Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1950, and to make certain consequential amendments in the Government of part C States Act, 1951."

The motion was adopted.

Shri Pataskar: I introduce the Bill.

REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT) BILL

The Minister in the Ministry of Law (Shri Pataskar): I beg to move for leave to introduce a Bill further to amend the Representation of the People Act, 1951 and to make certain consequential amendments in the Government of Part C States Act, 1951.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1951 and to make certain consequential amendments in the Government of Part C States Act, 1951."

The motion was adopted.

Shri Pataskar: I introduce the Bill.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

Mr. Speaker: The House will now proceed with the further consideration of the motion moved by Shri Pataskar yesterday. It refers to the Code of Civil Procedure and I do not think that I should read the whole motion. Along with that motion there is the amendment of Shri Agrawal.

Shri S. V. Ramaswamy (Salem): Mr. Speaker, yesterday I was saying that the Bill was wholly welcome because it was inocuous.

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

If you kindly permit me to go through these clauses, there are four clauses on one subject, Clauses 8, 16 (5), 17 and 18 relate to execution proceedings.....

Mr. Deputy-Speaker: Hon. Members will kindly make it as interesting as possible. Yesterday, we had thrice to ring the bell. Otherwise, we will finish the debate early.

Shri S. V. Ramaswamy: There are very few cases pending under section 68 to 72 of the Civil Procedure Code. Therefore, there can be no objection to the clauses relating to this. Clause 12 relates only to a verbal amendment to bring it in line with Article 133. Clause 14 has become necessary in view of the decision of the Rajasthan High Court to bring that section in conformity with article 14. The other clauses 2, 4, 5, 7, 9, 10, 15 and 16 are quite unobjectionable. I would only make a comment upon clauses 2, 11 and 16 before I state my objections to clauses 6 and 13.

Clause 2, I think, is very welcome. The decision of the High Courts with regard to the payment of interest had varied. I will just give three examples. One view is that the contract rate should be allowed; the other view is that 12 per cent. is reasonable and there is a third view that even 24 per cent. is not high. The views of the courts vary from person to person and we should not allow the courts to function in such a manner that the amount decreed varies from court to court and from case to case. Six per cent. I think is reasonable and it must be accepted.

With regard to clause 11 my hon friend, Shri A. M. Thomas objected to the raising of the level from Rs. 500 to Rs. 1,000.

Shri S. S. More (Sholapur): We are unable to hear. Something is wrong with the mike. We are very much interested in what my hon. friend says.

Mr. Deputy-Speaker: He may raise his voice.

Shri S. V. Ramaswamy: Are the reporters able to hear?

Shri Kamath (Hoshangabad): He can move to the front bench.

Shri S. S. More: That does not depend upon him.

Mr. Deputy-Speaker Nor does it depend upon Shri Kamath.

Shri S. V. Ramaswamy: There shall be no objection with regard to clause 2; it is most welcome. With regard to clause 11 my friend Shri A. M. Thomas objected to the raising of the level from Rs. 500 to Rs. 1,000. The tendency now is to raise the jurisdiction of courts. For instance recently in Madras they passed an Act by which the jurisdiction of the courts of the District Munsifs had been raised from Rs. 3,000 to Rs. 5,000. They also passed an Act by which the jurisdiction of the City Civil Courts had been raised to Rs. 50,000. This got the desired effect of taking 800 suits from the original side of the High Court. That is the tendency now and I do not see any objection why summary proceedings should not be raised to the level of Rs. 1,000 from Rs. 500. That also is welcome.

My main objection is to clause 6, which, I am afraid, may lead to many difficulties. Clause 6 deals with section 47; in so far as it attempts to settle the question whether the purchaser at a court auction is a party to the proceedings or not, it is quite good and welcome. But I am afraid that clause 6 is going to lead to difficulties for this reason. The note on clause 6 says:

> "The principle of *res judicata*, including those of constructive *res judicata* are expressly provided in the case of suits under section 11. There is no such specific provision in regard to execution cases. Courts have, however, applied the principles under lying section 11 to execution cases also. There is a difference of opinion among the various High Courts as to how far these principles can be applied to execution cases. This clause seeks to provide expressly how far the principle of *res judicata* should be applied to execution cases."

I am afraid by expressly providing this, complications are likely to arise. If you look into the original section 47, you will see that the explanation to sub-clause 3 there is incorporated here as explanation (1). Explanation (2) to the present clause is explanation (2) to section 11 of the original Code and explanation (3) is analogous to the explanation (3) of section 11. I can understand explanations (2) and (5) for section 11 being omitted in its application to clause 6, but what about explanation 4. My friend, Shri A. M. Thomas touched upon it but did not go wholly into the matter. Explanation IV to section 11 reads thus:

> "Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

The effect of excluding this from the explanation will be to restrict the scope of this clause only to cases where it has been specifically taken. I see that even as early as *6 Allahabad*. it has been noted:

> "Section 11 is not applicable to execution proceedings as it relates to matters decided in suits. It is only on principles analogous to that section that *res judicata* can be applied to execution proceedings."

Now, when it is clear that explanation IV to section 11 has also been judicially construed as applicable to execution proceedings, when you exclude explanation IV to section 11 from being incorporated in clause 6, it comes to this: the "might" and "ought" clause of explanation IV cannot hereafter be applied. Then

[Shri S. V. Ramaswamy]

what becomes of those judicial decisions by which this "might" and "ought" clause, which has been a headache to all civil lawyers, has been applied? What happens to them? Does it apply to execution proceedings. What happens to those judicial decisions which have been made hitherto applicable? I am afraid the House would like to have a fuller clarification of this point from the hon. the Law Minister.

The Minister in the Ministry of Law (Shri Pataskar): What is the opinion of the hon. Member? Should it be applied?

Shri S. V. Ramaswamy: I cannot anticipate things. It may have to go to the Supreme Court and we shall have to wait and see the complications that arise.

What I am contending now is that the existing law will be disturbed when you specifically state the scope of the section and limit it to the particular aspect. You cannot apply the judicial decisions which have grown around this. Therefore, this is a limiting factor and how it will react on the existing decisions remains to be seen. I am afraid it will lead to an element of great complication.

Again, what about explanation VI of section 11? Why has it been excluded from the operation of clause 6? Explanation VI to section 11 reads thus:

> "Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

Supposing there are execution proceedings in respect of some decree arising out of a suit where there is a *bona fide* litigant in respect of public right; what happens to such suits? What happens to the execution proceedings in such suits? I do not know. I think, here again, the Law Minister will be pleased to explain why he has excluded explanation VI of section 11 from being made applicable in clause 6 of the Bill.

The other point that I wish to contest is clause 13. I am afraid I must state clearly that I am never for restricting the revisional jurisdiction of High Courts which is one of the great safeguards of human liberty. It may be that there is abuse of this power but I cannot conceive of the revisional powers being replaced by any other which will guarantee or ensure the just interests of the people. When the hon. Minister seeks to limit it to such of those cases where there is no appeal and drives the party to wait till such time as he can appeal against such things, I am afraid he is restricting the right of the parties and the rights of the parties may be gravely jeopardised. It is in that sense I say that the revisional powers of the High Court should not be restricted in any manner.

Then there is clause 16. As I pointed out, clause 16(5) is consequential to clauses 8 and 17. I do not see why clause 16(4) has become necessary. Now, read Order XX, rule 1. The existing Order XX, rule 1 is quite all right and there is no need to change it in terms of clause 16(4). The Statement of Objects and Reasons with regard to clause 16(4) reads thus:

> "This clause seeks to give a statutory direction to courts to pronounce judgements as early as possible after the hearing of the case."

Now, what does Order XX, rule 1 say? It says:

> "The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of

which due notice shall be given to the parties or their pleaders."

The word used there is also "shall" and so it is mandatory. Therefore, I do not see any justification for introducing this new clause at all.

Now, I had dealt with the expenses and delay in civil proceedings. The question of reduction of expenses in a sense can be solved if delay can be avoided. But, the major problem is this. So long as the State Governments depend for their revenues on the income from the administration of justice, I am afraid, the expenses will mount. I am hoping for a day when no State will depend upon—what shall I say—the "profits" from the administration of justice, to run the general administration. It should never be the aim of a State to make money out of the business of administering justice. Justice should be made as cheap as possible. Instead of that, because the tax structure in the States is so inelastic and the resources are so restricted, the States resort to the Court Fees Act as a sort of *Kamadhenu* to take out as much money as possible out of the litigant public. This attitude must change. Unless this attitude changes I am afraid the question of reducing expenses cannot be properly tackled. That will lead me to subjects other than Civil Procedure Code because the methods will have to be devised by which the revenues of the States can be augmented and made independent of the revenue from the administration of justice.

Sir, I will give you one example. You may remember the time—possibly you were in practice at that time—when the court fee on copy stamp was one anna.

Shri Pataskar: May I bring to the notice of the Chair that there is a good deal of criticism since yesterday about the court fee being levied by the States? I do not know what I am expected to do about that matter in the Civil Procedure Code

Shri S. V. Ramaswamy: I was only bringing to the notice of the House that the claim need not be made that this Bill seeks to reduce the expenses. That is my humble contention.

Shri Pataskar: So far as I can see that is envisaged under this Bill.

Shri S. V. Ramaswamy: Take for instance Order XV. I want an Order XV-A to be introduced for this purpose. Often-times after issues have been settled some courts write like this on the notes paper: "For trail or settlement. Posted to such and such a date". But, no court applies its mind after settlement of issues to see that a particular suit is settled as early as possible. They automatically write on the notes paper as I said before. No attempt is made by the court to apply its mind to the question of settling it before the trial. If by chance the parties come to some understanding and they report settlement, the court is only too pleased because it means disposal. They welcome such a thing. But I want that after the settlement of issues, a suit must be posted for a particular date for a settlement, if possible, after, I suggest applying Order 15.

Mr. Deputy-Speaker: Are there not complaints that some munsifs are *raji* or compromise munsifs and that they coerce the parties and compel them to come to terms?

Shri S. V. Ramaswamy: The element of compulsion is there. That is the thing which is objectionable. If it could be possible that after the settlement of issues they thrash out the thing and explore the possibilities of settling the suit it would be all to the good.

Mr. Deputy-Speaker: I think there must be conciliation officers appointed.

Shri S. V. Ramaswamy: That is what I am emphasising.

Shri Pataskar: Supposing the judge tries to effect a compromise and he finds that same parties are obdurate

[Shri Pataskar]

and do not agree, naturally there is a prejudice created in his mind about the parties concerned, and so I do not think that will be a very good procedure to be followed.

Shri S. V. Ramaswamy: When we are having conciliation procedure for conciliation and arbitration, why is it not possible for the courts to apply their minds, after the settlement of issues, to clarify the issues and to narrow down the issues, to try to bring the parties together and see if they cannot effect a settlement before going to trail? If, of course, after exploring these possibilities, the suit must go to trail, by all means, let it go, but let this be done before the issue of summons to witnesses. It will be a matter of saving for the parties. It will be a matter of saving of trouble for the witnesses and for the litigant public also. It appears that such a new order like order 15-A might be introduced.

There are other things for suggestion. The question is whether question could be settled at the district court level and what is the category of such questions. There are other questions like hearing of first appeals by itinerating division benches of High Courts if possible. This will also reduce the pendency of suits and expedite justice. I do not want to take much more time. If one is invited to make suggestions, so many suggestions could be made.

With regard to the motion moved by Shri M. L. Agrawal that the matter may be opened up for suggesting other amendments to the other portions of the Code, I am very diffident as to what would happen. You will remember that when I introduced by private Member's Bill for the limited purpose of abolition of assessor and jury systems in the application of the criminal Procedure Code, the then Minister of Home Affairs got up and said that he would come forward with a very comprehensive measure for the reform of the criminal Procedure Code and tried to persuade me to withdraw the Bill. But I stuck on and I was contending that I shall not withdraw the Bill till such time as the promised comprehensive Bill came up for the consideration of the House. When the Bill did come—as it has now come—it was far from being comprehensive. It dealt, just like the Civil Procedure Code is now being dealt with, with only few sections. But then it was suggested and it was accepted by the Minister and the hon. Members of this House that the Committee might receive suggestions with regard to amendments covering other sections not dealt with by the amending Bill, and many of us have circulated printed amendments covering other points as well. But so many were the amendments that were received by the Committee that the Committee, in its report, submitted that this is too vast a subject and that it cannot deal with those amendments and that question may be deferred till such time as a more comprehensive Bill could be put up. I fancy that similar will be the fate of those suggestions and if the House accepts that the suggestions for amendments with regard to the other sections, orders and rules might also be given, we shall certainly get busy and send so many amendments, but ultimately I think the result will be the same, and the report will say that there are so many amendments that a comprehensive Bill may be brought forward later! With these words, I support the Bill.

Shri Kamath: Sir the Minister of Law—I am sorry, the Minister in the Ministry of Law is....

Mr. Deputy-Speaker; It is something like a son-in-law and a father-in-law.

Shri Kamath: The Minister in the Ministry of Law is piloting a measure which, to my mind, is a child of the Government's predilection nay passion for change, and of its indifference to the cause or the interests of real justice

Turning first to the Statement of Objects and Reasons, the Minister has observed thus:

> "While a thorough overhaul of the Code of Civil Procedure is a difficult task which should be entrusted to an expert Committee, some amendments of the Code appear to be desirable from the point of view of reducing the delay and expense".

Some of the amendments proposed in this Bill appear to be designed to reduce the delay and expense but only at the cost of the highest standards of justice which have been objective and our goal in this country for so many decades. It is unfortunate that merely with a view to reducing delay and expenditure, certain salutary provisions of the Code of Civil Procedure should be sought to be amended. It will only deprive our litigants, who are already suffering in many ways in the lower courts, of their right of appeal and revision.

Much has been said on various clauses of the Bill and I do not wish to traverse the ground which has already been covered. I will confine myself to two or three clauses of this Bill. I shall not deal in the order in which they appear in the Bill but I shall take them as I deem fit. I will take up first the clause concerning exemptions—clause 14 of the Bill—about which a lot was said yesterday by my friend Shri S. S. More and other hon. Members too in this House. It seeks to amend section 133 of the principal Act. Exemption is sought to be conferred upon a whole cart-load of dignitaries of the Indian Union. The Speaker is one, the President is one, the Vice-President is one, but Ministers are at least 300, I think, in the whole of India. If you take all the 27 States and add up the number of Ministers there will be at least 300 to 400 Ministers in the Indian Union.

Shri S. V. Ramaswamy: Then it is a train-load, not a cart-load.

Shri Kamath: Cart-load or a car-load or even train-load, as you please. May I submit, in this connection, that firstly it is not clear whether this term 'Minister' includes Deputy Minister, Ministers of State and also Parliamentary Secretaries. The list of Members as given by the Lok Sabha Secretariat contains in the first few pages the whole list of the Cabinet Ministers, Ministers of the Cabinet rank but not Members of the Cabinet, Ministers of State, etc.

Shri S. S. More: Our rules of procedure define Ministers as including Parliamentary Secretaries.

Shri Kamath: In the Centre, as you are very well aware, their number has been enlarged recently and it is I believe,—if my memory does not betray me—only four short to make a complete pack of cards.

Shri Asoka Mehta (Bhandara): Excluding joker.

Shri Kamath: If the joker be included, it would be five short. Of course, we have got the aces, kings and queens etc., but only the *dukke* are lacking.

Mr. Deputy-Speaker: The hon. Member goes in an indirect manner into the appointment of Ministers, which is very wrong. He can just say, all these categories of persons ought not to be exempted. But it is another thing to say that Ace or Jack has been exempted.

Shri Kamath: I never disputed the Government's right or President's right to appoint any number of Ministers. I only stated as a fact that there are so many Ministers.

Mr. Deputy-Speaker: Of course there are a number of Ministers, but to go into details that he is Ace or Jack is wrong.

Shri S. S. More: He is only adding some humour in order to keep the quorum in the House.

Mr. Deputy-Speaker: But there are limits to it.

Shri Kamath: It is not merely humorous; it is a serious statement, Sir. There are 300 Ministers in the Indian Union. Of course I do not wish to dispute anybody's right to appoint any number of Ministers. My point in this connection is that if any of these dignitaries—President, Vice-President, Speaker and Ministers—happens to be a plaintiff in a civil suit, he should not be exempted from personal appearance in court. Exemption may be granted in other cases; but exemption should not be granted in cases where any of these dignitaries happens to be a plaintiff in a civil suit. Recently we have had some measure about defamation. Some case might arise in which some Minister might file a suit for damages. It may not be for defamation, but for damages, which is a civil action. In that case, if Minister files a civil suit against somebody for damages, the Minister should not be exempted from attendance, because he becomes a plaintiff. What is given in the Bill is a blanket provision that so many persons in the Indian Union shall be exempted. This must certainly be amended to this extent that if any of these persons happens to be a plaintiff in a civil suit, he should not be exempted or allowed to claim exemption.

Then, as regards the reason for amending section 133 of the Code, the explanatory memorandum says that the Rajasthan High Court ruled that section 133 of the Code was *ultra-vires* of articles 14 of the Constitution. This is mentioned in the note on clause 14 of the Bill. I am sorry I could not get a copy of the judgement of the Rajasthan High Court. If it was attacked by the Rajasthan High Court on the ground that the State Government had been empowered to notify for exemption certain persons, then I concede this amendment will serve the purpose. But if the exemption of certain persons has been attacked on the ground of inconsistency with article 14 of the Constitution, then I do not understand how this amendment will work.

Shri Pataskar: For the information of the hon. Member, I may tell him that the Rajasthan High Court judgement proceeds on the basis that in all such matters there should be some sort of a classification. The object of the present section of the Bill is to prevent exemption being given to anybody arbitrarily. That is the object. I can send the judgement of the Rajasthan High Court to the hon. Member if he likes. The present section has been considered as not *ultra vires* by another High Court—Punjab High Court. We do not want to leave the section in this condition. I was going to deal with this point in my reply, but now that so many Members are raising this point, I would like to point out to hon. Members that the basis for a distinction ought to be some sort of a classification and it should not be left to the arbitrary decision of the Government as to who should be exempted. You can say these are the persons who should be exempted and you can also include 687 ex-rulers. I would like to explain this also: The present position is that there are agreements of merger in which it has been agreed that these persons would get exemption. We have to continue it now.

Shri S. S. More: All ex-rulers are not Rajpramukhs.

Shri Pataskar: I just wanted to explain the position regarding the decisions of the High Courts. There is one High Court which has held this section is not *ultra vires;* there is another High Court which says that this is rather arbitrary and from that point of view it is not consistent with the Constitution. We have made an attempt here to see that all these controversies are settled.

Shri Kamath: If the Rajasthan High Court suggested that there should be a reasonable classification, was any exact type of classification mentioned in the judgement?

Mr. Deputy-Speaker: It will take some time for the hon. Minister to

refer to the judgement and give the information. Whatever information the hon. Member has ordered will be given, but the hon. Member can continue his speech.

Shri Kamath: If section 133 of the principle Act was declared *ultra vires* of article 14 of the Constitution on the ground of equality before law, I fail to understand how the present section in the Bill will meet the requirements. This also may be held by the Supreme Court as being *ultra vires* of the Constitution. Also, I am afraid that it will not be held reasonable to include so many dignitaries of the Union. Further I would ask the Government to straightway make it clear as to what categories are included in 'Ministers'. In the last Parliament when the question of disqualification of Membership of Parliament arose, the Government brought an amending Bill to include the Deputy Ministers also within the scope of exemption from disqualification on account of offices of profit. Therefore, just to obviate any difficulty which might arise later on, they should define the term 'Minister' in this Bill.

Mr. Deputy-Speaker: I believe there is only one category of Ministers in the Constitution.

Shri Kamath: Council of Ministers is mentioned. There is no Minister mentioned individually or as such.

Mr. Deputy-Speaker: All of them are members.

Shri S. S. More: May I bring to your notice that in the Rules of Procedure, 'Minister' has been defined It has been defined in such a way as to include even a Parliamentary Secretary.

Mr. Deputy-Speaker: That is another thing.

Shri S. S. More: My hon. friend Shri Kamath is perfectly right in making the statement that the word 'Minister' ought to be defined.

Shri Kamath: Next Sir, My hon. friend Shri S. S. More, yesterday made out a point with very cogent arguments that you too, Mr. Deputy-Speaker, should also be exempted.

Mr. Deputy-Speaker: Why?

Shri Kamath: He argued very rightly....

Shri S. S. More: It is not a question of you. When Ministers are exempted, if the Deputy Ministers are exempted, why not the Deputy-Speaker?

Mr. Deputy-Speaker: Unless it is absolutely necessary and I make a request, hon. Members need not plead my case here.

Shri S. S. More: I was mainly responsible for making that point. You yourself were absent. Otherwise, it would have been awkward for me. Apart from the personality, the occupant of this office should be exempted

Pandit Thakur Das Bhargava (Gurgaon): If the Speakers of the State legislatures are exempted, our Deputy-Speaker is more dignified. There is no doubt about that.

Mr. Deputy-Speaker: Order, order.

Shri Pataskar: I shall be very happy if the Deputy-Speaker is also included. People need not argue about it.

An Hon. Member: When the House is in session, what about the Members?

Shri Sadhan Gupta (Calcutta South-East): What about the panel of Chairmen?

Shri Pataskar: I am not prepared to go further at present. The Select Committee might consider anything.

Shri Kamath: My point in this connection was whether it is the President or the Vice-President or anybody else right down to the last category, if he happens to be a plaintiff in a civil suit, he should not be exempted by the court. He should be

[Shri Kamath]

required to appear in the court. If he fails to do so, the presumption should be as much against him as against any ordinary citizen of the land.

Pandit Thakur Das Bhargava: What is the warrant for legal presumption? If they do not appear themselves, the court may not force them to come. Supposing they are able to come and they do not appear, the presumption will be against them.

Mr. Deputy-Speaker: Merely because there is a suit, each one of them ought not to fall ill. Notwithstanding the fact that they are hale and healthy and strong, if they do not appear, no presumption can be drawn when there is a statutory provision under which they can absent themselves.

Pandit Thakur Das Bhargava: Because they are exempted, the court will not compel them. Suppose a person chooses to come, cannot he come?

Mr. Deputy-Speaker: He can.

Pandit Thakur Das Bhargava: In his own interest, it is for him to appear. If he does not appear the presumption of law will be there that he does not want to appear.

Mr. Deputy-Speaker: It is not for us to consider what the court is likely to do. A person is exempted. The option is to him to appear or not. If he takes advantage of this provision, whether there is presumption or not, it is for the courts to decide. We are not giving any hypothetical rulings upon what may happen or may not happen. If the presumption arises, it will arise. If there is no presumption, there will not be any presumption. There is already an Act. The High Court or the Central Government may grant exemption to various persons. The Government has only to notify to the High Court. In view of some judgement, the Government wants to categorise them. The only point is whether you should have any categories, or whether there are too many categories or some more have to be included. Whether any presumptions will arise or not is not a matter for our decision here.

Shri Kamath: The question of presumption must be considered. I definitely demand that as plaintiffs they should be required to appear in court.

The Minister of Law and Minority Affairs (Shri Biswas): May I draw attention to clause 3 of section 133 as it stands? It is on page 15 of the booklet that has been circulated. It says.

> "Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs."

The only change which is now proposed is the deletion of the word 'so exempted'. What I am pointing out is this. The mere fact that their names are in the new clause (1) does not mean that they will be automatically exempted. They have got to claim the privilege. If by reason of the claim it is found that the other party will be damnified, because he has to take out a commission for his examination, the costs of the commission will have to be paid by the person who claims exemption. I am only pointing this out; I am not making any comments. I only want to draw attention to the existing clause 3 of section 133.

Shri S. S. More: It is a sort of a deterrent.

Shri Kamath: My point is about the examination in court: not on commission, which is quite different from appearance in court. I say, as a plaintiff, he should not have the benefit of examination on Commission.

Pandit Thakur Das Bhargava: This shows that he does not get any benefit.

Shri Kamath: As the plaintiff, he should not be allowed to claim it.

Mr. Deputy-Speaker: The point seems to be that he ought not to avoid the witness box and a public cross-examination. Commission is an entirely different thing.

Shri Raghavachari: Appearance is under two categories: as a party and as a witness. My friend is saying it applies to both.

Shri S. S. More: It does apply. It does not say, as a witness.

Shri Raghavachari: Exactly. It is only as a witness that he has to pay the costs of the commission.

Shri Kamath: Coming to clause 11 of the Bill, it seeks to raise the pecuniary floor limit for second appeals from Rs. 500 to Rs. 1,000. I think, in the conditions prevailing in India today, this is a retrograde proposal. It will affect the poorer section of the population very adversely. A Government committed to a welfare state and what not, should not be desirous of or should not even dream of affecting the poorer classes in any adverse manner at all. I have not practised law myself. But, I have for a short while, Sir, administered the law. I have heard lawyers, haranguing, fighting like kilkenny cats on occasions. I have learnt from them a lot, though not very much from books. I personally feel that if the right of second appeal in respect of suits below Rs. 1,000 in value is sought to be taken away, and the litigant is deprived of this right, I am afraid the lower courts and the small cause courts would behave more arbitrarily than they are doing at present. There are no small cause courts in all places; in particular courts there are small cause days in a week. I have personally heard it said; these days are referred to as bazaar days for that court, because there is such a crowd and such a rush of people, that it is not even possible to get into it.

Mr. Deputy-Speaker: Has the hon Member experience of civil judicial work also?

Shri Kamath: I was additional District Judge for two years. The Small Cause Judge happened to be my neighbour for a year. I knew what used to pass in that small cause courts.

Mr. Deputy-Speaker: I am sure the hon. Member's judgements have never been taken in appeal.

Shri Kamath: I did not decide small cause suits.

Pandit Thakur Das Bhargava: May I know what was the percentage of appeals accepted in respect of your judgements.

Shri Kamath: I want notice, Sir. I was referring to small cause judges and if you will permit me, I shall refer to the observations made by a full bench of the Supreme Court consisting of Chief Justice Mahajan, S. R. Das, Ghulam Hassan, Bhagwati and Venkatarama Aiyar. In the reported case of Dhakeswari Cotton Mills, they held that the income-tax officer and the tribunal passed their judgement on pure guess-work. Here is the relevant portion of the judgement.

> "....it is equally clear that in making the assessment under sub-section (3) of S. 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all."

Mr. Deputy-Speaker: We are not on the Income-tax Act now.

Shri Kamath: Our small cause courts may behave worse than when they know there is no second appeal.

Shri Pataskar: The very nature of the word "small cause" shows that they are for small causes, not connected with immovable property etc.

Mr. Deputy-Speaker: The value of Rs. 1,000 today is not more than Rs. 500 of earlier days.

Shri Kamath: It may not be. For poor people, it means quite a lot. In the course of the trail of my election case in the Supreme Court, Chief Justice Mahajan remarked that if this protection by appeal and revision under articles 226 and 227, 136 etc., were not there, these courts, tribunals and others would behave,—and they have behaved, like petty dictators. That was the remark made during arguments in my case. It is good the Constitution has given more than powers of revision. Otherwise, the lower courts may run amuck, and I do feel that there is no case for raising the pecuniary floor limit in the circumstances prevailing today. This may be considered perhaps at a later stage when the country is more prosperous and we have settled down and the Civil Procedure Code is revised by an expert committee as the Minister has promised in the Statement of Objects and Reasons, but at the present day there is absolutely no case for raising the floor limit from Rs. 500 to Rs. 1,000.

