PRESIDENT'S ASSENT TO BILLS

Secretary: Sir, I have to inform the House that the following Bills, which were passed by the Houses of Parliament during the last Session, have been assented to by the President since a report to the House was last made on the 13th September, 1956:

1. The Indian Coconut Committee (Amendment) Bill, 1956.
2. The National Highways Bill, 1956.
3. The River Boards Bill, 1956.
4. The Indian Cotton Cess (Amendment) Bill, 1956.
5. The Indian Institute of Technology (Kharagpur) Bill, 1956.
6. The Government Premises (Eviction) Amendment Bill, 1956.
7. The Lok Sahayak Sena Bill, 1956.
8. The Indian Post Office (Amendment) Bill, 1956.
9. The Supreme Court (Number of Judges) Bill, 1956.
10. The State Financial Corporations (Amendment) Bill, 1956.
11. The Public Debt (Amendment) Bill, 1956.
12. The Central Excises and Salt (Amendment) Bill, 1956.
13. The Indian Railways (Amendment) Bill, 1956.
14. The Representation of the People (Third Amendment) Bill, 1956.
15. The Khadi and Village Industries Commission Bill, 1956.
16. The Jammu and Kashmir (Extension of Laws) Bill, 1956.
17. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1956.
18. The Constitution (Seventh Amendment) Bill, 1956.

RESIGNATION OF MEMBERS

Mr. Speaker: I have to inform the House that the following four Members have resigned their seats in the Lok Sabha with effect from the dates mentioned against their names:

1. Shri Nijalingappa—27th October, 1956.
2. Shri R. N. S. Deo—1st November, 1956.
3. Shri Giridhari Bhoi—1st November, 1956.
4. Dr. Natabar Pandey—12th November, 1956.

ELECTRICITY SUPPLY (AMENDMENT) BILL

EXTENSION OF TIME FOR PRESENTATION OF REPORT OF SELECT COMMITTEE

Shri N. C. Chatterjee (Hooghly): I beg to move that the time appointed for the presentation of the Report of the Select Committee on the Bill further to amend the Electricity (Supply) Act, 1948, be extended upto the 30th November, 1956.

We have done some work and we hope to finish it by the end of this month. We have also to take some evidence.

Mr. Speaker: The question is:

"That the time appointed for the presentation of the Report of the Select Committee on the Bill further to amend the Electricity (Supply) Act, 1948, be extended upto the 30th November, 1956."

The motion was adopted.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

The Minister of Legal Affairs (Shri Pataskar): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, as reported by the Joint Committee, be taken into consideration."

Shri Kasliwal (Kotah-Jhalawar): May I know how much time you propose to fix for this Bill?

Mr. Speaker: What is the suggestion of the hon. Members who have read this? They may kindly tell us how much time they would like to have.

Shri Pataskar: I think it should not take much time.

Mr. Speaker: Two hours.

Shri Kamath (Hoshangabad): Not less than three hours—may be four.

Mr. Speaker: Three hours.

Shri Pataskar: Anything between two and three hours.

Shri Tek Chand (Ambala-Simla): It should not be less than three hours, it should be four.

Mr. Speaker: We shall fix it at three and see.

Shri Pataskar: As hon. Members are aware, this Bill to amend the Code of Civil Procedure was first introduced in this House on 7th May, 1955, and a motion to refer it to a Joint Committee was moved by me in this House on 2nd August, 1955, and the said motion was passed on 4th August, 1955. Subsequently, on 16th August, 1955, a motion was made in the Rajya Sabha that that House should concur in the recommendation of the Lok Sabha that the Bill should be referred to a Joint Committee and the said motion was passed by that House on 17th August, 1955. The Joint Committee very carefully considered all the provisions of this Bill and submitted its report on 12th December, 1955. Owing to pressure of work in Parliament a motion to take this report into consideration could not be made earlier.

