the Bill is drafted mostly on the views expressed by the Law Commission. There was section 9 in the old Act: it has been removed by this Bill. It was a speedy remedy. There was that provision. It debars taking of possession of immovable property without the due course of law, without legal remedies. The only thing that a man was required to prove is that he was in possession of the property within the last six months. There was no question of title or anything of that kind. If it was proved that a person was deprived of his property without the due process of law, then he must be given possession. I will give an example. Today I stay in flat No. 15: that is in my possession for the last six months. Somebody comes and throws out my packages and deprives me of the possession. What is the remedy for me? Should I go to a civil court and have a long procedure? It takes one year or two years or even ten years. Nobody likes to go to the mamlatdars' court because there is the revenue procedure and we know how it is done there and I do not want to criticise or offer my remarks on that. So, the remedy for me under section 9 would be there; I have to apply under that section that possession should be returned to me. That remedy is taken away by this Bill. I urge the Joint Committee to look into this and I am of the opinion that section 9, with some modifications, should be retained.

Most of the law here is what contracts could be enforced, what could not be enforced and in what cases compensation could be allowed. These are the three important things. Naturally there are the perpetual injunctions and temporary injunctions and so on. I would now refer to clause 11. It refers to specific performance of part of contract.

Now, clause 11(1) says:

> "Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract."

In sub-clause (2), it says:

> "Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the

whole in value and admits of compensation in money, the court, may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency."

It is a right proposition. So, if you see the spirit of sub-clause (2) and the spirit of sub-clause (3), you will hesitate to accept what is said in sub-clause (3) which reads as follows:

"Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant."

So, the clause says that if the contract is such that the major part of it could be enforced, then specific relief should be given and a compensation also should be paid But if a major part could not be specifically enforced and the minor part could be enforced, in that case, the plaintiff must have paid the whole contractual amount, and then, if at all he persists to have a specific relief for the minor part enforced, he will have to relinquish his claim for compensation even for the major part.

Let us consider the section as it is. There are two properties. One is A and the other is B: the two are combined. The bigger part is A. If the specific relief for the bigger part could be enforced, that means A, B is a minor part of it. In that case, the defendant would be asked to perform the part of the contract. That is, he shall have to pass relief for the major part of the contract and for the part that he could not he has to pay compensation. So, if there is a small part, he has to pay compensation.

Here is another case A man sells the property. A major part of it is such that it could not be enforced and the smaller part of it is such that it could be enforced. In that case, the law says that if you want a specific performance of the smaller or minor part, you must pay the whole amount and you must relinquish your right of compensation. You cannot ask for compensation. Is it a fair proposition? I would suggest that the Law Minister should devote some thought to it. In both of the cases, if a part of it could not be specifically enforced, the remedy should be one of compensation. Why should the person relinquish his right of compensation? I would urge this point to the hon. Minister and I wish that the Joint Committee that is going to be appointed looks into this matter.

Then I come to clause 12. There also, I am not happy with sub-clause (d).

Clause 12 says:

"Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or

[Shri P. R. Patel]

lessee has the following rights, namely:

> (d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit...."

There is nothing wrong in it. If the vendor or lessor files a suit and if it is proved that he has no perfect title, in that case the deposit must be returned. But suppose the vendor or lessor is sued and it is found that he had imperfect title. Because of the imperfect title, specific performance would not be desirable, because nobody would like to have property with imperfect title. In that case, if he is sued, is there any remedy or anything in the law which would give authority to the court to award compensation or return of the deposit? The law is silent. As I understand the clauses in this Bill, the vendee does not get any compensation or does not get his deposit back if he files a suit and finds that the lessor and vendor had imperfect title. This matter should be looked into.

This is not the time to suggest any amendment. But it would be useful to the Joint Committee if I give my suggestion. I suggest that in clause 12, sub-clause (d) should be amended like this:

> "Where the vendor or lessor sues for specific performance of the contract or is sued and the suit is dismissed on the ground of his want of title or imperfect title, the defendant or the plaintiff has a right to a return of his deposit and compensation."

I think these things should be put in this clause, so that the other side might also get justice.

There are other clauses. Clause 17 says:

> "Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases...."

I would request the Minister to read along with this, clause 25, which says that where due to a mutual mistake of the parties, a contract or other instrument in writing does not express their real intention, then either party may institute a suit to have the instrument rectified and so on. If an agreement is passed and if the other side says that it is not according to the terms thought of or there are some variations which are not in writing, in that case I would suggest that the party should file a suit under clause 25 and get the matter settled. Suppose this remedy is not availed of and the other side, in whose favour the agreement has been passed, goes to the court and proves the agreement, which is in writing. Under the Evidence Act, no doubt there are exceptions and when there is fraud or some mistake, some evidence may be given. But otherwise, oral evidence in such a case would rather prolong the case and cause harassment to the person. I am of opinion that the law should put an end to this. If there is any agreement in writing, other intentions could be shown by a document which is in writing. We know that oral evidence could be had for a cup of tea or some coins. The court will rely on two or three witnesses and come to the conclusion that the agreement is not valid and the man will lose. I think we should give protection to such persons too.

I hope the hon. Minister will consider these suggestions. I indulged myself in offering these views only in order that the debate may not collapse all of a sudden. I was not prepared at all. But I have practised on the civil side for some years and so, I could give some suggestions.

Mr. Speaker: He has fared quite well. Why should he admit that he has not studied it?

Shri U. M. Trivedi (Mandsaur): He has studied it very well and offered very substantive and constructive suggestions.

Mr. Speaker, Sir, I think I should welcome this Bill as it stands. Now, there are some flaws in it which are the result of the members of the Law Commission not ever having undergone the difficulties of the ordinary layman in the street. I have not understood the arguments advanced by the Law Commission for omitting the provisions of section 9 of the Specific Relief Act. It indeed provided a very speedy remedy, which was allowed under law, more so in these days when people have become used to take the law into their own hands and might is right these days than it used to be before. Seciton 9 of the Specific Relief Act contained a very healthy provision, which was many a time very useful to those who had not much money at their disposal. Section 9 says:

> "If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such a suit.
>
> Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof".

The only advantage that one could get was in court fees. One had not to pay the full court fees for filing a suit under section 9.