While I am on the subject, I may refer to this expert committee. Though it is not part of the Bill, it is part of the Statement, of Objects and Reasons. The Minister has referred to the future revision—"overhaul" is the word used here—of the Civil Procedure Code by an expert committee. I do not know what exactly is meant by the word "expert". Experts very rarely agree and they very often differ, fight among themselves, quarrel among themselves. If it is entirely legal experts, I hope the Minister will not take such a step, and I hope that when Government appoints this committee, it will also include persons who have been conversant with social, economic and political life and developments in this country. Not mere lawyers would do. I hope Government will hear that in mind before they proceed with the appointment of this committee. This is only a subsidiary observation because it is not immediately relevant to the consideration of the Bill. It has been provoked by the remark made by the Minister in the Statement of Objects and Reasons.

Coming to clause 13, it seeks to amend section 115 of the principle Act. The effect of that would be that revisional powers of the High Courts in certain cases would be restricted. The High Court would be deprived of its revisional powers where an appeal lies. Now, there are various stages in a civil suit. It is not clear whether this particular provision refers to all stages, interlocutory and final. There are stages where an issue of law may arise which, in my judgement, only a High Court should decide and not any lower authority. The ex-Chief Justice, of India, Shri Mahajan, shortly before his retirement, said in Ambala or somewhere else that the lower ranks of the judiciary were showing an unhealthy tendency to become subservient to the executive. He said that he deprecated this tendency and he hoped that the judiciary would maintain the highest standards so far as the administration of justice was concerned. Now, if the High Court is deprived of the powers of revision where issues of law are concerned, it will affect many litigants adversely because revision on an issue of law is quite different from an appeal on issues of fact. The High Court can sift the evidence affecting particular issues, and decide the matter very quickly and remand it to the lower court for trail. A lower appellate court, judging by the way things are going in many parts of the country, will not decide it as efficiently, or even as quickly perhaps, as a High Court will do. As a matter of fact, the section in the principle Act refers to only issues of law. What does it say?

"..... appears--

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity."

These are issues of law, not issues of fact at all, which may even call for exercise of the powers of High Courts under article 226. Under this article the High Courts have the power to issue writs of certiorari and other writs. These are however not affected by this, as the law cannot override the Constitution. Under article 227 the powers of superintendence given to the High Courts are very wide, and in my own case a ruling was given for the first time by the Supreme Court that by superintendence is meant not only administrative superintendence, but also judicial superintendence.

Mr. S. S. More: May I ask if clause 13 takes away the original power of revision, because the only word omitted is "thereto"? By omitting this word, on the contrary, the power of revision is widened. My friend is arguing on the assumption that this clause 13 would take away the powers.

Mr. Deputy-Speaker: Till now no revision was allowed except in cases where an appeal lay to the High Court. Appeals may lie to subordinate courts. Even then, under this amendment omitting the word "thereto", it is open to have revision to the High Court, wherever an appeal lies, from the Munsif to the District court etc.

Shri S. S. More: Sir, am I right when I say that by the omission of the word "thereto"....

Shri Pataskar: That is to say, it is quite clear that if there is the remedy by way of appeal open to the person concerned, then, naturally, he will not be able to go the High Court, if this amendment is accepted.

Mr. Deputy-Speaker: Wherever the appeal may lie.

Shri Pataskar: The whole idea is where there is a remedy by way of an appeal even to another court, in that case, there will not be a revision application to the High Court. I would just like to ask the hon. Member: is it not the common experience that interim proceedings like waiting for record etc., cause an amount of delay?

Shri Biswas: If I might interrupt, as a matter of fact, the object of the present section 115 is quite well known. The remedy is provided by way of a revision petition to the High Court for this reason, namely that even if there is an appeal open to a district court, say from a munsif to a subordinate judge or from subordinate judge to a district judge, it may still be necessary to move the High Court by an interlocutory application Otherwise, a lot of money and time may be wasted. If there is a point of law, and you go up to the High Court all at once and get a decision on that point of law, that may finally conclude the case, and then other proceedings in the lower courts may be wholly unnecessary.

What has happened is that section 115 has come to be abused to a large extent. Advantage has been taken of the words 'with material irregularity' in sub-section (c) of section 115. My hon. friend Shri Kamath pointed out the various provisions, but referred only to points of law. Now, so far as points of law are concerned, if you go to the High Court only for a final decision on a point of law, which will practically render other proceedings unnecessary in the lower courts, one can understand it. But taking advantage of these other words 'with material irregularity'; even when the point is something beyond a point of law, people rush to the High Court, and the High Court is over-flooded with numerous petitions in revision, most of which ultimately come to be thrown out. The result

[Shri Biswas]

is that in the meantime much valuable time wasted as well as money. Owing to the accumulation of work in the various High Courts, these revision petitions have come to be regarded as a clog in the administration of justice. That is why this change has been made. Although there was a good deal to be said in favour of an immediate recourse to the High Court to get a point of law settled, still after taking all matters into consideration, in the balance, it was found that we might try and see what is the effect of an amendment like the one which has now been proposed.

Pandit Thakur Das Bhargava: The logical course then would have been to take away the words 'with material irregularity' rather than to take away the entire right. According to my hon. friend, the entire right is very useful. So, only the words 'with material irregularity' could have been removed.

Shri Biswas: I was explaining the considerations which moved Government to adopt this course. One might or might not accept that view. There might be other ways. I am not suggesting that the object might not be attained by other ways. I am only explaining what led Government to make this amendment.

Shri B. S. Murthy (Eluru): Why should there be a total denial of the right?

Shri Sadhan Gupta: May I know whether Government have any figures to show the extent to which this particular provision has been abused, because normally I would have thought that the High Court would promptly reject any application in a matter in which appeal lies to another court or to itself, and it is only in very abnormal circumstances that such an application would be accepted.

Mr. Deputy-Speaker: Is not the hon. Member aware of the cases where lists of documents have not been admitted?

Shri Sadhan Gupta: No appeal lies from that. The particular thing remains unaffected even now.

Mr. Deputy-Speaker: An appeal lies against that order only when the appeal lies against the case itself. Now, in interlocutory orders, there is no appeal.

Shri S. S. More: Even with the present amendment, parties who have ample funds to spend will rush to the court and come back.

Shri Pataskar: The provisions of the Constitution, as I pointed out yesterday, are already there. So, we aware of that.

Shri Kamath: The hon. Minister Shri Biswas has been an eminent judge of the Calcutta High Court. I would ask him to tell us whether he was speaking from personal experience when he said that the High Courts are flooded with these applications for revision. He has decided many well known cases like the *Bhowal sanyasi* case, and he has been a judge for many years. During his tenure of office, was he flooded with these applications for revision? I would like to know that.

Shri Biswas: My friend is asking me to state my own experience. I will say this that I have sat with several colleagues on the High Court Bench. Well the judicial mind changes like the Chancellor's foot, and particular judges have particular views on these matters. Some are very liberal; some are very strict. I need not give names. But there it is. If you have a strong colleague who can assert himself, the other judge may yield. Otherwise, the personal equation prevails, and that is the real position. If I might mention one name, for instance, if people went to the late Justice Sir Ashutosh Mukerjee, they might be sure almost in every case of getting a rule, whatever the ultimate result might be. If on the other hand, you went to a judge, the late Mr. Justice Buckland, it was very difficult to get any rule. That personal equation prevails even now.

We cannot help it. And there you are. You have to decide here whether you should or should not retain the existing provision or make a change.

Shri Kamath: I proceed on the assumption that our High Court judges will be liberal and just. At the same time....

Shri Pataskar: There is no doubt about it. All of them are just.

Shri Kamath: I hope there will be a liberal interpretation of law, liberal so far as the citizen is concerned, as against the State.

I submit that it is wrong to curtail or restrict the powers of revision that have been conferred on the High Courts by section 115 of the principal Act. If that is not accepted, I am afraid that the only remedy in certain cases might be to have recourse to the constitutional powers conferred on High Courts under articles 226 and 227; but it is not always easy to invoke these powers. So, I would earnestly plead that this clause seeking to curtail the powers of revision should not be accepted, and the powers of revision as they are today should continue.

In this connection, I would only briefly mention in passing that this illustrates a tendency which has been noticeable in very recent months. There has been a spate of speculation in the press, and there have been rumours, that Government want to curtail the powers conferred on the High Courts under articles 226 and 227.

Shri Pataskar: But there is no justification for any such thing.

Shri Kamath: There have been so many rumours and reports.

Shri Pataskar: They are rumours only and nothing more; and absolutely, there is no intention on the part of Government to do anything of that kind.

Shri Kamath: May I take it that this is a definite assurance and promise by the hon. Minister?

Shri Pataskar: I do not know what more is required than this. I say there is nothing under consideration before Government to take away those powers. The matter is not under consideration.

Shri Kamath: I might draw the attention of the hon. Minister to article 226 where the last phrase is 'for any other purpose'. There was a very strong rumour that this phrase 'for any other purpose' was sought to be deleted, and that Government would introduce an amending Bill even in this session or the next session. But I am glad over what the hon. Minister in the Ministry of Law has stated, and I hope that will be endorsed by his senior colleague also on behalf of Government.

Shri Biswas: I can say this, that so far there is no proposal to that effect.

Shri Kamath: That is a very half-hearted 'so far'.

Shri S. S. More: They cannot speak for eternity.

Shri Biswas: I cannot speak for the future.

Shri Kamath: Has it been mooted any time in the Cabinet?

Shri S. S. More: That is a Cabinet secret.

Shri Kamath: If it is not a secret, he could tell us.

Shri Biswas: Whatever takes place in the Cabinet is a secret, and I am on an oath not to speak about it.

Shri Vallatharas (Pudukkottai): There is no quorum. We are only 39.

Shri Chattopadhyaya (Vijayavada): This lack of quorum seems to be like history which repeats itself. It repeated itself three times yesterday. We should adjourn the House now.

Shri Altekar (North Satara): There is no question of quorum between 1 and 2-30 P.M.

Shri S. S. More: May I bring to your notice that the recent statement that during the lunch period the question of quorum should not be raised....

Shri Vallatharas: It is said that there need not be quorum between 1 and 2-30 P.M. So I withdraw my remark.

Shri S. S. More: .... is absolutely wrong? In the House of Commons, there is no statutory provision for the purpose of maintaining quorum and, therefore, they can develop a convention which cannot be in conflict with any statutory provision. In our Constitution, there is a regular provision, an article which says that 50 shall be the number required to form quorum, and a convention which conflicts with this constitutional provision cannot have any validity. I respect the dignitary who made that sort of suggestion, but looking to the brass-tacks, that sort of convention, not to count out the House during this period is in conflict with a provision of the Constitution, and will therefore have no validity. Therefore, if anybody raises that question, you will be kind enough to take this into consideration.

Shri Chattopadhyaya: I refer to clause (3) of article 100 of the Constitution.

Shri S. S. More: That is what I refer to.

Pandit Thakur Das Bhargava: If there is no quorum, all this argument is useless.

Shri Pataskar: You will remember that when we decided to sit continuously even during lunch hour, it was a sort of understanding that nobody should raise this objection. If we do not have quorum, then the only course is to wait for quorum.....

Shri S. S. More: If you want to have any convention, amendment of the Constitution will be the easiest way.

Shri Biswas: So far as the point raised by Shri S. S. More is concerned, he is strictly right from the legal point of view. We recognise the necessity of amending the Constitution, and that may be done.

Mr. Deputy-Speaker: Until that is done, what is my position?

Shri Biswas: That lies in the hands of the occupant of the Chair. There was that understanding, a gentleman's understanding, while the full House was here, and whether we should adhere to that or not is a matter for the Members to decide for themselves.

Shri S. S. More: I want to make a very sober suggestion for your consideration. People are interested much more in their lunch than in the discussion here. Will it not be more honest and straightforward to adjourn for lunch so as not to put Members to the necessity of either foregoing their lunch or foregoing their responsibilities to the House?

Pandit Thakur Das Bhargava: Quite right.

Mr. Deputy-Speaker: All I can say is that during this period no vote is taken, unless there is a unanimous vote. So far as the decision is concerned, the decision is of a full House. It means 50 and above; that is, the quorum is full. It is a question of making speeches and then trying to convince the others. Yesterday, as hon. Members are aware, it was not during lunch time that there was no quorum, but at tea time. Then there may be dinner time and so on; various times come one after the other and there is want of quorum. Therefore, it is not mere lunch time that takes away the quorum, but other times also. Therefore, I would urge upon hon. Members not to raise the question of quorum during this period; I will also feel that there is quorum. We can go on for some time because we have to get through the work.

Not that I say there can be any convention overriding a statutory provision, but we get on as if there is quorum; nobody brings it to my notice and I do not take notice.

Shri S. S. More: It becomes a gentleman's understanding which goes against the spirit of the Constitution.

Mr. Deputy-Speaker: After all, if it is modified day after tomorrow, we are absolutely in the right. Nothing is sought to be forced.

Shri Kamath: We cannot leave it, unless it is withdrawn.

Shri Vallatharas: I have already withdrawn it.

Shri Biswas: There are so many things which we shut our eyes and ears to.

Shri Vallatharas: I only brought it to the notice of the chair because no quorum situation is often talked of in the bazaar openly.

Mr. Deputy-Speaker: I shall take care that except during the lunch hour, the deliberations are conducted with quorum, whether the matter is brought to the notice of the Chair or the Chair itself takes notice of it. Without quorum, no proceedings will be conducted, but during this period, quorum is assumed to continue; only hon. Members need not bring it to the notice of the Chair. The Chair also need not take notice of it.

Shri Chattopadhyaya: That is highly imaginative.

Mr. Deputy-Speaker: If we do not accept the convention, I shall bring it to the notice of the hon. Speaker who started this convention, and I will leave it to his decision.

Shri Biswas: May I have your leave to leave the House, although I am not a Member of this House?

Shri S. S. More: He cannot be a part of quorum.

Mr. Deputy-Speaker: The hon. Minister, Shri Pataskar, is here.

Shri Kamath: I am only submitting on that point that without quorum this will be unconstitutional.

Mr. Deputy-Speaker: No decision is taken.

Shri Kamath: There is article 100 (3) of the Constitution. This is a Parliament which has to function within the limits of the Constitution. It is our duty to uphold the Constitution.

Mr. Deputy-Speaker: I can only ask hon. Members to sit for a while, because there is no quorum.

Shri Kamath: I was on the point of the High Court's powers of revision, and I can only hope that that is not the shape of things to come, or what is very expressively said in another phrase, coming events cast their shadows before. I do hope that the assurance given by the Minister will not prove to be a three days' wonder but will be honoured and respected at least for some reasonable time to come. I cannot of course bind him for an indefinite future.

Shri Pataskar: Why attach so much importance to rumours?

Shri Kamath: It is not only rumour. Some rumours precede Government announcements. I have seen that on many occasions. I cannot bind the Minister for the entire future, because he too may not be there. So for a reasonable time, he must assure us that the High Courts' powers and Supreme Court's powers in regard to issuing writs and in other matters, namely, articles 226, 227, 132, 133, 136 and so on, will not be curtailed or abrogated or restricted. I hope that the Joint Committee will take note of the suggestions I have made on these three clauses, namely, High Courts' powers of revision, exemption of dignitaries from attendance in courts and raising of the pecuniary floor limit in the matter of second appeals. I hope that these suggestions will commend themselves to the Joint

[Shri Kamath]

Committee and these will be incorporated in the Bill when it comes back to the House from the Joint Committee.

Shri S. S. More: Don't be so optimistic.

Shri Altekar: Speed, efficiency, impartiality and cheapness are the principal objectives to be attained in the administration of justice—full proper justice. If we take up two of these, impartiality and efficiency, they, of course, cannot be so much effected by any procedre. Impartialiy has to be vouchsafed by the Constitution, by making the judiciary independent, and that has been so done. With respect to efficiency, I would like to point out that it depends upon the personnel, the proper choice of the personnel. For that, of course, a great effort will have to be made. I think so far as civil justice is concerned, it enjoys the confidence of the public to a great extent. So far as speed and cheapness are concerned, this Procedure Code has to do a good deal in that respect. But cheapness can be obtained only by revising the Court Fees Act and by changing the present structure of the judiciary so as to establish primary village courts for simple matters. If cheapness is to be secured the court fees and other costs of litigation will have to be curtailed to a great extent and the expenses of the judiciary will have to be reduced in such a way as to pave the way for the reduction in the costs of administration of Justice. From that point of view, a radical investigation into the Code of Civil Procedure, as also the Court Fees Act and the Evidence Act will have to be undertaken. That cannot be done unless and until the Commission which has been contemplated by the Government takes these matters in hand and goes through them.

Meanwhile, the question is that if there are some important reforms that could be brought in, whether they should not be attempted. If a very fundamental reform is undertaken the criticism is that this should not be done merely by the Minister but rather the question should be put into the hands of a competent Commission. That is the sort of criticism we saw at the time of the Criminal Procedure Code (Amendment) Bill. Now, when the reform that is sought is I may say, moderate the criticism that is levelled is why introduce such a Bill at all. I would like to point out that when such a great investigation requires time we should bring about changes which are very essential, and which could be brought about without any sort of controversy. From that point of view there are, I think, many provisions in the Bill which are very salutary and they require to be enacted into law.

Take, for instance, the question of repealing sections 68 to 72 and the Third Schedule of the Civil Procedure Code. We have seen that when decrees are transferred to the Collectors they take a lot of time. I have seen proceedings in which when the matter is sent to the Collector for partition it has dragged on for 5, 6, 7, 8 or even 10 years. In the case of maintenance decrees also, when they are sent to the Collector for the sale of the land, they take a good number of years. I have seen cases in which, in the meanwhile, we have amended the execution applications by adding year after year additional claims during the pendency of that execution proceeding. So, it is quite necessary and desirable; and it is a reform that is called for from all classes that the execution of the decree should be made by the court rather than be sent to the Collector. I have seen, in a partition suit brought by an adoptive father, where the son took possession of the property, the father had to sue for partition and possession and the case was decided and the decree was given. But, when the matter was sent for execution to the Collector it went on for years. The father died meanwhile, and the son

remained in exclusive possession undisturbed as before. So, there was absolutely no use of such proceedings.

So far as this reform is concerned, I have discussed this with many of my friends at the Bar as also some gentlement who are working for the cause of social reform and so on. All of them say that this is a very useful and salutary reform. I think that if the execution of those decrees which heretofore were being transferred to the Collector for execution are ultimately executed by the court itself, a good deal of time will be saved. From the point of view of achieving speed in the execution of justice, I think, this is a step in the right direction. The only thing would be that perhaps some clerks fit to serve in the Survey Department will have to be engaged in courts or if a partition of land has to be effected some commission will have to be issued to a survey or in the office of the District Land Records. Apart from that, I think, this is a step in the right direction, and will spell no difficulty.

Another point which I think of equal importance is in connection the determination once for all of the controversial question of the status of the auction purchaser at a court sale. There was a great controversy and that has been set at rest.

Yet another point which has been a matter of controversy here is *res judicata* in execution proceedings. I think that the principles that apply in suits in regard to *res judicata* or Order II, Rule 2, cannot apply in the case of execution proceedings because there are certain matters in which orders are passed only in connection with the matters that are in issue at the time being. In a suit, the plaintiff is bound to seek for all the reliefs that he is entitled to get. If he does not do so, then, he cannot subsequently agitate the matter by a different suit. But, in execution proceedings we often see that when a decree is passed for so many reliefs the plaintiff just asks for the execution of some of them; and, he can ask for the rest within the period of limitation. It is not so in respect of suits. Therefore, in execution proceedings only those points that have been actually pleaded, denied or accepted, will be matters of *res judicata*, That, I think, should be the proper approach.

Another important point that has been taken up in this Bill is in connection with restitution. Orders were not the subject-matter of restitution under section 144 and they have now been so taken and I think that is the proper thing to be done.

But, in connection with the amendment of section 115, that is the revisional powers of the High Court. I am rather not of the same mind as the hon. Minister of Law. I think there are certain types of interlocutory orders which, if not allowed to be taken in revision to the High Court, would entail great cost upon the parties. Take, for instance, the question of the amendment of plaint. If section 115 is amended as it is sought now, then in a case where a proper amendment of the plaint is not allowed to be made—this being an order against which there is no appeal—it cannot be hereafter taken to the High Court. However, when the case is decided and when the party goes to the appellate court the question can be taken up there whether the amendment was not allowed rightly or otherwise. Under these circumstances, the situation would be that if this revision was there he could take it to the High Court and get it decided at comparatively less cost, and, of course, earlier than it would be when it is decided by going through a regular appeal. If this amendment is made that particular facility which was there—I myself have availed of it about half a dozen times and thrice successfully—to a litigant would be taken away. This is a point which is worthy of consideration by the hon. Minister and also by the members of the Select Committee.

In connection with speed, there are certain other considerations. Great

[Shri Altekar]

criticism was levelled against the judges yesterday that they do not decide cases quickly. Unfortunately, there is no representative of the judges here and if any one were there we would have heard what obtained in the courts. Many times the cases are adjourned because the pleaders apply for adjournments and the judges are unwilling to grant adjournments and when they allow, it is often with great reluctance. I would, at the same time, like to point out that the situation in our country is such that expeditious trial will not be possible until the position of the masses in regard to education improves. We know it for a fact that most of them are illiterate and they do not know what documents are required. Many times when we ask them to procure extracts from the record of rights or copies of decisions in old cases and when we get them in our hands we get some information and from that we ask them to get some more documents. We are not able to get that information in time because they are illiterate and because they are not well acquainted with their own cases and only when we get information in this way we know what documents are necessary, even then copies are not supplied in time by some departments—. That being so, it sometimes happens that even written statements are not being given in time. Of course, they could be given in one month or two months if necessary information would be made available. It so happens that owing to the ignorance on the part of the general litigant public, it is very difficult to expedite the litigation as we intend, in the present circumstances in the country. Of course, we should try to do our best. Not many adjournments for written statements should be given and no unnecessary adjourment for the purpose of hearing also should be given, but it should not work in such a way as would ultimately defeat the ends of justice by not allowing the proper case to be put up and proper documents or evidence to be produced before the court. This should be taken into consideration in the peculiar social level or social circumstances that obtain in the country. All these facts have to be taken into consideration when we are speaking about expediting the administration of justice. This, in particular, is a very important factor and should not be overlooked.

In connection with another point—interest on costs, I would rather say that the deletion of that particular sub-section will not be in any way desirable, because in many cases it so happens that the court exercises its discretion by looking into all the circumstances of the particular cause that is being agitated before it. As pointed out by one of my friends here the other day, on account of some complicated and intricate points the litigation itself drags on for a number of years and under such circumstances the party who has contracted debt for litigation and has to await the result for a long time, should not be put to additional strain. Many times it so happens that the other side puts in certain pleas that are quite not legitimate and proper—of course, under section 35A there is a compensatory clause. But in every case, the compensatory costs will not be allowed. There are certain cases in which the pleas put in by the other side may not exactly come within section 35A, but the court, taking all facts into consideration, may allow interest on costs. So, I think that that particular clause should be retained, sub-section (3) of section 35.

In connection with section 92, I submit that the addition that is being sought is quite desirable, because of a trustee is removed and he is in possession of the property, then the new trustee that is appointed should be given possession of that property and the possession from the old trustee should be taken away. That will prevent multiplicity of suits and it has been provided for rightly in this Bill.

In connection with clause 16, I have to point out that there are very salutary provisions suggested therein with

respect to the service of summons by registered post and so on, but with respect to sub-clause (3), I have to bring one circumstance to the notice of the Select Committee as also of the hon. Minister. It says:

> "Where any party to the suit has, at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents."

So far as production of witnesses is concerned, I have no objection, but so far as it relates to the production of documents, I submit that if a person in that list produces the documents on the day of hearing, the other party has no notice of it and connot know what documents the opposite party wants to produce. The pleader for other party has to take information and instructions from his client, and only after taking such information, he can cross-examine or conduct the case further. Or he may be also thinking of producing any evidence for rebuttal. Though it may not be necessary to have a summons for documents being produced in court, the list should be given quite early—I may say on a previous date before the day of hearing. The documents may be produced without any summons by the witnesses. But if the list is to be given the same day on which the document is to be produced and the case to be heard, then it will take the other side by surprise. In spite of the present provisions in the Code, there are certain practitioners in law who desire to take the other side by surprise and to produce documents at the latest stage. They would get a license to do so. That should not be allowed. So, in the case of documents which are to be produced in court, a list should be given at least, say, fifteen days before the date of hearing and summons need not be given to the witnesses. They may produce the documents on the day of hearing, but the list and the information as regards the documents should be given sufficiently early so that the other side may get an opportunity to take full information in connection with the documents and also to produce certain documents, if it is necessary to produce, by way of rebuttal. This aspect of the case deserves to be considered by the Select Committee.

I have not much to say with regard to the security from parties and other things, which are matters for the Select Committee to go into, but I have brought the important aspects to the notice of the House. What I have to say in connection with this Bill generally is that there are certain matters which have been touched upon—many of them are not controversial but some of them are very important, and from that point of view the hon. Law Minister has done well in bringing the Bill before the House. If it is to be kept back until the whole enquiry is completed by the Law Commission, which may perhaps take other Acts also for consideration first, it may be a long time before anything can be done in this matter. As I have already stated, two or three Acts will have to be taken into consideration in order to bring about an expeditious measure of administration of justice; the Evidence Act, for instance, will have to be considered. In certain cases, in the case of registered documents, we do not know with which of the aliances or which of their heirs the document lies so, that it is difficult to get produced the original in time. What is usually being done is that certified copies of the documents are produced, and if the law is to be strictly followed, and copies are not allowed to be exhibited it will be a long time before a proper procedure is followed for producing the documents. Generally, in the case of certified copies, it is the practice to admit them, but if it is not done, it will be rather difficult to get expeditious trials. The sections in connection with the admission of documents, secondary evidence and other matters also in the Evidence Act will also

[Shri Altekar]

have to be considered. So the Evidence Act, the Criminal Procedure Code, the Court Fees Act and several other Acts should be looked into thoroughly and then alone the contemplated thorough and complete revision of the Civil Procedure Code will come in. It will take quite a lot of time and before that the very important provisions that are sought to be made by this Bill are properly done and I support this Bill subject to the suggestions made by me.