When I made a motion to refer this Bill to a Joint Committee, I explained in detail the several clauses in the Bill which were about 18 in number. The Joint Committee accepted many of the provisions in the Bill without any modification. There are only a few in respect of which they have suggested either modifications or deletion. I shall therefore not take the time of the House by again referring to those provisions in the Bill which I had explained in detail on the last occasion, and shall confine myself only to the few changes that have been effected by the Joint Committee. These changes are:—

Clause 2 of the Bill relates to an amendment of section 34 of the Code of Civil Procedure. That section empowers a court to award further interest from the date of the decree up to the date of payment on the aggregate sum which comprises the principal sum, with interest. Clause 2 was provided to limit the rate of interest which a court can award on the decreetal amount to six per cent per annum. The Joint Committee went further and decided that interest not exceeding six per cent should be allowed only on the principal sum and not on the aggregate sum which does include some amount of interest. This is based on the equitable principle that interest ought not to be allowed on the amount of interest itself; in other words, to prevent compound interest.

Hon. Members are aware that there was considerable discussion with respect to clause 5 of the original Bill in this House on the last occasion. Section 39 of the Civil Procedure Code relates to transfer of decrees of one court to another court and clause 5 of the Bill proposed to add a sub-section as sub-section (2) to that section. It ran as follows:

> "(3) Nothing in this section shall be construed as authorising a Court to send for execution any decree passed by it *ex parte* before the 26th day of January, 1950, against a defendant who was not amenable, or had not submitted himself, to its jurisdiction to another Court to which the decree could not, under the law in force at the date of the decree, have been sent for execution, or as authorising such other Court to execute the decree."

[Shri Pataskar]

Hon. Members will find on turning to the Bill as it was introduced that it was stated then in the notes on this clause that it was proposed to introduce this sub-section for the following reasons:

Courts in former Indian States were foreign courts before the commencement of the Constitution. All decrees passed by such foreign courts were not executable by courts in India under section 39 of the Civil Procedure Code. The position had become anomalous after the commencement of the Constitution. It is now sought to be made clear that *ex-parte* decrees passed before the 26th January, 1950, by such courts shall not be executed by courts in India under section 39 nor any *ex parte* decree passed before that date by any court in India shall be executed by any court in any former Indian State.

This clause was subjected to a good deal of discussion in this House and was also a matter of considerable discussion in the Rajya Sabha and in the Joint Committee.

The question for consideration is whether decrees passed by courts in former Indian States before the 26th January, 1950, are executable in the courts in what was known as British India after that date and *vice versa*. Under section 39 of the Civil Procedure Code, a court which passed a decree may send it for execution to another court and the court to which it is sent may execute the decree. Before the commencement of the Constitution, courts in the Indian States were regarded as foreign courts and their decrees were not executable in India, unless there were reciprocal arrangements which permitted such execution. On the commencement of the Constitution, all courts in Indian States became courts in the territory of India and, later on, the Civil Procedure Code was also extended to Part B States on the 1st April, 1951. There cannot be any manner of doubt that any decree passed after 1st April, 1951, by any court in India is executable in any other court in India. It is arguable that a decree passed by a court after the commencement of the Constitution is similarly executable, though the Allahabad High Court has taken a different view.

Difficulties arise in regard to decrees passed before the 26th January, 1950. When any such decree passed by a court in an Indian State was sent for execution to a court in former British India before that date, the judgment debtor had the same defence open to him in execution as if he were sued on a foreign judgment. The short point for consideration is whether by subsequent events, viz., the merger of the State into the Indian Union, the commencement of the Constitution or the extension of the Civil Procedure Code to that State, the position has been materially altered.

There has been divergence of opinion between different High Courts on this question. The Bombay High Court has taken the view that such a decree is executable in India, provided the decree was passed by a court of competent jurisdiction under the local law. The views of the Bombay High Court have been upheld by the High Courts in Hyderabad, Rajasthan, Saurashtra, Punjab and Madhya Bharat.

It is a well-accepted principle of private international law that a decree passed *in absentum* in a personal action by a foreign court to the jurisdiction of which the defendant has not submitted in any way, is a nullity. It is not also disputed that notwithstanding this general principle, any local law may confer on a court the right to entertain a suit against a non-resident foreigner.