13 hrs.

Secondly, it was not necessary to have any evidence of title in this case. It is true, as the Law Commission has said, that in some cases evidence was recorded. But that was the mistake of the judiciary. If we go on appointing to the judicial offices persons with no experience, and boys who have just got out of the law colleges and who are not able to put down two sentences correctly or able to express their thoughts succinctly are made to assume the important powers of a civil judge or a district judge, they are bound to suffer. So the remedy does not lie in dropping this provision of law, but the remedy lies elsewhere. That we have not considered at all. I do not know whether we have yet formulated any rule of law or any Act or any provision in any Act whereby the judiciary is to be properly selected, properly trained and properly posted. The visitations of this sin are, therefore, put upon the heads of the litigants. The remedy ought not to be that this provision of law should be taken out from the statute-book.

Those of us who have the good fortune of practising at the Bar realise that often this has proved to be of great help to those poor persons who have just been driven out by mightier persons from their possessions. Sometimes, if the judge is quick and sensible, the remedy that is obtainable is very quick and immediate and also effective. This effective remedy is denied to them by virtue of this new provision by which section 9 is sought to be removed from this Act. You will remember, Sir, that this Specific Relief Act has been in force since 1877. This is a very old Act, and the principles then laid down on the grounds of equity, as obtaining in England, have stood the test up to date. None of these principles of law has been in any way deviated so far in any of the pronouncements that have been from time to time. I will therefore, say that it will be very wrong to take away the provision of section 9 of the Specific Relief Act.

Then, in one case we find that the Law Commission has tried to jump before the stile is reached in as much as no law as required to be framed

[Shri U. M. Trivedi]

or as contemplated to be framed under the provisions of article 226 of the Constitution has been framed anywhere in India. Rule-making powers have been vested on the High Courts and some High Courts—I have Orissa in mind—have framed the rules. Other High Courts have looked at the executive bodies and they have framed laws whereby a curb has been put upon the desire of the poor litigant, the poor sufferer, the poor downtrodden, to approach the High Court. One High Court requires a big amount as court fees for approaching the court. Another High Court says that so many rupees have to be deposited before the application can be heard. This is being followed by almost all the High Courts. The only exception, to my knowledge, is the Rajasthan High Court which still allows writ petitions to be filed without any obstacles. No law has been framed so far. Before that law is framed under article 226 of the Constitution which gives us the right of the various prerogative writs—*certiorari, quo warranto, mandamus* or prohibition—we say that since these powers are already there in the High Courts under article 226 we should drop the provisions of section 45 of the Act.

I would welcome the dropping of section 45. I do not like it. It has got certain limitations. Those limitations are not quite healthy in the present form of Government and in the present days when our fundamental rights have gone up and are followed by the people. I know that the fundamental rights I talk of are the fundamental rights conceived when the Constitution was framed which have now gone by the board and are merely a mirage. They are not the fundamental rights which one should aspire that they should remain on the statute-book. But whatever has remained is sufficient for the downtrodden to approach the High Court. But the legislature has not moved in any of the States to make a provision. This Parliament has also not moved in that direction. This Parliament is authorised to make a law under article 226. No law has been made by virtue of which these prerogative rights can be governed and the principles embodied under these prerogative rights can be obtained in the jurisdiction of equity. Therefore, as long as that was not done, this provision of law was quite a healthy provision of law which ought not to have been disturbed simply because the wise man who sat on the Law Commission thought it so.

Equally important, I would say, is this doing away with the provision of section 44 on the question of appointment of a receiver. There is a big gap between the ways of thinking of those who sit in the mofussil courts and those who sit in the cities. Among cities also, there is a big gap into the way of thinking of a man sitting in Bombay and an officer sitting in Delhi. Bombay has got a particular high tradition. It does not require long arguments to place matters before a judge however low he might be in the Maharashtra State. It is not so elsewhere. The difference between the appointment of a receiver before the suit and after the suit when the suit is still pending is not realised by several judges.

Mr. Speaker: By whom?

Shri U. M. Trivedi: By the members of the judiciary—I do not mean Judges of the High Court.

Mr. Speaker: Others also ought to be respected.

Shri U. M. Trivedi: They are also human beings and as human beings they do commit these mistakes. This is an everyday affair, that to get the appointment of a receiver you must have a very honest man sitting and presiding as a judge who will apply his mind properly. Otherwise, Sir, it is a discretionary order, and a discretionary order means the discretion of

a presiding officer in whatever way the wind blows. He decides for himself. With great respect to all them, Sir, I would say that difficulty is felt in this respect. When the question of appointing a receiver before an action, when the action is still pending, comes in, then it becomes still more difficult. Even if this Specific Relief Act allows it, it becomes a difficult problem, and it becomes still more difficult when one wants to convince a judge that a receiver can be appointed even through an executive process. Therefore, this question of appointment of a receiver ought to have been elaborated to a greater extent. Instead of doing that, section 44 is sought to be removed from the statute-book. I will, therefore, suggest that the provisions of section 44 must be fully elaborated upon and brought to the forefront rather than that the provisions of section 44 should be taken away from the statute.

13.10 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Then I will come to clause 8 of this Bill. It is a new clause which says:

> "Except as otherwise provided here in, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts."

The Law Commission has stated on this point:

> "In England and in America, one finds that the text-books on Specific Performance deal with the defences open under the law of contract as well as the defences available in equity Courts in proceedings to enforce a contract by way of specific performance. In India, the defences that are available under the law of contract, such as incapacity of parties, the absence of a concluded contract, the uncertainty of the contract, coercion, fraud, misrepresentation, mistake, illegality, or want of authority to enter into the contract, have all been dealt with in the Contract Act. Further, it is provided by section 4(a) of the Specific Relief Act that an agreement which is not a valid contract under the Contract Act is not specifically enforceable.
>
> Hence, a repetition, in the Specific Relief Act, of the defences available under the law of contract may be avoided by inserting in the Act a specific provision to the effect that all defences open under the law relating to contracts shall be open to a defendant in a suit for specific performance. We, therefore, propose to insert a new section to the above effect and to omit clause (a) of section 4 which becomes redundant."