पंडित ठाकुर दास भार्गव : इस बिल को पेश करते वक्त हमारे ला मिनिस्टर साहब ने यह बातें नहीं कहीं कि वह इसके जरिए से कोई रैवोल्यूशनरी चेंज इस बिल के द्वारा सिविल प्रोसीजर कोड में लाने जा रहे हैं। जैसा कि इस बिल के आब्जेक्ट्स एंड रीजन्स में लिखा है यह कोई ऐसा बिल नहीं है जिसके जरिए से कि जितनी भी शिकायतें मुकदमेंबाजी की हैं वह सब दूर हो जाएंगी। जैसा कि कहा गया है कि यह मामूली सी एमेंडमेंट्स हैं जिससे कि जरूर फायदा होगा और मैं भी समझता हूं कि इसमें कोई शक भी नहीं है कि इन से कुछ फायदा होगा। इस बात में कोई शक नहीं है कि यह एमेंडमेंट्स फायदेमन्द हैं।

श्री कामत : चन्द एक।

पंडित ठाकुर दास भार्गव : चन्द एक ऐसी हैं जो कि प्रैक्टिस में आई हुई हैं। ऐसी बात नहीं है कि अगर यह बिल न आए तो उन पर अमल होना बन्द हो जाए। लेकिन मैं तो कहना चाहता हूं कि उनका वह जो कहना है कि हम थोड़ी सी और मामूली सी एमेंडमेंट्स लाए हैं जो कि आम तौर पर कबूल की जानी चाहिएं, यह दुरुस्त ही मालूम होता है और मेरे विचार में उन्होंने इस बिल को लाकर लिटिगेंट पब्लिक के लिए एक अच्छा काम किया है। मैं तो श्री पाटस्कर साहब से भी यह एक्सपेक्ट कर रहा था कि वे एक ऐसा बिल लाएंगे जो कि एक बुनियादी बिल होगा और जिससे खर्च व तेज इंसाफ में बहुत फर्क पड़ जाएगा। लेकिन उन्होंने खुद ही फरमा दिया कि वह ऐसी सब चीजें एक्सपर्ट कमेटी पर छोड़ देना चाहते हैं और मैं समझता हूं कि यह दुरुस्त बात भी है। काटजू साहब जब अपना बिल लाए थे तो हम ने बहुत कुछ नुक्ताचीनी की थी और आखिर में भी जिस दिन यह बिल पास होना था, जनाबेवाला को याद होगा, मैं ने अर्ज किया था कि उस बिल पर अमल नहीं होना चाहिए। क्रिमिनल प्रोसीजर कोड में जो तबदीलियां की गई थीं वह ऐसी थीं जिनसे कि इसकी खूबसूरती और पॉएज (Poise) ही खत्म हो जाते हैं और इसलिए मेरे खयाल में यह बेहतर होता कि हम इंतिजार करते। लेकिन यह एमेंडमेंट्स जो इस बिल में लाई गई हैं इनसे कोई लम्बा चौड़ा फर्क सिविल प्रोसीजर कोड में नहीं पड़ता और इसलिए मैं इस बिल के लाए जाने पर कोई एतराज नहीं करता।

अब इस बिल में जो बातें दर्ज हैं और जैसे मैंने अर्ज किया वह इस किस्म की नहीं हैं जो बुनियादी हों और जिनके बारे में बहुत कुछ कहने की जरूरत हो। जहां तक खर्च का सवाल है यह मानी हुई बात है कि सभी कोर्ट्स में खर्चा होता ही है। लेकिन जो बहुत ज्यादा खर्चा होता है उस फजूल खर्च को रोकने के लिए इस बिल में कहीं कोई एमेंडमेंट नहीं है। यह एमेंडमेंट्स प्रोसीजर को तो स्मूदन करती हैं लेकिन खर्च के बारे में कुछ भी नहीं कहा गया है सिवाय इसके कि अगर आप अपील या रीविजन करना चाहें तो न करें तब तो खर्चा पड़ने का सवाल ही नहीं उठता। खर्चा किस में होता है? सिविल कोर्ट्स में सब से पहले तो वकील की फीस का सवाल उठता है। उसकी फीस को यह बिल टच नहीं करता। बहुत से बड़े बड़े मुकदमों में वकीलों को पांच फीसदी फीस मिलती नहीं है जो आप खर्चे के अन्दर दिलाते हैं। छोटे मुकदमों में वकील ज्यादा लेते हैं और आप दिलाते हैं पांच फीसदी। तो यह दोनों तरह के केसों में खराबी की बात है। इसमें कुछ कमी करने के बारे में कुछ नहीं किया गया है। आपने कोई ऐसी इंस्टीट्यूशन बनाने का सुझाव भी नहीं दिया जहां से गरीब आदमियों को मुफ्त सर्विस मिल सके या बार एसोसियेशन

एंसा इंतिजाम करें। अगर एंसी कोई बात इस बिल में होती तो भी खर्चा कुछ कम हो सकता था लेकिन एंसी बात कोई नहीं हैं।

जिस चीज पर और खर्चा होता हैं वह हैं कोर्ट फीस के मुताल्लिक। अभी मेरे दोस्तों ने कहा कि रोज मर्रा कोर्ट फीस बढ़ती ही जा रही हैं। क्योंकि प्रांविशल गवर्नमेंट्स को रुपए की जरूरत होती हैं और कोर्ट फीस को बढ़ाना उनके अख्तियार में हैं इस वास्ते वे कोर्ट फीस बढ़ा देती हैं। मेरे देखते देखते जब से मैं ने प्रैक्टिस शुरू की हैं इसका कोई अन्दाजा नहीं हैं कि कोर्ट फीस कितनी बढ़ गई हैं। जब कोर्ट फीस बढ़ती जा रही हैं तो मैं पूछता हूं कि खर्चा कैसे कम हो सकता हैं....

श्री कामत: अव्वाम की भलाई के लिए!

पंडित ठाकुर दास भार्गव: मैं यह नहीं कहता कि अव्वाम की भलाई के लिए यह बढ़ती गई हैं परन्तु कोर्ट फीस जब बढ़ती हैं तो कई बार एंसा होता हैं कि इस बढ़ती हुई कोर्ट फीस को देखते हुए जो लोग फजूल से कौंसस दायर करते हैं वे एंसा नहीं कर पाते और इसके साथ ही साथ जो लोग सच्चे केस को लड़ते हैं वे भी इस बढ़ी हुई कोर्ट फीस को देखते हुए इनको छोड़ देते हैं।

अब और जो खर्चे होते हैं सिविल कोर्ट्स में उनकी तरफ मैं आपका ध्यान दिलाना चाहता हूं। आपको शायद मालूम न हो कि वहां पर कितने रुपए वकील की फीस और कोर्ट फीस वगैरह के अलावा खर्चा होते हैं क्योंकि पाटस्कर साहब ने शायद लोयर कोर्ट्स में प्रैक्टिस न की हो। मैं ने चूंकि छोटी से छोटी कोर्ट में भी प्रैक्टिस की हैं और वहीं से मैं ने प्रैक्टिस शुरू की थी, इस वास्ते जो वहां पर खराबियां हैं, वह मुझे मालूम हैं....

श्री कामत: आपकी प्रैक्टिस अधिकतर क्रिमिनल रही न?

Shri Pataskar: I have also practised in all courts from the bottom to the top.

पंडित ठाकुर दास भार्गव: उस जमाने में जब मैं ने प्रैक्टिस शुरू की थी उस जमाने में पुराना सिविल प्रोसीजर कोड चलता था और १९०८ में नया सिविल प्रोसीजर कोड आया। हम ने जो इम्तिहान पास किया था वह १८८२ के एक्ट के अंडर किया था। उस जमाने में और आज के जमाने में बहुत फर्क आ गया हैं। उस जमाने में मैंने देखा कि जो सिपाही अदालत के बाहर खड़ा रहता था अगर उसको चार आने दे दिये जाते थे तो वह कुछ इन्फारमेशन आप को ला कर दे देता था। अगर किसी अहलकार को या नाजिर को एक रुपया दे दिया जाता था तो वह खुश हो जाता था और आपका काम चल जाता था। आज कल जो सबार्डिनेट कोर्ट्स के क्लार्क हैं उनके ही खर्चे इतने बढ़ हुए हैं कि कुछ ठिकाना ही नहीं हैं.....

श्री कामत: स्टैंडर्ड बढ़ गया हैं।

[SHRI BARMAN *in the Chair*]

पंडित ठाकुर दास भार्गव: इसके अलावा जो सम्मन इशू करता हैं उसको भी जब तक आप दो रुपए न दें तब तक उससे भी काम करवाना मुश्किल हैं। इसी तरह से जब तक आप जो सम्मन तामील कराने के लिए जाता हैं उसकी मुट्ठी गर्म न कर दें तब तक सम्मन की तामील ही नहीं होती। एक दो किस्से मुझे सिविल कोर्ट्स के याद आते हैं और उनको मैं यहां पर अर्ज कर देना मुनासिब समझता हूं। मैं क्रिमिनल प्रैक्टिस भी कर रहा हूं लेकिन जिस वक्त मैं ने प्रैक्टिस शुरू की थी तो मैं ने देखा था कि मेरी आमदनी इतनी नहीं थी जितनी कि मेरे वालिद साहिब के अर्दली की आमदनी थी। मैं समझता हूं कि उस वक्त एक अर्दली एक मामूली प्रैक्टिस करने वाले वकील से ज्यादा आमदनी कर लेता था। तो मैं अर्ज करता हूं कि यह खर्च की जो मद हैं इसमें कमी करने की बात को सोचना चाहिए था। जब कोई मामूली आदमी मुकदमा करने के लिए आता हैं कोर्ट फीस वगैरह छोड़ कर, वकील का खर्चा छोड़ कर, अगर वह चाहे तो वकील कर सकता हैं और अगर न चाहे तो नहीं भी कर सकता हैं, वकील बहुत सस्ते भी मिल जाते हैं, किस तरह से उसके खर्चे में कमी आ सकती हैं, इस पर पाटस्कर साहब को सोचना चाहिए था। आज कल कोई भी काम नहीं होता कोर्ट के अन्दर

[पंडित ठाकुर दास भार्गव]

जब तक कि सब की मुट्ठी गर्म न कर दी जाए। नाजिर, चपड़ासी, अहलमद वगैरह सब की मुट्ठी उसको गर्म करनी पड़ती है। रीडर का तो कहना ही क्या। वह जो चाहे लिख देता है। इसका कोई इलाज नहीं किया गया है। यह न तो स्पीड ही होने देता है और न मुकदमेबाजी को सस्ता ही रहने देता है। आपने इसके बारे में सोचने की कोशिश नहीं की।

श्री कामत: यह ओवरहाल में आएगा।

पंडित ठाकुर दास भार्गव: मैं चाहता था कि इसके बारे में कुछ तो कर दिया होता। खर्चा बढ़ाने वाली जो एक दूसरी मद है वह जैसा कि आल्तेकर साहब ने कहा, रूल्ज इतने स्ट्रिक्ट हैं रीजिस्टर्ड डाकुमेंट्स के बारे में भी कि जब तक लोगों को गवाही में पेश न करें तब तक काम ही नहीं हो सकता। जब तक आप दस्तखत को साबित न करें, स्टेटमेंट को साबित न करें तब तक महज कापी से काम नहीं चलता है। सर्टिफाइड कापीज कोर्ट के अन्दर मौजूद होती हैं उसकी जब तक आप कातिब या गवाहान की गवाही से साबित न करें तब तक It is not admissible in evidence. इसी तरह से जब तक आप १०, १० और २०, २० रुपए कापी लेने के लिए कापींग क्लार्क को या कापींड एजेंट्स को न दें दें तब तक आपके लिए कापी लेना मुश्किल है। यह जो लिटिगेंट पब्लिक को खर्च करना पड़ता है यह खर्च की दूसरी मद है। इसका आपने कोई इलाज नहीं किया है। जजिज जो रिश्वत लेते थे उसका मैं जिक्र नहीं करना चाहता। अब उस तरह से रिश्वत जजिज में नहीं चलती जैसे कि पहले चलती थी। आज की ज्यूडिशरी पहले की ज्यूडिशरी से बेहतर है। पहले जमाने में मैं ने देखा है कि जजिज खूब रिश्वत लिया करते थे। एक किस्सा मुझे याद है कि जब हम एक मुनसिफ के यहां रूबरू पेश हुए और उनसे आरबिट्रेशन करने की दरख्वास्त पेश की और जिसमें वकला खुद ही पंच व सरपंच बन गए थे और कहा कि गांव में आ कर मुकदमे का फैसला कर देंगे, राजी नामा करा देंगे तो मुनसिफ साहब कहने लगे इतना तो इसको मिल गया इतना इसको मिल गया। इतना जो पंच होगा उसे मिलेगा, मगर मुझे क्या मिलेगा। वह मुंसिफ साहब उस वक्त शराब में मखमूर थे और ऐसी बेतुकी बातें करने लगे। आप ये बातें सुन कर हैरान होंगे, लेकिन वह पुराना जमाना था। यह आज के जमाने की बात नहीं है। आज-कल तो बहुत से बी० ए०, एल० एल० बी० जजेज बनते हैं। अब जुडिशरी में ज्यादा पढ़े लिखे लोग आते हैं। मैं समझता हूं कि जहां तक बाइबरी का ताल्लुक है, वह पहले से काफी कम हो गई है --मैं यहां सिविल कोर्ट्स का जिक्र कर रहा हूं। आज जुडिशरी का कैलिबर भी ऊंचा हो गया है। इस सिलसिले में काफी इम्प्रूवमेंट हुई है।

लेकिन इसके साथ ही मैं अदब से अर्ज करना चाहता हूं कि अगर आपका मकसद चीप और स्पीडी जस्टिस प्रोवाइड करना है, तो आप को एक नई तरह का सिस्टम शुरू करना चाहिए। पिछले दिनों दिल्ली का एक एक्ट सिलेक्ट कमेटी में गया था और हम सब ने मिल कर तजवीजें पेश की थीं। सिस्टम यह होना चाहिए कि हर एक कोर्ट में दस बीस नाम आरबिट्रेटर्ज के होने चाहिए, जो कि प्रूव्ड मैरिट और इन्टीगृटी के शख्स हों। हर कोर्ट में इस किस्म की एक लिस्ट होनी चाहिए और जब कोई मुकदमा आए तो कोर्ट का यह फर्ज होना चाहिए कि वह पार्टीज को कहे कि "तुम्हारे जिले के ये नाम हैं, इनमें से किसी को पंच बना लीजिए और अपना फैसला कर लीजिए।" मैं अर्ज करना चाहता हूं कि अगर आप जस्टिस में स्पीड लाना चाहते हैं तो मुकद्दमात में पंचों का इन्तजाम कर दीजिए--कान्सिलिएशन का इन्तजाम कर दीजिए। पिछले दिनों हमने डाइवोर्स के लिए कान्सिलिएशन को जरूरी कर दिया है। क्यों न हर मुकदमे के लिए कान्सिलिएशन का प्राविजन किया जाए? यह निहायत जरूरी है। मैंने देखा है कि सिविल कोर्ट्स में जब कोई टैक्निकल आबजेक्शन होता है, तो वकील की बाछें खिल जाती हैं।

मैंने देखा है कि लाखों रुपए के मुकदमात टिकट न लगी होने की बिना पर खारिज कर दिए जाते हैं। जो बाकी निकलती है -- जो बैलेंस होता है, उस पर अगर एक आने का टिकट नहीं लगा है, तो मुकदमा खारिज हो जाता है, क्योंकि तब वह "प्रामिस टु पे" नहीं होता है। इस तरह कितने ही मुकदमे खारिज हो जाते हैं। हमारे जितने जजेज हैं, उनका फर्ज है कि हमारे पुराने ख्याल और हमारी पुरानी सभ्यता के मुताबिक वे मुकदमों का फैसला करें। मुकदमा जिस कोर्ट में भी जाए, उसका फैसला सही तौर पर किया जाए और टैक्निकल बातों की तरफ ज्यादा ध्यान न दिया जाए। आज एविडेंस के सिलसिले में यह होता है कि कोर्ट काक्स की गेम (मुरगों की लड़ाई) में एक स्पैक्टेटर की तरह बैठी रहती है और अपना फर्ज अदा नहीं करती है। वह पार्टीज को यह नहीं बताती कि इस एविडेंस की कमी है, इसको लाओ। वह महज यह लिख देती है कि "देयर इज नो एविडेंस आन रिकार्ड"। आज-कल तो कोर्ट सिर्फ तमाशा देखती है। उसका यह फर्ज होना चाहिए कि वह सही फैसला करने की गरज से पार्टीज को डायरेक्शन्ज दे।

हमारी पार्लियामेंट ने हिन्दुस्तान में आइन्दा एक सोशलिस्टिक पैटर्न आफ सोसाइटी कायम करने का फैसला कर लिया है। इसलिए मैं निहायत अदब से अर्ज करना चाहता हूं कि उसका कोई न कोई नमूना हमको अपने मुल्क के जस्टिस में लाना होगा और देखना होगा। थोड़े दिन हुए, हमने रेफ्यूजीज के लिए पार्लियामेंट में एक ला पास किया था -- डेट्स एडजस्टमेंट एक्ट। उसमें हम ने यह फैसला किया था कि जिस आदमी की आमदनी २५० रुपए से कम होगी, उसकी कोई चीज एटैच नहीं हो सकेगी, लेकिन दफा ६० में हमने वही पुराना दकियानूसी नुक्ता-ए-निगाह कायम रखा हुआ है और प्रोवाइड किया हुआ है कि फलां फलां चीजें, जैसे कपड़े और औरतों के लहंगे वगैरह, एटैच नहीं हो सकती हैं मेयार ऊंचा होने पर मामूली सामान और १०० से कम तनख्वाह या मजदूर कुर्क न होनी चाहिए। ये सब बातें हमको तबील कर देनी होंगी।

मुझे इस सिलसिले में एक वाकया याद आता है। हमारे जिले हिसार में स्किनर (Skinner) फैमिली की दूसरी स्कीनर (Skinner) फैमिली पर कई लाख रुपए की डिक्री हो गई। वह डिक्री कई बरस के झगड़े के बाद सन् १९१८ में हुई थी, लेकिन जब १९३९-४० में मैं अपने जिले में जब मैं सिविल कोर्ट की अपनी प्रैक्टिस खत्म की -- उस वक्त भी एक्सीक्यूशन का झगड़ा चल रहा था।

श्री कामत: क्या हिसार में?

पंडित ठाकुर दास भार्गव: जी हां।

डिफेंडेंट के मुख्तार मुझे कहते थे कि रुपया भरने के लिए बैलियां सिलवा लो। इसकी वजह यह थी कि हम जानते थे कि हर एक उजरदारी के बाद सिविल सूट होता था और वह प्रिवी कौंसिल तक पहुंचता था। हमारे किसी जज ने ठीक ही कहा भी हुआ है कि लिटिगेंट की तकलीफ डिक्री से नहीं बल्कि एक्सीक्यूशन से शुरू होती है। पाटस्कर साहब से मैं कहना चाहता हूं कि रैस जुडिकेटा के सिलसिले में उन्होंने जो प्रोविजन दिया है, वह काफी माकूल है। मैं समझता हूं कि अगर वह इस सारी बातें रैस जुडिकेटा को लिख देते, तो झगड़ा पड़ जाता। उन्होंने एक झगड़े का फैसला कर दिया है। जो कुछ उन्होंने लिखा है, वह मुनासिब है। आइन्दा जब एक दफा फैसला हो जाएगा, तो दोबारा उस पर झगड़ा न होगा। मैं ने अभी जिक्र किया है कि एक्सीक्यूशन के मुकदमे प्रिवी कौंसिल तक जाते रहे हैं। इस लिए मैं अदब से अर्ज करना चाहता हूं कि यह प्राविजन हमारे लिए बहुत मुफीद है। जैसा कि अभी मेरे दोस्त आल्तेकर साहब ने फरमाया है, जिस वक्त नई कमेटी (कमीशन) बैठेगी, तब नए रूल्ज आफ एविडेंस बनेंगे। मैं कहना चाहता हूं कि हमारे मौजूदा रूल्ज एक ऐसे मुल्क से आए हैं, जहां के ज्यादातर लोग पढ़े-लिखे हैं। पहले हमारे यहां इतनी लिटीगेशन नहीं थी लेकिन अब लिटीगेशन ज्यादा हो गई है। अब तो अगर

[पंडित ठाकुर दास भार्गव]

किसी आदमी ने किसी तरह आबजैक्शन कर दिया, तो वह उस पर अड़ा ही रहता है। लेकिन मैं समझता हूं कि अब भी अगर हमारी जीनियस के मुताबिक रूल्ज बनेंगे, तो मुझे पूरा यकीन है कि हमारी ये आदतें खत्म हो जाएंगी और हमको चीप और अच्छा जस्टिस मिलेगा। यह मैं जानता हूं कि जिस जमाने में मैं ने प्रैक्टिस शुरू की थी, उसके मुकाबले में आज बहुत फर्क हो गया है। अब पंचायतों को भी कुछ अख्तियारात मिल गए हैं। अब वे सिविल केसेज और छोटे छोटे क्रिमिनल केसेज करती हैं। मैं नहीं जानता कि वे कहां तक इन्साफ करती हैं। जहां तक मैं ने सुना है, उससे मुझे तसल्ली नहीं हुई। यह ठीक है कि अब गांवों में भी वही पुरानी राइवैलूज, पार्टीबाजी, अदावतें, दुश्मनियां और जेलसीज चल रही हैं, लेकिन मेरा ख्याल है कि अब भी रिडंम्पशन की गुंजायश है। छोटे छोटे मुकदमात को पंचायतों के सुपुर्द कर दिया जाए और रिविजन और अपील की ज्यादा गुंजायश न रहे, तो मुमकिन है कि गांवों में एक दूसरे के सामने लोग झूठ बोलने की जरूरत न समझें। मैं जानता हूं कि आज किसी को अदालत के सामने सफेद झूठ बोलने में भी कोई झिझक नहीं होती है। पंजाब में एक मसल है कि जो अदालत में सच बोलता है और पंचायत में सच नहीं बोलता है, वह अपने बाप का बेटा नहीं है।

एक बात मैं अदब से कहना चाहता हूं और उम्मीद करता हूं कि सारा भवन इसको नोट करेगा। विलायत में प्रथा है कि जब बच्चा बहुत छोटा होता है, तो मदरसे में अच्छे से अच्छा उस्ताद उसे मिलता है और उसकी आदतों को मोल्ड करता है। कालिज में भी प्रोफेसर अच्छे होने चाहिएं, लेकिन स्कूल में जो मास्टर हो, वह अव्वल दर्जे का होना चाहिए। इसी तरह हमारे गरीब लोगों के लिए अच्छे से अच्छे जज आने चाहिएं, लेकिन वे नहीं आते। जब यहां पर यह कानून बनाया गया था कि सुप्रीम कोर्ट में बीस हजार से कम की वैल्यू की कोई अपील न होगी, तो मैं ने कौंस्टिट्यूएंट असेम्बली में अर्ज किया था -- और इस वक्त उसको फिर दोहराना चाहता हूं कि यह उसूल गलत है कि कोई शख्स मालियत की बिना पर बड़ी से बड़ी अदालत में जा सके। यह दुरुस्त नहीं है। एक गरीब आदमी को, जिसका दौलत का आइडियल एक, दो या पांच हजार रुपए का है, अपनी जायदाद उतनी ही अजीज है, जितने कि एक करोड़पति को अपने करोड़ रुपए अजीज हैं। यह उसूल गलत है कि आप हायर केसेज के लिए अच्छे जजेज रखें और छोटे केसेज के लिए, जो कि गरीबों के होते हैं, अच्छे जजेज न रखें और यह मुकर्रर कर दें कि पांच हजार की मालियत का मुकदमा हाई कोर्ट में जाएगा और बाकी नहीं जाएंगे। अगर यह डिस्टिंक्शन (Legally mooted point) झगड़े के पायंट की बिना पर किया जाए, तो उसको तो मैं समझ सकता हूं, लेकिन मालियत की बिना पर ऐसा करने पर मुझे सख्त एतराज है। सोशलिस्टिक पैटर्न आफ सोसाइटी कायम करना हमारा एम है। इसलिए बीस हजार या तीस हजार की यह हद रख देना मुनासिब नहीं है।

श्री कामत: इससे ताल्लुक?

पंडित ठाकुर दास भार्गव: इससे ताल्लुक है। अभी तो आप हजार रुपए और ५०० रुपए के बारे में फरमा रहे थे। आप ही की स्पीच सुन कर तो मुझे यह रिमार्क करना जरूरी हुआ और आप ही यह फरमाते हैं कि इससे क्या ताल्लुक है।

तो मैं यह अदब से अर्ज करना चाहता हूं कि जहां तक जूरिस्डिक्शन ५०० रुपए का हो तो उसको बढ़ा कर १००० कर दिया जाए यह मैं पसन्द नहीं करता।

अभी ला मिनिस्टर साहब ने फरमाया कि सेक्शन ११५ क्लाज १२ के ऐसे मामले जो कानूनी मामले हैं उनको अगर हाई कोर्ट ले जाने की इजाजत दी जाएगी तो मुकदमे लम्बे हो जाएंगे। लेकिन मैं समझता हूं कि उन मुकदमों को हाई कोर्ट ले जाने की इजाजत नहीं दी जाएगी तो ये

ज्यादा लम्बे हो जाएंगे। अगर इंटरलोक्यूटरी आर्डर के सिलसिले में कोई झगड़ा हाई कोर्ट जाता है तो वह यह रूलिंग देती है कि अगर यह सिर्फ इन्टरलोक्यूटरी (Interlocutory) है तो हम इंटरफियर नहीं करेंगे। अगर यह पाइंट मुकदमे की जड़ तक जाता है तभी हम इंटरफियर करेंगे। इसलिए अगर कोई पाइंट मुकदमे की जड़ तक जाता है तो उसमें वह इंटरफियर करते हैं वरना नहीं करते। लेकिन अगर आप कहते हैं कि ऐसे मामलों का हाई कोर्ट में जाना बन्द कर दिया जाए तो आप लोगों को उस रेमेडी से महरूम कर देंगे जिसको कि वह अर्से दराज से एंजाय करते आए हैं और जिसके बारे में कोई फैक्ट्स और फीगर्स हमारे पास नहीं हैं कि वह एब्यूज होती हैं।

जनाब वाला, इस मुल्क में गलत तौर पर या सही तौर पर हाई कोर्ट और सुप्रीम कोर्ट में लोगों का बड़ा विश्वास है और इस कदर विश्वास है कि अगर हाई कोर्ट से और सुप्रीम कोर्ट से इंसाफ न मिले तो लोग कहते हैं कि कानून में गलती है। इसलिए जहां पर कोई हाई कोर्ट या सुप्रीम कोर्ट के जुरिस्डिक्शन में इंटरफियर करता है तो पब्लिक में वही सेंसेशन होता है जो मिस्टर कामथ में २२६ के बारे में होता है। मैं चाहता हूं कि हाई कोर्ट और सुप्रीम कोर्ट के जुरिस्डिक्शन को कम न किया जाए। जब हमने कांस्टीट्यूशन बनाया उस वक्त जितनी कोशिश हो सकी हमने की कि इन अदालतों का जुरिस्डिक्शन बढ़ाया जाए। लेकिन जो रूल्स बनाए गए उनकी रू से १० हजार या २० हजार से कम के मुकदमे सुप्रीम कोर्ट में नहीं जाते। यही चीजें हैं जो कि इंसाफ के मिलने में खललअन्दाज होती हैं और मुझे अफसोस के साथ कहना पड़ता है कि जो हमारा मंशा था वह पूरा नहीं हो रहा है। मैं ने देखा है कि जो पावर्स हमने सुप्रीम कोर्ट को दी थीं उनसे वह गरज पूरी नहीं हो रही जिनके लिए हमने वह पावर्स दी थीं। इसमें जजेज का कुसूर नहीं है। सेक्शन १२४ और १२६ की रू से उन्होंने अपने चारों तरफ एक आयरन वाल बना ली है। मैं चाहता हूं कि यह आयरन वाल हाई कोर्ट और सुप्रीम कोर्ट के चारों तरफ न रहे। इन टैक्निकल रूल्स की वजह से इन्साफ के रास्ते में रुकावट पड़ती है। हम इन्साफ चाहते हैं। हम नहीं चाहते कि इन रूल्स की वजह से इन्साफ में रुकावट पड़े। इस बिल में ऐसी कोशिश की गई है कि इस किस्म के कुछ रूल्स को हटाया जाए, लेकिन कुछ ऐसे रूल्स को वापस लाने की भी कोशिश की गई है।

जहां तक रिव्यू का सवाल है उसके लिए मैं देखता हूं कि आर्डर ४७ रूल २ है। अब तक यह था कि अगर उसी जज के सामने मामला न हो तो उसका सक्सेसर नोटिस जारी नहीं कर सकता था। यह चीज हटाई जा रही है। मैं खुश हूं कि इसको लिबरलाइज किया जा रहा है।

इसी तरह से एक बड़ा सवाल है जिसके बारे में अमेंडमेंट करने का जिक्र है। सन् १९०८ के एक्ट के पहले तक सिविल कोर्ट्स को जायदादों को नीलाम करने का अख्तियार था। लेकिन सन् १९०८ में यह ख्याल किया गया कि शायद रेवेन्यू आथारिटीज एग्रीकल्चरिस्ट के इंटरेस्ट को ज्यादा अच्छी तरह से समझ सकें इसलिए यह काम रेवेन्यू कोर्ट्स को दे दिया गया। लेकिन इसमें देर बहुत होने लगी क्योंकि सिविल कोर्ट्स में एग्जीक्यूशन में बहुत देरी होती थी। वह मामले उतनी जल्दी तै नहीं हुए जितनी कि उम्मीद की गई थी। इसी वजह से पाटस्कर साहब ने अमेंडमेंट दिया है। लेकिन पेशतर इसके कि इस मसले पर सिलेक्ट कमेटी गौर करे मैं यह जानना चाहूंगा कि इस अमेंडमेंट से ऐसा तो नहीं होगा कि जो फायदा हम एग्रीकल्चरिस्ट को पहुंचाना चाहते थे उससे वह महरूम हो जाए। मैं चाहता हूं कि इस बात की तहकीकात करने के बाद ही यह अमेंडमेंट किया जाए। मैं मानता हूं कि आजकल इन मामलों में देरी होती है और हो सकता है कि इनके सिविल कोर्ट में जाने से इतनी देरी न हो। लेकिन हमको यह देख लेना चाहिए कि एग्रीकल्चरिस्ट को जो फायदा पहुंचाना मक्सूद था उससे तो वह महरूम नहीं हो

[पंडित ठाकुर दास भार्गव]

जाएगा। मैं चाहता हूं कि इस मामले को तै कर लिया जाए।

एक यह जिक्र आया है कि कास्ट के ऊपर इंटरेस्ट न लिया जाए। उसूलन तो मैं इसके खिलाफ नहीं हूं क्योंकि जो हार जाता है उसको कास्ट देना ही मुश्किल हो जाता है। लेकिन मैं जानता हूं कि अदालत पूरी कास्ट तो देती नहीं है। सिर्फ कायदे का खर्चा दिलाया जाता है। ऐसी हालत में अगर किसी आदमी ने डिग्री हासिल की है और उसका केस जस्ट था और डिफेंडेंट ने डिसआनेस्टी की है, तो मैं नहीं समझता कि कास्ट पर इंटरेस्ट क्यों न दिया जाए। जिन लोगों को बेजा तौर पर कास्ट मिलती है उन पर अगर सख्ती की जाए तो मैं समझ सकता हूं लेकिन अगर एक आदमी का जस्ट केस है तो मैं नहीं समझता कि क्यों इंटरेस्ट न दिया जाए। जिस रोज वह आदमी डिग्री हासिल करता है उसी दिन वह अपना रुपया पाने का हकदार है। आम तौर पर कोर्ट्स कास्ट पर इंटरेस्ट नहीं लगातीं। लेकिन अगर वह लगाती हैं तो यह कौन से उसूल के खिलाफ है। कोर्ट्स को डिस्क्रीशन है। उनके सामने केसेज आते हैं और वह उन पर डिस्क्रीशन इस्तेमाल कर सकती हैं। हो सकता है कि उनके इस डिस्क्रीशन को काट लेने से कुछ केसेज में फायदा हो जाए। लेकिन मैं समझता हूं कि अच्छा है कि आप डिस्क्रीशन को वहीं रहने दें जहां कि उसे रहना चाहिए।

श्री कामत: कास्ट में वकीलों की फीस कितनी होती है?

