These are some of the other points to which I would like the Select Committee to give its attention and consider whether they should be amended or not. Otherwise, I support generally the provisions of the Bill which has been put before us by the hon. Minister for being referred to the Select Committee. In this Bill clauses 4, 6, 8, 9, 10, 14 and 16 are very necessary and therefore, I would commend to the House that when the Bill is being referred to the Select Committee, they should have the authority and direction from this House that they may consider such other matters as I had referred to in my speech and as may be referred to by other hon. Members of either this House or the otner House.

Mr. Deputy-Speaker: Amendment moved:

That in the motion *after* "and 15 Members from Rajya Sabha" *add*:

"with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary".

Some Hon. Members *rose*—

Mr. Deputy-Speaker: I hope the hon. Members are aware of the rule that hon. Members whose names are here and are willing to spend a lot of time and exert on behalf of the Parliament and the Select Committee would wait until they have an opportunity in the Select Committee. They ought not to rise now if their names also are on the Select Committee. The others will nave an opportunity to speak.

DELHI JOINT WATER AND SEWAGE BOARD (AMENDMENT) BILL

Mr. Deputy-Speaker: Now, the other Bill has been kept waiting. I shall take up that Bill and dispose of it and come back to this. I must put it to the House formally.

The question is:

"That the Bill, as amended, be passed".

Those in favour will say 'Aye'.

Several Hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say 'No.'

Some Hon. Members: No.

Mr. Deputy-Speaker: The 'Ayes' have it.

Some Hon. Members: No, Sir. The 'Noes' have it.

Mr. Deputy-Speaker: Those against the motion will kindly stand up in their seats.

There are thirteen.

Now, those who are in favour will kindly stand up in their seats.

I find a large number and therefore by an overwhelming majority the motion is adopted.

Shrimati Renu Chakravartty: It is a slight majority.

Shrimati Sucheta Kripalani: It is a marginal majority.

Mr. Deputy-Speaker: Twenty is less than 21.

The motion was adopted.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL—*contd.*

Mr. Deputy-Speaker: Now, we will take up the Code of Civil Procedure (Amendment) Bill. Having regard to the length of time it is not necessary for me to impose any restriction at this stage, but, anyhow, hon. Members will have, I think, an idea of the time that they can take. 20 minutes I think will be all right except in exceptional cases which is always an exception.

Shri A. M. Thomas: Sir, I welcome this Bill so far as it goes, but the impression formed by me after going through the various provisions of the Bill and the impression left with me after reading the Statement of Objects

[Shri A. M. Thomas]

and Reasons is that "a mountain has brought forth a mouse."

Shri S. S. More: Not even a mouse.

Shri A. M. Thomas: Many of the provisions of this Bill are either adopted by way of practice by the various courts in India or by modification of the Code of Civil Procedure as passed by the Centre by virtue of the rule making powers vested in the High Courts according to part X of the Code....

Shri Kamath (Hoshangabad): Sir, the Minister in the Ministery of Law is not present.

The Deputy Minister of Health (Shrimati Chandrasekhar): Sir, he has asked me to take down notes on his behalf.

Shri Kamath: I think at least one Minister representing the Ministry of Law should be present here.

Mr. Deputy-Speaker: He has just gone out. There are two Ministers present.

Shri Chattopadhyaya (Vijayavada): It may be bad for the "Health" of the "Law."

Shri A. M. Thomas: Sir, one can very well appreciate the difficulty that has been pointed out by the hon. the Law Minister that a thorough overhauling of the Civil Procedure Code at this juncture, especially in view of the appointment of the Law Commission, may not be quite desirable. But, in his Statement of Objects and Reasons he has made a very tall claim and has said:

> "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."

In all humility I beg to submit that the two objects, namely, to reduce the delay and also to minimise the expense, cannot be carried out by the provisions contained in this Bill except to a very insignificant extent. For example, I should like to say that the abolition of the clause relating to delegation of powers for execution of decrees to the Collector is a welcome move. There are some other small features of this Bill, which are desirable, namely, the enabling provision to have service by post; then, at any stage an admission of a document can be called for from a party and there is the other innocuous provision that a party will be entitled to produce his own witness even without issuing a formal summons from the court.

[SHRI BARMAN *in the Chair*]

Shri Kamath: Sir, there is no quorum in the House.

Shri S. S. More: Let us reduce the number for quorum.

Shri Kamath: You will have to amend the Constitution for that.

Shri S. S. More: That is by amending the Constitution.

Shri Kamath: There is no Minister and there is no quorum.

Pandit K. C. Sharma (Meerut Distt.-South): There are two Ministers.

Mr. Chairman: I am ringing the bell.

Now, there is quorum. The hon. Member may continue.

Shri A. M. Thomas: Sir, I deliberately said that in bringing out this Bill what has been done was only the mountain bringing forth a mouse because Dr. Katju who was in charge of the Home portfolio prepared a long note on the reform of judicial administration in India. He circulated it among the various State Governments, the various judges of the Supreme Court as well as High Courts and Advocate-Generals. He invited opinions from them on that detailed note. But, although the hon. the Law Minister has stated that when this Bill was prepared this memorandum and the notes received from the various State Governments and the judges of the

Supreme Court as well as the High Courts were also looked into, I fail to see that except with regard to one or two minor points, none of the points that have been raised by Dr. Katju have been incorporated in this Bill. None of the improvements that have been suggested by the various Chief Ministers or the various judges of the Supreme Court as well as the High Courts have been incorporated in this Bill.

I was stating that the twin objects with which this Bill has been brought forward cannot be served by the various provisions of this Bill. I admit that we must use a great deal of care as well as circumspection in the matter of amendment of a Code like the Civil Procedure Code. Even Dr. Katju, as will be seen from the note that he has circulated, who is fed up with the dilatoriness and the cumbersomeness of the procedure of the various courts....

An Hon. Member: "Slumbersomeness".

Shri A. M. Thomas: He has even admitted in his note:

> "Largely proceedings in a civil suit are governed by the Civil Procedure Code. That Code has stood the test of time in its broader aspects. It is simplicity itself."

Shri Pataskar: For the imformation of the House I may say that the memorandum which I said was circulated, was the memorandum of the hon. Minister Dr. Katju himself.

Shri A. M. Thomas: With regard to this observation of Dr. Katju there has been even unanimity as will be seen from the various notes that he has received in reply to the memorandum that he circulated. So, I am prepared to concede that the approach that we have to make when we consider the Civil Procedure Code is that there is nothing basically wrong with the system as laid down by this Code. In spite of the powers given under this Civil Procedure Code, under Part X to which I have already referred, empowering the various High Courts to frame rules according to their discretion after previous publication, you will find that in the various orders which are as many as fifty, and the sections thrown open for modification, the basic frame has not been touched materially. That will also indicate that we have to approach this Bill with this point of view, namely, that there is nothing basically wrong with the Civil Procedure Code as it obtains today.

I am tempted, Sir, to read the observations of Chief Justice Chagle of the Bombay High Court which are contained in the opinions which have been printed and circulated among the Members at the time we discussed the Criminal Procedure Code Amending Bill. He has stated:

3 P.M.

> "Objectionable and obnoxious as the British rule was in India, administration of justice was one of its most satisfactory aspects. It would be a mistake to think that this legacy of British rule is alien to the soil of the country. The present civil and criminal courts have existed in the country for well-nigh three quarters of a century; a trained, able and extremely well equipped Bar flourishes not only in State capitals and District headquarters but practically in every Taluka town. The uncodified personal law of Hindus and Muslims and the codified law have been enriched by a long line of judicial decisions given by eminent English and Indian Judges. The people themselves highly litigious by nature and temperament have become quite familiar with the procedure in the Courts and the principles underlying British jurisprudence. Any reforms that we should envisage must be within the existing frame works. It would be a mistake to my mind to uproot the tree whose roots have gone deep down and spread into the soil and try to plant in its place a young sapling whose strength and whose power of endurance we have no means of knowing".