I do not know why it has been put in clause 8 instead of retaining it in clause 4(a). Section 4(a) of the existing Act says:

> "Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—
>
> (a) to give any right to relief in respect of any agreement which is not a contract;
>
> (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract;...."

We have omitted that provision. After omitting it, what we say is that all the defences that are open under the Contract Act may be available to the party. Since litigation is already quite costly, to point out to a dishonest man that he has got so many defences available to him is just like giving a torch in the hands of a thief

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to plunder the house. If this specific provision is not made and if only the equitable provision that is already there is retained, attention to the defences under the Contract Act will not be brought to light unnecessarily for burdening litigation. At least in the mofussil we come across pleadings where, whether the point has been raised or not, the lawyers will plead that the contract is illegal, bad in law, vague in terms, obtained by indue influence and coercion etc. Whatever be the case, all these grounds will be pleaded, all the various defences that are available, without thinking for a moment whether all those pleadings were applicable to a particular case or not. Now by this clause 8 we are opening out a big vista whereby various defences will be taken and litigation will become lengthier than what it is today. On the contrary, I would suggest that on grounds of equity only equitable defences must be allowed in cases of specific performance and highly technical objections should not be allowed to prevail. It is a futile attempt on our part to put it down on the statute book the various defences which will open the eyes of those who are dishonest enough to refuse specific performance of contract which they have entered into and where it will not be necessary for a judge to enforce these contracts.

Coming to clause 9, which is old section 12, there has been a recasting of this provision. The Explanation is the same which was there in the old Act but what has happened is that all the illustrations which were very important and which form part of the Specific Relief Act have been omitted from the present Bill. When the provisions are practically kept in the same language except that there have been some verbal changes here and there, I don ot see why these illustrations should have been dropped. These illustrations are very important. For example, for section 12(a), which reads:

> "when the act agreed to be done is in the performance, wholly or partly, of a trust"

the illustration given is:

> "A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation."

What was wrong with this illustration? Why should it be dropped? In practically the whole of this Bill illustrations have been dropped. Illustrations are very important for the interpretation of the Specific Relief Act, particularly so when we have to deal with, as I have said before, judges who have just been appointed after becoming law graduates from law colleges.

Their knowledge of law is always meagre. No training is imparted to them and having not received any training they try to interpret the law with their own meagre knowledge of English also. Upto date we had all these laws in English and I do not know when the day will come when we will have these laws codified in Hindi. But whether it is in Hindi or in English, law is law and the interpretation of law will always be one of the features of all time to come. Therefore in order that the interpretation may not go wrong or against what was intended by the legislature it is always necessary that illustrations of all those laws which are possible of being interpreted in an ambiguous manner or of having two meanings are given. Illustrations are the only thing which can guide one in the proper manner about the meaning of a particular provision of law.

Now, as I was saying, the words "when the act agreed to be done is in the performance, wholly or partly, of a trust" in section 12 have been changed to "where the property is held by

the defended as the agent or trustee of the plaintiff" in clause 9(b)(ii)(b). Why has this become necessary? Why narrow down the very wide meaning that is available in section 12(a), namely:

> "when the act agreed to be done is in the performance, wholly or partly, of a trust;"?

It might be an implied trust or it might be a constructive trust; it might be an express trust also. All those things are there. Instead of that we have come down to the position of having the words "as the agent or trustee of the plaintiff". Why should it be limited? I have not understood the argument behind this.

The Law Commission has said:

> "Clause (a) of section 12 relates to an obligation arising out of a trust."

Now, this is their argument:

> "Some jurists consider such an obligation as appertaining to the law of contracts but, in view of the definition of a trust in the Indian Trusts Act, such an obligation arises out of an executed contract. The relief by way of specific performance is, on the other hand, available only in respect of executory contracts, to which the other clauses of section 12 relate. It seems to us, therefore, appropriate to delete clause (a) from section 12 and to place all the provisions relating to trusts together in one section. The only references to trusts, so far as specific performance is concerned, are in sections 12(a) and 21(e). We propose to include both of them in a new section."

They have put it down in clause 9. They have made a change in section 21 also.

I know it will be very difficult for anyone to offer full criticism of this Specific Relief Bill. I understand that it is going to the Joint Committee.

1376 (Ai) LSD—5.

Mr. Deputy-Speaker: The motion is for reference of the Bill to the Joint Committee. We are discussing that motion.

Shri U. M. Trivedi: However, since I have offered some criticism, I will finish after saying something about section 21. Section 21 provides for contracts which cannot be specifically enforced. It starts by saying:

> "The following contracts cannot be specifically enforced:—"

and then they have enumerated those contracts. About section 21 the Law Commission has said:

> "Some of the clauses of section 21 require in our view amplification.
>
> "Thus, while as a general rule, contracts to lend or mortgage are not specifically enforced, as they come under clause (a), there are certain exceptional cases where specific performance has been granted by the Courts upon the assumption that damages would not afford adequate relief in such cases, and these exceptions should be mentioned in the section itself, to make it comprehensive.

These exceptional cases are as follows:

> 1. Where a loan has been advanced either in whole or in part by the lender on a contract to execute a mortgage but the borrower refuses to execute the mortgage, specific performance of the contract can be obtained if the borrower is not willing to repay the loan at once. Where a part of the loan only has been advanced, the lender must be ready and willing to advance the remaining sum according to the agreements."

This section they have put down in clause 13.

Mr. Deputy-Speaker: Clause 21?

Shri U. M. Trivedi: Yes. Instead of putting clause (e) in section 21 where it was there.....

Mr. Deputy-Speaker: Clause 21 is different. It relates to power to grant relief.

Shri U. M. Trivedi: I am talking of section 21 of the original Act. Section 21 in the original Act has now been framed into clause 13 of the present Bill. About clause (a) of section 21 of the present Act the Law Commission has said:

> "Where a loan has been advanced either in whole or in part by the lender on a contract to execute a mortgage but the borrower refuses to execute the mortgage, specific performance of the contract can be obtained if the borrower is not willing to repay the loan at once. Where a part of the loan only has been advanced, the lender must be ready and willing to advance the remaining sum according to the agreement.
>
> Another such case is the specific performance of a contract to subscribe for debentures of a company. Though Section 122 of the Companies Act, 1956 provides for the specific performance of such a contract we think it would be expedient, for the sake of comprehensiveness, to make a provision in this Section."