पंडित ठाकुर दास भार्गव: उनकी फीस वही होती है जो हाई कोर्ट ने मुकर्रर की हुई है। कुछ रकम तक ५ पर सैंट होती है और उसके आगे २ पर सैंट और २ पर सैंट होती है। जिसने वकील को फीस दे दी उसके पास से तो पैसा चला गया। ऐसी हालत में कास्ट रिकवर करते वक्त इंटरेस्ट देना गैर वाजिब नहीं है। मुझे खुशी है कि कामत साहब इंटरेस्ट में इतना इंटरेस्ट ले रहे हैं।

एक अमेंडमेंट पोस्ट के जरिए तामील के बारे में है। यह सेक्शन १६(२) के बारे में है। इसके बारे में मैं यह अर्ज करना चाहता हूं कि लोग आजकल इतने होशियार हो गए हैं कि जहां कहीं कोई समन जाता है वहां वह पोस्टमैन के साथ जाकर "रिफ्यूज्ड" लिखा लेते हैं। अगर सिर्फ पोस्टमैन अपनी तरफ से यह लिख दे तो मुझे एतराज नहीं, लेकिन लोग खुद जा कर पोस्टमैन से यह लिखवा देते हैं। पोस्टमैन को भी क्या गरज पड़ी है कि बार बार उस आदमी के यहां जाकर देखे कि वह है या नहीं। इसलिए ऐसा लिखने में दोनों का फायदा होता है और पोस्टमैन 'रिफ्यूज्ड" लिखा लिया जाता है। ऐसा होने से बहुत से केसेज एक्सपार्टी हो जाएंगे और लोगों को बहुत सी दरखास्तें मंसूखी देनी पड़ा करेंगी। मैं अदब से अर्ज करना चाहता हूं कि यह मेरे तजर्बे की बात है। मेरे तजर्बे में ऐसे केसेज आए हैं कि जहां समन पर रिफ्यूज्ड लिखा हुआ था लेकिन वह गलत था....

Shri Pataskar: What about the bailiffs also?

पंडित ठाकुर दास भार्गव: यह हो सकता है कि बेलिफ गलत लिख देते हैं लेकिन बेलिफ का हल्फिया बयान तो होता है। पोस्टमैन का तो कोई हल्फिया बयान नहीं होता। न पोस्टमैन पर सिविल कोर्ट का कोई अख्तियार होता है। बेलिफ पर तो कोर्ट को अख्तियार भी होता है। अब तक जो समन अनरजिस्टर्ड भेजे जाते हैं उन पर भी अगर "रिफ्यूज्ड" लिख दिया जाता है तो उन केसेज को एक्सपार्टी कर दिया जाता है। आपने इतना तो किया। रजिस्टर्ड इसमें किया, इतना तो किया, लेकिन रजिस्टर्ड में और नान रजिस्टर्ड में जब किसी आदमी ने लिफाफा भेजा, तो उसमें कोई लम्बा चौड़ा फर्क नहीं रहता, दोनों में रिफ्यूज्ड लिखना है। ढाई, तीन आने का खर्चा और बढ़ गया है, बाकी इम्प्रूवमेंट इसके अन्दर कोई नहीं हुआ।

जहां तक गवाहान के लाने का आपका सवाल है, उसको मैं बिल्कुल अननेसेसरी समझता हूं। आज के दिन जो जज इसका प्रिजम्पशन करे, वह वायलेंट प्रिजम्पशन करता है, कोई मुल्क ऐसा गवाहान को अपने साथ ले जाए, कोई वह कहे

और इसको बिलीव कर लें कि जितने गवाहान हैं वह ऐसे सीधे हैं कि कोर्ट का सम्मन गया तो आ गए और कोर्ट का सम्मन नहीं जाता तो वह वहां पर नहीं आते। तो वह गलती करता है, सम्मन आप भेजें या न भेजें, हकीकत यह है कि गवाही देने के लिए वही लोग आते हैं जिनको कि प्लेंटिफ और डिफेंडेंट खुशामद करके ले आते हैं।

रूल ४ में आम तौर पर यह होता है कि कोर्ट अपना फैसला दोनों पार्टीज को बुला कर सुनाता है वरना झगड़ा हो जाता है और उसके लिए वह डेट मुकर्रर कर देता है पहले से कि फलां तारीख को वह फैसला सुनाएगा। यह भी मेरी राय में इतना नेसेसरी नहीं है।

तो मैं अदब से अर्ज करूंगा कि इसमें बहुत सारी बातें हैं जो काफी साफ हैं और आजकल भी प्रैक्टिस में मौजूद हैं। बहुत सारी बातें ऐसी हैं कि जिनको हमें कबूल कर लेना चाहिए और मुझे उम्मीद है कि सेलेक्ट कमेटी, यह जो सब मेम्बर साहबान ने एंतराजात किए हैं, उनके अंदर जाकर जो मुनासिब समझेगी करेगी।

एक दूसरे सवाल की बाबत मैं जनाब की इजाजत से अर्ज कर देना चाहता हूं कि मेरे एक भाई ने अमेंडमेंट मूव किया है कि सिवाय इन सेक्शन्स के और जितने सेक्शन्स हैं, उनके बारे में भी इजाजत होनी चाहिए कि सेलेक्ट कमेटी में अमेंडमेंट होकर आ जाएं। उसूलन तो मैं यह समझता हूं कि कोई लम्बा चौड़ा एंतराज इसमें नहीं होना चाहिए क्योंकि अगर श्री पाटस्कर साहब इन चीजों को देख लेते और इसमें रिलेट देते तो वह सारी चीजें सेलेक्ट कमेटी को सुपुर्द हो जातीं। अब अगर उन्होंने उनको देखना मुनासिब नहीं समझा या नहीं देखा, किसी तरह से नोटिस में नहीं आया, तो अगर कोई मेम्बर साहब चाहते हैं कि उन बाकी सेक्शन्स पर भी सेलेक्ट कमेटी में गौर हो जाए, तो उसूलन इसमें कोई हर्ज नहीं है, कतई हर्ज नहीं है। लेकिन मैं अदब से अर्ज करूंगा, यह जरूरी सवाल है कि अगर कोई ऐसी तब्दीली है, मेजर तबदीली है जो इस बात पर मुन्नहसिर करती है, जैसा कि श्री पाटस्कर साहब का ख्याल था कि कहीं एक्सपर्ट कमेटी करके या कोई ऐसी बड़ी भारी तबदीली है, तो ऐसी बड़ी तबदीली इसके अन्दर नहीं आना चाहिए, क्योंकि खुद इस बिल के अन्दर पाटस्कर साहब ने यह लिख दिया है कि हम छोटे मोटे मामलों को लेना चाहते हैं जिससे लोगों को फायदा हो जाए और कुछ न्याय मिलने में स्पीड भी तेज हो जाए और उसके सम्बन्ध में होने वाला खर्च भी कम हो जाए। तो ऐसी चीजें जिनके लाने से फायदा हो, ऐसी चीजें जो अन-कंट्रोवर्शियल हों, ऐसी हों जिनके अन्दर कोई झगड़ा न हो, उनका आना मुनासिब है। सिविल प्रोसीज्योर कोड की फील्ड इतनी वसीह है कि जिसका कोई ठिकाना नहीं, महीनों तक इसको आप एमेंड करते रहिए, काम पूरा नहीं होगा और वह कंट्रोवर्शियल हो जाएगा। श्री पाटस्कर ने जितनी चीजें रक्खी हैं, वह इतनी ज्यादा कंट्रोवर्शियल नहीं हैं, एख्तलाफ राय हो सकता है, लेकिन बेसिकली कोई एख्तलाफ नहीं है। इस बिल को हमें इस डाइरेक्शन के साथ सेलेक्ट कमेटी को भेज देना चाहिए कि इसके अन्दर जो ऐसी चीजें हैं कि जो बहुत कंट्रोवर्शियल न हों, उन पर अगर अमेंडमेंट लाए जाएं तो कोई हर्जा नहीं है और उन पर भी गौर करके फैसला कर लिया जाए, वरना अगर बुनियादी चीजों पर वहां झगड़ा हुआ तो इस बिल की नेचर ही तबदील हो जाएगी।

Shri B. K. Ray (Cuttack): Mr. Chairman, the motion before this House is a very interesting one. With regard to the discussion of the Civil Procedure Code, almost all the grounds have been covered and I do not propose to take much time. Amongst the many arguments advanced, one is that the Civil Procedure Code stands now as a harmonious and coherent structure and if it ought to be revised, it ought to be revised as a whole. There should be no haste about it. Let the expert committee examine it and then revise it. This sort of piecemeal revision would bring about disharmony and may do more injustice rather than justice. This argument, I should say, is not entirely

[Shri B. K. Ray]

without force; but it can be met if we extend the scope of the Bill. How does the Bill read? The Bill reads, "a Bill further to amend the Code of Civil Procedure, 1908"; therefore I should say that the scope of the Bill is not confined to the clauses that have been proposed there. Now for example, it is said that if the witness has been named, then a party can produce him in court without taking any summons for his production. Till now, we know that every party has got the full right to bring a witness to court without summoning him and even without previously naming him. This has been the practice. So far as the provision for summoning witnesses is concerned, it is just to help a man to call any witness to a court. I know of a particular decision of a High Court which set the law at rest in this respect. Previously witnesses brought into courts without summons used to be discredited on account thereof. The final decision of the High Court was that as there was no provision to prevent a witness from coming to a court without summons on being solicited by a party, he should not be discredited on that ground. Therefore, if this provision is enacted, then it will mean that no longer can anybody produce a witness either without summons or without previously naming him in the court. In this way, some of the amendments may adversely affect the law as it is. Therefore, I give value to this opposition objection. But as the hon. Deputy-Speaker has opined—which presumably is the sense of the House also—if such amendments of the Code as are incidental to the proposed amendments or as have a relation thereto so that, if not inserted consequentially, it will lead to dereliction of justice and injudicious procedure, are allowed as being within the scope of the Bill, there will be no harm, but some good will be done to the cause of dispensation of the civil justice. Therefore, I would appeal to the hon. Minister in charge of this Bill to remember this opinion of the Deputy-Speaker, the sense of the House and accept amendments which have a relation with the remainder of the provisions of the Act.

Secondly, I have found from the discussions that there is some misconception about the Civil Procedure Code. It is thought as if the Civil Procedure Code is the source of all the delays and expenses in disposal of civil cases. In this respect, without claiming any infallibility for my words, I should like to express my strongest possible opinion that the Civil Procedure Code is very well designed. It was the result of the wisdom of a country whose jurisprudence is highly developed and it has been so enacted that if it is strictly followed, all the delay and expenses involved in the administration of civil justice will be reasonably abridged. It is a matter for pity that those who are in charge of administering the Civil Procedure Code are not strictly following it. I would like the House to bear with me for a few minutes.

When I was the Chief Justice of a High Court I had been on tour. I was told by a District Judge that he wanted a subordinate judge because he had got a big case which would take about two months and fifteen days and there were many other old cases pending. Therefore he thought that an additional man was necessary. I told him: "You better send the papers of that case to me at the headquarters." They were sent to me; I read them; I went through the orders and I found that the Procedure Code had not been followed.

Now what does the Procedure Code say? The Procedure Code says that there will be a first hearing. What is the meaning of first hearing? At the first hearing both the parties will be present; matters really in dispute will be sifted, subtracting those that are admitted or that are unimpeachably proved by documents, and will have to be categorised, classified and put down into issues. No court ever-

follows that procedure. First hearing in mofussil court means—so far as my experience, extending over a period of forty years goes—simply stating the parties, cases and putting down some issues tentatively. Nothing further is done.

In the Civil Procedure Code there are provisions for discovery and inspection of documents; there are provisions for issue of interrogatories; there are provisions for calling upon the other party either to admit or not to admit documents or facts; there are provisions for examination of witnesses on commission. These provisions are there to facilitate speedy disposal. If they are strictly followed, then certainly by the time the case comes to be heard a lot of matter should have been admitted, a lot of documents should have been admitted on record, or proved on admission. There is a sanction behind these provisions because the Procedure Code provides that if somebody wrongfully disowns particular documents or facts and the same are proved against him in court, notwithstanding the fact that he wins the case on the whole he will have to pay the costs of the opposite party incurred by him on this particular item which the party has proved. Now none of the members of the subordinate judiciary follow these provisions.

Going back to my experience, I transferred the case to my file. Then, I made the first hearing; I called upon the lawyers on both sides to issue interrogatories of such facts which they thought may be admitted. Each issued interrogatories on the other. Then I called upon both the parties to discover the documents and give inspections thereof to the other party calling upon him to admit or deny. That was done. The majority of the documents were picked up and were admitted to be genuine. Ultimately it was found there were only five documents to be proved by oral evidence and three witnesses to be examined. There the whole case ended.

Therefore, it is wrong to think that the delay and expense are due to the Civil Procedure Code. I should say it is due to the fact that the Code has not been strictly followed. If speedy and cheap justice has to be obtained, I think strict scrutiny should be made by the higher judiciary of the work of the lower judiciary.

Coming to the High Courts, what happens in the High Court is this. The papers are listed for being printed. The printing presses take two or three years. That is mainly the cause of the delay in the High Courts, quite apart from inadequate personnel or anything of the kind.

Suppose you introduce a rule that the appellant whose appeal is admitted has to produce all the necessary papers, either printed or typed, from the very beginning and the respondent will in a short time produce all the papers that he wants the court to go through a lot of time would be saved?

Shri Rane (Bhusaval): Why not dispense with printing altogether?

Shri B. K. Ray: In the High Court there are two judges forming a Bench and two sets of papers are necessary. Previously, the judges were Englishmen and translations had to be done. Now things are changed.

Shri Pataskar: What about the two or three High Courts which have got original jurisdiction? There all the procedure of the Civil Procedure Code is strictly followed, but the complaint in their case is that the amount of expenditure is so excessive that the parties find it difficult.

Shri B. K. Ray: There the expenditure is due to the system of attorneys. About that also, I shall tell the House my experience.

It was recently decided that all cases with regard to companies under liquidation proceedings should be heard by the High Court in its original jurisdiction where the Head Office of the company is situated. As a result of this a large number of cases from the Calcutta High Court were to be transferred to my court, that is the Orissa court. Now the liquidator came and

[Shri B. K. Ray]

reported to me that each attorney wanted Rs. 500 to apply for and get transfer of the records in his charge from the Calcutta High Court to my court. I asked my Registrar to write to the Registrar of the Calcutta High Court. Thereafter Sir Trevor Harris, who was the Chief Justice, ordered that all the records should be sent to Orissa. Within a fortnight all the records were there. He wrote to me that with regard to certain documents and private papers with the attorneys he could not help.

So, the main expenditure is due to the attorney system. Of course there is a moral aspect to the attorney system. That keeps our barristers and advocates above suspicion. I should, therefore, urge that the scope of this amending Bill should be widened, so that the Civil Procedure Code, or at least those parts of it which will be consequentially affected by the proposed provisions, should be considered. That has been the sense of the House, so far as I have been able to understand and that has the sympathy of the Minister incharge. With regard to the amendment of the Civil Procedure Code, there is another answer to any objection, namely that some parts of it are severable. The fundamental principles are coherent and harmonious, but some parts are severable for example. So far as exemption of particular persons from appearance in court is concerned, that has practically nothing to do with the rest of the Code. There may be similar amendments when occasions arise.

With these words, I support the Bill.

Shri Mulchand Dube: (Farrukhabad Disstt.-North): : During my experience at the bar for more than 40 years, I have come to the conclusion that the Civil Procedure Code as it stands has not got many defects. It consists of two parts, one containing sections up to 158 and the other consists of Orders and Rules. So far as the portion that deals with Orders and Rules is concerned, the Rules can be amended by the High Courts. Every High Court has a Rules Committee which examines the Rules from time to time and according to the prevailing local conditions, alters or amends them. Therefore, I do not agree with the hon. Minister when he says that overhauling the entire Code is a stupendous task and requires a Committee of experts. All that seems to me to be necessary is that the State Governments and the High Courts should be alerted so that they may examine the Orders and Rules and alter them or amend them according to the conditions prevailing in each State. For this Parliament to take up the entire Code consisting of Orders and Rules would certainly be unnecessary, because, in that case, the rules will have to be framed on a uniform basis with the result that they may not be adequate or fully applicable to all the States in the country.

So far as the sections are concerned my submission is that they lay down very sound principles and do not call for any change. When the hon. Minister says that the task is stupendous and it is difficult to overhaul the entire Code, the only conclusion to which I can come is that the defects are not so patent as to be easily visible. I think this expression of his supports my view that the Code as it stands is not as bad as it is made out to be.

In the course of the debate on this Bill a question about the incompetence of the judiciary has been raised. My submission is that there are certainly delays, and sometimes misappreciation of evidence also. But, the judges are not the only party to blame. There are three parties who must share the blame. The litigants are responsible for producing false evidence or setting up false cases before the court. The advocates are also to a certain extent responsible for trying to win their cases by their skill in advocacy; the judges are also responsible to a certain extent for not being able to appreciate the evidence fully. But, in spite of all this, it can be said with confidence that 90 per cent. of the cases at least are decided correctly. This is all to the

credit of the judges and the great experience and knowledge of human nature that they have to bring to bear upon the decision of these cases.

I shall now come to the various amendments that have been placed before the House. The first point is, I have not been able to understand why the Code is not being made applicable to the State of Jammu and Kashmir. When we turn to section 1 of the Code as it stands at present, it reads:

> "It extends to the whole of India except—
>
> (a) the Tribal Areas in the State of Assam;
>
> (b) Save as hereinafter provided, the Scheduled areas in the State of Madras;
>
> (c) the State of Jammu and Kashmir; and
>
> (d) the State of Manipur;"

It appears from section 1 that the Code is not extended to the State of Jammu and Kashmir. When we come to the definition contained in section 2 we find:

> "(7B) "India", except in sections 1, 29, 43, 44, 78, 79, 82, 83 and 87A means the territory of India excluding the State of Jammu and Kashmir;"

That is, a part of the Code, sections 1, 29, 43, 44, 78 and others are made applicable to Jammu and Kashmir. These sections relate to service of summons, execution of decrees and such other matters. If the Code could be made applicable to Jammu and Kashmir in these matters, I do not see any reason why it should not be made applicable to the State of Jammu and Kashmir as a whole. I expect that the hon. Minister will clarify the position.

The first amendment that is sought to be introduced is that the successful party should be deprived of the interest on costs that he has incurred. I have not been able to understand the reason behind this. The successful party has incurred considerable costs and the costs taxed against the opposite party represent only a small part of the costs that have been actually incurred. If a person, on account of the wilful default or wrong committed by another person, has been driven to the court, and has had to incur expenses and spend money from his pocket, there does not seem to be any reason why he should be deprived of interest on costs that he has incurred. It is said that it is a matter of social justice. My submission is that this kind of thing is likely to encourage the judgement debtor to desist from paying Costs as they fall due. He can withhold the costs and put the decree-holder to considerable expenses and trouble even after he has obtained the decree. It is a common saying that the troubles of the decree-holder begin only after he has obtained the decree. Therefore, I do not quite understand the hon. Minister when he says that costs should not bear any interest after the decree has been passed.

The next amendment proposed to section 35A is a welcome and salutary amendment. Up till now, it was necessary for a party claiming special costs or compensatory costs to raise that objection at the earliest possible opportunity. The words 'earliest possible opportunity' are being omitted with the result that the courts will be in a position to grant compensatory costs even though they have not been claimed at the earliest possible opportunity or even though they have not been claimed at all. This is all to the good. This is bound to result in deterring unscrupulous litigants from launching vexatious or frivolous claims. The amendment of section 47, bringing in the principle of *res judicata* is a welcome and salutary change, because up to now the principle of *res judicata* was surely applied to execution cases, but it was constructively so applied, but there was no provision in the law as to whether that principle should or should not be applied. I think it is a good amendment to apply that principle. My hon. friend Shri Ramaswami said that the question of might or ought

[Shri Mulchand Dube]

should also be applied to execution proceedings. I do not agree with him, because it is more a question of constructive *res judicata*. Therefore, such points which have been heard and finally decided should be *res judicata* not others which might and ought to have been raised and have not been raised.

The amendment to section 92 is also a salutary and good amendment. Up to now what happened was that a person who succeeded in ousting a trustee from trust property only got a declaration and in case he wanted to take possession of the property, he had to file another suit. Now, this is a necessary amendment and this is quite welcome.

Mr. Chairman: The amendments with which he agrees, he need not recapitulate because it has been said by so many Members. He should try to economise the time and just speak on those clauses where he has something to say.

Shri Mulchand Dube: In regard to amendment of section 133, I have some doubts as to whether the proposed amendment is going to meet the objections that have been raised by the High Courts in regard to the exemption of persons. The amendment reads as follows:

> "In section 133 of the principal Act,—
>
> (a) for sub-section (1), the following sub-section shall be substituted, namely:—
>
> (1) the following persons shall be entitled to exemption from personal appearance in Court, namely:—
>
> (i) the President of India;
>
> (ii) the Vice-President of India;..."

Now, the opening words are "The following persons" and the exemption is in regard to their offices. The question is whether the word "persons" covers, and is comprehensive enough to include, the offices held by these persons. If the persons are to be exempted, it should be clearly stated that the persons holding the following offices shall be entitled to exemption. That would be, I think, more correct. My submission is that the hon. Minister might take this fact into consideration, because, in order to meet the objection raised, in order to bring the clause in line with the provisions of article 14 of the Constitution, we should see to it that the proposed amendment is made consistent with the article of the Constitution.

Article 14 reads:

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Now, the word used here is "person" and according to the rule of interpretation contained in the Constitution itself, the definition of "person" is to be taken from the General Clauses Act. In the General Clauses Act, this word "person" includes any company or association or body of individuals, whether incorporated or not. It would be noticed that the definition leaves in tact the ordinary meaning of the word "person", which is an individual human being. Therefore, the word "person" would mean an individual human being and would include any company or association or body of individuals whether incorporated or not. Now, these offices which are mentioned in the amendment to section 133 are neither men nor associations of men nor bodies of individuals incorporated or unincorporated. So, these offices do not come within the definition of "person" and therefore, in case it is considered necessary to give exemption to these offices, it should be said that persons holding these offices are exempt. The amendment of the section as it is framed does not say so. It only says the following persons are exempt and then it names the offices. I think the opening words of the section should be: "persons holding the following offices". If it is put in this way, it may be that it might meet the objection to meet which this amendment is being brought forward.

The Minister of Defence Organisation (Shri Tyagi): I wonder if these offices can be treated as institutions.

Shri Mulchand Dube: Institutions are not mentioned anywhere. Institutions do not count. It is the persons that count.

Shri Tyagi: For instance, there is Lord Krishna's Mandir. Lord Krishna in law is a person although he does not exist.

Mr. Chairman: These are all personalities.

Shri Mulchand Dube: I entirely agree with my hon. friend Pandit Thakur Das Bhargava that justice should be administered and every person should have a right to get justice in respect of any wrong that he has suffered or in respect of any wrong that is being done to him. My submission is that that is certainly an ideal which it is difficult to reach, and if all such cases were to come to the Supreme Court or the High Court, it would be impossible for them to deal with the plethora of such cases.

There is one other point which I wish to mention and that is that the revisional jurisdiction of the High Court should not be curtailed in the manner it is sought to be curtailed. The High Court should have the power to call for the record of any case, to examine whether justice has or has not been done.

With these words, I support the Bill.

Shri Achuthan (Crangannur): This process of codifying the Civil Procedure is not new, it has been going on for a century now. It is not a new instance with regard to this Parliament. There is no meaning in waiting till the Law Commission exhausts the whole law and comes out with its recommendations before this House to effect the necessary changes. Moreover, it may take a long time, so that, according to me, if this amending Bill goes to the Select Committee and if the Select Committee considers changes in other relevant sections and Orders of the Civil Procedure Code which may have the effect of seeing that justice is meted out as quickly as possible and in an efficient manner, it will be well and good. But my concern is not with regard to the provisions in the Code but with regard to other matters outside this Code and with regard to the judiciary. We must have a competent judiciary. We must have enough number of judicial men. In some States we see there are a number of cases pending in small courts where the Munsiff is not able to deal with them in full. There are cases which are older than five years, not in the High courts or appellate courts—I am referring to the original Munsiff Courts.

Shri Bibhuti Mishra (Stran *cum* Champaran): Do the Munsiffs sit from 10 to 4?

Shri Achuthan: 11 to 5, excepting for one hour for lunch. Though he may not be in the bench, he has to do administrative work. You have no experience of that. That is the difficulty.