[Shri A. M. Thomas]

These expressions portray the basic approach that we have to adopt when we consider an Act like the Civil Procedure Code. I may also submit that in these matters—matters regarding the amendments of the procedure codes and other similar statutes—the judges and the lawyers will be loath to make any substantial changes. Giving some allowance for that temperamental difference in the case of judges as well as lawyers, I may also submit that the difficulties that we were really experiencing in the matter of this delay and expense were difficulties caused because of the non-enforcement of the various provisions of the Civil Procedure Code. For example, we have got provisions relating to interrogatories, discoveries and affidavits. In the various courts, we have never made proper use of the provisions and if we had realy made proper use of them it would have simplified the matters and also curtailed a lot of unnecessary evidence.

I will also say that the feeling expressed in some of the notes with regard to the difficulties of judicial administration in our country that they have been due to the lack of really competent men in the subordinate courts as well as the lack of adequate number to manage the volume of work is justified. As has been pointed out, the most important factor in the administration of justice is the judge himself.

With these preliminary observations, I would like to come to some of the provisions of this Bill. I submitted that the claim made by the Law Minister is a little exaggerated and the various provisions that he had referred to do not, after all, very much affect the question of delay and expense. I would point out to the hon. Minister that in the detailed note that has been submitted by Dr. Katju, specific reference has been made to the delay and cumbersomeness at the execution stage. He has pointed out that the real difficulty does not lay in securing a decree but that it begins after the decree has been passed This statement of the then Home Minister has been supported by the various notes that he has received. I do not understand why the hon. Law Minister has not cared to touch the execution chapter at all.

Shri Pataskar: Clauses for transferring cases to the Collectors have been mentioned.

Shri A. M. Thomas: That practice is not existing with regard to so many courts and it is practically a dead provision. I am sorry the hon. Minister was not present then—in fact, that was the first point that I mentioned in justification of the claim that has been made in the Statement of Objects and Reasons that some such provisions are meant to minimise delays and also reduce expense.

Provisions such as the issue of notice and compliance with other formalities at the various stages of execution ought to have been examined by the Law Ministry and proper amendments ought to have been incorporated in this Bill. With regard to these matters I should think that the Law Ministry should not take shelter under the plea that we should not attempt an overhaul of the entire Civil Procedure Code in view of the fact that a Law Commission is going to be appointed and that therefore we must not touch those provisions. Even to a pointed question that was put to the Law Minister, he was not in a position to say what exactly would be referred to the Law Commission and whether a revision of the procedure codes will be within the competence of the Law Commission.

Shri Pataskar: That will naturally come within their competence. Why they should be excluded, I do not know. There is no reason why they should be excluded.

Shri A. M. Thomas: The Law Minister was not bold enough to assert so, when that question was put to him. It is left to Shri Biswas.

Shri Pataskar: I cannot understand this. Before an announcement is made, I cannot say what it will contain, but I do not see any reason why it should be excluded from the scope of the Law Commission's recommendations.

Shri S. S. More: He does not see any reason, today!

Shri A. M. Thomas: Apart from the question of execution proceedings, there have been several small changes which could have been effected on the lines suggested by Dr. Katju. The provision to produce certified copies of judgments and decrees along with the memo of appeal is now mandatory. I concede that when a litigant may require an urgent stay of proceedings or something like that, or when the court is required to go into the judgment, in order that he may form his opinion at the admission stage, it may be necessary to produce certified copies of the judgments and decrees. But with regard to the case when, as a matter of course, notice has to be issued and the records have to be called for, I cannot understand why the provision with regard to the production of certified copies of judgments and decrees has to be insisted upon. This is only just one of the many points which could have been taken note of by the Law Ministry and proper provisions incorporated in this Bill.

With regard to the question of *res judicata*, specifically dealt with in this Bill, I may say that the principle of constructive *res judicata*, as adopted by the various courts, is made applicable to execution proceedings also. But what is now sought to be done is to put it on a statutory basis. I would point out to the hon. Law Minister that certain anomalies have been pointed out with regard to the administration of the principle of *res judicata* in the note that has been circulated by the then Home Minister. Pointed attention was drawn by the various State Governments as well as by the various judges to that provision. I do not know why some provisions were not incorporated in this Bill by amending section 11 which relates to *res judicata*. If they had been incorporated, those anomalies could have been got rid of. It should have been examined whether we should provide for appeals with regard to the various orders that now exist in the Civil Procedure Code, whether there is any scope for reducing the number of orders from which appeals can be preferred and also whether certain appeals and revisions from interlocutory orders should be entirely barred. These sections ought to have been examined and some provisions incorporated.

You will also find that with regard to the exact scope of the revisional jurisdiction of the High Court, the decisions are not unanimous. Some provision could have been incorporated in this Bill which would have just shown the scope of the revisional jurisdiction in the light of the various judgments of the High Courts.

The note refers to questions with regard to the appointment of guardians for minors and other things; how delay can be minimised by resorting to some provisions, etc. These simple questions could have been examined and more suitable provisions introduced in this Bill.

The hon. Deputy-Speaker has said that my friend Mr. Agrawal's amendment is of a very wide nature and it may not be possible to go through the Code consisting of 158 sections and 50 orders and various rules; but with this authority vested in the Select Committee, I think we need not at this stage restrict the working of the Select Committee that it can only go through such and such sections and such and such orders.

Mr. Chairman: I think it is the other way round; instead of restricting the scope, I think we are widening the scope of the Select Committee. So far as I understood, what the hon. Deputy-Speaker has said is that if any hon. Member has got any concrete suggestion into which the Select Committee may be asked to go

[Mr. Chairman]

he may give that suggestion, instead of giving a blank cheque to the Select Committee to revise the whole Civil Procedure Code. I think he was very justified in making that remark. I want to repeat that if any hon. Member has got any specific suggestion relating to any specific section or order as it exists in the Civil Procedure Code, he can kindly give his constructive suggestion and the Select Committee will be quite competent with the permission of this House to go into it.

Shri S. S. More: The question is whether we should table amendments pointing out the different aspects upon which we want to make constructive suggestions or whether the amendment will be in a general form giving ample scope for every man to make any suggestion. I think that if the Deputy-Speaker's suggestion is accepted, it would be very inconvenient to the Members, because reasonable suggestions which may come on the spur of the moment will be ruled out. That is the difficulty.

Shri Chattopadhyaya: I would like to point out once again that there is no quorum; it is very very strange; how can the discussion be carried on like this?

Shri Kamath: There is no quorum.

Mr. Chairman: I am ringing the bell.

Shri Pataskar: This is a terse subject.

Shri S. S. More: Does the hon. Law Minister say that because this is a terse subject, there is no necessity for quorum?

Shri Pataskar: It is for the Chair to find out whether there is quorum or not; it is none of my business.

Shri S. S. More: The counting may be done by the Finance Ministry. Or, the office of the Deputy Whip has been declared to be free from disqualification; at least he should do this job.

Shri Raghavachari: The Deputy-Speaker has already mentioned that it is the duty of the Government which wants the Bill to be passed to maintain quorum.

Mr. Chairman: There is quorum now.

Shri A. M. Thomas: I was just going to make a suggestion on the lines of the suggestion just now put forward by Mr. More, namely, that the Select Committee should have wide powers to interfere with any sections, orders or rules which it may deem fit.

I will now proceed to some of the clauses of the Bill. The first thing that is sought to be affected by this Bill is the question of interest. Under the present Code, the courts are empowered to award such interest as they deem reasonable and that power vested in the courts has been taken away now with regard to the interest from the date of decree. The question of interest from the date of suit to the date of decree has not at all been touched by the amending provision. I would also suggest that the quantum of interest which we now prescribe with regard to the amount from the date of decree may also be made applicable in the case of the interest for the amount from the date of suit to the date of decree. A notable departure which has been made by this Bill in the matter of interest is the interest which is now being awarded on the costs decreed. I do not understand why the Government thinks that it is not necessary to award any interest on this amount. It is a matter of common knowledge that the amount that is actually decreed as costs in any proceedings would usually be less than the amount actually incurred by the party, and I do not understand why that party after winning the case should be penalised by this provision saying that he would not be allowed any interest on the costs that have actually been decreed.