Now, I find that this provision, as has been suggested by the Law Commission, is not put down under (a). Instead of that, the explanation that has been given is given in clause 13 (3):

> "Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:
>
> (a) where the suit is for the enforcement of a contract.
>
> (ii) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is willing to repay at once:
>
> Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract;"

Now, instead of decreeing the amount that has been given, the court will enforce execution of a mortgage deed. That is to say, the court may enforce specific performance to execute a mortgage or furnish any other security for securing repayment. How will the court be able to enforce such an order? Suppose the property does not belong to him, which he has agreed to sell or which he has agreed to mortgage or he finds there is a defect in it. How will the court order execution of such a mortgage? The law as it stood was quite all right. Although it is true that defences were available in particular cases, to make it a necessary and essential condition in the law, everybody would like to have his pound of flesh and say, he must be asked to execute. What will he execute? How will he execute? That would create multiplicity of proceedings. Suits will arise out of other suits. Under these circumstances, the explanation which has been very wisely put by the Law Commission is not very helpful. To make any change in this law is not called for.

I will take up the other clause:

> "Where the suit is for,—
>
> (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
>
> (ii) for the purchase of a share of a partner in a firm.

I am sorry; I will have to read it again:

> "Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:
>
> (b) where the suit is for,—
>
> (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership;"

That will create very great hardship to parties. Supposing partners have started working and have taken up some business, is there any binding force that a man must continue to remain a partner? Our law itself provides that nobody can be compelled to work against his will. You can damnify a man. We can put damages against him. We can penalise him. But, we cannot force him to remain a partner. Where even at the beginning a man realises, if I continue in this partnership; I will suffer immense loss and I may have to undergo insolvency, if a man realises and visualises that this partnership is not going to be a profitable proposition, the man cannot be compelled that the partnership must be entered into under this provision. The original provision was:

> "a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;"

That was a very healthy thing. Today, we are taking a retregrade step. We have got in our Constitution fundamental rights to associate or not to associate with people whom we like or do not like. We have freedom of association and the right to carry on our business in any manner that we may like. One is not to be compelled to labour. One thing is there. Suppose I am a working partner, I have entered into a contract that I will be your working partner, and I cannot work, will I be compelled to be a working partner with that man? That is what is contemplated by this. In their over-anxiety to be more equitable, they have overstepped the limits. The Law Commission's recommendations on this are not acceptable and should not be accepted.

I think, within the short time at my disposal, I have covered some points. This is going to a Joint Committee. I will, therefore, urge that the joint Committee will do well in taking all the available opinion, particularly from those who come from the mosfusils rather than from those who come from the cities on this question of specific performance, and then formulate the law as it should be, and they need not be guided by the consideration that the report has been made by the very wise law lords of the Law Commission.

Shrimati Sarojini Mahishi (Dhanwar North): Mr. Deputy-Speaker, I would like to congratulate the Law Minister, not so much far having introduced this Bill, but for having reduced the number of sections in this particular Act. The original Act consisted of a still greater number of sections and the Bill that has been introduced now consists of a smaller number of sections comparatively. I hope they will not follow the example of the American Constitution which, originally, was described as a coach and four, but which subsequently was developed into a heavy train with a number of bogies. At the very outset, I would like to congratulate the Law Minister for this.

Specific relief was a creation of equity. It was the outcome of the principles of equity, good conscience and justice. Also the necessity was there. Common law could not give remedy or adequate remedy. The

[Shrimati Sarojini Mahishi]

petitioner had to approach the Chancery division and it was the Chancery division who tried to dispose of those cases. The result was, we had equity courts also. This equity jurisdiction is based on certain principles. For the time being, we had to follow those principles that were being followed in the Equity courts in England. Subsequently, we had the Judicature Acts in India and they tried to amalgamate the common law and equity courts. It is now one and the same judicial body that is disposing of cases arising out of equity principles and also common law cases. Therefore, a number of Acts have come into force: the Contract Act, the Indian Succession Act, Arbitration Act, and Trust Act. All these are to be amended. We find it a necessity to amend or rather introduce a new Bill in connection with specific relief also. That is, in the old Act, many of the sections have to be repeal or the old Act has to be replaced by a new Act. That is a necessity now. Especially after Independence, we have now our own Constitution. The Constitution gives a number of remedies to the citizen irrespective of caste, creed, or place of birth. We find that certain Acts which have gone out of use or which are not applicable under the existing circumstances are to be amended. In cases where some of the sections of the Indian Specific Relief Act were not in consonance with some of the sections of the Indian Contract Act. Indian Trusts Act and the Indian Arbitration Act, all these are being modified to be in full consonance with the different sections of these Acts.

In clause 2(c) of the present Bill I find that the word 'trust' has been defined as under:

> " "trust" has the same meaning as in section 3 of the Indian Trusts Act, 1882, and includes an obligation in the nature if a trust within the meaning of Chapter IX of that Act;"

The Opposition Member, Shri U. M. Trivedi criticised this definition and said that the nature of the trust, namely whether it is expressed or implied trust or constructive trust, has not been fully defined. I must say that that very defect has been remedied. The existing Specific Relief Act does not contain any full description of these words, but in the present Bill, the definition has been modified in such a way as to resemble the definition given in the Indian Trusts Act itself. Therefore, this definition has been inserted with a view to remedy the defect in the existing Act.

Similarly, we find that a number of new sections have been added, and a number of existing sections have been amended, and certain sections have been modified as well. That is how we find that in the new Specific Relief Bill which has been introduced, an attempt has been made to come up to the existing circumstances, and to come up to the changing values in society today. Especially, if we go through the judgements and the case law given by the eminent judges of the different High Courts in India, which, as one hon. Member has pointed out, are in many cases of a contradictory nature, we shall find it necessary that some of the existing sections should be amended. That means that those sections are to be changed again. That is quite true. Even now, we cannot say, and no guarantee can be given that there shall be a uniform interpretation of the different sections of this Act. In a living generation, amongst living people, when the values go on changing, the interpretation also may change according to the locality, according to the usages and according to the conventions. No lawmaker can make a law so as to encompass all emergencies that might spring up in future. Therefore, it is but natural that we have come to a stage now when the Specific Relief Act that was passed in the year 1877 has to be amended.