Mr. Chairman: Order, order.

3 P.M.

Shri Achuthan: So that, we are not to blame the judiciary as a whole. They are as conscientious as we are. The judges must be properly paid. That is my main submission. Unless the judiciary becomes contented and unless they are made to feel that their future is safe and that they can have a contented and happly life, they become discontented, and dissatisfied, and as a result, their full energy and enthusiasm are not forthcoming. So, it is very necessary that they must be properly paid.

Secondly, there must be enough number of persons on the judiciary. And there must be a standardisation in their scales of pay. We find that there are wide variations in their pay scales at present as between the different States. In one State, the munsiffs scale may go up to Rs. 300, but in some other States, it may be very much less. These variations must now be set right, and their must an all-India pay scale for all these judicial men. That will

[Shri Achuthan]

create the necessary atmosphere in which they can feel that they are independent, and that they form one lot from one end of India to another; and this will also result in the speedy disposal of cases.

Even more important is the part that we advocates have to play. I know personally that there is a good number of my fellowmen in the different courts who may not play the part that is expected of them. You know well what sort of advice we give sometimes to our clients. If we make a little introspection we shall find that in many cases the parties may not have to go to court at all and that the case could be settled better by arbitration or by some sort of compromise or conciliation, and thus the matter could have been expeditiously dealt with, but yet the case has been taken to the courts, under our advice. Unless we are united, and we have in view the new and changed social conditions, and we adapt ourselves to the new set-up, I for one feel that delay in the disposal of cases cannot be solved in the near future.

Then comes the question of the litigant public and the witnesses. They are also responsible sometimes for delay. They are expected to tell the truth and the truth only, and they must abide by the summons issued to them. But I can give you a number of cases in which even though the witnesses are ready and it is convenient for them to go to court and give their evidence, yet they plead inconvenience on the ground that they are laid up or that they have some other urgent matter and then ask for postponement of the case, or leave of absence. This is the sort of tactics that has been employed in our courts beginning from the lowest and ending with the highest. In the face of all this, delay is certainly inevitable.

Unless we realise all these factors, and unless we realise that quick administration of justice is a part and parcel of justice, and that delay should be reduced to the utmost, we shall find this sorry state of affairs continuing in the future also. As far as possible, we must see that the cases are settled outside the court itself. Otherwise, the expenses by way of lawyers' fees etc., which the parties will have to bear, will mount up to a high figure. Moreover, in certain cases, it may happen that the status of the parties to a case might be different; the plaintiff may be a rich man, and he may employ one of the biggest advocates; then necessarily, the defendant also, even though he may have a strong case in his favour, will run after a big advocate. These big advocates will be brought to the lower courts, and it is just possible that on that particular day, there might be a number of other hearings, and this particular case may not be taken up at all. And yet the lawyers' expenses will be there. The result of all this will be that even though the defendant succeeds ultimately in this case, yet with regard to his financial position he will be nowhere, and he will become just an insolvent. We have to take all these factors into consideration and see that justice is made as quick and as cheap as possible. This is by way of general remarks.

Now, coming to this small amending Bill, I feel that it is not of much significance. Only some very small and minor matters have been taken up. And even there, I find that there are some hardships likely to be caused as a result of the proposed amendments. For instance, with regard to the question of costs, everybody will admit that when a party spends some money by way of costs, he must receive interest on the same. What is the justice, or what is the rational in saying that the interest will not be allowed on the quantum of costs that the party has spent for obtaining the decree in his favour? If you say there will be no costs at all paid to any party, I could quite well understand that. And moreover, it will act as a deterrent to the litigant public from going to court, for they will not get even a single pie by way of cost. If that sort of provision is made, I can appreciate that. But there is no point in saying that while

costs would be allowed, the costs will not bear interest, and that the question of allowing interest on costs will be left to the discretion of the court. Suppose in a particular document, 12 per cent interest is claimed, and the decree also is granted in favour of the person concerned, certainly the courts are not going to allow that rate of interest. But certainly discretion should be left in the courts to award such rate of interest as they think just and proper.

Then I come to the question of compensatory costs. According to me, this is a very important provision. As far as my experience goes, there have been quite a number of frivolous and vexatious cases. Unless the courts are armed with full powers to grant compensatory costs in respect of frivolous, untenable and useless contentions, the litigant public will only be encouraged and the incidence will be on the increase. But if this provision is there, according to which the court can at any time award compensatory costs to the party concerned, then it will have a deterrent effect on persons contesting such cases in the courts.

Some other devices also can be adopted to minimise the number of these vexatious and frivolous contentions. If the parties could come to a settlement that there is no substances in the contention, then the court fee can be refunded. This kind of provision existed in our State, and in fact it exists even today. If there is an agreement between the parties that there is no contention at all, then half the court fee will be refunded. This acts as an encouragement to the parties to settle their cases outside the court if possible. And if the parties come to a settlement even at the stage of framing of the issues, then the whole of the court fee will be refunded. If this sort of provision is made, then somehow or other a tendency will be created among both the parties to a case to try to settle the matter among themselves and not pay the court fee to the State concerned.

The best way to reduce the number of cases in courts is to encourage the system of arbitration, conciliation or compromise. If this course is adopted, then in many cases, the advocates of the two parties could settle the case among themselves within one week. That has been our experience. But if we allow them to go to court, we find that the case drags on even for as long a period as two or three years. If we advocates are certainly at it, and we have a mind to settle the cases outside the court, then we shall be able to settle many of these cases within just a week's time; but if we take those cases to the court, they might well drag on for years.

Shri Raghavachari (Penukonda): All your fees should be realised first.

Shri Achuthan: I for one feel that some sort of provision must be there with regard to settlement of cases by arbitration or compromise outside the court. But I find that there is no place for that in the Civil Procedure Code. There is no doubt an Act with regard to arbitration, namely the Indian Arbitration Act, but only very few persons have recourse to that. If only we could see that the tendency to seek arbitration is encouraged among the litigant public, there will be less of delay in the disposal of cases in the courts. A number of prominent persons also have been saying the same thing and it will be in the interests of the litigant public themselves if they resort to arbitration rather than go to a court.

Now, I come to the question of *res judicata*. They were in use before, and they are in use even now also. In our State, there were cases of *res judicata* even in execution proceedings but ultimately it is for the High Court to say whether a particular matter could be agitated or not on the principles of *res judicata* or not. But I find that nothing much could be gained in this regard by means of the present amendment.

Then I come to the question of revision and appeal. According to me, the provision in regard to revision is necessary. It is not that I am against revision itself. When there is very little of justice, or there is a violation of

[Shri Achuthan]

justice, or a question of an important point of law is involved, certainly the parties would not keep quiet, and the matter will definitely go to the High Court, where they will try to convince the judge concerned that it is a very important matter which will affect the whole tide of the case, that there will be a repetition of the losses, and so on; and on this, necessarily the High Court will interfere and pronounce its opinion. At present, even in regard to some small intricate matters, the party runs to the High Court, even though he could get some real relief from the district court itself, where the case has been dragging on for two or three years. If these stay orders could be got from the district court itself, then the High Courts will be left free to deal with more important matters only. At present, what happens is that because a revision petition has been filed in a High Court, and it may come up only after a year or so because the High Court is preoccupied with other more important work, the whole case comes to a standstill, and the aggrieved party is put to a great loss and suffering.

Then there is the question of appeals in regard to small causes. I think the provision in this regard in the Bill is absolutely necessary. It lays down that only in causes involving a corpus worth more than Rs. 1000 a second appeal can lie. At present, the provision is that causes where the valuation exceeds Rs. 500 can be agitated by way of second appeal. Only in cases where some serious financial loss is involved should the matter be allowed to be agitated by way of a second appeal. So, it is very necessary that there must be some limit fixed in this regard, beyond which only a second appeal can be made.

Now, as regards service of summons through post, there is one very serious difficulty. We must have post offices throughout India. Unless we introduce the postal service throughout India, this difficulty may remain. Now, in villages with a population of 2,000 and above, we find post offices. Unless we extend the postal facilities, I think the delay will continue. Even the preliminaries take three months or six months. In some big cases, where there are about 200 or 300 defendants, the service of summons will go on for two years. I know of a case in the Madras High Court in which I am interested. The appeal was filed in 1948. We are now in 1955. The last date of service of summons has not been completed. Seven years have lapsed, but still the last service is yet to be completed. That is the position. So unless we take it into our heads to see that the postal service is sufficient for the purpose, delays cannot be avoided, as it will be prolonged. So this amendment in clause 16 regarding the inclusion of postal service instead of having the other service is a welcome change which has to be adopted.

So also with regard to the bringing of witnesses. Even now a party brings witnesses. Even though the other party may cross-examine them and ask them, 'why have you come at the invitation of the other party?', the court does not take notice of it. Courts nowadays realise the social consciousness of the people. People now do not depend on the wealth of the people bringing them. In cross-examination, the veracity and *bona fides* of the witnesses can be well understood. So not much value can be attached to the fact of witnesses being brought by the party. Actually, sometimes witnesses may not like it. They say, 'We do not want to follow you. Let us get the summons and we will come and say what we have to say'. Therefore, even though we may have this provision here, it won't be made much use of, because there are respectable witnesses, they may not like to come with the party. They may consider it as an insult to go to the party's house and then come along with them. So even though we have the provision incorporated here, it will not be made much use of by the parties.

Then with regard to sub-clause (6) of clause 16, Order XXV, rule 1; asking for security for costs, according to my experience in the Bar, we ought not to be content with the existing provision

alone. At the hearing stage, the plaintiff who is not a resident there and who has no immoveable property, goes on raising contentions, and on demand by the other party, furnishes security. According to me, even now parties who are settled here and who have no immoveable property, raise a lot of contention. But no court can demand security for costs; it can only have the person brought there, when security for his appearance is demanded and furnished. But, according to me, we must go a step further. In a number of cases, we find that this cannot stand for a moment. So when the court finds from the written statements and other pleadings that those contentions are frivolous—because the process must go on—the court must be vested with powers, even though the parties concerned may be belonging to the place or have no immoveable property, to demand security for costs. That will also be a check against raising frivolous contentions, which are raised not for succeeding but for the sake of contention.

These are welcome changes. They have to be looked into and seriously examined by the Joint Committee. Moreover, provisions in Parts I and II of the Civil Procedure Code may also be examined by the Committee, so that we need not wait till the Law Commission examines the matter and comes out with its exhaustive report dealing with so many other matters also. We shall, meanwhile, as far as possible try to achieve the object, namely, reducing the time and expense and achieving more efficiency. Let us see what can be done. Let the Joint Committee go into the matter and revise all those provisions of the Civil Procedure Code which require revision and see that as far as possible, better provisions are adopted which will have the desired effect. So I welcome this measure.

श्री आर० डी० मिश्र (जिला बुलन्दशहर): मैं समझ रहा था कि सिविल प्रोसीज्यौर में कोई भारी परिवर्तन होने जा रहा है क्योंकि जिस तरह डा० काटजू साहब ने क्रिमिनल प्रोसीज्यौर कोड एक्ट के सम्बन्ध में अपना भाषण दिया था और उसके सम्बन्ध में बहुत से कागजात हमारे पास भेजे थे उससे हमने समझा था कि इस सिविल प्रोसीज्यौर कोड के बारे में भी काफी मसाला हमारे सामने रक्खा जाएगा, लेकिन जब यह बिल हमारे सामने आया तो मालूम पड़ा कि ऐसा कुछ भी नहीं है। जो इसमें छोटी मोटी तरमीमें की जा रही हैं, उनके लिए तो मेरी समझ में यह भी नहीं आता कि यह बिल सेलेक्ट कमेटी को क्यों भेजा जा रहा है। इसमें ऐसी कौन सी बात है कि जिस पर सेलेक्ट कमेटी छः महीने गौर करेगी और बिजनेस कमेटी ने भी यह नहीं सोचा जो यह दस घंटे का वक्त बिल के सोचने के लिए दिया, वह बहुत ज्यादा है। इस से पहले जो हाउस के सामने स्प्रिचुअस प्रीपेरेशन्स बिल रक्खा गया और जिसमें कि एक साल की सजा का प्राविजन था अगर कोई उसकी खिलाफ वर्जी करता हुआ पकड़ा जाए। यह जानना एक थानेदार के लिए कि इस प्रीपेरेशन में C_2H_5OH का कैमिकल कम्पोजीशन है या नहीं बहुत मुश्किल होगा, उस बिल को तो यहां पर तीन घंटे में पास कर दिया गया। उसके सम्बन्ध में बहुत कुछ कहा गया और बहुत बातें समझाई गईं, लेकिन कोई भी बात नहीं मानी, लेकिन इसमें जिसमें कोई डर नहीं है, सिर्फ यह है कि सम्मन चपरासी के बजाय डाकखाने से भी रजिस्ट्री चिट्ठी द्वारा भेज दिया जाया करे, या मुंसिफी का चपरासी भी तामील के लिए जाए और साथ ही डाकखाने की रजिस्ट्री भी चली जाए, या खर्च पर सूद न दिया जाए, या डिग्री के साथ आर्डर शामिल कर लिया जाए, या इसमें कहीं "एंड" का लफ्ज जोड़ दिया जाए, ऐसी मामूली सी बातों के लिए मेरी समझ में यह नहीं आया कि हमारे आनरेबुल मिनिस्टर साहब ने इस बिल को सेलेक्ट कमेटी में ले जाने के लिए कौन सी बड़ी बात समझी।

इसी तरह इसमें जो रिवीजन का क्लाज है उसके अन्दर से "देयरटु" का लफ्ज निकाला जाए, उसके ऊपर सेलेक्ट कमेटी गौर करेगी, तब उसमें कोई बदलाव होगा, ऐसी बातों को रख कर हाउस का भी वक्त खराब करना है और सेलेक्ट कमेटी का वक्त भी खराब करना है। अगर वाकई आपने इस सिविल प्रोसीज्यौर कोड

[श्री आर० डी० मिश्र]

में कोई लाभदायक अमेंडमेंट करना हैं तो जो संशोधन मेरे भाई श्री मुकुन्द लाल अग्रवाल ने दिया हैं कि सेलेक्ट कमेटी को यह इंस्ट्रक्शन्स दिए जाएं कि सिविल प्रोसीज्योर एक्ट में अमेंडमेंट करने के लिए जितने भी संशोधन आएं, उन पर सेलेक्ट कमेटी गौर करे, तब तो यह बिल सेलेक्ट कमेटी को भेजना जरूरी हो जाता हैं और अगर यह मंशा हो तो मैं जरूर अपने आनरेबुल ला मिनिस्टर साहब से अपील करूंगा कि भाई मुकुन्द लाल अग्रवाल का जो अमेंडमेंट हैं, उसको मंजूर कर लें। और सिविल प्रोसीज्योर एक्ट में तरमीम करने के लिए सदस्यगण जो भी अमेंडमेंट दें, कमेटी उन सब सुझावों पर गौर करे, और अगर ऐसा होता हैं तो यह एक बड़ी मुनासिब और माकूल बात होगी।

हमारे एक साथी ने जो उड़ीसा के चीफ जस्टिस रह चुके हैं हमको बतलाया और अपना चालीस वर्ष का तजुर्बा हमारे सामने रक्खा। उन्होंने हमें बतलाया कि सिविल प्रोसीज्योर एक्ट में कोई ऐसी ज्यादा बात नहीं हैं जिससे कहीं बे-इंसाफी हो जाने वाली हैं। हां, कहीं कहीं पर लोग इस सिविल प्रोसीज्योर एक्ट पर पूरा अमल नहीं करते हैं जिसकी वजह से मुकदमों के तै होने में देरी होती हैं। जो बात उन्होंने कही हैं वह समझने की हैं। दूसरे आपने खुद कहा हैं कि डिले होती हैं, देरी होती हैं। डिले का एक खास कारण तो यह हैं कि अदालतों में जजों और मुंसिफों की कमी हैं। दूसरी वजह यह हैं कि इन सिविल कोर्ट्स को इतनी लम्बी छुट्टी दी जाती हैं कि काम काफी पिछड़ जाता हैं। सुप्रीम कोर्ट चार महीने के लिए बन्द हैं, तमाम हिन्दुस्तान का काम जो उस अदालत को करना होता हैं, वह पड़ा रह जाता हैं। इसी तरह हम देखते हैं कि दूसरी अदालतें भी जैसे हाई कोर्ट और दीवानी अदालतें काफी लम्बी छुट्टी मनाती हैं, जिसके कि कारण काम पड़ा रह जाता हैं। आप डिले को हटाने के लिए लम्बी छुट्टियों को कम कीजिए और जजों और मुंसिफों की तादाद को बढ़ाइए। तीसरे जैसे कि क्रिमिनल प्रोसीज्योर एक्ट के अन्दर हैं कि आनरेरी मजिस्ट्रेट रक्खे जाएं और आनरेरी कोर्ट्स हों, उसी तरह हिन्दुस्तान में जितने भी रिटायर्ड जज, मुंसिफ और वकील मिलें उनको आप आनरेरी जजेज और आनरेरी मुंसिफ बना कर मुकदमें फैसला करने का प्रबन्ध कीजिए या कुछ तनख्वाहदार मुकर्रर करिए ताकि लोअर कोर्ट्स और हाई कोर्ट्स में जितना पिछड़ा हुआ काम हैं वह सब पूरा हो जाए, अगर आप ऐसा करें तब तो समझ में आ सकता हैं कि आप वाकई तरमीम कर रहे हैं...।

श्री विभूति मिश्र : ऐसा करने से अनएम्प्लायमेंट भी दूर हो जाएगा।

श्री आर० डी० मिश्र : मैं आनरेरी के मुताल्लिक कह रहा हूं, मैं तो रिटायर्ड लोगों के रखने के वास्ते कह रहा हूं जिन्हें पेंशन भी काफी मिलती हैं और जिन्हें अपने घर में वक्त काटना भारी हो जाता हैं, ऐसे लोगों को यह काम दे दिया जाए ताकि वह आनरेरी जज या मुंसिफ बन कर कुछ मुकद्दमात तय कर सकें। इसके अलावा आप कुछ सरकारी नौकर भी बढ़ावें जिससे डिले दूर होगी और जैसा कि मेरे दोस्त ने कहा ऐसा करने से अनएम्प्लायमेंट भी दूर होगी।

इस बिल के अन्दर कुछ बातें ऐसी हैं जो जरूर अच्छी हैं और जिनको कि मैं मानता हूं कि वह वाकई में अच्छी हैं। अब चूंकि हमारे यहां जमींदारी प्रथा खत्म हो गई हैं इसलिए पहले जो लैण्ड रेवेन्यू अदा करने वालों जायदादों के नीलाम के सिलसिले में एक्सक्यूशन के कागजात नीलाम के वास्ते कलक्टर के पास जाते थे, अब उसकी जरूरत नहीं हैं। लैंड रेवेन्यू सिस्टम के कारण वह इजरा डिग्री के कागजात कलक्टर के पास भेजे जाते थे ताकि लैंड रेवेन्यू सिस्टम में कोई खराबी न आने पाए और ठीक ठीक काम हो जाए और साथ ही सिविल कोर्टों के पास ज्यादा काम न रहे।

अब जमींदारी खत्म हो गई। कलेक्टर के यहां एग्जिक्यूशन के प्रोसीडिंग्स भेज दी जाएं और वह जायदादों को नीलाम कर के दीवानी अदालतों को इजरा वापस कर दें। अब इन दफात की जरूरत नहीं रह जाती हैं उनका निकालना जरूरी समझा जा सकता हैं। लेकिन इस बिल में बाकी

कुछ ऐसी बातें भी रक्खी गई हैं कि बाज जगहों पर तो उनको दंड कर रूहानी तकलीफ होती हैं।

एक माननीय सदस्य: रूहानी तकलीफ कैसी?

श्री आर० डी० मिश्र: रूहानी तकलीफ यह हैं कि यह हमें अपनी गुलामी की याद दिलाती हैं। इस बिल में जो दफा ५ हैं, उसमें यह रक्खा हैं कि जो इंडियन इंडिया हैं, जहां पर कि राजा लोग राज्य करते थे, वहां की अदालतों की जो एक्स पार्टी डिगरियां हैं वह भारत के उस भाग में जो ब्रिटिश इंडिया का हिस्सा था, जिस में आप ने लाल रंग नक्शे में देखा होगा, एग्जिक्यूट नहीं हुआ करेंगी, और ब्रिटिश इंडिया की अदालतों की एक्स पार्टी डिगरियां इंडियन इंडिया की अदालतों में एग्जिक्यूट नहीं होंगी। क्यों साहब? आपको इस अमेंडमेंट लाने की क्या जरूरत हैं। इसकी वजह आनरेबिल ला मिनिस्टर साहब बतलाते हैं कि २६ जनवरी, सन् १९५० से पहले इन भागों की अदालतों में आपस में इजराय डिगरी के ताल्लुकात नहीं थे। अरे साहब, हिन्दुस्तान गुलामी से निकल गया, मुल्क आजाद हो गया, तमाम हिन्दुस्तान एक हो गया, इंडियन इंडिया और ब्रिटिश इंडिया का फर्क मिट गया तमाम स्टेट्स यूनियन आफ इंडिया में मर्ज हो गई। तब फिर आप गुलामी की याददाश्त की इस दफा को दोबारा क्यों रख रहे हैं? अब हालत में फर्क आ गया हैं अब पिछली बातों को फिर ताजा करना ठीक नहीं हैं। अब अगर एक्स पार्टी डिगरीज हों तो उनको कानून के अनुसार एग्जिक्यूट किया जाए। मैं यह मुनासिब समझता हूं कि अगर वहीं राजाओं की रियासतों के अन्दर की अदालतों की एक्स पार्टी डिगरी पास की हुई हैं और डिगरी हासिल किया हुआ आदमी ब्रिटिश इंडिया के इलाके की अदालत के जरिए इजरा डिगरी का तबादला कराकर रुपया वसूल करना चाहता हैं तो उसको यह हक होना चाहिए। आप इसको रखिए, मैं आपके साथ हूं। हां, अगर किसी आदमी ने बेईमानी से डिगरी हासिल की हैं तो वह एग्जिक्यूट न होनी चाहिए। लेकिन इसका तरीका यह नहीं हैं जो आपने दफा ५ में रक्खा हैं। इसका तरीका यह हैं कि जजमेंट-डेटर को दफा ४७ के मातहत मौका दिया जाए कि वह उसको रद करा सके। अगर कोई जजमेंट-डेटर आब्जेक्शन करे कि उसे उस डिगरी का पता नहीं तो अदालत को इसकी तहकीकात करने की जरूरत नहीं कि उसको नालेज थी या नहीं, उसको वह डिगरी सेट असाइड कर देनी चाहिए और रेगुलर सूट की तरह की जांच करनी चाहिए। उसके बाद अगर रुपए की डिमान्ड अनड्यू पाए तो उसको ठीक कर दे। इसमें ब्रिटिश इंडिया और इंडियन इंडिया का सवाल कहां हैं। ब्रिटिश इंडिया की अदालतों में डिगरी आए तो वहां एन्क्वायरी हो, डिगरी की ठीक जांच कर के रुपया वसूल कराया जाए, अगर वहां इंडियन इंडिया की अदालतों में यहां की डिगरी जाए तो वहां तहकीकात हो और तब रुपया वसूल हो। यह तो मेरी समझ में आ सकता हैं। लेकिन यह बात समझ में नहीं आती कि वह डिगरियां इजरा नहीं होंगी। सन् १९५० में आपने खुद तमाम स्टेट्स को मर्ज किया, यहां का कानून वहां लागू हो गया। और आज पांच साल बाद आप कहते हैं कि अब फिर दोबारा इधर की दुनिया उधर होगी। इसलिए दफा ५ में जो बात रक्खी गई हैं वह ठीक नहीं हैं। इसको आप को एमेंड करना चाहिए और सेलेक्ट कमेटी को भी इस पर गौर करना चाहिए। इंडियन इंडिया और ब्रिटिश इंडिया की बात इसमें नहीं रहनी चाहिए। हां, इस के लिए कोई रास्ता निकाला जाए कि जो गलत डिगरियां किसी ने ले रक्खी हैं वह सेट एसाइड हो जाएं और ठीक डिगरियों का रुपया वसूल हो जाए।

दूसरी बात आपने क्लाज दो में रक्खी हैं ६ परसेंट सूद की। यह एक मामूली बात हैं: It is the regular rate of interest throughout India. ६ परसेंट से ज्यादा कोई कोर्ट इन्टरेस्ट नहीं देता। अगर कोर्ट अपने फैसले में कह दे कि "विथ इन्टरेस्ट" तो समझा जाता हैं कि ६ परसेंट इन्टरेस्ट।

the regular interest of Six per cent is तारीख डिगरी से तारीख अदायगी तक डिगरी की रकम पर ६ परसेंट ही सूद अदालतें आजकल देती हैं अगर आप इस सूद की दर को इस बिल के

[श्री आर० डी० मिश्र]

जरिए दफा २४ में दर्ज कर देना चाहते हैं तो कर दें, कोई बात नहीं है. यह मामूली बात है।

इस बिल के द्वारा आप दफा ३५ए में तरमीम कर रहे हैं। ३५ए की इस बात को मैं मानता हूं कि उसमें से यह शब्द निकाल देने चाहिएं कि अगर कोर्ट शख्श सब से पहले मौके पर इस प्रकार का एतराज करे तो उसको खर्चा मिल सकता है। अदालत को किसी मौके पर भी अगर यह मालूम हो जाए कि किसी आदमी ने झूठा या वैक्सेशस मुकदमा दायर किया है तो अदालत को अख्त्यार होना चाहिए कि वह कम्पेन्सेशन या खर्चा दिला दे। यह बात भी मैं मानता हूं कि अगर कोई झूठी डिगरी जारी करता है, नीलाम जायदाद कराता है या कोई इजरा डिग्री में झूठा उजर करता है, वहां लोअर कोर्ट को इसका अख्त्यार देना चाहिए कि वह दफा ३५अ में खर्चा खास दिला सके। लेकिन अपेलेट कोर्ट को अख्त्यार न दिया जाए, यह बात मेरी समझ में नहीं आती क्योंकि अगर एक आदमी ने झूठी या वेक्सेशस नालिश लोअर कोर्ट में कर दी और लोअर कोर्ट ने किसी गलती से नालिश को झूठी न समझ कर डिगरी दे दी, उसके बाद अपील में जा कर अगर एपेलेट कोर्ट यह समझे कि लोअर कोर्ट का जजमेंट गलत है और वाकई नालिश झूठी है, तो क्या वजह है कि एपेलेट कोर्ट दफा ३५अ में खर्च को न दिला सके? एक छोटा सा मुंसिफ तो खर्च को दिला सकता है, लेकिन हाई कोर्ट का जज या डिस्ट्रिक्ट जज जो है वह उस खर्च को न दिला सके, यह बात मेरी समझ में नहीं आती। एपेलेट कोर्ट को भी यह अख्त्यार होना चाहिए। चूंकि अपीलें भी झूठी हो सकती हैं इसलिए उसमें भी वह खर्चा दिला सके। मान लीजिए कि एक आदमी ने लोअर कोर्ट में नालिश कर दी, लोअर कोर्ट ने उसको झूठी समझ कर खारिज कर दिया और उस पर सूट का खर्चा दिलाया, और ३५ अ में खर्चा खास दिलाया लेकिन वह आदमी आगे अपील करता है, यह जानते हुए कि नालिश झूठी है और मुंसिफ ने हालांकि उसको खारिज कर दिया है फिर भी वह अपील कर रहा है। तो अगर ऊपर की अदालत इस नतीजे पर पहुंचे कि यह मुकदमा झूठा है लोअर कोर्ट का फैसला सही है। यह आदमी सिर्फ दूसरी पार्टी को तंग कर रहा है, नीचे की अदालत में उसने झूठा मुकदमा चला कर तंग किया और अब ऊपर की भी अदालत में अपील करके तंग कर रहा है, तो अदालत अपील को खर्चा खास दिलाने का अख्त्यार मिलना चाहिए। मेरा कहना यह है कि एपेलेट कोर्ट को भी यह हक रहना चाहिए कि जो आदमी फाल्स या वैक्सैशस अपील करे उन से ३५ए के मुताबिक वे दूसरी पार्टियों को कम्पेन्सेशन दिला सकें।

इसके बाद आप देखेंगे कि दफा ६० में तरमीम की जा रही है। क्या तरमीम की जा रही है? कि जब सरकारी नौकर के खिलाफ इजरा डिगरी होगी तो उसमें अटैचमेंट से सरकारी मुलाजिमों की तनख्वाह का १/२ एग्जेम्प्ट रहेगा। वैसे अब तक था कि तनख्वाह के पहले १०० रु० अटैचमेंट से एग्जेम्प्ट रहेंगे और उसके ऊपर जो तनख्वाह बचेगी उसका ५० परसेंट भाग एग्जेम्प्ट रहेगा शेष भाग कोई आदमी जब चाहेगा तब अपनी डिगरी में ले सकेगा। अब ऐसा मालूम होता है जैसे बहुत सी औरतें मेंटेनेन्स डिगरी ले कर सरकारी अफसरों के खिलाफ आ रही हैं और उन औरतों की हिमायत में हमारी मिनिस्ट्री आ रही है कि २/२ तो बीवी को मिलना चाहिए और १/२ खाविन्दों के पास रहना चाहिए।

एक माननीय सदस्य: आप क्या चाहते हैं? मेंटेनेन्स की डिगरी कितने की होनी चाहिए?