Shri M. S. Gurupadaswamy (Mysore): Socialistic pattern of society!

Shri A. M. Thomas: I do not think on that basis it would be fair. If it is to be on any such consideration, it may be provided that interest cannot be awarded in any case. Why should this invidious distinction be made in the matter of costs which will be usually less than the amount which has been actually incurred? If it is to be on the socialistic pattern pointed out by my friend Mr. Gurupadaswamy, then some provision on the basis of the rule of *damdupat* under the Hindu Law may be put in; that is to say, in no case the quantum of interest that would be allowed shall be more than the principal amount or shall be more than 50 per cent of the principal amount. In my State, in Travancore area, before integration, there was some such provision to the effect, that in any suit, the quantum of interest that would be decreed will not be more than 50 per cent of the principal amount. If some such provision is incorporated, we can understand and it may give relief to the parties to some extent. Should this provision that we adopt with regard to interest, not be made applicable to mortgage suits also? That has to be examined.

With regard to the power to give compensatory costs, that power has also now been extended to execution proceedings. They are specifically brought in. I would like to know why appeals have been excluded from this provision. Should there not be something which will stand in the way of the parties coming forward to courts with frivolous appeals and some such proceedings?

Then, we come to the executability of *ex parte* decrees which have been passed before 26th January, 1950. That is a welcome provision. In fact, there are some decisions, a single judge decision of the Bombay High Court, I think, which recognise the right of executing decrees which have been passed even before 26th January, 1950.

When the principle of *res judicata* has been made applicable to execution proceedings, I do not understand why some of the qualifications which have been laid down in section 11 have been omitted in this case. A notable exception appears to be Explanation IV to section 11 which says:

> "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."

If, at the stage of execution proceedings, the parties did not raise any claim or ground of defence which they ought to have raised, that should also come within the ambit of the section, when we apply the principles contained in section 11 to execution proceedings.

With regard to the other provisions, my main objection is to the provision that has been made with regard to restricting the scope of second appeals to the High Court, namely clause 11. As the Code at present stands a second appeal to the High Court will not lie if the valuation of the suit is less than Rs. 500.

Shri S. S. More: That was the limit of the small cause suits.

Shri A. M. Thomas: I understand that. I submit that the enhancement of this amount of Rs. 500 to Rs. 1000 is not at all desirable. When we make such a provision, we should also have some idea of the standard of living of our people as well as the average wealth of a citizen of this country. We, as a matter of fact, know that Rs. 500 for an ordinary man in India is a substantial amount. If he does not get an opportunity of agitating his claims with regard to this matter in the High Court, that would be really denial of justice. In this connection, I would like to quote the observations made by hon. Judges of the Supreme Court themselves.

[Shri A. M. Thomas]

They are against any restriction of the present scope of second appeals to the High Court. In certain States, a provision has been made modifying the provisions contained in the Code that if the District Court comes to a different conclusion, from the decision of the trial judge, a second appeal will automatically lie to the High Court. With regard to questions of facts, the decision of the District Court won't be final. There are very eminent personalities who advocate the incorporation of such a provision in the Code itself. On the question of the entertainment of appeals to the High Court, on page 327 of this publication, the present Chief Justice of our Supreme Court has said:

> "My considered opinion is that there is really no justification for abolishing second appeals as they exist in the present Civil Procedure Code."

Justice Mahajan was also of the same opinion as will be seen from his observations:

> "In my opinion, the scheme of the Civil Procedure Code so far as appeals and revisions are concerned does not require any alteration."

Then, he says:

> "My view that the present system of appeal provided by the Code of Civil Procedure should not be interfered with is based not only on my experience as a lawyer and as a judge, but occasionally even as a litigant. This is a very valuable right given by the Code to the litigant and the approach of a litigant to the High Court gives him the satisfaction that he is getting justice from the highest court of the land. There is more confidence of the citizens of India in the High Courts than they have in the subordinate judiciary and the limited opportunity given to them by the Code to approach the High Court should not be denied to them."

I am emphatically of the opinion that there should not be any further restriction of the scope of appeals as at present exists in the Civil Procedure Code.

With these observations, I support the Bill with regard to most of its provisions and I am definitely of the opinion that as far as the Bill goes, it is definitely an improvement and it has to be welcomed.

Shri C. R. Chowdary (Narasaraopet): The Statement of Objects and Reasons clearly states that the objective in bringing about this Bill is to eradicate dilatoriness, reduce expenses and remove complications in the matter of procedure and also administration of civil justice. The only point that arises for consideration in anybody's mind is whether the amendments suggested in the Bill, in fact contribute to obtain any of these objectives stated in the Statement of Objects and Reasons. To my mind, a casual perusal of the notes provided in this Bill shows that none of the clauses will provide us with the means to achieve the objective set forth in the Statement of Objects and Reasons. Rightly the Deputy-Speaker desired to know the clause or clauses which go to achieve this objective. The hon. Minister of law was about to answer. But, two hon. Members intervened and said, for instance, substituted service. Substituted service relates to only one clause. Another Member, if I am correct, I think it is Shri K. C. Sharma, pointed out the omission of a section in the Civil Procedure Code in the matter of execution of decrees by Collectors. But those sections, if I remember rightly, are dead letters as they are not in practice at all.

Then, as to clause 16, that is substituted service, it has been in practice for the last two or three years especially, as far as my knowledge goes, in the States of Madras and Andhra. Though it is in practice, though there

is some element of saving in point of time, in practice it admits of fraud. How is this fraud being played? The plaintiff goes to the court, gets in the first instance notice of summons. Then if they are returned as unserved, a substitute service is ordered by sending notice of the suit as well as other matters by registered post. It is quite possible, as everybody knows, and in practice it is very easy for the plaintiff to get endorsed through the postal authorities that the registered notice had been refused. Then, the result would be a decree against the defendant, not to his knowledge, but behind his back. So, though there is some element of saving in time, there is much scope for fraud. As such, the amendment that has been substituted by the hon. Minister by way of substitute service in this clause causes much more harm to the litigant public than benefit. Therefore, even from the point of view that substituted service is the only element that has been introduced with the purpose of saving time and also cost, the service that it does to the litigant public is not worth mention. Then, what is there left in the Bill to achieve the object stated in the Statement of Objects and Reasons? There is nothing. As such, it is an incorrect statement of fact and highly misleading not only this House, but also the public. Therefore, at least now at this stage let the scope of the Select Committee be widened with powers to tackle all the provisions in the Civil Procedure Code so as to achieve the objectives stated in the Bill. In the absence of such a provision enabling the Committee to deal with various provisions of this Civil Procedure Code, it will be allowing an already incorrect statement in the Bill to continue intact in the Bill. Therefore, it is highly necessary to send this Bill to the Select Committee with proper instructions and power to deal with the Bill to achieve the objectives enunciated in the Statement of Objects and Reasons. Therefore, the Bill may be considered by the Select Committee with this object in mind and it may return the Bill not as stated by the Minister within the time, but some time later even. It matters very little if the Committee reports back with some delay because there is no assurance from the Minister that early steps will be taken to overhaul the Civil Procedure as such and bring forward a Bill before the House at an early date which is necessary for the simple reason that it is admitted by the Minister himself in the Statement of Objects and Reasons of this Bill that there is dissatisfaction in the matter of civil administration and its procedure for various reasons. When the dissatisfaction of the public is a recognised fact, it is highly necessary for the Minister to bring forward an amending Bill of the civil procedure so as to suit the national genius of our country. Therefore, my submission is: let there be an amending Bill at an early date before this House. In the absence of that, it is necessary for instructions to be given to the Committee to touch every possible section in the Civil Procedure Code so as to achieve this object.