The Bombay High Court has taken the view that a decree passed by an Indian Court before the commencement of the Constitution is executable in an Indian State after such commencement. In coming to this conclusion, the Bombay High Court does not rely on article 261(3) of the Constitution. According to that High

Court, section 20(c) of the Civil Procedure Code which is a local law, confers jurisdiction on Indian courts to entertain suits against non-resident foreigners. A decree so passed is not a nullity and its enforcement or executability was limited to Indian Courts and it could not be executed or enforced in a foreign country because the defendant has not submitted to its jurisdiction. By subsequent political events, the character of the defendant has undergone a change. On account of the merger of the Indian States and the passing of the Constitution, the residents of Indian States are no longer foreigners qua courts in India. The impediment which was there in the enforcement of the decree has disappeared by reason of the change of the status of the defendant and the decree which was unenforceable before has become enforceable and executable in an Indian State. According to the Bombay High Court this decision does not in any way violate the principle of private international law.

On the other hand, the High Courts of Mysore, Rajasthan, Travancore-Cochin, Calcutta and Allahabad have reached a contrary conclusion in this matter.

The latest decision on the subject appears to be that of the Allahabad High Court which was delivered on the 11th April, 1955.

Shri N. C. Chatterjee (Hooghly): Allahabad has agreed with Calcutta.

Shri Pataskar: The latest decision on the subject appears to be that of the Allahabad High Court. This discusses the earlier cases on the subject. According to this High Court, a court can exercise jurisdiction over foreigners if they reside within its jurisdiction and if neither of those two conditions exists, the decree passed against a foreigner is an absolute nullity outside the court of the forum by which it was pronounced. Within that country it will be a good decree, if there is a special local legislation empowering the courts to exercise such jurisdiction. If there is no such special local legislation, the decree will be a nullity even within the country in which the court passing it is situated. This is the state of law so far as this matter is concerned, as decided by judicial decisions.

Though the High Courts have differed in their conclusions, an analysis of their judgments would reveal broad agreement on certain points:—

(i) a decree passed by a court in an Indian State against a person resident in former British India is a nullity, unless there is any special local legislation empowering the courts to exercise such jurisdiction;

(ii) even if there is any such special local legislation, the decree was not enforceable in the former British India before the commencement of the Constitution.

The converse will also hold good. The difference arises over the question whether subsequent events, viz., the merger of the State into the Indian Union or the passing of the Constitution which brought about a change in the status of the defendant make the decree enforceable now.

There are two possible alternatives which arise for consideration:

(i) That the *status quo* should be maintained and that the matter should be left to be decided by courts and that the legislature should not intervene in this matter. This has one advantage, viz., that the law as in force in a particular State by the decision of the High Court of that State, will not be disturbed. This may not, however, bring about a uniformity of law throughout India until the Supreme Court declares the law on the subject.

(ii) That the divergence of opinion among the High Courts should be removed by legislation. In such a case, it will be necessary to come to a firm decision on the question whether effect should be

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given (a) to the views expressed by the Bombay High Court and other High Courts which agree with Bombay or (b) to the views expressed by the High Courts of Calcutta and Allahabad and other High Courts agreeing with them.

If effect is to be given to (a) above, a question arises whether the defendant should be given the right to set aside a decree sought to be executed against him on the ground that the decree, when passed was not binding on him. If, however, effect is to be given to (b) above, a provision may have to be made to the effect that the decree-holder should be allowed to file a fresh suit on the same cause of action, the period between 26th January, 1950, and the commencement of the Code of Civil Procedure (Amendment) Act being excluded for the purpose of limitation.

This mater was exhaustively considered in the Committee and strong views were expressed in favour of the views held by both the groups of High Courts. The main question before the Joint Committee was whether interference by legislation at this stage was desirable. It is to be noted that it is now more than six years after the commencement of the Constitution and the law with respect to the execution of these decrees in different States has now come to be settled by the decision of the different High Courts in those States. It is possible that any interference by legislation at this stage is likely to lead to upset the existing law on the subject in different States. There is also a possibility or even likelihood that if and when the matter comes to be decided by the Supreme Court, that itself might create some sort of uniformity throughout India in respect of the legal position. The Joint Committee therefore came to the conclusion that a uniform procedure as envisaged in that clause would neither be practicable nor desirable and that that clause should therefore be dropped. In conformity with this decision, the original clause 5 of the Bill has been dropped.

Clause 5 of the original Bill sought to provide expressly that the principles of *res judicata* should be applied to execution cases also. There is, however, a decision of the Supreme Court reported in AIR (1953) S.C. p.65, that the principles of *res judicata* are also applicable in execution cases. The Committee therefore thought that in view of this decision, provision of this clause was unnecessary.