श्री आर० डी० मिश्र: बराबर बराबर बंटना चाहिए। पति के खिलाफ बीवी की डिगरी और किसी दूसरी डिगरी में फर्क हो जाता है। स्त्री जो है वह अर्द्धांगिनी होती है, अगर उसके मेंटेनेन्स की डिगरी हो तो ५०, ५० होना चाहिए। आप ने २/२ का रूल कहां से निकाल कर रक्खा यह मेरी समझ में नहीं आता। मेंटेनेंस डिगियों में आधी तनख्वाह एक्जेम्प्ट रहनी चाहिए।

Shri Pataskar: It is not going to be applied only to maintenance decrees in favour of women.

श्री आर० डी० मिश्र: आप सोच लीजिए।

इसके बाद आप क्लाज ११ के जरिए स्माल काजेज कोर्ट की डिग्रियों की सैकिन्ड अपील में ५०० रु० की मियाद को बढ़ा कर १००० रु० कर रहे हैं। यह आप गरीब आदमियों के साथ अन्याय कर रहे हैं कि ५०० रु० को बढ़ा कर १००० रु० कर रहे हैं और उसको संकेंड अपील की ईजाजत नहीं दे रहे हैं। लाखों रु० का मामला तो हाई कोर्ट तक जा सकता है, सुप्रीम कोर्ट तक जा सकता है, लेकिन गरीब आदमी को जो संकेन्ड अपील का राइट था उसको उस से छीन रहे हैं। यह आप अच्छी बात नहीं कर रहे हैं, इसको आप सोच लीजिए।

दफा १४ के मातहत जो आप कोड की दफा १३३ में तरमीम कर रहे हैं कि प्रेजिडेन्ट वगैरह को अदालतों में हाजिर होने से एग्जेम्प्ट किया जाए, यह तो बड़ी अच्छी बात है और इसे मैं मुनासिब समझता हूं कि उन्हें अदालतों में हाजिर होने से एग्जेम्प्ट रक्खा जाए।

अब सवाल यह आता है कि आप सर्विसेज आफ समन्स में भी कुछ तरमीम कर रहे हैं। इसमें यह तरमीम की जा रही है कि डाकखाने की रजिस्ट्री के जरिए से समन भेज दिया जाए और वह इनकारी वापिस हो तो तामील काफी मान ली जाए। मेरा कहना यह है कि जब कोई रजिस्ट्री जाती है तो रजिस्ट्री का पाने वाला पहले समझ लेता है कि कोई न कोई नालिश का कागज है। ऐसा होने पर वह कागज को लेगा ही नहीं। जिस पर रुपया चाहिए वह रजिस्ट्री को लेगा ही नहीं। रजिस्ट्री को रिफ्यूज कर देगा। दूसरी बात यह भी हो सकती है कि इस की कोई गारन्टी नहीं है कि रजिस्ट्री उसके पास गई भी थी, और अगर डाकखाने वाले बेईमानी करना चाहेंगे तो पोस्टमैन लिख देंगे कि रिफ्यूज्ड। अब तक थोड़ा सा सेफगार्ड था कि चपरासी तामील करने जाता था और उसी को समन की तामीली करनी पड़ती थी। उसको कम से कम यह लिखना होता था कि मुद्दायले के मकान का दरवाजा पूर्व को है या पश्चिम को। इससे कम से कम यह मालूम होता था कि चपरासी मुद्दायले के मकान के दरवाजे तक गया था।

पंडित डी० एन० तिवारी (सारन दक्षिण): कचेहरी में पूछ लेता था।

श्री आर० डी० मिश्र: लेकिन कम से कम पूछता तो था और साथ में दो गवाहियां कराता था कि मुद्दायले ने उनके सामने लेने से इनकार किया। तो दो गवाहों की एविडेंस मिलती थी, मकान का हुलिया मिलता था फिर कोर्ट में जा कर अफसर के सामने आन ओथ स्टेटमेंट देता था कि मैं गया और इस तरह फलां फलां गवाहों के सामने फलां आदमी ने समन लेने से इन्कार किया। तो इतने सेफगार्ड के साथ चपरासियों के द्वारा समन की तामील होती थी। लेकिन फिर भी कोर्ट नहीं मानता था और दूसरे जरिए से भी उस समन को तामील करवाता था। अब आप कहते हैं कि अगर सिर्फ डाकखाने से लिख कर चला जाएगा कि रिफ्यूज्ड तो तामील काफी मान ली जाए। उस रिफ्यूज्ड पर न किसी की गवाही है न स्टेटमेंट आन ओथ है, और आप कहते हैं कि इसको मान लिया जाए। यह कहां तक ठीक होगा। यह तो बड़ी निकम्मी सर्विस होगी और इससे और ज्यादा बेइनसाफी बढ़ेगी। इससे ज्यादा बेहतर तो मैं यह समझता हूं कि अगर रिजिस्ट्री न करा कर अंडर पोस्टल सर्टिफिकेट समन भेज दिया जाए तो ज्यादा बेहतर होगा। इससे यह तो साबित हो जाता है कि सम्मन भेज दिए गए हैं और साधारण रूप में वह मुद्दायले पर चिट्ठी की तरह पहुंच गए होंगे। हम रोजमर्रा देखते हैं कि जो चिट्ठियां बगैर रिजिस्टर करवाए भेजी जाती हैं वे पहुंच जाती हैं और इससे यह प्रिजम्पशन निकलती है कि वे पहुंच गई हैं। रिजिस्टर कराने में बड़ी गड़बड़ी होगी। इस से वह मुद्दई पोस्टमैन के पास पहुंच जाएगा और उसको एक दो रुपया देकर "रिफ्यूज्ड" के लफ्ज लिखवा देगा। आप करप्शन को कचहरियों से हटा कर के डाकखानों में पहुंचा देना चाहते हैं लेकिन मैं प्रार्थना करता हूं कि कम से कम डाकखानों को तो करप्शन से बचाए रखिए। करप्शन के मुताल्लिक भार्गव साहब ने कहा कि कचहरियों में नीचे से ऊपर तक करप्शन फैला है। चपड़ासी रिश्वत लेते हैं, नाजिर लेता है, तमाम अहलकार लेते हैं और आप किसी ऐसे आदमी को नहीं पाएंगे जो रिश्वत न लेता हो। यहां पर मैं यह कहना चाहता हूं कि पार्लियामेंट ने एंटी करप्शन एक्ट पास किया। हाई कोर्ट ने यह तय कर दिया था कि क्रिमिनल

[श्री आर० डी० मिश्र]

प्रोसीजर कोड का सैंक्शन १९७ रिश्वत के मामलों में लागू नहीं होता है। इस में in the discharge of public duties का काम नहीं है। उसमें मुकदमा चलाने के लिए किसी सैंक्शन की जरूरत नहीं है। हाई कोर्ट्स के इस रूलिंग को बरतरफ करने के लिए एंटी करप्शन एक्ट पास कर दिया गया। उसमें यह लिख दिया गया कि रिश्वत के जितने भी मुकदमे होंगे वह तब तक नहीं चल सकते जब तक कि उस डिपार्टमेंट की मंजूरी न ले ली जाए जिस डिपार्टमेंट में कि वह आदमी नौकर हैं। अगर वह किसी डिस्ट्रिक्ट बोर्ड में नौकर हैं तो उस बोर्ड के चेयरमैन की मंजूरी लेनी होगी, अगर वह लोकल गवर्नमेंट में हैं तो लोकल गवर्नमेंट की मंजूरी लेनी होगी, अगर सैंट्रल गवर्नमेंट में हैं तो सैंट्रल गवर्नमेंट की मंजूरी लेनी होगी। हाई कोर्ट ने रिश्वत बन्द करने के लिए जो फैसला दिया आप ने यहां पर एक्ट बना कर रिश्वत खोरी को नहीं बन्द होने दिया। इसका नतीजा यह हुआ है कि जब रिश्वत लेने में सब साझीदार हैं, खुलेआम रिश्वत ली जाती है और जब मुकदमा चलाने के लिए सैंक्शन मांगी जाती है तो वह मिलती नहीं है। जितनी रिश्वत १९२७ में सरकारी अफसर लेते थे उससे कहीं बढ़चढ़ कर आज रिश्वत ली जाती है। जहां पहले एक रुपया वे लेते थे वहां आज दस रुपए लेते हैं, जहां एक सौ लेते थे वहां आज एक हजार लेते हैं और जहां हजारों लेते थे वहां आज लाखों लेते हैं। आज हालत यह है कि इनके कहीं पर तो टाउनशिप बन रहे हैं, कहीं कालोनीज बन रही हैं और कहीं दूकानें बन रही हैं। आज आप आर्डर इश्यू करते हैं कि सरकारी अफसरों से उनकी सम्पत्ति का हिसाब लिया जाए। लेकिन इन से कुछ होता नहीं है। आज जो आर्डर आप इश्यू करते हैं उन पर अमल नहीं किया जाता है। हाउस में जो कुछ मेम्बर साहिबान कहते हैं इसकी भी कोई परवाह नहीं की जाती। एक टाई की ही मिसाल ले लीजिए। इसके मुताल्लिक प्रेजीडेंट साहब ने कुछ आर्डर जारी किए तकरीबन तीन साल पहले, लेकिन अब भी हम देखते हैं कि कम से कम जो सैक्रेटरी लोग हैं उनके कालर तो जरूर बन्द हो गए हैं वह बन्द कालर का कोट पहनते हैं लेकिन जो अंडर सेक्रेटरीज हैं उनके अभी भी टाई लगी रहती है। अगर यह कहा जाए कि फलां जगह के रहने वाले लोग नहीं मानते, बम्बई के जो लोग हैं वह नहीं मानते, तब तो बात समझ में आ जाती है। लेकिन देहली में, यहां सरकारी अफसरों की लाबीज में अंडर सेक्रेटरीज को बगैर टाई के नहीं देखता। मैं ने सोचना शुरू किया कि आखिर बात क्या है कि सरकार के आर्डर्ज की तामील क्यों नहीं होती। जो फर्क मैंने देखा वह यह है कि राष्ट्रपति के आर्डर्ज की तामील, होम मिनिस्टरी के आर्डर्ज की तामील सिर्फ सैक्रेटरियों तक ही होती है और नीचे के अफसर इन आर्डर्ज की तामील नहीं करते। फिर मैं ने सोचा कि आखिर क्या कारण है कि नीचे के अफसर गवर्नमेंट के आर्डर्ज को नहीं मानते, क्या उनको इन आर्डर्ज को न मानने से जो नताइज निकल सकते हैं, उनका डर नहीं है। मुझे पता चला कि सैक्रेटरीज ने अपने अंडर सैक्रेटरीज से कह रखा है कि हमें तो रोजमर्रा मिनिस्टर्ज के पास जाना पड़ता है और इसलिए हमें गला बन्द रखना चाहिए और चूंकि आपको नहीं जाना पड़ता, इसलिए आप टाई वगैरह लगा सकते हैं और खुला गला रख सकते हैं। तो ऐसी हालत में हम क्या आशा करें कि यह हमारा काम करेंगे, ठीक ठीक करेंगे और जल्दी से करेंगे। रिश्वतस्तानी को जब हाई कोर्ट्स ने रोकने की कोशिश की तो यहां पर एक एक्ट पास करवा लिया गया कि मुकदमा चलाने के लिए सैक्रेटरी की सैंक्शन जरूरी है और जब तक वह सैंक्शन नहीं मिलती, मुकदमा नहीं चल सकता। मैं ने देखा है कि अलमारियों के पिछले खानों में फाइलें पड़ी रहती हैं जिनके बारे में यह पता नहीं चलता कि वे कब कब की कौन सी फाइल हैं। इन बातों का जिक्र करना इस सिविल प्रोसीजर कोड के बिल के बारे में मेरे विचार में फिजूल सी बात है। मैं चाहता हूं कि न्याय जरूर मिलना चाहिए। अगर कोई चोरी करता है तो उसको सजा होनी चाहिए, अगर कोई डकैती डालता है तो उसको

उसकी सजा मिलनी चाहिए, अगर कोई कत्ल करता है तो उसको फांसी की सजा मिलनी चाहिए। अगर किसी को रुपए देने हैं और वह दे नहीं रहा है तो उस पर डिगरी हो जानी चाहिए। वह डिगरी कैसे होगी उसके लिए प्रोसीजर दिया गया है। इन प्रोसीजरों के कारण न्याय नहीं हो रहा है। इतनी कोर्ट फीस जरूरी है, इतने और पैसे चाहिएं, इतनी वकील की फीस चाहिए, इतना तलबाना चाहिए और जब तक वह इतने पैसे खर्च न करें, उसके लिए इन्साफ लेना मुश्किल है। खाने को तो बेचारे के पास रोटी के पैसे नहीं होते तो इतना ज्यादा खर्च वह कहां से लाए। अगर कर्जा लेकर वह मुकदमा लड़ता भी है और ईमानदारी से जीत भी जाता है तो अब कहा जाता है कि खर्च पर सूद नहीं मिलेगा। मैं पूछता हूं कि क्या वजह है कि उसको सूद न दिया जाए? उसने क्या कसूर किया है? जब वह अदालत में आया और उसने सच्चा मुकदमा लड़ा और वह जीत गया और जब आप उसे मजबूर करते हैं कि इतने रुपए के टिकट लगाओ, इतना तलबाना दो, वकील को भी उसे देना पड़ता है और यह सब खर्चा करने के बाद जब डिगरी हुई कि इतना रुपया खर्च का भी मुद्दालह को देना चाहिए और जो एमाउंट एडजस्ट होगा वह दूसरा होगा। इस तरीके से जब आप कहते हैं कि खर्च पर सूद नहीं मिलेगा तो मैं पूछता हूं कि यह कहां तक मुनासिब है। उसने तो कर्जा ले कर मुकदमा दायर किया था और जब डिगरी हो गई तब अगर दूसरा फरीक उसे फौरन ही पेमेंट कर दे तब तो यह बात ठीक है। मगर जब दूसरे फरीक को मालूम है कि उसको कोई खर्च पर सूद नहीं देना पड़ेगा तो वह दो बरस या ज्यादा अरसा रुपया देने में भी लगा सकता है और इस तरह से यह और डाइलेटरी प्रोसीजर बन जाता है। यह मुकदमों को निपटाने के लिए स्पीडी प्रोसीजर नहीं हो सकता। हां अगर यह कहा जाए कि मार्टगेज का सूद नहीं मिलेगा तो समझ में आता है। जो बहुत ज्यादा सूद लेते हैं उस सूद को रोकने के लिए हम ने जरूर कोशिश की थी और यह किया था कि गरीब आदमियों को इससे तकलीफ न हो और उनको सूद दर सूद न देना पड़े, कम्पाउंड इंटरेस्ट न देना पड़े, असल के दूने से ज्यादा जो रुपये हो गए हैं वह नहीं मिलने चाहिएं, यह तो ठीक बात है लेकिन जब आप एक आदमी को मजबूर करते हैं कि वह अदालत में आए, रुपया लगाए तो अगर वह मुकदमा जीत जाए तो उसको उसके अदालती खर्च पर सूद न दिया जाए यह ठीक बात नहीं है। डिगरी की तारीख से अदा करने की तारीख तक खर्च पर सूद दिलाया जाना चाहिए।

इसके अलावा आपकी एक तरमीम क्लाज ९६ में सब-क्लाज ६ के ऊपर है। इसमें कहा गया है कि मुद्दई से सिक्योरिटी ले ली जाए। अब तक तो यह था कि अगर कोई आदमी हिन्दुस्तान से बाहर जाता था या जाने वाला होता था तो मुद्दई से सिक्योरिटी ले ली जाती है। अब इसको आम तौर पर लागू करने की बात कही गई है कि अदालत चाहे जिस से सिक्योरिटी डिमांड कर ले और अगर मुद्दई भारत से बाहर हो या बाहर जाने वाला हो तो उससे जरूर ले ली जाए। उसमें आपको इसका भी ख्याल रखना चाहिए कि यह ट्रफा पापर सूट पर भी एप्लाई करती है। अगर किसी गरीब आदमी के पास रुपया नहीं है, तो वह जमानत कैसे देगा? मैं यह भी कहना चाहता हूं कि पापर्ज के मुकदमों से सम्बन्ध रखने वाली दफाओं में भी आपको जरा कुछ अमेंडमेंट करनी चाहिए। इस विषय में जो कानून हैं, वह इतना गड़बड़ है कि गरीब आदमियों के लिए अदालत में जाने का रास्ता बन्द है। उसमें बहुत सी बातें बदल देनी चाहिए ताकि अगर किसी गरीब आदमी के पास कोर्ट-फीस देने लायक पैसा न हो, मकान, जमीन या कैश न हो, तो उसको मुकदमा करके अपने अधिकार की रक्षा का अवसर प्राप्त हो जाए। अगर कोई बड़ी भारी जायदाद का मालिक हो, लेकिन उसको गुंडों ने छीन लिया हो, तो उसको भी इन्साफ हासिल करने का मौका मिल सके। इस बारे में एक बहुत लम्बा चौड़ा सिलसिला रखा हुआ है। पहले मुंसिफ तहकीकात करता है, छान-बीन करता है, अगर उसको यकीन हो जाता है, तब वह नोटिस देता है और उसके बाद फिर गवाही होती है। इस तरह कई तारीखें पड़ती हैं। पापर के पास वैसे भी पैसा नहीं होता है। वह तो पापर होने की तहकीकात में ढेर हो जाएगा और उसके पास कुछ नहीं

[श्री आर० डी० मिश्र]

रहेगा। वकील और गवाह करने में ही उसका तमाम रुपया खर्च हो जाएगा। हमें ऐसी व्यवस्था करनी चाहिए कि उसको आसानी हो और उसको इन्साफ मिल सके।

मैं आप से अर्ज कर रहा था कि अगर आपको इस बिल को उसी सूरत में पास करना है, जैसे कि वह इस वक्त यहां रखा गया है, तो इसको सिलेक्ट कमेटी में भेजना बेकार है। अभी तीन चार घंटे बाकी हैं। आम तौर पर सब मेम्बर्ज ने इसके प्रिन्सिपल्ज को मान लिया है और कोई खास आबजेक्शन नहीं किया है। इसलिए आप जो कुछ इस बिल में रखना चाहते हैं, उसको अभी रख लीजिए और जो कुछ निकालना चाहते हैं, उसको निकाल दीजिए। तीन चार घंटे में यह खत्म हो जाएगा। इसको सिलेक्ट कमेटी में क्यों भेजते हैं। लेकिन अगर आप सिविल प्रोसीजर कोड में इस प्रकार की तरमीम करना चाहते हैं कि लोगों को इन्साफ मिले और सब खराबियां दूर हों, तो आपको इसका स्कोप वाइडन करना चाहिए और सिलेक्ट कमेटी को यह अख्तियार देना चाहिए कि वह उन बातों पर गौर करे। सिविल प्रोसीजर कोड में दफा १२१, १२२, १२३ और १२४ मौजूद हैं, जिनके मुताबिक रूल्ज बनाने के अख्तियारात हाई कोर्ट को हासिल हैं। वे जो कुछ चाहें कर सकते हैं। वे काबिल आदमी हैं, इसलिए समझता हूं कि एक्सपर्ट कमेटी की ज्यादा जरूरत नहीं है। आप हाई कोर्ट को कह दीजिए कि आपको इस तरह रूल्ज बनाने चाहिए कि स्पीडी जस्टिस हो सके। अभी इस सदन के सदस्य एक्स चीफ जस्टिस साहब ने कहा था कि प्रोसीजर में कोई खराबी नहीं है, लेकिन लोग उसको पूरे तौर पर समझते नहीं हैं और या उस पर पूरा अमल नहीं करते हैं। आप हाई कोर्ट्स को कहिए कि फलां फलां रूल्ज आबजर्व नहीं हो रहे हैं—इंटेरोगेशन, इंस्पेक्शन वगैरह के रूल्ज आबजर्व नहीं हो रहे हैं—उनको मातहत अदालतों से आबजर्व कराइए ताकि मुकदमेबाजी कम हो और जल्दी जल्दी काम चले। अगर रूल्ज में कोई खराबी है, तो हाई कोर्ट के जज साहबान उनमें तरमीम कर देंगे। दे आर दि बेस्ट एक्सपर्ट्स। मैं आपसे फिर अर्ज करना चाहता हूं कि अगर आप सिविल प्रोसीजर कोड में कुछ तरमीम करना चाहते हैं, तो आपका इसका स्कोप बढ़ाइए। आप श्री मुकन्दी लाल अग्रवाल की तरमीम को मन्जूर कर लीजिए। मैं कहना चाहता हूं कि इसमें ऐसी बहुत सी बातें हैं, जिनको बदलना निहायत जरूरी है। आप शुरू से लीजिए।

सब से पहले लीगल रिप्रेजेंटेटिव की डेफिनीशन आती है। इस बारे में हाई कोर्ट डिफर करते हैं और इसके सम्बन्ध में कांट्राडिक्टरी रूलिंग मौजूद हैं। यह किताब देखिए। सिविल प्रोसीजर कोड की कमेंटरी में लिखा हुआ है कि फलां हाई कोर्ट के जज साहब ने कहा है कि कोपार्सनर लीगल रिप्रेजेंटेटिव हैं और दूसरे ने कहा है कि नहीं हैं। इस बारे में डिफरेंस आफ ओपीनियन है। जब हम तरमीम कर ही रहे हैं, तो हमको दोनों में से एक राय को मान कर उसको ला बना देना चाहिए और तय कर देना चाहिए कि जो सक्सेसर होगा, वह लीगल रिप्रेजेंटेटिव होगा।

इसी तरह रेस जुडिकेटा में काज आफ एक्शन डिफरेंट हो और डिफरेंट टाइम पर एराइज हो, वहां भी रूलिंग्ज डिफरेंट हैं। रेस जुडिकेटा तब होता है जब कि सेम इश्यूज हों। इश्यूज कई प्रकार के होते हैं: इश्यूज आफ ला और इश्यूज आफ फैक्ट। इश्यूज आफ ला एंड फैक्ट दोनों मिक्स्ड भी होते हैं। जब सिर्फ इश्यू आफ ला हो, तो वह रेस जुडिकेटा होना चाहिए या नहीं यानी अगर एक अदालत ने किसी इश्यू आफ ला को गलत इन्टरप्रेट कर दिया हो, तो वह दूसरे मुकदमे में रेस जुडिकेटा होना चाहिए या नहीं। इस बारे में भी डिफरेंस आफ ओपीनियन है। बम्बई हाई कोर्ट कहता है कि होना चाहिए, लेकिन कलकत्ता हाई कोर्ट और दूसरे हाई कोर्ट्स कहते हैं कि नहीं होना चाहिए। कौन ठीक है और कौन गलत है, यह तय करना आपका काम है। मैं यह नहीं कहता कि आप फलां हाई कोर्ट की राय मानिए। ये सब बातें आपके सामने मौजूद हैं और उनको देख कर आप फैसला कर

दीजिए। आपने स्टेटमेंट आफ आबजेक्ट्स एण्ड रीजन्ज में लिख दिया हैं कि सिविल प्रोसीजर कोड में तरमीम करना बड़ा मुश्किल काम हैं और इसको एक एक्सपर्ट्स कमेटी करेगी। मैं आपसे पूछता हूं कि फिर आपका सेक्रेटेरियट क्या कर रहा हैं? यह उसका काम था कि वह इस काम को करता, लेकिन उसने कुछ नहीं किया। सेक्रेटेरियट के लोग तो सारा दिन टेबल पर बैठे रहते हैं, काम कुछ करते नहीं हैं और मजा मार रहे हैं। आपके सेक्रेटरी हैं ला मिनिस्ट्री के। आप उनसे कहिए यू आर दि एक्सपर्ट। आपके नीचे पूरा डिपार्टमेंट हैं। आप जो कुछ पूछना चाहते हैं, हाई कोर्ट से पूछिए। इसके अलावा सब कुछ किताबों में छपा हुआ हैं। तो फिर एक्सपर्ट्स की क्या जरूरत हैं? आप मिनिस्ट्री से कहिए कि जहां दो हाई कोर्ट्स की राएं डिफर करती हैं, वे हमारे सामने रखी जाएं और बताया जाए कि उनमें से कौन सी राय मुनासिब हैं। मिनिस्टर साहब देखें कि बम्बई और कलकत्ता हाई कोर्ट्स क्या कहते हैं और फिर इस बारे में कोई फैसला कर दें। पार्टी में फैसला कर दें और हाउस को बता दें। मेरी समझ में नहीं आता कि यह एक्सपर्ट्स कमेटी क्या करेगी। मेरे ख्याल में उसकी कोई जरूरत नहीं हैं।

इसके बाद दफा २१ आती हैं जूरीस्डिक्शन की। सवाल हैं किसी अदालत को मुकदमा करने का जूरीस्डिक्शन हैं या नहीं। इसके सम्बन्ध में लिखा हैं कि अगर लोअर कोर्ट में इस बारे में आबजेक्शन ले लिया गया हो, तो अदालत अपील में वह माना जाएगा वर्ना नहीं। हाई कोर्ट की रूलिंग हैं कि अगर एपेरेंटली जूरीस्डिक्शन वाई हैं, तो अदालत की तमाम कार्यवाही गलत हो जाती हैं। इस बारे में भी हाई कोर्ट्स डिफर करते हैं। इसलिए इस सिविल प्रोसीजर में लिख दीजिए कि अगर जूरीस्डिक्शन नहीं हैं, तो उसकी कुल कार्यवाही गलत हैं। हाउस को यह भी अख्तियार हैं कि वह उसको सही मान ले। जिस बात पर हाई कोर्ट्स डिफर करते हैं, हाउस को उसके बारे में फैसला करना चाहिए कि कौन ठीक हैं और क्या कानून रहना चाहिए। आप कहते हैं कि ओवरहालिंग में बहुत देर लग जाएगी। मैं तो कहता हूं कि इसके लिए एक्सपर्ट्स कमेटी की कोई जरूरत नहीं हैं। यह काम मिनिस्ट्री और डिपार्टमेंट के हेड के सुपुर्द कर दीजिए। वे पढ़ें और देखें और जहां दो हाई कोर्ट्स डिफर करते हैं, वह मामला हमारे सामने रख दें, लेकिन ऐसा नहीं किया गया हैं।

इस सिविल प्रोसीजर में लिखा हुआ हैं कि अगर किसी फिमेल पर डिक्री हो, तो फीमेल्ज को इजरा डिग्री में जेल नहीं हो सकती। मैं कहना चाहता हूं कि अब कांस्टीट्यूशन पास हो गया हैं उससे सब को बराबरी का राइट मिल गया, औरत और मरद बराबर हो गए, तो फिर क्या वजह हैं कि औरतें जेल में न जाएं और मरद जाएं। आर्टिकल १४ कान्स्टीट्यूशन के अनुसार ऐसी सब दफा नाजायज हैं। मैं यह नहीं चाहता कि स्त्रियां जेल जाएं और न ही यह चाहता हूं कि मरद जाएं। जब किसी के पास रुपया देने को नहीं हैं, तो कानून कहता हैं कि वह इनसालवेंट बन जाए। बकाया डिग्री का रुपया न दें तो जेल में जाने से क्या हो जाएगा? कपड़े और खाने का खर्चा और बढ़ जाएगा और आदमी महीना भर जो कमाता हैं, वह नहीं कमा सकेगा। रुपया कैसे वसूल होगा? रुपया वसूली के लिए किसी को जेल भेजना फिजूल बात हैं। हमारा कहना यह हैं कि कोई आदमी रुपए की वसूली के लिए जेल नहीं भेजा जाना चाहिए। अगर कोई आदमी जुर्म करता हैं, डकैती डालता हैं, कत्ल करता हैं या और कोई खराब काम करता हैं उसी हालत में उसको जेल जाना चाहिए। सिविल प्रोसीज्योर में डिग्री के एग्जीक्यूशन के सिलसिले में जो अरेस्ट या डिटेंशन के प्रावीजन हैं उनको निकाल देना चाहिए। ऐसा करने से न स्त्रियों को शिकायत रहेगी और न पुरुषों को शिकायत रहेगी।

Shri Altekar: On a point of information, Sir. Will the hon. Member state whether he has not got the experience that a judgment-debtor makes arrangements to pay the amount in the court in many cases where a warrant for arrest is issued?