Then, I will come to the clauses in detail. As a matter of fact, all the amendments suggested are not of much importance. They are of minor nature and they will not basically change the character of the civil procedure. The civil procedure, as I understand it, has got its own history, and the hon. Minister has traced the history of the civil procedure by saying that more than 35 times amendments were effected and that this is one such amendment.

Shri Pataskar: After 1908.

Shri C. R. Chowdary: After 1908. This is also one such amendment. As a matter of fact, this procedure has been prescribed by a foreign power with a certain object, that is to exploit the country in their own interests. And now it is high time that this procedure that has been laid down with a certain object by a foreign power is repealed. Therefore, the only history that I can visualise

[Shri C. R. Chowdary]

of the Civil Procedure Code is procedure by which one can exploit the country to the interest of the ruling class.

There are certain really good features which set at rest the conflicting decisions that are obtaining in the field, under section 47. That is set at rest by the amendment suggested in clause 6 of the Bill. But there is some vagueness in the matter. As the Deputy-Speaker has observed already, the principle of *res judicata* is made applicable in a case where a matter has been decided in a former proceeding. But, if the matter has been decided earlier in the same proceeding and subsequently the same matter is being agitated by the parties, it is not clear whether in that case the principle of *res judicata* so far as that matter is concerned can be made applicable.

Shri Pataskar: Can it be called *res judicata*? In the same proceeding do you call it *res judicata*?

Shri C. R. Chowdary: Supposing at one stage a matter has been contested by the parties and a finding has been given. At a later stage, suppose the matter is again sought to be raised by the same parties, can it be permitted to say that the principle of *res judicata* comes into operation or they are barred from reopening the matter? That is how I understand the thing. I hope the Select Committee will consider this aspect.

Then, I will come to clause 14. The amendment is sought to be made as a result of a decision of the Rajasthan High Court declaring that section 133 of the Civil Procedure Code is *ultra vires* of the Constitution. In bringing about this amendment, a list has been given comprising the President of India, the Vice-President of India, the Speaker of the House of the People, the Ministers of the Union, the Governors, the Rajpramukhs, Lt.-Governors, Chief Commissioners of States etc. I want to know from the Minister something about the persons to whom section 87B applies. This section 87B gives the ex-rulers the status of foreign rulers. These people having lost their status, having lost everything that can be called rulership, now want to have the privilege not to attend the courts. I want to know why these people must be given this special privilege of not attending the court. Why should they have a special status? Is it because they were once the rulers of India? If that be the case, I know a friend of mine who is a descendant of the King of Oudh but who gets about Re. 0-1-6 as allowance. He may as well claim the privilege of not attending the court. The only thing that has been enjoined to them is that if they claim the privilege, they have to pay the cost of the commission. At times, the party may pay the expenses of the commission; in that case, he need not worry about anything, and he can have that privilege and say that he belongs to the privileged class. But I do not know on what basis he can be called a person belonging to the privileged class, and what led the ruling party to talk in terms of creating a privileged class contrary to the fundamental rights—spirit and letter of article 14 of our Constitution. No explanation has been given by the hon. Minister as to why this particular amendment has been put in. I hope the Joint Committee will consider this matter and recommend the deletion of this clause from the Bill itself.

Another clause which is important in my view is clause 7, seeking to amend section 60. That section deals with attachment and protection given under specified circumstances to specified persons. The original Code gives protection to certain categories of people, but it fails to give protection to certain other classes of people. The servants either of the Centre or of the States or of the local authorities have got their salaries protected to a certain extent. And that is based upon certain principles. The idea in giving that protection to these public servants was, in order that they and their dependants could main-

tain themselves. and they might discharge the duties to the public, enjoined on them by virtue of their office. But there are other servants also who are doing service to the nation, and who are equally important. For insance, there are servants of some public institutions, such as the high schools. the medical schools, hospitals and other such institutions which are recognised by law as public institutions. No protection is afforded to those servants at all. The proposed amendment also does not give them any protection, but confines itself only to the public servants either of the Central Government or of a State Government or of a local authority. I would, therefore, suggest to the Joint Committee to consider the question of extending this protection to those servants also who are serving public institutions, such as educational institutions, charitable institutions, or medical institutions etc. run by the private people.

Shri S. S. More: It is to some extent protected under sub-clause (h).

Shri C. R. Chowdary: It is not clearly stated. It is a debatable and moot point.

Shri S. S. More: Salary to the extent of Rs. 100 is protected.

Shri C. R. Chowdary: If protection is not extended to those servants, then it tantamounts to discrimination in my opinion. I would, therefore, suggest to the Joint Committee that they should extend the scope of the protection to these public servants also and make suitable provisions in that behalf.

Although this Bill attempts to minimise delays in the matter of disposal of cases, although it attempts to reduce the expenses, although it attempts to eradicate dilatoriness, and although it attempts to remove the dissatisfaction among the litigant public, yet I feel that it fails to achieve the main object. And since it fails to achieve the object in view in its present form, it is very necessary that the scope of the Joint Committee should be extended. For instance, the Joint Committee should be given permission to touch provisions relating to execution matters also, where awful delay is being caused at present.

I find that there is no provision in this Bill which touches order XXI. According to me, order XXI is the main obstacle in the way of early realisation of the decretal amount or in the matter of early execution of decrees. The complicated procedure prescribed in this behalf at present is being left untouched. I would request the Joint Committee to consider this order in its entirety and to simplify the procedure, thereby enabling us to achieve the objective of minimising delays.

Now, I come to clause 16 (6). It reads:

> "In Order XXV, for rule 1, the following rule shall be substituted, namely:—
>
> '1. (1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:
>
> Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.' "

If the whole clause is taken together with the proviso, I do not find the necessity for the words 'for reasons to be recorded'. The main provision in this sub-clause (1) enunciates the principle, and gives discretion to the court to ask the plaintiff to furnish costs that are expected to be spent by the defendant in defending

[Shri C. R. Chowdary]

the cause. But what we find here is that when such a discretionary order is issued, the judge is called upon to record his reasons for making such an order. Once there is a situation in which the court is asked to pass such an order, then where is the necessity for recording the reasons for making an order to that effect? If the proviso controls the main provision, then there is no reason why the judge should be called upon to record his reasons. But if, however, the proviso is not controlling the main provision, then this principle can be made applicable to any case, or this may be invoked in any case, where the defendant feels that the plaintiff's claim is not sustainable or that he has no property, and that in case of dismissal of the suit, the defendant cannot realise the amount that he has spent; in such a case, the defendant may invoke this provision and demand some security to be deposited in the court. But if the judge can only make an order in the circumstances enumerated in the proviso, then there is no reason why he should be called upon to record his reasons for passing such an order.

I, therefore, submit that this is a Bill which has been brought forward without any aim or objective. At best, this can only be called a Bill containing amendments made to the Civil Procedure Code, which, it has been felt desirable, should be effected in the Code.

Beyond that, nothing can be said in favour of this Bill. Therefore, the Committee may be asked to consider how best civil procedure can be simplified, speedy justice can be given at minimum cost and how best we can repose confidence as to the quality of administration in the matter of civil justice.

Pandit K. C. Sharma: The Bill, as it is placed before the House, is very innocent, deals with minor provisions and has not much of significance so far as the administration of civil justice is concerned. I appreciate the anxiety of the hon. Minister about the dilatoriness, expense and complication of civil procedure and the administration of civil justice. But the changes sought to be brought about do not meet the requirements of the case.

The Civil Procedure Code, as it is, is quite a good law and if a Judge means business, within the four corners of this great book, this white book, he can do natural and acceptable justice to the people. The fault does not lie so much with the law as with the personnel. It is a sad case that we lack good Judges at the present time; not that they lack the good motive to do their duties, but they lack the requisite equipment. This is a painful observation I have to make. I have been going through the judgments of various High Courts. I know so many cases, and I know, to my regret, that justice has not been done. Not that the Judge did not like to do justice, but the Judge was incapable of doing justice not because he lacked intelligence, but because he lacked training, he lacked sympathy with the people, he was not of the people at all. He was too much intellectualised and too much divorced from the life of the citizen. That is a sad case. It requires change in the recruitment procedure, it requires good training, it requires sending the man at the earlier stage of his career to live among the people to understand them, to know them man to man. This is my painful experience after going through the various judgments. I have seen people being shot, but yet the culprit being honourably acquitted, not because there was no evidence, but because there was no proper appreciation of the evidence. The Judge, too much intellectualised and divorced from the life of the common man, could not understand the wrong done to the poor man. He is brought up in a different atmosphere, a different environment and lacked the necessary sympathy.....