Original clause 13 of the Bill sought to restrict the revisional jurisdiction of the High Courts in respect of cases in which the aggrieved party had a remedy by way of appeal to any court. As hon. Members are aware there were several hon. Members in this House who objected to this restriction. It is true that even now High Courts seldom exercise their powers of revision in cases where the aggrieved party has an alternative remedy by way of appeal to any court. The Committee therefore thought that considering all these things, there should not be any statutory bar against the exercise of such jurisdiction by High Courts in hard cases.

I think probably the Select Committee expressed itself very strongly against certain opinions of the House that we should not interfere with the powers which are already vested in the High Court and, I think, the Select Committee has rightly come to this correct decision, which, I hope, will be acceptable to the House.

Clause 14 of the original bill (new clause (12) was also subjected to a good deal of discussion in the House on the last occasion and the necessity for a clause like this was also explained by me in detail on that occasion. This clause gives a list of persons who will be entitled to exemption from personal appearance in courts. The Select Committee thought

that the Judges of the Supreme Court and the Judges of the High Courts should also be entitled to such exemption. This clause has accordingly been suitably modified by the Select Committee by the addition of these names.

As a result of the re-organisation of States, Part 'B' States and their Rajpramukhs have disappeared. Part 'C' States have also disappeared and we have Union territories and Administrators thereof. Sub-clause V of clause 1 of clause 12 will have therefore to be suitably modified. I have already given notice of a suitable amendment for the purpose. These are some of the main changes made by the Select Committee in this Bill, and I hope they will be accepted by the House. As I pointed out on the last occasion, the amendments proposed fall into the following categories: I think I need not dilate upon them because they are not controversial. (1) Those necessitated by the changes in the Constitution. They are contained in clauses 5, 12 and 14 of the Bill;

(2) those necessary to remove some anomalies found as a result of the working of the Civil Procedure Code. They are contained in clause 9 and sub-clause (10) of clause 16;

(3) those rendered necessary by change in ideas of social justice and economic conditions. They are contained in clauses 2, 3, sub-clause (7) of clause 16 and clause 7;

(4) those intended to make further and wider provision to prevent vexatious claims and defences. That is contained in clause 4;

(5) those intended to make provision for speedier disposal of execution proceedings. They are contained in clauses 8, 17, sub-clause (5) of clause 16;

(6) to make further provision of summary trials in regard to suits on negotiable instruments. This has reference to sub-clause (8) of clause 16;

(7) to prevent multiplicity of proceedings. They are contained in clauses 6, 10 and 15;

The Bill was subjected to a good deal of criticism on the ground that it does not go far enough with respect to the question of making the administration of justice speedy. As hon. Members are aware, the larger question of suitably overhauling the entire system of civil judicial administration is before the Law Commission, and that Commission is likely to take some time before it will finally make its recommendations regarding this matter. I am sure that when those recommendations are made, the Parliament will duly take them into account and effect necessary changes in this part of the administration. There is, however, no reason to postpone the present measure, though limited in its scope, as it will give relief in the meantime. As lawyer Members of this House are aware, the Civil Procedure Code has undergone some small changes from time to time and the small changes that I have mentioned should be carried out for the reasons that I have already mentioned.

This aspect of the matter was also clearly expressed by me at the time when I made the motion to refer this Bill to the Select Committee. The House by passing that motion has accepted the necessity of this small measure, though limited in its scope. The provisions of this Bill are simple and most of them are non-controversial. I commend my motion already moved to the acceptance of the House.

Mr. Speaker: Motion moved:

> "That the Bill further to amend the Code of Civil Procedure, 1908, as reported by the Joint Committee, be taken into consideration."

Shri Kamath: Before the debate beings, I would like to invite your attention to the fact, I am given to understand, the Government of which the Minister is an hon. Member, has itself recommended 12 hours for the

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discussion of this Bill; I find that it is an important Bill and I suggest that the time limit may be reconsidered by you and the House. The Business Advisory Committee is meeting this afternoon, and the discussion may therefore go on for the whole day.

Mr. Speaker: Hon. Members, whatever they might have suggested earlier, have read the Bill and have come prepared. I ascertained the views of the House. The hon. Minister said I want 2 or 3 hours. Hon. Members wanted three hours and Shri Kamath said he would like the debate to go on up to 4 hours. Then he said it could go on up to 4 O'clock. I will allow 3 hours for this debate. Let me see. Now you say that it must be extended to 12 hours. Hon. Members are very anxious that other matters should be discussed.