श्री आर० डी० मिश्र: यह बहुत गलत बात हैं। जो रुपए वाले होते हैं उनके दिल नहीं होता।

[श्री आर० डी० मिश्र]

एक साहब ने एक आदमी का घर नीलाम करवा दिया और उसकी कड़ियां निकलवा कर नीलाम करवा दीं। मैंने उनसे पूछा कि आपकी डिग्री तो सौ रुपए की है पर आपको इस नीलाम में सिर्फ ६ रुपए मिले। उन्होंने कहा कि ऐसा करने से इसके बच्चे तो चौड़े में रहेंगे। दूसरों को सबक मिल जाएगा और वे रुपया दे देंगे। मैं कहता हूं कि जेल भेजने से रुपया वसूल नहीं होता। वह तो बदले की भावना से जेल भेजते हैं। रुपया न देने की वजह से कोई जेल नहीं जाना चाहिए। अब हिन्दुस्तान का नक्शा बदल गया है और इस बात को सब को समझ लेना चाहिए।

श्री पाटस्कर: यह बात तो ठीक है। लेकिन आप ही कहते हैं कि जो डिग्री मिले उस पर भी सूद देना चाहिए।

श्री आर० डी० मिश्र: आप सूद दें यह तो ईमानदारी है। हो सकता है कि किसी गरीब आदमी ने अपने को डिफेंड करने के लिए कर्ज लिया हो तो उस आदमी को कास्ट पर सूद क्यों न मिले। लेकिन मैं यह नहीं कहता कि उसके रुपए के लिए किसी को जेल भेजा जाए। चाहे वह गरीब का रुपया हो या अमीर का रुपया हो। लेकिन जो रुपया अदालत बतौर कास्ट करार दे दे उस पर सूद न दिया जाए यह गलत बात है। और रुपया वसूल कराने के लिए किसी को जेल भेजना यह भी गलत बात है।

फिर आप देखेंगे कि दफा ६० में सरकारी नौकरों के एलाउंसेज कुर्क होने से एग्जेम्प्ट हैं। मैं चाहता हूं कि यह जो एम० एल० एज० और एम० पीज० वगैरह हैं इनके भी एलाउंसेज एग्जेम्प्ट होने चाहिए। सेलरी आप कुर्क कर लें यह मैं मान सकता हूं। लेकिन इधर तो वह मकान का किराया दे और उधर कोई उसका एलाउंस भी कुर्क करा ले तो उसके लिए काम करना मुश्किल हो जाएगा। इसलिए मैं चाहता हूं कि एम० पी० और एम० एल० एज० वगैरह का एलाउंस भी एग्जेम्प्ट होना चाहिए। अगर यह एलाउंस किसी लाला या व्यापारी के घर से आता होता तब तो दूसरी बात थी, लेकिन वह तो सरकारी खजाने से मिलता है। अगर इसको एग्जेम्प्ट नहीं किया जाएगा तो वह अपना काम ईमानदारी से अन्जाम नहीं दे सकेगा। मैं यह नहीं कहता कि सरकारी नौकरों का भी एलाउंस कुर्क कर लिया जाए, बल्कि मैं तो यह कहता हूं कि एम० पीज० वगैरह का भी एलाउंस एग्जेम्प्ट होना चाहिए।

सिविल प्रोसीज्योर कोड में सेक्शन ६४ में यह लिखा है कि जब कोई प्रापर्टी एटैच हो जाएगी तो जजमेंट डेटर उसको बेच नहीं सकेगा। मेरे तजर्बे में यह आया है कि जब डिक्री होल्डर किसी की प्रापर्टी को कुर्क कराता है तो वह यह कोशिश करता है कि वह कम से कम कीमत में नीलाम हो जाए। अगर यह अमेंडमेंट कर दिया जाए कि जजमेंट डेटर अदालत की इजाजत से अपनी प्रापर्टी के एक हिस्से को या कुल को बेच सके तो हो सकता है कि वह अपनी कुछ प्रापर्टी को बचा सके। यह ट्रांसफर वह अदालत की इजाजत से करेगा। साथ ही यह भी प्रावीजन कर दिया जाए कि प्रापर्टीज का परचेजर रुपया अदालत में जमा करे जजमेन्ट डेटर को न दे। ऐसा करने से डिक्री होल्डर का रुपया भी सीक्योर हो जाएगा...

श्री पाटस्कर: आप जरा दफा ६४ को पढ़ कर देखें Section 64 says " .....shall be void as against all claims enforceable under the attachment."

श्री आर० डी० मिश्र: यही तो मैं कह रहा हूं कि आप उसको बेचने की इजाजत दे दें।

I am saying that here permission should be given.

Shri Pataskar: Why it is necessary? It is only void as against all claims enforceable under the attachment: otherwise the transaction is valid.

श्री आर० डी० मिश्र: इसमें दिक्कतें हैं। आप इसको जरा पढ़ लें तो आपको साफ हो जाएगा।

Mr. Chairman: I want to point out one thing to Shri Misra. If you give way to any other Member to have his say, at that time you should sit down.

Shri S. S. More: That means he should not give way to anyone.

Shri R. D. Misra: Thank you.

अब इसमें एक दफा ८७वी है जिसमें रूलर्स को रियायतें दी गई हैं, जो कि फारिन रूलर्स को भी दी गई हैं। लेकिन अब हिन्दुस्तान आजाद हो गया है और सब बराबर के सिटिजन्स हैं। इसलिए इसमें यह तरमीम कर दी जानी चाहिए:

They can be sued and they can sue like any other citizen of India.

Mr. Chairman: You should try to conclude now.

श्री आर० डी० मिश्र: बहुत अच्छा।

इसके अलावा आप दफा १२२ में अमेंडमेंट कर रहे हैं कि प्रेसीडेंट और मिनिस्टर एग्जेम्प्ट हों। इसी तरह से मैं चाहता हूं कि आप मेम्बर्स आफ लैजिस्लेचर कोduring the sessions of the legislature and meetings of committees एग्जेम्प्ट कर दें। अगर सेशन या मीटिंग हो रही हो और मेम्बर उस मुकाम पर मौजूद हो तो उसको अदालत में समन के जरिए वहां से जाने के लिए मजबूर न किया जा सके। इसमें यह एग्जेम्प्शन होना चाहिए।

दफा १२८ में यह बात है कि हाई कोर्ट को राइट है कि वह किसी ला कोर्ट को मजबूर कर सकती है कि वह अपना रिकार्ड अंग्रेजी में रखे। अब यह चीज इसमें से निकाल दी जानी चाहिए। हमारा कांस्टीट्यूशन अब बदल गया है। लेकिन कोर्ट जिस जबान में चाहे रिकार्ड रखे, उसे अंग्रेजी में रिकार्ड रखने को मजबूर नहीं किया जाना चाहिए।

पापर्स के लिए मैं कह ही चुका हूं।

मेरा कहना है कि जो कुछ सजेशन मैं ने आपके सामने रखे हैं वे तजर्बे की बिना पर रखे हैं। अगर आपको मेरे सजेशन रीजनेबिल मालूम हों तो आप इस बिल के स्कोप को बढ़ा दीजिए।

197 L.S.D.

आपकी सिलेक्ट कमेटी तो अक्तूबर में मीट करेगी। इस बीच आप मेरे सजेशन्स पर राय मंगा लीजिए और गौर कर लीजिए कि कौन कौन सी चीजें जरूरी हैं। उन चीजों पर सिलेक्ट कमेटी अगर गौर करे तो अच्छी बात है। इस मामूली से बिल के सिलेक्ट कमेटी में जाने से क्या फायदा होगा। इन शब्दों के साथ जो अच्छी बातें इस बिल में हैं उनको मैं सपोर्ट करता हूं और चाहता हूं कि जो इसमें खराबियां हैं उनको निकाल दिया जाए। मैंने पाटस्कर साहब के साथ काम किया है और मुझे पूरी उम्मीद है कि वह मेरे रीजनेबिल सजेशन्स को मान लेंगे। लेकिन मुश्किल यह है कि जो उनकी नीचे की मशीनरी है उसमें जंग लगा हुआ है। वह एक कामा तक नहीं बदलने देती। मैं चाहता हूं कि मिनिस्टर साहब उनके कहने में न आवें और इस बिल का स्कोप बढ़ाया जाए या न बढ़ाया जाए इस मामले में अपने जजमेंट से काम लें। अगर वह ऐसा करेंगे तो मुझे उम्मीद है कि वह मेरे सजेशन्स को मान लेंगे। मैं मिनिस्टर साहब से प्रार्थना करता हूं कि वह श्री एम० एल० अग्रवाल के अमेंडमेंट को मंजूर कर लें और इसके स्कोप को बढ़ा दें।

Shri Kasliwal (Kotah-Jhalawar): Sir, the hon. Members who have preceded me have advanced long arguments on the question as to whether the scope of this Bill should be widened or not. Many Members—and I am also of that view—have said that this Bill is a sketchy and scrappy Bill and could hardly serve any useful purpose. There are some Members like my hon. friend Pandit Thakur Das Bhargava who said that the scope and object of this Bill was a very limited one and as such the Bill was welcome.

In the heat of this controversy one particular fact has been forgotten and that is this. What is the genesis of this Bill. I want to take you very briefly through the history of the matter. In 1953 Dr. Katju who was then the Home Minister addressed a long circular letter to the various State Govern-

[Shri Kasliwal]

ments, public bodies, high court judges and to some others. That letter contained certain things particularly with regard to the administration of criminal and civil justice. His view was that, if not wholesale amendments, a lot of reform was necessary in the administration of both civil and criminal justice and he raised four points in his letter and those were: dilatoriness in the proceedings in courts, expensiveness of litigation, cumbersomeness of procedure and some other miscellaneous suggestions. I want to say that if this is the genesis of this Bill, this Bill does not touch the fringe of the problem. This Bill is a very limited and, I must say, a useless Bill, so far as those particular points are concerned. How does it in way say that expenses on litigation will be saved by the provisions in this Bill? How does it say that now, there will not be any dilatoriness in proceedings in courts and so on? I do not want to go into greater details because various Members have already addressed this House on those points. I leave it at that, and I leave it to the judgment and wisdom and good sense of the Select Committee to see that certain very important provisions to which attention has been drawn by Members here are included in this amending Bill.

I want to come to the provisions of the Bill now. I will not waste the time of the House in repeating the arguments on those clauses on which hon. Members have said a great deal but there is one provision on which, first of all, I want to draw the attention of this House, and I welcome that provision. I am sure that when I welcome that provision, the hon. Minister also will be very glad.

Shri Pataskar: I am always glad both ways.

Shri Kasliwal: I am not going into the matter in the seriatim order of the Bill but I am going in the reverse order. First of all, I want to take clause 16. In this clause you have included one sub-clause, namely, sub-clause (8). What is sub-clause (8)? Sub-clause (8) seems to be very innocuous or insignificant in a sense but really it is a very salutary provision, because, for the first time, in the entire country a summary procedure in respect of liquidated demands is proposed to be introduced. This Order XXXVII, rule 1 was previously applicable only to the three cities of Madras, Bombay and Calcutta. Now, for the first time, with the incorporation of this amendment, this new provision is sought to be made. I heartily welcome it because it is my experience that in suits on negotiable instruments, all sorts of vaxatious, bogus and frivolous defences are made. It is more or less the objective of the defendant to try in every possible way to defeat or to delay the plaintiff's suit or the decree that he might later on obtain. With the introduction of this new provision, the defendant will find himself in difficulties so far as the question of defeating or delaying justice is concerned.

Now, what are the provisions of this order XXXVII? It is this. When summons are being sent to the defendant, the summons will say, "You have got to enter appearance within ten days." If he does not enter appearance, the plaintiff will be entitled to get a decree immediately on any negotiable instrument. If he enters appearance, then, the court will say. "All right, I will give you the right to defend the suit only on certain conditions. You might file a security". Under such circumstances alone the defendant will be in a position to defend a suit and not otherwise. I do not want to enter into details on this point but I most heartily welcome this provision.

Shri Raghavachari: It applies to all courts of original jurisdiction in all places.

Shri Kasliwal: It applies only to the presidency towns. The Civil Procedure Code does not mention what you say.

Now I come to clause 5. My hon. friend Shri R. D. Misra was the first Member to refer to this clause. I am

rather suprised that for the first time after five years the Ministry of Law should have awakened to this anomaly. The hon. Minister said that there is an anomaly now because the decrees which were passed *ex parte* before the 26th January, 1950, were being executed on both sides. That is to say, when decrees were passed in the old British India they were being executed in the Indian States and the decrees which were passed *ex parte* in the Indian States were being executed in British India. What was the matter in these last five years? In these last five years, thousands of *ex parte* decrees have been executed and many other decrees in thousands are in the process of execution. What is going to happen to these decrees? Today, after five years, you are going to pass an extraordinary measure in this respect. If the Ministry has realised that there was any such anomaly, I say that there is no anomaly at all in this. My friend Shri R. D. Misra said there is really no anomaly, and that they wanted to bring out something very old which related to the division of India—British India and the native States. If there was such an anomaly, it was the business of the Ministry to have brought it before the House earlier and not after five years. I cannot say how it is going to affect the people as a whole.

There is another matter. There is no mention of the question of limitation. There will be many decrees which will have become time-barred. How can you file suits on all these *ex parte* decrees now? No mention has been made of that question in clause 5. I say that the Minister should reconsider the whole position so far as clause 5 is concerned. I would appeal to him not to keep clause 5 in this Bill.

I would very much like to refer to the Minister's speech while he was speaking about clause 5. He said that there were decrees from the then Indian States which were being executed in British India. I do not know what he really meant, but if it was an insinuation to the effect that judicial officers in the then Indian States were not as competent as judicial officers in the then British India, I would like to correct that impression.

Shri Pataskar: May learned friend is an advocate himself. There is no question as to what the character, etc., of the judicial officers in the Indian States were. As I made it clear, as the law then stood, if a person had not submitted to foreign jurisdiction, then the question is whether such an *ex parte* decree should be allowed to be executed in the foreign territory, simply because the native States have now merged in the Indian Union. Of course whatever suggestions the hon. Member has to make, I can understand. I have made it clear in my speech that if a man in Bombay obtained an *ex parte* decree against somebody in Hyderabad, when the Hyderabad man had never submitted himself to the jurisdiction of Bombay, such a decree would not be proper. I quite understand other hon. Members speaking about British India and all that. I do not understand an eminent advocate saying like this.

Shri Kasliwal: I was saying that the hon. Minister had only mentioned that *ex parte* decrees which have been passed in Indian States were being executed in British India.

Shri Pataskar: I have read my speech, I referred to the decrees obtained in the Bombay State as an example.

Shri Kasliwal: I will now pass on to clause 8. The original sections refer to the delegation of certain powers to Collectors. This provision was introduced in 1908. It was done primarily with the object that in the villages, the Collectors and the revenue officers subordinate to the Collector would be in a better position to see that the sale and auctioning of immovable property take place properly. In the city of course there is the civil court and the property can be mortgaged and auctioned. But in the villages, it is the Collector and his staff who could do it properly. Now it is proposed to abolish all these and the power of the Collectors is sought to be taken away.

[Shri Kashiwal]

The hon. Minister has said that Collectors are more burdened now and they do not look to this work properly. The Collectors may be overworked, but have we examined the position with regard to the agriculturists and the villagers? Has the hon. Minister satisfied himself that this will not cause any inconvenience to the people in the villages? I want him to examine this matter from that point of view and then alone come to a decision about the abolition of sections 68 to 72 and the Third Schedule.

There is one other matter to which I would like to refer about which many hon. Members have already spoken, namely, clause 13, which deals with the curtailment of the revisional powers of the High Court. I am in agreement with all those hon. Members who have said that the powers of the High Court in this respect should not be curtailed. I do not want to enter into other details; but I only want to say this thing. When Dr. Katju wrote that famous circular letter on the amendment of the Criminal Procedure Code, he made it clear as to how far curtailment of the revisional powers of the High Courts should be done in both criminal and civil matters; and he expressed the view that in criminal matters, the revisional powers of the High Court should not be curtailed. I am, therefore saying that in civil matters also, the revisional powers of the High Courts should not be curtailed.

There are many other small matters about which other hon. Members have already spoken and I do not want to take up the time of the House by entering into them. I only want to appeal to the Select Committee that they should take all these matters into consideration, apply their minds and see that this truncated Bill does not come out in this truncated form, but in a full-fledged form.

श्री विभूति मिश्र: जब मैं प्रथम पार्लियामेंट में आया तो यह सोचता था कि हमारी सरकार चार चीजों में आमूल परिवर्तन करेगी। पेनल कोड, सिविल प्रोसीजर कोड, क्रिमिनल प्रोसीजर कोड और एविडेंस एक्ट, क्योंकि इन कानूनों का जनता के साथ रोजमर्रा का बहुत ज्यादा सम्बन्ध है। मैं जब आया तो देखा कि पिछले सेशन में क्रिमिनल प्रोसीजर कोड में कुछ सुधार हुए। हमारे वह भाई जो साइकिल पर चलते हैं उनको पता होगा कि जब साइकिल के पंच रिपेअर होने लगते हैं तब साइकिल कितना काम दे पाती है। आप सोचिए कि सिविल प्रोसीजर कोड के जो पैंच रिपेअर हो रहे हैं उनसे कितना काम होगा। हमारे ला मिनिस्टर साहब पुराने कांग्रेसी हैं, वह वृद्ध हुए और उनको रोज कानून से सावका पड़ता होगा और कचेहरियों का भी ज्ञान होगा और कचेहरियों की बहुत सी बातों को देखा होगा। साहब, सिविल प्रोसीजर कोड में किस के लिए सुधार हो रहा है। वहां पर बोलने वाले अधिकतर वकील हैं। मैं पूछता हूं कि कानून बनाने के पहले, जो हमारे कानूनों को चलाने वाले पंडा हैं, हमारे वकील हैं, उनके सुधार के लिए क्या हुआ। उनका काम कैसे हो, इसके लिए मैं चाहता था कि सरकार कोई कानून लाती।

मैं जानता हूं कि कचेहरियों में क्यों डिले (delay) और दूसरी गड़बड़ी होती है। वह सब कुछ वकीलों की वजह से होती है। मैं कचेहरियों में जाता हूं, कुछ न कुछ काम रहता हूं। मैं कांग्रेस का कार्यकर्ता हूं, कोई न कोई भाई ले जाता है। किसी ने कहा कि कचेहरियों में जो गड़बड़ी होती है वह वकीलों की वजह से होती है। मैं ने सुना था कि शायद रोम में यह प्रथा चली कि फीस नहीं लेंगे क्योंकि जो गाउन पहनते हैं उनके बगल से छेद रहता है। रोम में उस गाउन के पहनने वाले कहते हैं कि मुफ्त काम कर दिया करते थे और अच्छा काम करते थे। वह कहते थे कि फीस नहीं लेंगे। मैं जानना चाहता हूं कि आज तक कितने वकील हमारे यहां ऐसे हुए जिन्होंने किसी केस को बिना फीस लिए हुए मुफ्त काम किया हो? मैं हिन्दुस्तान की सरकार से और ला मिनिस्टर से चैलेंज दे कर के पूछता हूं कि जिलों में कितने वकील ऐसे हैं जो बिना फीस लिए हुए किसी गरीब के केस में गए हों। एक भी नहीं। मैं तो देखता हूं कि जो भी सिविल कोड में सुधार हो

रहा हैं, उससे गरीबों का ही नुक्सान हैं। तो मैं चाहता था सरकार को इस कानून को लाने के बदले सिविल प्रोसीजर कोड को बिल्कुल ओवरहाल करना चाहिए था, पहले उसको पूरी तरह सुधारना चाहिए था। हिन्दुस्तान की वर्तमान स्थिति को देखते हुए, हिन्दुस्तान का जो सोशलिस्टिक पैटर्न हैं उसको देखते हुए इस कानून में पूरा सुधार करना चाहिए।

दूसरी बात यह हैं कि इस कानून को चलाने वाले जो पंडा हैं, उनके लिए सरकार पहले कानून बनावे। जो इस वक्त वकील लोग हैं उनमें काफी सुधार की जरूरत हैं। जब तक इन दोनों का सुधार नहीं होगा तब तक अदालतों का सुधार नहीं हो सकता।

तीसरी बात हैं कि जो कचेहरियां हैं उन सभी में सुधार की बड़ी जरूरत हैं। आप लाखों कानून बनाएं, अभी हमारे एक पुराने चीफ जस्टिस बैठे हुए थे, उन्होंने भी बताया कि आप लाखों सुधार कीजिए लेकिन उनसे काम चलने वाला नहीं हैं। यह कानून हैं, चेअरमैन साहब, जरा आप सोचिए कि स्माल काजेज कोर्ट में जहां पर कि गरीबों के मामले चलते हैं जिनको डूनियरी के मामले कहते हैं उनके लिए लिखा हुआ हैं कि स्माल काजेज कोर्ट के मामलों की मियाद ५०० रु० से बढ़ा कर १००० रु० तक कर दी गई हैं। फिर उनकी अपील भी नहीं हैं। मान लीजिए कि किसी गरीब के पास २, १ एकड़ जमीन हैं। हमारे बिहार में एक एकड़ से ज्यादा जमीन नीलाम होती हैं और एक एकड़ से कम नहीं हो सकती हैं। आज गांव गांव में रहने वाले बड़े आदमी किसी गरीब आदमी के अंगूठे की छाप किसी तरह ले लेते हैं, उसका कोई भी कागज तैयार कर लेते हैं और उस पर नालिश कर देते हैं। गरीब आदमी के खिलाफ डिगरी हो जाती हैं डिगरी के बाद नीलामी हो जाती हैं। कुछ दिनों तक वह उस जमीन को उसके पास छोड़ देता हैं। उसके दो वर्ष या तीन वर्ष बाद पिछली डिगरी के आधार पर वह जा कर जमीन पर कब्जा कर लेता हैं। अब हमारे ला मिनिस्टर साहब ने स्माल काजेज कोर्ट की मियाद ५०० से बढ़ा कर १००० कर दी हैं। पांच सौ से ज्यादा की जमीन तो किसी के पास कम ही होगी। किसी के पास आधा एकड़ होगी, किसी के पास चौथाई एकड़ होगी। लेकिन उस पर भी अब मियाद ५०० से बढ़ा कर १००० कर दी तो इससे गरीबों का क्या लाभ होगा यह मैं समझ नहीं पाता। आपको तो जैसे पहले ५०० मियाद थी वैसे रहने देनी चाहिए थी। इसमें आप ने अपील भी नहीं रक्खी हैं। हमारे यहां डूनियरी के मामले स्माल काजेज कोर्ट में चलते हैं। उसको अपील भी नहीं रक्खी हैं। हमारे यहां डूनियरी हैं। भला बताइए जिसके पास खेत नहीं खाने को नहीं हैं। वह अपील करने को शहर जाएगा तो ४ सेर सत्तू ले जाएगा, और उसको खाने के बाद जब वकील साहब के यहां पहुंचेगा तो वकील साहब पूछेंगे कि हमारी फीस लाए या नहीं। अगर नहीं लाए तो वकील साहब गालियां देते हैं, निकाल देते हैं। इस सदन के अन्दर बैठने वाली सरकार के बोटर में समझता हूं कि ५० की सदी से ज्यादा गरीब हैं। मैं इन ५० की सदी आदमियों की बात आप से करता हूं। मैं पूछता हूं कि आप यहां जो कानून बनाते हैं वह गरीबों के लिए बनाते हैं या धनिकों के लिए। आप बताइए कि जब गरीबों और अमीरों की लड़ाई होती हैं तो उन गरीबों के साथ कचेहरियों में कितना गोलमाल होता हैं, धनिकों के लिए कोई गोलमाल नहीं होता। जहां गरीब पिसते हैं वहीं गोलमाल होता हैं। गरीब आदमी की सुनने वाला कोई वकील नहीं मिलता। कचेहरियों में जो क्लार्क लोग होते हैं वे भी उनकी नहीं सुनते। हाकिम की तो कुछ भी न पूछिए। हमारे एक भाई साहब ने कहा कि साहब देरी लगती हैं, डिले होता हैं, मैं पूछता हूं कि हमारे प्रधान मंत्री जितने समय तक काम करते हैं क्या हमारे अफसर लोग भी उसी तरह से ईमानदारी से दस बजे से पांच बजे तक काम करते हैं? मैं तो समझता हूं कि वे नहीं करते। जब कभी पूछा जाता हैं कि फलां अफसर कहां हैं तो कहा जाता हैं कि साहब वह फलां काम कर रहा हैं लेकिन असलियत यह होती हैं कि वह अपने दोस्तों से, वकील लोगों के साथ गप्पें मारने में लगा रहता हैं। जब दो तीन बजे तब वह आता हैं और दो चार अपीलें सुनने के बाद चला जाता

[श्री विभूति मिश्र]