Under clause 8, except as otherwise provided herein, the defendant has been given all the defences that are available to him under the Contract Act. This provision ought to have been included in clause 4 only. I am unable to understand why a separate clause has been inserted for this purpose, namely clause 8, especially when this provision has existed in section 4 of the existing Specific Relief Act. As Shri U. M. Trivedi has also said, it ought to have been included in clause 4 itself.

But I do not agree with my hon. friend when he says that many intelligent lawyers will try to take undue advantage of this particular clause or try to exploit the ignorance of their clients. I do not know whether this particular clause alone will be responsible for that. With due respect to the eminent lawyers of the land, I may say that there may be certain lawyers who, by making an exhibition or a show of volumes of books may make money from their clients. But those things alone will not go to help or support the lawyer.

Anyway, the Specific Relief Bill as it has been introduced has been abridged in the sense that the number of sections has been reduced. So, this particular provision in clause 8 could as well have been included in clause 4.

Under section 9 of the existing Act, there is provision for some speedy remedy to a person in immediate possession of land or to a person who is in possession of a particular property for a period of six months immediately preceding the introduction of the suit. But that speedy remedy is no longer given under the Bill that has been introduced now, because the speedy remedy is lost. Formerly, the person who is in immediate possession of the land would have been allowed to retain possession of that property, and the other party would have to establish his title to the immovable property. But, now, of course, the whole thing has been removed; therefore, the person in immediate possession of the land has been deprived of this particular remedy. I hope that the Joint Committee will consider this point again.

As regards clause 13, a new sub-clause has been added in this Bill. I welcome this provision. Taking into account the changing circumstances of the country, this particular provision has been newly added. It reads thus:

> "Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:
>
> (a) where the suit is for the enforcement of a contract,—
>
> (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:.....
>
> (ii) to take up and pay for any debentures of a company;
>
> (b) where the suit is for,—
>
> (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership.....".

This provision has been made to cover such exceptional cases. It may be that such cases might not have sprung up in the times gone by, but now according to the circumstances that exist, and especially in view of the case law that has come up, we find that in certain exceptional cases, the court can order specific performance, even though such ordering of specific performance is within the discretion of the court.

In regard to clause 21, I must say that in order to avoid multiplicity of suits, a person who sues for specific performance may also claim for the

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possession or partition and separate possession of the porperty, in addition to such performance, even though the claim to possession cannot be made unless a decree for the specific performance is made earlier.

Sub-clause (1) (b) of clause 21 reads thus:

> "any other relief to which he may be entitled including the refund of any earnest money or deposit paid or made to him in case his claim for specific performance is refused.".

That means that money may be refunded, and the person has to make a claim for the same; in case he dots not place his claim for the refund of money, in case his suit is not entertained, in case the plaintiff has not claimed any such relief in the plaint, the court, shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. That is what the proviso provides. therefore, in case the court finds that it is quite essential to give such relief, it can subsequently allow him to amend the plaint. Thus, the court of equity gave specific relief in a number of ways, by ordering specific performance or by giving some preventive relief also. In this way, in order to avoid multiplicity of suits, a very effective remedy has been given in clause 21.

Clause 40 lays down the conditions under which an injunction cannot be granted. The words that are to be found in this clause are essentially those found in section 56 of the existing Act. Instead of the words 'staying the proceedings', the words 'to restrain any person from prosecuting a judicial proceeding' etc. have been used here. This means that injunction is a remedy against a litigant, under the particular provision here. That is why we find that injunction to stop the proceedings has not been provided for here.

So far as section 42 giving relief by way of declaratory decree is concerned, I find that this particular provision has been retained, even though there was want of support for it from the Law Commission. Of course, there may be parties who may be satisfied only with the declaration of a particular decree; and if the rights of the party to a particular property are declared, the further remedy may be sought after by the parties themselves. Therefore, the provision for declaratory decree has been retained in the present Bill.

As regards section 45 in the present Act, which gives the right of *mandamus*, that has been dropped in this Bill, and the Deputy Minister has explained that this right of *mandamus* has been dropped in view of the rights given under article 226 of our Constitution. Moreover, it is one of the principles of law, and it is included in the Specific Relief Act also, that where there are equally effective remedies, this may not be sought for by the particular plantiff or petitioner. We find that article 226 of our Constitution encompasses a good number of such cases of writ applications which can be filed for getting such grievances redressed or for getting remedies. I do not know whether article 226 is wider in this sense than article 32 which gives all the rights to the Supreme Court, because anything in the nature of a writ is also included in article 226(1) but not in article 32. I do not know what exactly this addition indicates. But articles 32 and 226 do confer all these powers upon the Supreme Court and the High Courts respectively and a citizen has been given the fundamental right to approach the Supreme Court or the High Courts. Therefore, I do not think that this particular section of the present Specific Relief Act is essential in this particular Bill. Under the Constitution, the citizen has been given all the rights, including the

writs of *habeas corpus, mandamus, quo warranto*, prohibition, *certiorari* etc.; therefore, through anyone of these writs, he can sue for his rights, and the writ applications will be entertained, and when the applications are entertained, immediately setting aside all other cases, the court has to attend necessarily to the writ application received from the petitioner. Therefore, in those cases, effective and speedy remedy can be had under the Constitution either under article 226 or under article 32 of the Constitution. So, I do not think that section 45 of the existing Specific Relief Act is essential again.

With all this, I may say that the Specific Relief Bill which has been introduced has got a very wider outlook, and all those new changes that have been introduced by reason of the amendments that have taken place in the Contract Act and such other enactments have been incorporated in the different sections included here. Members of the Opposition criticised the deletion of section 9 on the ground that a speedy remedy is denied. I am for inclusion of section 9 in the Bill, but at the same time, I may say that not only in this case but in all civil proceedings justice is delayed to a great extent.