Shri Kamath: After hearing the Minister's speech, I am inclined to think that more time is necessary.

Mr. Speaker: Much of this is not necessary. The hon. Minister has given reasons why certain clauses have been dropped, only to enlighten the House. Anyhow, let us see. I want to ascertain from the hon. Members how the House would like to devote the time for the several stages. We shall take 3 hours for the time being. There are only a few formal amendments. One is to be moved by Shri Sadhan Gupta and relates to section 39, clause 4A. All others are merely formal. The amendments may be taken up in an hour and a half and then we may have 2½ hours for general discussion. Let us see.

Shri N. C. Chatterjee: Mr. Speaker, Sir, it is a matter to be regretted that there is no comprehensive Bill in order to amend the Civil Procedure Code. You may remember that Sir Tej Bahadur Sapru when he was a Minister of India made some very strong comments on the Civil Procedure Code and appointed a Civil Justice Committee presided over by Sir George Rankin, Chief Justice of Calcutta High Court and that Committee made some comprehensive recommendations which were incorporated in the Statute Book. Anyone who has got to do with the administration of justice in this country must admit that our procedural law requires radical revision at the earliest possible date. We have copied too much the English system of Civil Procedure. As a matter of fact whenever there is difficulty, we open the English Book, "the White Book" as it is called in England, but that is not right. We are pressed by too many technicalities of British law, which can easily be weeded out. The Chief Minister of my State, Dr. B. C. Roy, appointed a Civil Justic Committee presided over by Sir Trevor Harries, a judge of great experience and that Committee made certain recommendations to weed out certain portions of the Code of Civil Procedure. Unfortunately, things move very slowly, especially when it is a question of legal reform. The machine moves rather too slowly.

I am quite sure all sections of the House will impress upon the hon. Minister and the hon. Minister would himself recognize that our procedural system requires drastic and radical reorientation in the light of experience. It is quite correct, as the hon. Minister himself pointed out, that the Code must be revised from time to time. But it is high time that it should be under the searchlight of a proper legal expert or a juridical architect, if I may say so. There should be some kind of real planning behind it so that you can dispense with two black spots of our legal administration—delay and costliness. There are High Courts—I will not say all the High Courts, but most of the High Courts—in which regular appeals, first appeals are pending for five years, six years and seven years. I have been told that in one High Court the accumulation has gone up to about 30,000 appeals pending. I am told that in some High Courts there were 10,000 writ petitions pending, writ petitions which require

immediate redress because there has been some kind of allegation of violation of Fundamental Rights. What is the use of making a declaration that Fundamental Rights are sacred and shall be given prime consideration and every citizen of India, under the Constitution, has been given not merely..

Shri Raghavachari (Penukonda): May I raise a point of order? The scheme of the Civil Procedure Code was relevantly discussed at the time of reference to the Joint Committee and the discussion went on in the Committee. Now the matter has come from the Joint Committee. The discussion should now be confined only to the provisions on record and not to the question of what might have been the subject matter included in the Bill. So my submission is that all this discussion now at this stage will not be very useful.

Shri N. C. Chatterjee: I don't think it would be improper or irrelevant to appeal to the House and specially to the hon. Minister to take into cognisance the almost unanimous feelings of all sections of the House, if I may say so.

Shri Pataskar: I am as keen as any other hon. Member to improve the Bill.

Shri N. C. Chatterjee: It is with a view to reinforce them that I am making this preliminary submission. My hon. friend need hardly remind me that I should speak only on the relevant provisions of the Bill.

Practically in every Minute of Dissent you will find the echo of strong language. The real object of this Bill was to eliminate delay and eliminate costs.

Mr. Speaker: I believe Mr. Raghavachari is anxious that other hon. Members must also have some time and, therefore, all that has been said regarding the comprehensive Bill need not be brought again. That is his object, I suppose.

Shri Raghavachari (Penukonda): Yes.