An Hon. Member: Sympathy with whom?

Pandit K. C. Sharma: Sympathy with the underdog, sympathy with man on the field, in the factory, in the street. Because the man is brought up somewhere in the city of Delhi or Calcutta and adorns the chair without knowing what the poor man means.

The changes so far being sought to be brought about are on the ground that justice should be easily available, that it should be cheap and speedy. I would have very much liked the hon. Minister to wait for the Law Commission. It should go into the entire system of judicial administration. The changes to be brought about do not go far enough, but so far as they go, I have no quarrel with them. They can be placed in three categories. There are some changes which are sought to be brought about in the interest of justice as such; there are others which are necessary for procedural improvements, giving greater opportunities for adjudication; and there are others which are meant to expedite the processes in the administration of justice. So far as these go, they do good to the people, create greater confidence among the people and secure easier and speedier justice. I appreciate the anxiety of the hon. Minister and I am grateful to him for the attempt. But I again repeat that the fundamental question is of overhauling the entire system of administration of justice. I do not agree with Shri A. M. Thomas, that the civil procedure, as it is, should not be changed at all. It may be good, it may be a model—there is no doubt. I am not one of those who feel that because we have recently become independent, we should be independent of every notion, of every good thing which is already doing good or which is already holding its own. There are certain fundamental things which have stood the test of time; they should be accepted. Accepting this principle, there are many things which in different lands, in different conditions, under different environments do not so well work as they have worked under other conditions. Now, what those conditions are would be considered when the Law Commission will sit and go into every detail. This is not to be done when this small Bill is discussed. The Law Commission should find out how justice can be done free and cheap, with speed and ease; it should also see that it should be in accord with the accepted code of morals and notion of natural justice, as people accept it.

As I said before, the Law Commission should look into it; I emphasise with all the force at my command that it should look into the question of recruitment to the judiciary, its training, its equipment, which will bring about a sense of understanding and certain dignity, also a good knowledge of constitutional rights and obligations. Sir, this is a very important point. Sometime ago, I said that all over the world the cadre of services has changed and greater emphasis has been laid on training. For instance, in most of the States, not very much importance attached to seniority in the matter of promotion. Perhaps India is the only country where too much emphasis is laid upon seniority.

Mr. Chairman: That is too much beside the point.

Pandit K. C. Sharma: I am dealing with it for a minute. In other countries, merit, the will to work, equipment, special talents—these are the questions which are considered when a man is promoted from a lower cadre to a senior cadre. Here in India, unfortunately, a man drudges on and as years pass, he is raised from one chair to another higher chair, then a still higher chair, though the equipment is lacking. Therefore, he does not do the job well. These are the problems. I do not want to go at this stage into the details of this Bill because two of my hon. friends have already done so and I have nothing else to add.

4 P.M.

Shri S. S. More: Sir, I want to raise on this occasion some important points for the consideration of the

Treasury Benches. Now, the Minister in charge was pleased to go into the past history of this Civil Procedure Code. Since he has referred to the past history I should like to make a point or two.

Now, the first Code of Civil Procedure, a full-fledged Code, came on the statute-book in 1859. And, within a period of 18 years, that is by 1877, the first Code was scrapped and replaced by another. But that did not last very long. Within a period of 5 years, that is in 1882, the second Code was also displaced and another Code took its place. Then, from 1882 to 1908, that is a period of about 26 years, the whole Civil Procedure Code was made to undergo a substantial change.

Th. Jugal Kishore Sinha (Muzaffarpur—North-West): There is no quorum.

Mr. Chairman: The hon. Member may go on.

Shri S. S. More: How can I?

Mr. Chairman: I find nobody from the Government side here. Shri Rane is here. In this way, how can the House go on? This is the third time.

Shri S. S. More: May I make a formal motion that in view of the repeated absence of quorum the House do now adjourn?

Shri D. C. Sharma (Hoshiarpur): Shrimati Chandrasekhar is also here.

Mr. Chairman: It is for the Government party to see that there is quorum.

Shri Pataskar: Of course, it is too late in the day now. But I shall take steps to see that it is not repeated.

Shri B. S. Murthy (Eluru): The Minister of Parliamentary Affairs is here.

Th. Jugal Kishore Sinha: This is for the third time.

Mr. Chairman: Is there quorum now?

Shri S. S. More: Most of them have left. The bell must have ceased ringing and if in spite of that fact we are not in a position to secure quorum, I think, it is much better that we close our books and go home. I cannot say close our shops.

Shri Altekar (North Satara): I would suggest that at least the members of the select committee should be here to hear the views of the hon. Members who are making suggestions here. I hope they will be present.

Mr. Chairman: Is there any select committee going on now?

Shri S. S. More: I do not follow what the hon. Member was muttering.

Shri B. S. Murthy: I think the bell is not sufficiently loud enough to bring people. It is not making sufficient sound to attract them here.

Mr. Chairman: There is quorum now; the proceedings will go on. But I should say for the last time that if there be again any want of quorum. I shall adjourn the House. The Government must take care of it.

Shri S. S. More: I was trying to make out a point that right from 1859 to 1908, there were 3 Procedure Codes and I would, therefore, submit that since 1908.....

Shri Pataskar: May I, Sir, appeal through you. I do not think I belong merely to government. I would appeal to hon. Members to whichever party they may belong that, it may be, as I said in the beginning a terse subject, this Bill has its own importance and whenever a Bill is brought forward, it should be our duty—rather the duty of all the Members—as far as possible to be present in the House. It is not merely the duty of the Government. I would at least request the Opposition—unless there is a desire to non-co-operate and I think there is no such desire on their part—to take as

much interest in this terse subject, as it is, all the same, doing our duty. I would appeal to everyone, whether he belongs to this side or that, to help the process of legislation by his presence.

Shri S. S. More: My argument is that it is time for us to start drafting a new Civil Procedure Code, which will replace the Code of 1908.

There is one more point which I want to make out for the acceptance of the House that the Civil Procedure Code which was framed by the Britisher was for the purpose of perpetuating his rule and the Britisher who framed all these Codes was given to a capitalistic sort of economy. Therefore he devised a procedure which was designed to safeguard the rights of private property owners and private business interests. The social conception, the conception of social welfare, the conception of giving something to the underdog, the conception of removing the economic inequalities in the country was not in his mind and therefore the Procedure Code was framed in a wooden manner, advantageous to those persons who had a long purse. Sir, I have been practising on the civil side for practically the last 30 years and I find that the Civil Procedure Code....

Shri M. S. Gurupadaswamy: He may be given pension.

Shri S. S. More:....is only useful to those who can take up the matter from one court to another so that the other party who is weaker can be exhausted. The Civil Procedure Code gives the privilege to the vested interests of fighting a battle of drift. Therefore, I would say that since we are talking about socialistic patterns —now I am discouraged by the Minister of Parliamentary Affairs.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): I am helping him.