हैं। जो क्लर्क लोग होते हैं वे भी मिले रहते हैं और फिर पेशियां दे देते हैं। गरीब आदमी जो बीस बीस कोस से चल कर आते हैं उनको तारीख दे दी जाती है और कह दिया जाता है कि फलां तारीख को हाजिर हो। अब उन बेचारों को निराश हो कर वापस चले जाना पड़ता है। मैं प्रार्थना करता हूं कि हमारी जनता की सरकार है और हम ने आजादी की लड़ाई लड़ी है और हमारा फर्ज है कि हम यह देखें कि गरीब आदमियों का भला हो। जिन लोगों ने गरीबों का उद्धार किया वे पैगम्बर माने जाते हैं जैसे, ईसा, गांधी जी, नाना साहब वगैरह। हमें भी सोचना चाहिए कि हम लोगों का उद्धार कैसे कर सकते हैं और जो तकलीफें आज लोगों को उठानी पड़ती हैं उनको हम कैसे दूर कर सकते हैं। इस वास्ते स्माल कावेज कोर्ट के बारे में मुझे इतना ही कहना है क्यों वहां पर किसी किस्म की अपील की गुंजाइश नहीं है। पर होनी चाहिए।

दूसरी बात हमारे आर० डी० मिश्र साहब ने सम्मन की तामील के बारे में कही है। आप ने अब यह तय कर दिया है कि सम्मंज रिजिस्टर्ड पोस्ट से भी भेजे जा सकते हैं। सम्मंज की सर्विस के बारे में पहले ही बहुत गड़बड़ी होती है और इस से अब और भी ज्यादा गड़बड़ी हो जाएगी। इसमें अब ऐसे होगा कि जिस आदमी को सम्मंज इश्यू होंगे वह आदमी पोस्टमैन के पास जा कर उसको दो रुपए दे कर उनके ऊपर रिफ्यूज्ड के लफ्ज लिखवा लेगा। इसका सब से बेहतर इलाज तो यह है कि यह सम्मन बाई पोस्ट भेजने के अलावा जिन गांवों में पंचायतें हैं उन के जरिए से इनकी तामील करवाई जाए। अब सरकार ने पंचायतें गांव गांव में खोल दी हैं। मैं अपने सूबे की बात जानता हूं। वहां, हर उस जगह पर जिस की कि आबादी चार या पांच हजार की है, एक एक पंचायत खोल दी गई है। इन ग्राम पंचायतों में एक ग्राम सेवक भी होता है और यह सम्मंज ग्राम सेवक जा कर इनकी तामील करवा सकता है। इसको एक दो रुपये सम्मन तामील करवाने के लिए पंचायत को फीस के बतौर दिए जा सकते हैं। जो सम्मन इस तरह से तामील कर दिए जाएं उनको सर्व्ड मानना चाहिए। हमारे गांवों में लोग हैं वे अनपढ़ हैं और कई बार उनको तब पता चलता है जब डिग्री हो जाती है और कुर्की बजती है। सर्विस आफ दी सम्मंज में भी गरीब आदमी ही मारे जाते हैं और अमीरों को आंच तक नहीं आती। इसके बारे में जो प्रोसीजर एडाप्ट किया जाता है उस से गांवों के कितने ही घर बरबाद हो गए हैं। अमीरों के घर बरबाद नहीं होते, गरीबों के ही घर बरबाद होते हैं। जब कभी गरीब आदमी के खिलाफ मुकदमा चलाया जाता है तो वह तबाह हो जाता है क्योंकि वह पढ़ा लिखा नहीं है, कुछ जानता नहीं है, कुछ समझता नहीं है, सारी की सारी जमीन उसकी नष्ट हो जाती है। इस वास्ते मैं सरकार से प्रार्थना करता हूं कि सर्विस आफ सम्मंज के बारे में काफी सख्ती बरती जाए और मैं सिलैक्ट कमेटी से भी दरख्वास्त करता हूं कि वह इसके बारे में सख्त कदम उठाए।

अब एक बात पापर्ज के बारे में कही गई है। मैं आप से पूछना चाहता हूं कि पापर्ज किस को कहते हैं। इसकी कोई परिभाषा होनी चाहिए। मैं पूछता हूं कि हमारे गांवों में जो लोग एक एक दो दो और तीन तीन एकड़ जमीन के मालिक हैं और साल भर मेहनत करने के बाद, मजदूरी करने के बाद जब उनको खाने को नहीं मिलता है, जब उनका गुजारा नहीं होता है उनको आप किस कैटेगरी में लेते हैं। हमारे यहां एक एकड़ जमीन की कीमत डेढ़ हजार से ले कर तीन हजार तक है। मैं पूछता हूं कि जब ऐसे आदमियों के हाथ में से एक एकड़ या दो एकड़ जमीन चली जाती है और उन के पास एक ही एकड़ जमीन बच रहती है तो क्या यह उनके गुजारे के लिए काफी है। एक एकड़ अगर उस में से निकाल ली गई तो यदि उसको मुकदमा करना हो तो उसके ऊपर तीन चार सौ रुपए कोर्ट फीस लगेगी तो वह रुपया कहां से आएगा। आगे ही गरीब काश्तकारों के पास बहुत ही कम जमीन है और साल भर मेहनत करने के बाद भी उसका गुजारा नहीं होता है। इस वास्ते मैं ला मिनिस्टर साहब से प्रार्थना

करता हूं कि जब वह पापर की परिभाषा करें तो बड़ी होशियारी से करें। इस में जितने भी गरीब आदमी हैं उनके लिए गुंजाइश होनी चाहिए। पापर का अर्थ तो हमारे यहां यह लगाया जाता है कि जिसके पास कुछ न हो, जो भीख मांगता हो। तो मैं पूछता हूं कि ऐसा आदमी जिसके पास कुछ नहीं है और जो भीख मांगता है वह मुकदमा कैसे दायर कर सकता है या कैसे मुकदमा लड़ सकता है। इसके लिए वह पैसे कहां से लाएगा। वह आदमी जिसके पास लोटा भी नहीं है, थाली भी नहीं कोई चीज नहीं है वह पापर होता है। भला बताइए कि ऐसा आदमी कैसे किसी मुकदमे में आ सकता है। इसलिए पापर की कुछ ऐसी परिभाषा होनी चाहिए जिसमें गांवों के जो गरीब आदमी हैं उनका उद्धार हो क्योंकि हमारी जो सरकार है उसकी मंशा गरीबों का उद्धार करने की है। अमीर आदमी तो हाई कोर्ट में भी जा सकते हैं, सुप्रीम कोर्ट में भी जा सकते हैं, दो दो और चार चार हजार खर्च कर सकते हैं। इस वास्ते मैं सरकार से प्रार्थना करूंगा कि पापर्ज की परिभाषा निर्धारित करते वक्त उसको इन गरीबों का जरूर ध्यान रखना चाहिए। जब ऐसा हुआ तभी यह कहा जा सकेगा कि सरकार न्याय करती है। अगर आप के कानून में गरीबों के लिए कोई गुंजाइश न हुई तो यह कहा जाएगा कि यह सरकार गरीबों के लिये कुछ करना नहीं चाहती और सिर्फ अमीरों के लिए ही यह सब चीजें करती है।

एक बात जजमेंट्स के बारे में कही गई है। कचहरियों में बहस हो जाती है और बहस हो जाने के बाद जज साहब कहते हैं कि फलां तारीख को जजमेंट सुनाया जाएगा। वे बेचारे वापस चले जाते हैं और जब दूसरी तारीख आती है तो फिर हाजिर हो जाते हैं। वकील साहब जब कभी भी कचहरी में आते हैं उसके पैसे उस गरीब आदमी से वसूल कर लेते हैं। जो थोड़े बहुत इन बेचारों के पास होते हैं वे भी इधर उधर खर्च हो जाते हैं। कुछ वकील साहब इस बात का पता लगाने का कि केस का क्या कुछ हुआ है ले लेते हैं और कुछ जिससे यह पूछने जाते हैं उसको देने में खर्च कर देते हैं। इस वास्ते मैं अर्ज करना चाहता हूं कि कोई ऐसा रूल बनाया जाए जिस से कि मुकदमे की सुनवाई हो जाने के बाद कुछ निश्चित दिनों के अन्दर फैसला सुना दिया जाए। आप चाहें पर १५ या २० दिन की हद मुकर्रर कर सकते हैं। इस अर्से के अन्दर उनको जरूर जजमेंट डिलिवर कर देना चाहिए। बार बार गरीब लोगों के कचहरियों में आने से एक तो उनकी फसल की ठीक तरह से देखभाल नहीं होती और दूसरे उनका काफी रुपया खर्च हो जाता है। इस वास्ते यह बहुत जरूरी है कि एक मुकर्रर वक्त से पहले जजमेंट डिलिवर हो जाए। अगर ऐसा नहीं हो सकता तो उस जज को लिखना चाहिए कि क्या कारण है कि मुकदमे की सुनवाई हो जाने के बाद इतने दिन तक जजमेंट डिलिवर नहीं हुआ। जैसे कि एक कहावत है :

Justice delayed is Justice denied.

जब तक एक मुकदमे का फैसला न दे दिया जाए, तब तक क्या जरूरत है दूसरे को बुलाने की? लेकिन आजकल ऐसा ही हो रहा है और फैसलों में बहुत देर लग जाती है।

इसके बाद मैं यह कहना चाहता हूं कि जब जजमेंट डिलिवर की जाती है, तो प्लीडर को खबर कर दी जाती है। मैं इस बात से राजी नहीं हूं। मुझे भी कचहरी का थोड़ा बहुत तजुर्बा है। जब हम किसी पर मुकदमा करते हैं, तो दूसरी पार्टी को नोटिस देना पड़ता है। कचहरी का चपरासी उसको वकील के दस्तखत करवाने के लिए ले जाता है कि नोटिस पाया। वकील साहब दस्तखत करते हैं और उसको पाकेट में रख लेते हैं और चलने के वक्त फाड़ देते हैं। जब वकील साहब से पूछा जाता है कि क्या बात है, तो कहते हैं कि सिरेस्ता में दरियाफ्त कीजिए। बिहार में कचहरी में क्लार्क काम करता है। आठ आने रुपया उसको देना पड़ता है। जब उसको बात बतलाई जाती है। फिर जब वकील साहेब से पढ़वाना हो तो एक रुपया कचहरी में देना होता है और वकील साहब पढ़ कर बताने का दो रुपया अपने लिए वसूल कर लेते हैं। वकील साहब को फुरसत

[श्री विभूति मिश्र]

नहीं होती है। जब दो रुपए मिलते हैं, तो काम कर देते हैं। जरूरत इस बात की है कि सरकार निश्चय करे कि हर एक हाकिम को सुनवाई के दस या पन्द्रह दिन के बाद जजमेंट जरूर डिलिवर करनी पड़ेगी और इन दि प्रेजेंस आफ पार्टीज करनी पड़ेगी। आज-कल होता यह है कि हाकिम साहब जजमेंट लिख देते हैं, लेकिन किसी को उसका पता नहीं होता है। हम को इस बात का निश्चय कर देना है कि हाकिम ग्यारह बजे से एक बजे तक सब आर्डर दें। बेचारे किसान पन्द्रह बीस मील चल कर आते हैं। अगर उनको वक्त पर हुक्मनामा मिल जाए—वह हारें या जीतें, यह अलग बात है—तो वह आराम से शाम को घर पहुंच सकते हैं। शाम को जब कोई आदमी कचहरी में नहीं रहता, तो पेशकार कहता है कि जजमेंट डिलिवर की जाएगी। शाम तक अगर किसान को वहां रहना पड़े, तो उसको बहुत तकलीफ होती है। अगर वह दुकान से खाना खाता है, तो पैसा ज्यादा लगता है। इसलिए यह आवश्यक है कि जजमेंट डिलिवर करने के लिए समय निश्चित होना चाहिए ताकि सब लोगों को सहूलियत हो। हमने देखा है कि तीन तीन महीने जजमेंट डिलिवर करने में लग जाते हैं।

एक बात मैं एक्सीक्यूशन की बतलाता हूं। बहुत से आदमियों की डिक्री हो जाती है तो जमीन का एटैचमेंट कराया जाता है। फर्ज कीजिए कि मेरी डिक्री हो गई है और किसी की जमीन हम ने नीलाम करानी है। तब हम ऐसा करते हैं कि एक आदमी की जमीन को एटैच नहीं करते, बल्कि परिवार के दो तीन आदमियों की जमीनों को एटैच करा लेते हैं। परिणाम यह होता है कि जो निर्दोषी हैं, जो पार्टी नहीं हैं, उसको भी मुकदमा करना पड़ता है, और उसको कष्ट होता है। इसलिए जमीन एटैच करते समय पूरी तरह छान-बीन कर के ही एटैचमेंट करनी चाहिए।

इन शब्दों के साथ मैं ला मिनिस्टर से प्रार्थना करूंगा कि जो वकील नहीं हैं, लेमैन हैं, उनका जो अनुभव है, उनकी जो कठिनाइयां हैं, उनको देखते हुए ही वह कानून बनाएं। साथ ही मैं यह भी कह दूं कि ये जो वकील भाई हैं, ये बाल की खाल खींचते हैं। ये चाहे जहां जाएं, हाई कोर्ट में जज हो जाएं या सुप्रीम कोर्ट में जज हो जाएं, उनकी जो परिपाटी बन जाती है, वह बदलती नहीं है—वह अभ्यास से दूसरी प्रकृति बन जाती है, सैकंड नेचर बन जाती है। आप डिस्पैशनेट हो कर—निरपेक्ष हो कर—देखें कि कचहरियों में कहां तक इन कानूनों का पालन होता है और अगर होता है तो कैसे होता है। ब्रिटिश गवर्नमेंट ने जो कानून बनाए हैं, उनके विषय में क्या अनुभव हुआ है ? आखिर में मैं कहना चाहता हूं कि सिविल प्रोसीजर कोड का पूरा ओवरहालिंग हो—इस प्रकार के पैच-रिपेयर से कुछ होने वाला नहीं है।

Shri C. R. Iyyunni (Trichur): I welcome this Bill, not for the grounds that are mentioned in the Statement of Objects and Reasons, but for other reasons. The main object is said to be to prevent dilatoriness in the disposal of suits and to reduce expenditure. As a matter of fact, if we go through the various clauses of the Bill, we will find only one or two small things wherein the expenditure can be reduced and dilatoriness cut short. If we go through the Civil Procedure Code section by section and if the courts are inclined, as has been suggested before by a previous speaker, to stick to things that are stated there, it will not be difficult to cut short the expenditure and at the same reduce the dilatoriness. I know of instances in certain States where there is very little dilatoriness, whereas in other States there is plenty of dilatoriness. How can that be correct in view of the fact that there is not much difference in the Civil Procedure adopted in the two States? The reason is simple. If the Chief Justice or the High Court is inclined to see that cases are disposed of properly, it is not a very difficult matter at all. That is the case. I am acquainted with the High Court in Cochin, and I am also acquainted with the High Court in Tra-

vancore. Years ago the practice was that by the tactics of the advocate or the parties, it was not difficult to get a case protracted as much as possible. But when the High Court or the Chief Court there wanted to see that the accumulation of cases was reduced and that the time taken to dispose of cases was reduced, they issued certain instructions. What they said was, if it is a suit of a particular nature, say a money suit, then it must be disposed of within such and such a time so far as the Munsiff Court is concerned, and if it goes in appeal to the district court, it must be disposed of in such and such time, and similarly in the High Court. If within the time fixed the cases are not disposed of, the Munsiff or the District Judge was called upon to explain why the cases had been delayed. When that procedure was adopted by the Chief Court then and the High Court subsequently, there was quick disposal of work. That is the way in which it ought to be done. Whereas in Travancore some years ago the practice was that the cases used to be protracted indefinitely. The reason was that the High Court there was not particular about the quick disposal of cases. That is the reason. Now, after integration I find that the number of cases disposed of is very much more than before and pending cases are also very little. So, there is no use of finding fault with the provisions of the Civil Procedure Code. What is needed is that the High Court or the Supreme Court must insist upon the lower judiciary to see that the cases are disposed of within a definite time, and if this is not done, they may be asked to explain why there is so much delay. If the delay can be avoided, much of the difficulty will be gone.

With regard to the expenditure side also, after all, there are only two or three clauses which say something about it. One provision is with regard to the sending of notices. In case it is found that a notice cannot be served personally, then it can be sent by post. That is one of the essential things.

With regard to the other matters also, it will be seen that it is because of conflicting opinions by courts that certain provisions have been introduced. For instance, if we look at the provisions connected with interest on costs and so on, we shall easily see that they have nothing to do with dilatoriness or the question of expenditure.

On the other hand, there are certain provisions here, which I think, in very desirable. And they are provisions in regard to review petitions. Suppose a review petition is to be put in, and the judge who was dealing with it before does not issue a notice or something like that, then it is difficult for a review petition to be admitted. But under this provision which is now proposed, even in such cases, the successor can admit the review petition and pass orders on the same. That is certainly a welcome thing.

As regards other matters, since most of the other Members have expressed their views already, I do not think I should unnecessarily take the time of the House and try the patience of hon. Members.

Shri Pataskar: I am really thankful to the hon. Members of this House, those who have criticised the Bill as well as those who have supported the same. For, I find that all their criticism has emanated from a desire to improve the administration of civil justice, a desire with which I also entirely agree. The difference may be with respect to what can be done so far as this Bill is concerned, and what has to be unavoidably left to be done on some other basis.

Arguments have been advanced as to what is the necessity for bringing forward a Bill, which as I already explained, has got a limited purpose only, when a Law Commission is shortly going to be appointed. I would take a little time of the House to explain the necessity to bring forward a Bill of this nature, for which I never made any tall claim, though probably some people have been under a wrong or mistaken impression that I was doing so.

[Shri Pataskar]

The history of this Code is as follows. Ever since the year 1908, there has been this Civil Procedure Code, which has set the pattern of administration of civil justice in our country. Before that also, there were civil procedure codes, but at least for the last 50 years or so, this Civil Procedure Code has been there. We have found even in this House that there are two sections amongst the lawyers themselves. For instance, the hon. Member who is an ex-Chief Justice of the Orissa High Court expressed a definite opinion that so far as the framework of the Civil Procedure Code is concerned, it is a very good one. On the other hand, there are other hon. Members also here, whose opinion is equally deserving of consideration, who say that in the new pattern of society, that farmework must undergo a change.

The object of the present amending Bill is most certainly, as I have declared in the beginning itself, not to change that framework, for that is a task which must be deferred for a different body. But what is our experience? The question has been asked why I should not wait till the proposed Law Commission is appointed, they make their report, and then the matter is brought before the House. As a matter of fact, the very history of a legislation of this type has to be taken into account before we can have a proper perspective in regard to a matter like this.

First, there was the Civil Justice Committee which was appointed as far back as the year 1926. Their report is a big volume. But I know that only very little of their recommendations has been incorporated in the new Act, due to various reasons.

Shri S. S. More: Are not committees appointed for the purpose of not doing anything?

Shri Pataskar: I do not take exactly the same view which my hon. friend takes about the past. We are bound to differ. But let us not colour this either with what I have got to put in my own way, or with what the hon. Member has to put in his own way. But the fact is that apart from any colour which we might or might not get, experience has shown that the Civil Justice Committee—whoever might be responsible then—thought that some changes should be made, and a certain amount of expenditure was incurred in that behalf. There was in that committee a man known as Mr. Justice Rankine. Many of those who are students of law must certainly be knowing his name. He was a very good jurist, and particularly a jurist who knew the basis of the Indian law as such. And I think there were no two opinions about his capacity.

Leaving that aside, there was the committee which was appointed by the U. P. Government as late as the year 1949 or 1950. There were certain powers under which rules could be made by them, etc. and therefore they made an enquiry into the matter. Still, not much has been done.

Then again, this question of the reform of the whole judicial administration cannot be done by merely amending the Civil Procedure Code. In the course of the discussion, we have found, for instance, that a good deal of criticism was addressed particularly to the State Governments. It was stated here that the State Governments are trying to increase their revenues by the imposition of court fees and so on. That is a matter which cannot be dealt with by an amending Bill of this nature. Nor can it be dealt with, unless a good deal of time is spent in that regard, for that is a State subject. Many steps will have to be taken before, if at all, that particular aspect of the proposed scheme of improvement of judicial administration can be carried out. We shall have to consult the State Governments, and various other matters will arise. Similar is the position with regard to recruitment of judges, with regard to having more

efficient judicial servants and so on. There is also the question as to whether we should still conform to the present method of judicial administration or whether there should be some other method. All these matters, I for my part feel convinced, would take too long a time. If at all these reforms could be carried out very early, certainly I am one with those who have criticised this Bill from that point of view. I have no desire whatever to protect matters in this respect. But I thought that, as I see and envisage, a long time is bound to intervene even if a commission is appointed, for the State Governments have to be consulted on their proposals, then the judicial machinery and various other bodies have to be consulted and so on. Naturally, all this is bound to take some time. Then there is also this drawback namely that when there is a parliamentary type of democracy what could the will of an individual do. What has to be done in a democratic way, in accordance with the system which we have adopted, and to which we adhered, takes in the very nature of things a long time.

Considering all these matters, I thought—and in fact, our Government thought more than myself, because this had originated even before I become a Minister—that there was no reason why if at all some changes could be made, which were at any rate beneficial and useful from the point of view of the present system of judicial administration, there should be any difficulty in trying to do it, because that is not going to hinder or mar whatever is going to be decided subsequently by the proposed Law Commission, whatever Government might decide and whatever time it may take. That is my justification for having brought forward the measure which, in the present form in which it is brought is, I am aware and conscious, limited in object. I would, therefore, make an appeal to hon. Members to realise that while fully appreciating the need for some different system, there should be no difficulty so far as this Bill is concerned.

Some of the hon. Members went to the length—naturally, having once started with the idea of entirely changing the whole picture of the judicial administration, without seeing what was there in the Bill—of wrongly characterising it—it pained me—as a puerile thing; some said there was nothing in it; some others said it was not worth the paper on which it was written. But ultimately those very Members, when they began to take into account the provisions, said, this is good, that is good, but it does not go far enough. Who claimed in the beginning that this was going to be the last word so far as the civil judicial administration was concerned? I had made it clear in the beginning that this was not meant for overhauling the entire system, but that if we succeeded in passing these amendments, with such modifications as might be proposed in the Joint Committee, it would go a long way in achieving those objectives which we have in view. I do not claim that as soon as this Bill is passed, expenses on litigation will immediately go down; I do not say that immediately after passing this Bill, all suits will begin to be disposed of quite quickly enough. Such a claim I never made, and I do not know whether we could, even after the Commission etc. are appointed...

Shri S. S. More: So he does not stand by his statement in the Statement of Objects and Reasons.

Shri Pataskar: I propose to stand by every word of what I have said there and here. I will try to argue that this is going to achieve those objects wherever it is possible; this is going to reduce expense and delay. I will take some time to explain what I mean. But I do not say, as some hon. Members seem to think, that immediately this is passed it will be a heaven for all people who have to go to courts for civil litigation. For instance, there was a good deal of talk both ways. Some of my friends thundered against the lawyer class. May be; we know they may have their own faults, but then I do not see how by amending the Civil Procedure Code, I am going to do away

[Shri Pataskar]

with this system. Then about corruption, everybody waxed eloquent. I myself would say that I have practised mostly in civil courts for more than 30 years—35 years—and I know what is going on. I am not like those who have come from somewhere outside and do not know what is happening in all these courts. But the point is that impatience takes us nowhere. The point is that we have to see at this time what can be done to prevent corruption, by amending the Civil Procedure Code, because that itself we can try to avoid wherever it is possible to avoid. Anything that could be done to see that there is the least chance of somebody making money in this way could be done. Therefore, I think it would not be proper to look at this Bill from any other approach than this general approach. I request hon. Members that in their anxiety to solve all these problems by an amendment of the Civil Procedure Code only—an impossible task, in itself, as I regard it—they should not fail to look more to the provisions which I have tried to incorporate here with the limited object of improving the present system of civil judicial administration within the framework of the present Civil Procedure Code. I also took some time that day to explain that this is a procedural law. this is not a substantive law. But, unfortunately, in the course of arguments, I have found that substantive law has been mixed up with procedural law. What has to be achieved by substantive changes in the substantive law cannot be achieved by merely trying to make some changes in the law of procedure. Therefore, I would request hon. Members to took at this problem from that point of view and not to raise unnecessary apprehensions about what is being laid down. They should look at it from the point of view of what it is going to achieve.

Then as regards the claims made in the Statement of Objects and Reasons, I do not know whether all will agree that all of them are satisfied to the satisfaction of every single Member. But I will try to point out—it is my duty to do so—that within the limited sphere, limited not on account of any desire not to do things, but on account of the very nature of what we are trying to do, we should look at those provisions which we are trying to make in this.

Then again, this Civil Procedure Code, as I said, being in itself in the nature of a procedural law, does require amendments from time to time, from year to year. That was why I gave the history of it, because even from 1908 to 1950 or 1952 when the last amendment was made, there have been more than 35 enactments. Why? Because, in the case of procedural law, whenever you get any difficulty, whenever you come across any trouble which you think can be removed, it should be removed. This may probably be on account of changed circumstances; what applied in 1908 may not apply to the conditions of 1930; conditions have undergone further changes and they were not what they were in 1952 or 1953. Naturally, therefore, a procedural law does require—whatever the form of the law which we enact—amendment from time to time so as to suit changed conditions which may exists. Therefore, we need not wait for any overhauling of the system, but we will try to do whatever is possible within the framework of the present Act. So that whatever changes are justified on account of the constitutional changes, on account of the changing circumstances, on account of change in ideas of the structure of society, will have to be done, by amending the law of procedure suitably. That is the purpose of the present Bill.

Now, take, for instance, clause 2. I thought it was a very simple provision and I never expected that there would be anybody in this House who would very seriously object to making a change in the year 1955, that when costs are awarded, the courts should not award interest on the amount of costs. Some of my friends, very vehemently argued on that point. There was Shri S. V. Ramaswamy, a

barrister, who said, 'why should he not get interest on that?' Incurring costs and giving a loan are two distinct matters. I can understand that interest is giving primarily when there is an agreement to give interest, because it is something in the nature of a thing which should carry interest. But to say that because a man goes to a court and succeeds, therefore, the other side should be vindictively dealt with, that it should incur not only the costs—which may be heavy—but also, add to that, the interest on it, is something which I, for one, fail to understand, as to how it can be consistent with whatever ideas we have got. That people should be expected to pay costs is reasonable; if the party succeeds, the other side should pay costs.

Shri S. V. Ramaswamy rose—

Shri Pataskar: I know there are some people—there are one or two other hon. Members also—who think that way, but I for one do not think that anybody should be allowed to make out of this cost of litigation something as if it was a loan which he gave to the other side. If it is not viewed from that aspect, I think it would not be proper, from the point of view of the ideas of justice, at any rate.

Shri S. V. Ramaswamy: If the money was invested in a bank, would it not have carried interest?

Shri Pataskar: It would not enter into an argument, because this is not a discussion about the social phenomena underlying these processes.

Shri S. S. More: Can you avoid that?

Shri Pataskar: I would rather avoid it and I think the majority will agree that this is not the right thing to do.

Shri Kamath: Avadi spirit.

The Minister of Commun (Shri Jagjivan Ram): It is per Kamath.

Shri Pataskar: This will, m less, be a matter which will be ed in the Joint Committee, and I they will do the right thing.

Clauses 2 and 3 are the same. think nobody has found fault with t rate of interest, of 6 per cent. I thir the provisions, so far as they go, a acceptable and will effect a go change.

Then I come to the question of c pensatory costs in respect of false vexation claims. What is the pre law on the subject? Section 35A introduced subsequent to 1908—in1 or thereabouts. The object was to p vent false and vexatious claims, At t time, there was a condition that unl that point was raised just in the begi ning, no compensatory costs could allowed,

5 P.M.

Shri S. S. More: Madam, is he like to take a long time after five o'cloc

Mr. Chairman: I thought that t sense of the House was that t hon. Minister should conclude. If yo want to adjourn I have no objectio

Shri Pataskar: How can I conclud It would not be right on my part n to take into account what the hc Members have said.

Mr. Chairman: Then, we shall adjourn till tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 4th August, 1955.