Shri N. C. Chatterjee: With regard to one clause that requires consideration, if you look into the Report of the Joint Committee signed by Shri Barman, Chairman of the Joint Committee, you will find the following:—

> *"Original clause* 5.—The clause sought to provide that *ex parte* decrees passed before the commencement of the Constitution by Courts in the former Indian States (regarded as foreign Courts) shall not be executed by Courts in India under section 39 of the *principal Act nor any ex parte* decrees passed before the commencement of the Constitution by Courts in India shall be executed in any of the former Indian States."

You know Sir, that it is the Cardinal principle of private international law that a decree passed in absentia by any foreign court is not at all binding on the defendant unless the defendant in some way submits to the jurisdiction of that court. That principle had been embodied in the Civil Procedure Code.

I do not want to mention any names or to make any invidious discrimination but there were some Indian courts over which the rulers used to exercise some kind of influence. Many people would not like to submit to the jurisdiction of the court because after all if an *ex parte* decree is passed, ultimately he can force the other party to come to the Court in India and have a proper adjudication.

Mr. Speaker: What is the difficulty? I am only making a suggestion. If an *ex parte* decree is delivered and if the defendant to whom notice is served on proper manner says that this ought not to be executed, let it be re-opened. In that case, the court to which it is sent, let it re-open and then proceed.

Shri N. C. Chatterjee: What I am pointing out is that there was a clause like that in the Bill. It wanted to provide that *ex parte* decisions by this court shall not be executed.

Mr. Speaker: I am taking one more step. Instead of allowing it to lapse, it may be reopened and then proceeded from that stage.

Shri N. C. Chatterjee: If you kindly look at the recommendation of the Committee, it says:—

> "The Committee are of the view that High Courts of India are sharply divided in their decisions in this regard and a uniform procedure as envisaged in the clause will neither be practicable nor desirable and, therefore, this clause should be dropped."

Now if you look at page (vi) of the report, that is, Mr. Vaishnav's Minute of Dissent, in the last paragraph it is stated:—

> "The Bombay High Court has taken the view that such a decree is executable in India provided the decree was passed by a court of competent jurisdiction. This view has been upheld by the High Courts in Hyderabad, Rajasthan, Saurashtra, Punjab and Madhya Bharat.....
>
> On the other hand, the High Courts of Mysore, Travancore-Cochin, Calcutta and Allahabad have reached a contrary conclusion in this matter."

Now, if you don't make any change in the law the result will be a complete cleavage, almost a chaos. If you are under the jurisdiction of the Bombay High Court, Chief Justice Chagla's view will operate. He says: no longer the cardinal principle of private international law operates; it shall be executable because it is no foreign court. If you go to Calcutta or Allahabad or Travancore-Cochin or Mysore, they take a different view, that is, the old conservative view.

Now I cannot understand the Joint Committee saying that let us drop it for the sake of uniformity. The Report says:

> "The Committee are of the view that High Courts of India are sharply divided in their decisions in this regard and a uniform procedure as envisaged in the clause will be neither practicable nor desirable and, therefore, the clause should be dropped."

Mr. Speaker: Therfore, there will be conflicts. Some High Court may go over its own decision.

Shri N. C. Chatterjee: And another High Court will stick to its own decision.

Shri A. M. Thomas (Ernakulam): And we will be abdicating our functions also.

Shri N. C. Chatterjee: What Mr. Thomas says is, to some extent, correct. You are abdicating your functions. They want some guidance from Parliament.

Mr. Speaker: Apart from the question of interpretation, it is open to this House to decide what ought to be done.

Shri N. C. Chatterjee: I can understand your saying that there is a Supreme Court judgment or this is the correct view and so on. But that is not the case here. They say that for the sake of uniformity let us not decide anything. But if you don't decide it, there will be no uniformity.

Shri U. M. Trivedi (Chittor): On what clause is the hon. Member speaking?

Mr. Speaker: On clause 5.

Shri N. C. Chatterjee: Clause 5, which has been omitted. Suppose in the Gwalior or Indore Court a decree was passed and if it is being executed in Bombay, then it is perfectly good. But if it is executed in Mysore, it will be wholly bad. If it is executed in Calcutta, it will be rejected as a nullity. There will be complete chaos.

Mr. Speaker: If it is transferred from one High Court to another, it is partly executable and partly non-executable.