Shri S. S. More: He is helping me with his back to me and talking to somebody else. My submission is that that social conception ought to be there. If we are very serious about socialistic pattern, if we are very serious about implementing the provisions of the Constitution, social, political and economic, then that idea must pervade through all our legislations. It may be argued on behalf of Government when they are going to appoint a Law Commission and that Commission will go into the question, how far it will be appropriate for me to make certain comments about the composition of the Law Commission. But since it is still in the stage of consideration, I would like to make one or two suggestions. It has been the practice both in Great Britain and even in India to appoint some retired members from tht judiciary on the Law Commission, or some eminent lawyers. I feel that the members of the judiciary and of the legal profession, by virtue of their own calling are more addicted to the habit of looking towards the past cases, past precedents, and anything which has become adjudicated upon is the only star that will guide them. If we have to look to the future, then I would say that the Law Commission should be predominantly composed of social workers who have a definite eye towards the future, who can take into their ken the changing social circumstances that we are going to unleash for the purpose of reaching the ideal of socialistic pattern. Therefore, I am coming to the conclusion that the duty of dispensing justice should be more for the social workers than for some persons who might have acquired some academic distinctions—that should not be the criterion. Viewed in that aspect, I would say that instead of bringing in this measure, Government would have been acting wisely if they had postponed consideration of this particular measure and come out with a full-fledged Procedure Code, both for the criminal justice and the civil justice, in which this new conception of the coming society would have found itself completely revealed. That is one of my submission, but

[Shri S. S. More]

unfortunately this Government is in the habit of giving us legislation doses in driblets, with the result that at no time we get the complete picture of the social system or the complete picture of what is really in the mind of the Government about changing the social conditions obtaining so long.

One more point. Going through the provisions, I feel they are half-hearted. My friends sitting on that side are animated with good motives to some extent, but they are hesitant and they will not go the whole length that the occasion requires. Take for instance clause 2—section 34 of the Code of Civil Procedure—in which the words "not exceeding six per cent" occur. Under the old section 34, when the decree is granted for the principal amount and the stipulated rate of interest, at the time of awarding the decree the court was permitted to grant future interest at a rate which it might deem reasonable. What the Law Minister has done is that that full discretion given to the court is limited by saying "not exceeding six per cent". But that is not enough. If the stipulated rate is something usurious, I think the court ought to take that fact also into consideration, because it is my experience that many judges who come from the family of money-lenders, many judges who belong to the class of property holders, take the side of the plaintiff who happens to be a money-lender, a mortgagee or a creditor and become victims to the sentiments or interests of their own class. They say. "The man has agreed to pay a certain rate of interest although it may be usurious and I propose to grant it and I will grant only the future interest at a reasonable rate." That should not be permitted. My friend Shri Thomas referred to the law of *damdupat*. My view is that no person should be allowed to recover interest from the unfortunate debtor more than half the amount of the principal; something like a ceiling of that sort ought to be there. We are talking about placing a ceiling on the landed property. The Taxation Enquiry Commission has also recommended a ceiling on the personal income of a man. I would also recommend a ceiling on the interest which a man could get or exact or squeeze out from the unfortunate debtor.

Mr. Chairman: Can this Procedure Code do that?

Shri S. S. More: Yes, Sir. Here we are already amending section 34.

Shri Pataskar: May I just draw the attention of the hon. Member to the fact that section 34 refers to the interest to be awarded after the filing of the suit?

Shri S. S. More: I am commenting on this section and I am pointing out that as far as it goes, it is good. Even section 34 does refer to the interest on that principal at the time of awarding decree. The future interest is on the aggregate amount decreed, that is, the original principal plus the amount of interest as per original agreement. That makes the aggregate amount of the decree, and on that aggregate amount the future rate of interest is now stipulated by Government to be six per cent and not more than that. I am perfectly competent to say that even the original rate of interest must be strictly controlled and there ought to be certain limitations on it.

Shri Pataskar: Will not the Usurious Loans Act cover that?

Shri S. S. More: I am making my suggestions and they may accept them for what they are worth and effect amendments either in this measure or in subsequent measures.

Then, in clause 4, section 35A is being sought to be amended. If a man has started some frivolous proceedings by way of a suit, then the compensatory clause can be allowed. Government has gone a step further

and included execution proceedings. As Shri Thomas has already stated, why should we exclude appeal? I find that a monied man, even when the first suit is decreed to be frivolous and vexatious, can take the matter to the appeal stage, not only to the first appeal, but to a second appeal if one is permissible, and the other man who is not well placed financially is thoroughly exhausted and put out of his breath. I may say here that Government must have included appeals and should not have excluded them.

I have got something to say about clause 5. In this context I have got to refer to section 13 of the Civil Procedure Code. When the States were there, they were treated as foreign courts and the judgment of a foreign court was treated to be conclusive for certain purposes and competent for being executed if certain conditions were satisfied. If certain conditions were not satisfied, then the man had to file another suit. Now it is stated that in regard to all suits which were decreed *ex parte* or in which the defendant was not amenable to the jurisdiction of the court, after the twenty-sixth day of January 1950, the parties will have no remedy. I speak subject to correction. What remedies do we give to these persons? Now the States have disappeared and the whole country has become one. Some ugly reminiscence of the past is being put up by this particular clause. A lady might have acquired some maintenance decree in some foreign courts; that maintenance decree is there. The husband may not have submitted to the jurisdiction of that court and that decree will now be infructuous and will have no value. I believe the time limitations might have gone and so many other technicalities might come in her way and she would have no relief.

I am not speaking for the decree holders and money lenders but there will be a good many cases and there may be many unfortunate persons who will be the real sufferers.

Then, I go to the clause 6. Instead of amending section 47 of the Civil Procedure Code, I would request the hon. Law Minister to see whether he could not amend the original section 81 of the Civil Procedure Code. Why should we have the principle of *res judicata* embodied in a statute at two different places. The previous speaker has pointed out that the conditions applicable under section 11 are not identical to the conditions which are submitted in this amendment. The result will be that some of the past controversies may come to rest but they will come to rest after giving place to some new controversy. I would rather say: please amend section 11. Instead of 'suit' you say 'execution proceedings' or whatever it is deemed necessary so that all conditions will be one and the same and will not be capable of misinterpretation by saying or comparing this with that or the other. They should know that the legislature had done this deliberately.

These are the complications which I preceive. Regarding section 60, some concession is made to the decree-holders. I have nothing to say about the decre for maintenance.

I would then go to clause 11. I feel that suits tried by small cause judges are non-appealable now if the suit amount is Rs. 500. This amount is being raised to Rs. 1,000. Having some experience of the mentality of the small cause court judges, I can say that when they realise that they can decree and decide something and there will be no appeal even on law points, important points of law, they decide things in an arbitrary manner. On many occasions, it is not the money value of the suit that is material but the points involved in a particular suit may be of great importance and such points ought to go to the higher tribunals in the country if they are sufficiently important

[Shri S. S. More]

and if the party is interested in agitating that point. So, merely raising the money value from Rs. 500 to Rs. 1,000 should not be there. You can introduce a sort of procedure that if certified by the small cause judge or if certified by the District Judge that there is some law point worth agitating in the higher tribunals, then even such suits and appeals should be permitted. It is something like what has been provided in our Constitution.

Then I go to clause 14. Certain exemptions have been provided for; certain persons had been exempted from attendance in courts. The Speaker of the House of the People is included but I find the Deputy-Speaker is not included.

An Hon. Member: Why not include Chairman also?

Shri S. S. More: Of course. The Deputy-Speaker is a permanent officer. The Chairman, unfortunately, is not a permanent officer though my sympathy for the Chairman who had always been so kind to me may lead me to suggest that they should also be made permanent features.

My submission is that the dignity and importance of the Deputy-Speaker of the Parliament is not something less than the Speakers of the local legislatures. If the Speakers of the State legislatures and the Chairmen of State Councils are there —I speak irrespective of personalities—the office of the Deputy-Speaker is something if not higher, at least on a par with the Speakers of the State legislatures and he should also be included.

Then I should like to make one further suggestion about the Members of Parliament. Their presence is absolutely essential because you saw that their absence had created difficulties about quorum and so many other things. So, their presence must be secured and therefore when the House is in session, supposing some court wants to examine any hon. Member of this House then during the period of the session no summons or any other process from the court should be operative against him or effective against him. If he is to be examined, during the period of a session, we have got a Central Hall where he can be examined on commission with cup of coffee or a tray of coffee or tea and in a more comfortable manner. That is my suggestion.

An Hon. Member: Parliament goes on for one year.