The theory 'justice delayed is justice denied' is strictly translated into action. If I may be excused, I may relate a very short story in this connection. A particular religious body which had the right of worship in a particular religious institution was in possession of an elephant. They used to put a lengthwise mark on the forehead of the elephant. Then another party which used to get the right of worship in the succeeding year used to put a breadthwise mark on the forehead of the elephant. Now, the party putting the breadthwise mark on the forehead of the elephant insisted that all the while the mark on the forehead should be the breadthwise mark. It filed a suit against the other party for this purpose. The decision given in the district court was that there should be a breadthwise mark on the forehead of the elephant. The other party appealed to the High Court which gave the decision that the mark should be a lengthwise one. The first party then went in appeal to the Federal Court and that Court gave the judgment that there should be a lengthwise mark upon a breadthwise mark on the forehead of the elephant. By this time, the elephant was no longer on earth. This is, after all, only a story. But this illustrates how justice delayed is justice denied.

I do not think that section 9 alone is responsible for this delay. What is more important is that there should be a remedy for redressal of grievances of the petitioner or plaintiff within a reasonable time. A remedy coming after a long time, when the causes or circumstances that demanded that particular remedy are no more in existence, is no remedy at all.

Therefore, I welcome the introduction of this Bill and I hope the Joint Committee will consider it at leisure and will give us a very studied Report.

Shri Gauri Shanker (Fatehpur): I look at this Bill with a mixed feeling. I cannot understand how this Bill will solve once for all the problem of multiplicity of cases and other things.

Section 9 has been deleted in the Bill. It was giving a speedy remedy to a person dispossessed of his property. He could get it in a miscellaneous case in a shorter period. The only argument put forward by the Law Commission, which has been supported by the Deputy Minister, for its deletion is that it has been done to avoid multiplicity of proceedings. But there are so many other circumstances where we are still continuing with such sort of multiplicity of cases. There is a recent amendment of section 145 Cr. P.C. where the issue of possession is referred to a munsif for decision. The same munsif is called upon to decide whether 'A' is in possession or whether 'B' is in possession.

[Shri Gauri Shanker]

That finding of the munsif is only a summary finding. If a regular suit is filed before the court of the same munsif, he is required to give a separate finding on the same issue as between 'A' and 'B' on the same subject-matter. This is an example of multiplicity of suits.

Again, there are rent cases, cases filed for realising arrears of rent. The issue is not decided. We have to file a separate suit for that.

As a matter of fact, the entire framework of the law which we are having at present is very complicated and there is multiplicity of proceedings everywhere. There is, of course, expensive litigation. There is the question of time also. For years together one has to wait for the final decision.

So this particular enactment is correlated with other enactments like the Contract Act. Arbitration Act and other civil enactments. Unless there is a complete overhaul, a complete recasting, of all those provisions and enactments, we cannot say that we are bringing about simplicity of procedure avoiding multiplicity, excessive expenses and such other things.

Here was a simple civil remedy open to a person under section 9. If he was dispossessed, he could bring in a suit for possession, and he could very easily get the remedy. Now that section is proposed to be deleted. I have to submit that this would create a great hardship, because if a regular suit is contemplated, naturally it would take a longer time and if it were to go up to the Supreme Court, the man might have to wait for twelve years or even more, whereas he could very easily get redress under this section. Of course, the criminal courts also cannot give any remedy, if he is dispossessed in that manner. Under these circumstances, I think section 9 should not be deleted but should find a place in the Bill.

Coming to the new clause 8, it is stated in the Notes on clauses:

> "In India, the defences that are available under the law of contract such as incapacity of parties, absence of a concluded contract, the uncertainty of the contract, coercion, fraud, mis-representation, mistake, illegality or want of authority are all dealt with under the Contract Act. Clause 8 prescribes in a compendious way all the defences that are open to a defendant; and incidentally makes the existing section 4(a), which has now been omitted, all the more unnecessary".

This particular clause adds new items of defence to a defendant. This will make the matter still more complicated. Litigation will be more expensive and more complicated and this will entail more time as well to get the remedy. Previously, it was not open to the defendant to plead all these defences. On the one hand, it is said that section 9 is being deleted to avoid multiplicity of suits. But present clause which has been introduced makes things more complicated which will mean more expense and more time for coming to a decision.

In the same context, I have to point to clause 11 of the Bill.

The Note on clause 11 reads:

> "Sections 14 to 17 deal with claims for specific relief of a part of a contract and section 13 enshrines a principle generally applicable to cases falling within section 14 to 17. All these sections have now been grouped together. But one important change which has been made in sub-clause (3) is that when the part which must be unperformed forms a considerable portion of the whole but admits of compensation in money, the plaintiff is allowed a proportionate abatement of the conside-

ration when he is to relinquish all claims to further performance or any further compensation for the breach. In this respect the existing position is inequitable."

The clause itself reads as under:

"(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

"(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

"(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case . . .".

This will create a hardship to the plaintiff as he has to relinquish the other part of his consideration and claim in a case where only a part performance has been used, where a considerable portion of the specific performance is indicated. I do not think there is sense in asking a person who brings a suit under this provision to relinquish his claim for no fault of his. This will create hardship instead of giving relief to the person coming to the court.

I would point out that it has been suggested in the recommendation of the Law Commission, and the hon. Deputy Minister has also referred to it in his speech, that this enactment is meant to avoid multiplicity of suits and to simplify the law. I do not know how certain things which were quite redundant in the old Act still find a place in this new Bill and have not been deleted. For example, I come to clauses 35 and 36. Clause 35 reads:

"Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual."

Then clause 36 defines temporary and perpetual injunctions. I would submit that there is a specific provision in the C.P.C. with regard to temporary and perpetual injunctions. Order No. 39 is there, and the remedy is also there, and that is a parent Act. I do not find any sense in retaining such things here. The remedy is there, the defence is there, and full details are given in the C.P.C. Order No. 39. So, what is the use of retaining those things here again? If you are going to simplify this particular law by bringing this amending Bill, then you have to see that such redundant things do not find a place and are deleted, as you have done in respect of section 9 and in other cases.

Clause 5 of the Bill is clear. It says:

"A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908."

[Shri Gauri Shanker]

So, this amending Bill also guarantees the remedies which were already open in accordance with the provisions of the Civil Procedure Code. If there is a specific provision already in that enactment, what is the necessity of keeping it here also? It will only mean that you are continuing with certain redundant clauses in respect of which remedy is open in other enactments as well.