Shri N. C. Chatterjee: It will be executed in one as a good decree and it will be a nullity in another. This is a thing which merits serious consideration. I am quite sure the hon. Minister is himself very much concerned over this I wish he could get some guidance from this House authoritatively.

If you look at Mr. Vaishnav's recommendation, on page (vii), in the last paragraph, it is stated:

> "In order to avoid further confusion and complications I am of opinion that the original clause 5 of the Bill be retained with a further proviso that such an *ex parte* decree holder should be allowed to file a fresh suit on the same cause of action, the period between 26th January 1950 and the commencement of the C.P.C. (Amendment) Act being excluded for the purpose of limitation. This would keep the remedy open to the *ex parte* decree holder instead of leaving him in lurch. The defendant then could defend the suit and thus proper justice could be imparted to both."

With great respect, I should like to say that this is an admirable solution of the difficulty. And it will be fair to all concerned. The decree holder will not be hurt, because up to the 26th January 1950 the decree could be executed. If there is any difficulty created after that or if the party is misled, the person can still get the benefit of the doubt. And he will not be deprived of the cause of action or his substantive rights.

Therefore, what I am submitting for the consideration of this honourable House is this. It is not a question of any party matter or anything like that; it is a matter of vital importance. And I know there are some cases where it is going to work very great hardship. Because, what has happened is that the people really did not defend some cases as they knew that this was the law and they did not like to put up a defence in a court which was amenable to feudal influences, if I may say so; and they took recourse to the ordinary principle recognised in private international law. I would, therefore, appeal to the hon. Minister, if it is possible, to consider the matter again. Otherwise, what will happen is this there will be complete confusion. Mr. Pataskar has said: let it be decided by the Supreme Court. That is one way of doing it. But I personally do not know of any particular case now pending in the Supreme Court where the point is actually in dispute. If it had been coming within a month or two, possibly there would have been something in favour of the Committee's attitude. But unless he can assure me that there is any case pending in the Supreme Court, I do not think it will be fair or right and proper to allow this matter to drift and to continue this uncertainty and chaos in our judicial system, which is certainly a vital matter.

This is all that I wish to submit at the present moment. On the other clauses, if there is any submission that I would like to make, I shall do so when they come up.

Shri Sadhan Gupta (Calcutta South—East): We welcome this Bill because it seeks to amend the Code of Civil Procedure which undoubtedly needs a lot of amendment. This Code of Civil Procedure was given to us by our erstwhile English masters, and they could do nothing better than to introduce the judicial system that was known to them into our country, almost bodily in some respects. There was much that was good in that system, and as far as the Civil Procedure is concerned it is notorious that there were also some very evil aspects in the English judicial system. The English judicial system was notorious for its dilatory disposals, and some of these came to our country with the Civil Procedure that they introduced.

The Civil Procedure Code was first enacted in 1829 and then various Codes were enacted till this last Code of 1908. Some improvements were

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undoubtedly made, but then many defects remained—defects which characterised the British judicial system of those days. Because, we could hardly expect to register any greater advance than the British judiciary had registered up to that time.

I will not multiply instances; but, for example, the rigid system of discovery and inspection—which may be admirable for certain cases, certain complicated cases—has been applied to every case of every description, however simple it may be, and has unnecessarily held up legal proceedings in many instances. All these have to be amended.

Then, to add to the delay contributed by the provisions of this Code, the avarice of our masters came into play in enacting legislation for the levy of exorbitant court fees. And that also scared away litigants.

To make a comprehensive reform of the whole judicial system, not only this Code but also laws like the Court Fees Act, the Evidence Act, the Rules and procedure of the High Courts, all these things have to be touched. And I am quite aware of the difficulty of touching all these without having a comprehensive scheme. The Law Commission is going into the matter, and we hope that its recommendations would furnish a very valuable basis for making an exhaustive reform of the judicial system and to make our judicial system progressive and beneficial and a system which will add to the speed of disposal of litigation and which will reduce the cost to litigants. Even though a Law Commission is going into the matter, something might have been done to reduce some of the more glaring defects, to tackle some of the more non-controversial provisions in the Civil Procedure Code in particular. I do not think enough has been done in that respect.

After giving this view of mine, I proceed to indicate my agreement with some of the aspects of the Joint Committee's Report. It is an admirable thing that we have sought to reduce costs by doing away with the payment of interest on costs or interest on interests. Now, that is a good thing that has been done. It is contrary to progressive notions of social justice of modern times that interests should run on interests, or that interests should run on costs, that litigants should be allowed to bread metal like ewes and rams.