Shri S. S. More: I would like to see the distinction between the body of the court and the rules abolished. The Statement of Objects and Reasons says that we are out to reduce the expenditure. What do we find? Civil litigation has been a major source of income to the State Governments with the result that instead of taking steps to reduce the expenditure to the parties concerned, they are going on increasing *ad valorem* fees. I will quote you an instance from my own State. Formerly to present a *vakalat nama* eight annas worth stamps were required. Then there was a 25 per cent increase which made it ten annas. But now Rs. 2 are required for the purpose of filling a *vakalat nama* in the lowest courts and the most ordinary courts....

Shri Altekar: Even in the case of *dharkast* petitions proceedings.

Shri S. S. More: Formerly there was a distinction that if that *vakalat nama* was to be filed in the High Court, before the Judicial Commissioner or the Revenue Commissioner the fee was normal and at certain other levels, it was less. But now it is not so and the provincial Governments are going on increasing court fees and as long as they are going on increasing this for the purpose of their revenues all talk of our saying in the Statement of Objects and Reasons that we are designing and legislating for the pur-

pose of reducing expenditure is something which is not real.

Mr. Chairman: That comes under the Stamp Act.

Shri S. S. More: I know the constitutional limitations but it is the Central Government which has made a declaration in the Constitution that "We, the people of India...." are committed to do these things and the party in power has such an objective. I would not have been so eloquent if that declaration has not been passed. But my submission is that this social objective—the objection of reduction of inequality—must pervade not only every action of the Central Government but also the actions of the provincial Government which fortunately or unfortunately belong to the same party in power. It is for them to devise and develop a sort of uniform procedure which shall take us to the social objective which we talk about so much.

My submission will be that this measure limited in extent has no particular purpose to be discussed before this House because the many amendments which are sought to be made are already matters of deep-rooted practice and the courts have already been operating on these lines. It is no use wasting our precious time and our precious money and if I may say so for the hon. Members who chose to remain absent from this House. They wanted to protest that this measure should not be taken up in this House and unnecessarily the money of the country and the time of this House should not be wasted for provisions which are already being given effect to by the judiciary.

Shri M. S. Gurupadaswamy: We must be very grateful to the Minister and the Law Ministry particularly for their dogged consistency in bringing only piece-meal, faulty and limping measures of this kind. We expected that the Civil Procedure Code would be completely reformed and we thought after the amendments to the Company Law and the Criminal Procedure Code that the Civil Procedure Code also would be drastically and completely amended. Unfortunately, contrary to our expectations, the Law Minister today said that there is a Law Commission to be appointed and it is premature to think of completely changing this Code at present. If that plea is advanced it should be advanced against all measures that are brought before us. We will be shortly having before us the Company Law which has been completely changed. All the 600 and odd clauses of that Bill have been considered by the Select Committee. Shri Pataskar had the honour of being the Chairman of that Committee and he has done very good job as the Chairman of that Committee. Likewise, the Criminal Procedure Code was changed considerably in the last winter Session. When such instances are there, I am amazed why Shri Pataskar has said that we have to wait. If we have to wait for amending the Civil Procedure fully because there is the Law Commission, then why should we not cry a halt to all legal reforms or amendments to the various measures? Why can't we cry halt to the business of this House and adjourn? Why not we meet only once in every year for Budget discussion and wait till the Law Commission finishes its work?

Apart from this I want to say that even the purpose for which this measure has been brought cannot be realised. According to the Objects and Reasons, there are the two purposes for which this piece of legislation has been brought before this House and many Members have already said that these objects, namely, dilatoriness and the high expense involved in civil proceedings cannot be reduced by merely passing this measure.

The most important cause for the dilatoriness in civil proceedings is that there has been too much accumulation of work nowadays in the civil courts. Take the District Courts, Subordinate Courts or the

[Shri M. S. Gurupadaswamy]

Munsiff's Courts, or any court for that matter, and you will find that at present there has been a continuous increase in litigations whereas there are only a very few judges to decide those cases. Secondly, the recruitment of judges is most unsatisfactory. That point was made out by my friend Pandit K. C. Sharma and I know from experience that in many States where munsiffs are recruited, they are appointed on political grounds and not on the grounds of merit. Recently, in Mysore State there was a big controversy about the appointment of munsiffs. The controversy was purely fought on political plane. The Ministry wanted to appoint about 30 munsiffs but the High Court said, "though we need many munsiffs we do not want the stuff that is selected".

Mr. Chairman: Was there no Public Service Commission there?

Shri M. S. Gurupadaswamy: The appointment of munsiffs is done through an examination conducted by the Public Service Commission. The Public Service Commission sent a list of their own selections but those who were selected by the Commission were not accepted by the executive.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South-West *cum* Bareilly Disstt.—North): This might have been a very rare case.

Shri Kamath: This is not unusual. Now-a-days it is not unusual.

Shri M. S. Gurupadaswamy: It is something extraordinary. The executive wanted their own men to be appointed. What happened was, there was a complete divergence of opinion between the High Court and the executive. At this time the old Chief Justice retired and the new Chief Justice came to the place. Now the Government of Mysore has been able to make the High Court accept their list and their men have now been appointed. I am only quoting this instance to show how recruitment to the judiciary is being done.

Shri B. S. Murthy: What happened to the recommendations made by the Public Service Commission of the State?

Shri M. S. Gurupadaswamy: The recommendations of the Public Sevice Commission were completely flouted.

Shri Raghunath Singh (Banaras Distt.—Central): It is not so.

Shri R. D. Misra (Bulandshahr Distt.): That is only his guess-work.

Shri M. S. Gurupadaswamy: There is no use denying it because this is a fact and you can just verify the matter from the Government of Mysore.

Shri Raghunath Singh: Can you quote any example?

Shri M. S. Gurupadaswamy: I have already mentioned that. I am quoting this instance just to show how the recruitment to judiciary is done now a-days and how there has been unnecessary interference by the executive. The whole thing is completely pervaded by political and other influences.

Shri R. D. Misra: May I know whether this relates.....

Shri Pataskar: Sir, I may say that my poor Bill has nothing to do with the judiciary.

Mr. Chairman: I had already observed in the case of Pandit K. C. Sharma that these things are too remote from the present purpose.

Shri A. M. Thomas: Not only that. There is no representative of the Mysore Government to defend.

Mr. Chairman: I have already observed that matters of State Government administration are too remotely connected with the Bill and need not be brought in here.

Shri M. S. Gurupadaswamy: This is a fact. I have only brought.....

Mr. Chairman: I have already said that these things are too remotely connected with the Bill and I hope he would not mention anything about State Governments. Let us go to the Bill itself.

Shri M. S. Gurupadaswamy: My simple point was that there has been too much delay in disposing of the cases because of the recruitment policy of the Government. I wanted to show that there has been too much of accumulation of work which resulted in delays. These are the two points that I wanted to submit.

About the provisions of the Bill I may say that only a few provisions have been touched and the rest of them have been left out on the ground that it may not be possible at present to take them all together. About the amendments that have been suggsted I may say that certain amendments are harmless and they may be quite welcome. For example there is no dispute, I think in any quarter, about the fixation of the rate of interest and also about allowing compensatory allowance on false and vexatious claims or defence. Among the amendments suggested, there is one thing which is highly objectionable to my mind, namely, the curtailment of the jurisdiction of the High Courts in respect of revision. It was observed by certain Members that it may not be right on our part to narrow down the revisional jurisdiction of the High Courts. Before the Government brought forward this amendment, they should have considered the matter thoroughly. There are many miscellaneous matters during the course of civil proceedings and there may be a necessity for appeal. I want to know whether before suggesting this amendment, the Government collected any statistics in regard to the disposal of these miscellaneous matters in appeal and how many miscellaneous appeals have been dismissed for frivolous reasons and how may have been allowed. I want to know whether the Government has taken pains to collect information in this regard. If they have collected any statistics, I want to be benefited by that. In case they have no statistics, in case they have not collected any data about this, then, on what ground have they said that appeals on miscellaneous matters should not be made to the High Court? In many miscellaneous matters, very important questions are usually involved and a decision by the high court may help the civil proceedings. So, I think greater thought should have weighted with the Government before they suggested this amendment.