In the same manner, clause 8 reads:

"Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts".

My submission is this, that if certain provisions of the Contract Act, the Transfer of Property Act, the Arbitration Act etc., are still there and have not been repealed, and if you provide in this Bill the remedies open in those enactments, I think that would not be very congenial, because then there will be a sort of conflict as regards the remedies open to a person in accordance with the Contract Act and under this law, as the same subject matter is being decided in accordance with this particular law. I submit that it would be proper if, in accordance with the recommendation made by the Law Commission relating to all existing enactments of course dealing with the civil side, they are all taken together and co-related to each other, then there can be a simplification of the law, avoidance of multiplicity of suits and complications and delays in getting justice.

The Specific Relief Act has been there since 1878; it is very comprehensive and very detailed provisions have been made in it. Attempts are being made in this amending Bill to delete certain provisions of that Act and to include certain new provisions, but I do not find any simplification achieved by that. So, Sir, I would appeal through you to the Members of the Joint Committee to look into these provisions, keep in view the recommendations of the Law Commission, and simplify the law once and for all, so that we can give speedy justice to the person who needs it. That would be fair. But simply deleting certain old provisions and including certain new provisions will not mean simplification and will not provide speedy justice.

There is clause 14. It reads:—

"Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto;

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingridient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;"

After that, a change has been introduced in sub-clauses (c), (d), (e) and (f). In the Notes on Clauses, it is said:—

"sub-clauses (c), (d), (e) and (f) could be substituted by a simple provision providing that a third party to a contract who is entitled to a benefit thereunder

or has an interest therein may sue on the contract subject to certain limitations. This substitution would, however, have to await a suitable amendment being made in this behalf in the Contract Act, and the clauses have been reproduced as they stand for the time being;"

The Law Minister has actually felt the difficulty that relief cannot be given to a third party unless such an amendment is undertaken in the Contract Act. In the same manner, there are so many other clauses or sections also in the Specific Relief Act which are co-related to so many other enactments, and unless the complicated things in those other enactments are also done away with, these changes will not give any relief, to the third party.

Section 42 of the existing Act finds a place in this Bill. I welcome that. That provision could not be done away with because it is a very important section. Section 42 has been retained, in spite of the recommendation of the Law Commission, and, in the same manner I would suggest that section 9 should also have been retained.

There should be an attempt to simplify the entire network of this enactment and the law court procedure. Towards that, steps should be taken in right earnest. The members of the Joint Committee should keep in view the fact that certain amendments have been undertaken and that certain existing provisions have been retained only just to avoid multiplicity of proceedings or all sorts of complications and to secure speedy justice. Then, and then only, can the remedy be given. Otherwise, as has been just now suggested by the hon. lady Member, justice delayed is justice denied. In civil litigation, especially, we find that when a suit is brought or even contemplated there is always the idea that there will be long delay in getting actual justice. That idea has to be done away with. Serious thought should be given to the parallel provisions in the Contract Act, the Transfer of Property Act, or the Arbitration Act. They should also be changed in accordance with the changes sought to be introduced by this amending Bill in the Specific Relief Act. Then and then only can some relief be given to the litigants; otherwise, it would be quite meaningless.

I would, therefore, request the Members of the Joint Committee to give serious thought to this because this is a very important piece of legislation which relates directly to civil remedies.

Shri R. Barua (Jorhat): At the very outset, Sir, I would congratulate the Law Ministry for quickly bringing forward the necessary legislation as recommended by the Law Commission. So far as the discussion of this particular Bill is concerned, I will just confine myself to one or two aspects.

Regarding section 9 of the existing Act, I am completely in agreement with the framers of the Bill. Section 9 of the Specific Relief Act was of a summary nature and it was not appealable. The result was that it did no good to the litigant. Whether a man succeeds or fails, he has got to seek his remedy elsewhere. A title suit has got to be filed and some other acts have to be done. Therefore, section 9 of the Act was an unnecessary appendage. It did not do any good to the litigant but simply added to unnecessary litigation. So, it is in the fitness of things that the framers of the Bill have omitted this provision. The Law Commission had also suggested that.

There are several other provisions for speedy relief. A person dispossessed of property can get possession under the Criminal Procedure Code within 2 months of dispossession. And, under the original Specific Relief Act, under section 9, a man has to go to court within 6 months. So, there is not very much of difference between

[Shri R. Barua]

the provision under the Criminal Procedure Code and section 9 of the Specific Relief Act. Under section 9 there is no provision for appeal. There is only revision to the High Court and that is a very expensive process.

Besides, if a man succeeds his troubles do not end there. The other party can come out with a title suit and proceed with that. So, instead of giving false hope, it is good that that section is abolished. Once for all title has got to be settled and possession has to be deduced from title. There should be the normal procedure of filing a suit for declaration of title and the rest of it. Therefore, I am completely at one with the Law Ministry that this section 9 should be omitted.

The Law Ministry by introducing clause 13 of the present Bill have expanded section 21 of the original Act, in which it was rightly said that the following contract cannot be specifically enforced:—

> "a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;"

If a partnership firm did not agree to function it is absolutely useless to invoke the aid of law court to enforce it. The Partnership Act is a comprehensive Act and it deals with the disputes that may arise between the partners: for the purpose of the partnership Act no document is necessary. Two partners can join together and share in the profit and loss; they have only to register it with the registrar. If they do not want it there can be provision for winding up proceedings: they can go for the dissolution of the partnership. But there is a new provision here which says that notwithstanding anything contained.... the court may enforce specific performance in the following cases, namely, where the suit is for the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership. If this provision is incorporated in this Bill it will bring people into unnecessary harassment. The Partnership Act is complete and it is there. So, the Joint Committee should remove these items from clause 13 of the Bill. If partners of a firm decided not to function, they will not begin to function simply because there is a court order that the partnership deed is to be executed. That is something extraordinary.

My last submission is with regard to the omission of illustrations. That is not very happy because generally these illustrations in different Acts are given in the light of the sections that the legislators make and are helpful in interpreting the sections in the context and circumstances of the case.

I am completely in agreement to omit section 9. The provision in clause 13 with regard to partnership should be abolished. I support the Bill.