About exempting certain persons from appearing before the court, I may say that the Members of Parliament, as Shri S. S. More, said, deserve consideration. I think they are as important as the Speaker or the Deputy-Speaker or a Minister or Governor. I think they do much more work than the Ministers. The Ministers have got such a huge staff whereas the Members have to do their work themselves. I think the work of an M.P. is much more difficult than the work of a Member on the Treasury Benches. So, I feel that Members of Parliament should be included under this category and you will be doing a great disservice to the Members of Parliament if you do not include them in this list.

About the rest, I do not want to say much except one thing about clause 3. It was true that before the Constitution came into force, that is, before the 26th January, 1950, there was a distinction between the courts of the former rulers' States or native States as they were commonly called, and the courts of British India, and the decrees passed by one court belonging to one area were not to be executed in the other territory or area. That was so because of history, because of certain circumstances, because of the then practice and all that. Now, there is a new Constitution. All the courts are the courts of India

[Shri M. S. Gurupadaswami]

Why not we say that all the old decrees passed *ex parte* prior to the 26th January, 1950, may be executable in any court of law in India? What is the difficulty in the way? I want to know from the Minister what was the reason for this limited amendment?

Shri Pataskar: What do you say about a decree passed *ex parte* in a neighbouring country and to whose jurisdiction the person had not submitted?

Pandit K. C. Sharma: He does not believe in property nor does he believe in the law of preference.

Shri M. S. Gurupadaswamy: I am only referring to the case where a man lives in Madras and the decree is obtained in Mysore. I want to know why a decree in such a case cannot be executable.

Shri Pataskar: Because he has never submitted himself to the jurisdiction of the court concerned.

Shri M. S. Gurupadaswamy: My contention is this: we have got a new Constitution, and all the courts are the courts of India. Why then should we not apply the same thing to the old cases, the old decrees passed *ex parte* prior to the 26th January, 1950?

Shri Pataskar: Probably I was not making myself clear when I spoke. Supposing there was a suit against A filed in a court which was a foreign court. A thought that it would be infructuous because it was a foreign court. So he may not have submitted himself to that court. Now, because of certain intervening circumstances, to make that decree executable in another court will not be equitable. That is our view: that is one view at any rate.

Shri M. S. Gurupadaswamy: Anyway the point is important. I feel that it may be considered.

Now, before I conclude, I would again reiterate that the Members of the House, on my side, would have felt happy if the Law Minister had brought a very comprehensive measure. Unfortunately, this piece of legislation is half-hearted. It will never satisfy anybody in this country, I think the Law Minister wants to delude the country or to keep the people in a sort of delusion, by making a pretence of reform.

Shri Pataskar: That is not our idea.

Shri M. S. Gurupadaswamy: You believe that you are making a great legal reform.

Shri Pataskar: I did not even say that.

Shri M. S. Gurupadaswamy: You may not say so, but you think so. That is working in your mind. Anyway, this piece of legislation should not have been brought before this House.

Shri S. V. Ramaswamy: I welcome this Bill because it is perfectly innocuous. There is nothing in this Bill except perhaps clause 2 which deals with interest which can possibly give rise to any debate. I am putting to the Law Minister this question: supposing he accepted a motion for circulation of this Bill for eliciting public opinion, and this Bill was placed in every Bar room and before every judge, what would they think? They might think: "Is this all that the Law Ministry of the Government of India is capable of finding flaws in this Civil Procedure Code?" I, therefore, pose a dilemma before the Law Minister if this is all that he can produce why have this at all? If on the other hand the Law Ministry is capable of finding out more points and bringing out a more comprehensive measure, why has this not been done? I do not know what the Law Minister is going to say to this dilemma.

There are about 150 sections and about 50 orders containing so many rules. Almost from the first page to the last page reforms can be suggested to the Code. It cannot be said that the points dealt with in this Bill are the salient points; but one thing I can say safely and it is this:

This Bill is better than the amending Bill of the Criminal Procedure Code, because this Bill does not do any damage as the other Bill has done. The symmetry, the balance and the structure of the Criminal Procedure Code have been damaged by the amending Act; this does not do that. It is in this sense that this Bill is better than the Criminal Procedure (Amendment) Bill.

It has been pointed out that the object of this Bill is to avoid expense and delay. I was looking into the report about the question of delays. As reported by the Wanchoo Committee one Judge has taken pains to give 30 reasons why there are delays. They are not exhaustible by any means. I think anyone can add to this number. There are 30 reasons given for delay on the original side and about 12 reasons for delay on the execution side. I am not going to read the entire list, but I will read some of them: service documents not filed and marked exhibits at the proper time; service not done properly in time by the process-servers who are ill-paid and frequently make false reports; pleadings are generally very loose, vague and prolific; too many adjournments mainly on counsel's request and non-attendance of witnesses; late filing of written statements; documents filed late and not properly denied or scrutinised on the date of issues and so on and so forth. There are endless reasons at every step to delay the proceedings. Certain things are being done partly due to the necessities of circumstances, partly to help the litigants and partly also because the lawyer may not be prepared and he may like to have adjournment. These are some of the things which contribute to the delay and I am asking the Law Minister to tell the House which of these points are sought to be met by this amending Bill which has been brought before the House.

As regards the cost, I do not think that any of these clauses touches that point anywhere. Recently in Madras, the court fee has been raised; formerly we used to pay rupee one for filing a *vaklatnama*, but now I think the fee is rupees three.

Shri Pataskar: Can we legislate for preventing the rise in court fees?

Shri S. V. Ramaswamy: Of course I quite agree that it is a State subject. The point is that the tall claim has been made in the Statement of Objects and Reasons.....

Shri Pataskar: There is no tall claim made.

Shri S. V. Ramaswamy: The claim is made in the Statement of Objects and Reasons that it is sought to reduce the costs—I ask, where, by which section? Do you touch that point anywhere? If you cut down the cost in one place, there are many other places where the expenses can be mounted up. My humble submission is that the Bill has not tackled the problem on the whole. I do not know why on the eve of the appointment of the Law Commission a Bill of this sort is brought before the House.

Shri A. M. Thomas: What is the provision that is objectionable in this?

Shri S. V. Ramaswamy: I say it is perfectly innocuous. It is not at all necessary; a more comprehensive Bill could have been brought which would serve some useful purpose. I cannot take any exception to any of the clauses, except perhaps clause 3; as my friend has also said, I take exception to the denial of interest on costs I do not know why the Law Minister has brought forward that amendment. Suppose there is a sub-court suit which drags on for a number of years. The party has paid some money into the court by way of court fees. Does it or does it not carry interest? Possibly he has borrowed the money by paying interest elsewhere. He might have borrowed the money at 12 per cent interest, whereas the maximum interest that the court can pay is only 6 per cent; even that the Law Minister is now trying to stop.

Shri Pataskar: Do you want that interest should be paid?

Shri S. V. Ramaswamy: Yes, for reasons of justice and fairplay, because the man has invested his money in the court. The law insists that the court fee must be paid; does that money carry interest or not? The money is actually in the hands of the Government. Provincial Governments like the Government of Madras depend upon the income from the law courts for the administration of justice and for general revenues. In that sense, the money that is paid by the litigant is utilised by the State in order to cover its general expenditure to run the Government. Why should the Government get this benefit out of the court fees? Why should not the party, who perhaps has borrowed the money and paid the court fee, get the interest on the cost that he wins?

These are some of the points that arise out of this. Coming to the clauses of the Bill, clause 3 deals with interest and I hope that the Law Minister will be pleased not to press his amendment at all with regard to Section 35A—Clause 4 of the Bill—I say it may very well be admitted. There is no objection to it.

Mr. Chairman: How much more time does the hon. Member require?

Shri S. V. Ramaswamy: About ten minutes more.

5 P.M.

Mr. Chairman: The hon. Member will resume his speech tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 3rd August, 1955.