Shri Bibudhendra Mishra: Mr. Deputy Speaker, Sir, most of the speakers are in favour of retention of section 9 of this Act. The other arguments that have been advanced have all been fully discussed by the Law Commission. I do not want to repeat them. A decree under section 9 does not confer any title. Assuming that it is a speedy remedy, as has been said, a person dispossessed can always file suit for recovery of possession on the basis of his title. Anyway, whether it is speedy or not it would undoubtedly result in a multiplicity of proceedings. Shri Trivedi accused the judiciary and said that the Act did not work well because fresh graduates are taken from the colleges and appointed as district judges. He is practising lawyer. I do not know if there is any place in India where it has so happened. I do not want to comment on it any further.

Reference has been made to section 145 of the Criminal Procedure Code and it is said that even though the

proceeding is taken under section 145 of the Cr P.C., the matter has to be referred to the civil court. But the distinction has to be remembered. Proceeding under section 145 is a preventive one. It is necessary to arm the magistrates with some sort of a power in order to maintain peace, maintain law and order. They are not entitled to determine the title. But unless they can pass some order about possession pending determination of title by competent civil courts, it will be difficult for the Government to maintain law and order.

Shri Gauri Shanker: Under section 145 the decision on possession is referred to the munsif court. I was referring to that position of the munsif courts which makes for duplication.

Shri A. K. Sen: Under 145 no title is decided. Only possession is decided. What harm is there in a munsif deciding it? How is it relevent for discussion on section 9?

Shri Gauri Shanker: It is relevant. The same munsif is required to decide two times. First, the issue of possession is referred and then with regard to the same subject-matter between the same parties the same munsif has to decide again. That was my point that there was duplication.

Shri Bibudhendra Mishra: The insertion of new clause 8 has been assailed; we cannot understand the logic behind it. When it is provided here what defences are open to a defendant, it is said that it is like giving torch in the hands of a theif. It is curious logic. If they are not specifically mentioned as part of the Act, I do not think these defences will be open in suits under the Specific Relief Act.

It has been said that chapter VIII, sections 45 to 51, should not have been omitted. I have already replied to it. That was the time when the powers were conferred only on three High Courts, when the Constitution was not there. Now, we have a Constitution and all the High Courts issue writs, not of mandamus only. It was also pointed out that section 45(f) and (g) are contrary to article 226 of the Constitution. By the adaptation order, section 50 was inserted it nullifies the entire chapter VIII. In view of all this, it was thought proper to omit this chapter.

About illustrations, the Law Commission has recommended that there should be no illustrations, not only here, but recently in the limitations Bill also, because it does not help in the growth of equitable jurisprudence. Sometimes, when the courts see the illustration, they have a tendency to stick to it so much, within its 'four walls, so that the growth of equitable jurisprudence becomes difficult. Anyhow, the matter is going to the Joint Committee. The Joint Committee will have an opportunity of going through it again, and it will come again before the House.

I am thankful to the hon. Members for the views expressed which I am certain will be considered by the Joint Committee.

With these words I commend the motion for adoption by the House.

Mr. Deputy-Speaker: The question is:—

> "That the Bill to define and amend the law relating to certain kinds of specific relief be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—
>
> Dr. M. S. Aney, Shri Brij Basi Lal, Shri Brij Raj Singh-Kotah, Shri Chattar Singh, Shrimati Zohraben Akbarbhai Chavda, Shri C. M. Chawdhary, Shri B. K. Dhaon, Shri N. R. Ghosh, Shri Abdul Ghani Goni, Shri Harish Chandra Heda, Shrimati Jamuna Devi, Shri Gulabrao Keshavrao Jedhe, Shri Yogendra Jha, Pandit Jwala Prasad Jyotishi, Shri Nihar Ranjan Laskar, Shri Masuriya Din, Shri Bibudhendra Misra, Shri

[Mr. Deputy Speaker]

David Munzni, Shri D. D. Puri, Shri A. V. Raghavan, Swami Rameshwaranand, Shri R. V. Reddiar, Shri A. T. Sarma, Shri S. M. Siddiah, Shri K. K. Singh, Shri Krishnapal Singh, Dr. L. M. Singhvi, Shri R. Umanath, Shri P. Venkatasubbaiah, and Shri Asoke K. Sen

and 15 from the 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 first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

14.32 hrs.

STATEMENT RE : MANUFACTURE OF SMALL CAR

Mr. Deputy-Speaker: Shri C. Subramaniam. He has to make a statement—I am sorry, that will come afterwards. Now, the next Bill.

The Minister of Law Shri (A. K. Sen): May I suggest, Sir, that Shri Subramaniam may be released? He may be allowed to make the statement.

Mr. Deputy-Speaker: I am told that the procedure is that it cannot be taken up in the middle.

Shri A. K. Sen: Subject to the Chair's discretion.

Mr. Deputy-Speaker: That is what the Speaker has said.

Shri Indrajit Gupta (Calcutta South West): May we know the subject-matter of the statement? It is not in the Order Paper.

Mr. Deputy-Speaker: It is regarding the small car in the public sector.

Shri S. M. Banerjee (Kanpur): That is a very good statement. He might be allowed to make it.

Shri Gauri Shanker (Fatehpur): He should not be allowed to make the statement at this stage.

Mr. Deputy-Speaker: There is no harm. He may make the statement just now.

Shri S. M. Banerjee: Are we getting the car?

The Minister of Steel and Heavy Industries (Shri C. Subramaniam)): Mr. Speaker, Sir, several times in past session of both Houses of Parliament, and already in the current session, Members have asked questions about the project for the manufacture of a small car. Interest has been shown in regard to this project by the general public also. The matter has required thought and consideration and has been under examination by Government for some time. Yesterday the question was discussed by Cabinet and a decision was taken. I am, therefore, now in a position to make a statement on the subject and take the earliest possible opportunity to do so in view of the interest in the subject so widely expressed.

The *ad hoc* Committee on the automobile industry set up in 1959 enquired, among other issues, into the need for a low cost car and the possibilities of its production in India Government, in their resolution dated September 6, 1960, on the report, decided to appoint an expert committee to examine the feasibility of producing, in the country, a car which would