It is also an admirable thing that the original clause seeking to restrict the revisional jurisdiction of the High Court has been dropped. The High Courts have acted with the greatest sense of responsibility in exercising their revisional jurisdiction. I have seldom heard of any case—in fact, as to myself, I have heard of no case—in which the High Court has entertained an application for revision where an appeal lies. Under those circumstances, to come forward with such a provision was an unnecessary affront and an unnecessary insult to the High Court. And the Joint Committee certainly deserves congratulation for having omitted that clause.

Having said so much, I cannot help indicating my dissent from the Report of the Joint Committee in some respects. I would support Mr. Chatterjee's contention as regards the deletion of the original clause 5 of the Bill. An impossible situation has arisen because of conflicting decisions of different High Courts. The High Courts are divided six to four on the question whether a decree passed by a Court in an Indian State is executable in British India, and *vice versa*. One set of courts, led by the Bombay High Court, has held that it is executable after the passing of the Constitution. Another set has held that it is not executable. Now, there is a conflict, conflict on a very important matter. And I would have thought that that conflict was enough to prod us to step in and resolve it. There is no impropriety in it. There

is no difficulty in it. We can simply say what the law should be. We can vote for either of these views, or we can put forward a new view, namely, we can add a provision for the saving of limitations, as Mr. Chatterjee has advocated. Now we have not done either, and the excuse for not doing it is even more astounding. The excuse is that the High Courts are sharply divided in their opinion and that is why it is undesirable to step in. I cannot understand how this excuse can be rationally given; how this excuse is at all sensible. If the High Courts are sharply divided it is all the more reason why we should come in and resolve this sharp conflict; but apart from this, apart from the rationality of it, apart from the commonsense or logic of it, I am concerned with the justice of it.

13 hrs.

The view of the Bombay High Court would obviously lead to great hardship in many cases. As Mr. Chatterjee has pointed out, many defendants had many reasons for not contesting a suit in a court, say, in an Indian State. They were amenable to all sorts of interests, and in any event when the defendant had a right not to contest a suit and exercised that right and a decree was passed *ex parte* against him and the defendant was perfectly sure that nothing would come out of that decree unless the plaintiff came forward and filed another suit in the jurisdiction in which he resided, or in British India, or in the Indian State, as the case may be, as he was sure of it, he had every reason not to contest. He was within his right not to contest. Now not having contested it, having got a decree against him, if it is to be executed against him without his having an opportunity to defend the suit, it is the height of injustice. I do not know how we can be asked to maintain that injustice. Of course, I can understand the plaintiff's point of view. If his suit is of no effect, by this time the suit might have been barred by limitation, we can make provision for it. We can either uphold the Bombay view. as the Minister said that the decree will be executable or that it may be reopened at the instance of the defendant who did not contest; or we can uphold the Calcutta view and say that the decree will not be executable, but the period of limitation will not run for a certain period, say, from the date of institution of the suit till the commencement of this Act, or to give him a reasonable notice of this Act, say, till sixty days after the commencement of this Act. I have given notice of an amendment on that line.

Now such provisions can be made. It is not impossible. We need not wait for a Law Commission for this purpose and we need not wait for the decision of the Supreme Court also for this purpose, because Government has not been able to give us any indication as to whether any such case is within the seisin of the Supreme Court and whether any such decision is likely to be arrived at soon enough. Mr. Chatterjee who ought to know about things in the Supreme Court says that he does not know of any case involving such a question before the Supreme Court. Therefore, we have no chance, we have no possibility of having the conflict resolved by the Supreme Court, and unless we resolve the conflict the conflict will go and all sorts of anomalies would arise.

As you pointed out a decree would be executable in one place and not executable in another place. It may be partly executed in one place and after transfer it may not be executable in another place. So, all these anomalies would arise. Therefore, you will find that many of us have appended minutes of dissent, disagreeing with the Committee's recommendations for deletion of clause 5. I would therefore, strongly urge upon the Government to reintroduce this clause with suitable modifications about the period of limitation, or adopt some other procedure, so that a thing which is absolutely revolting to all ideas of natural justice may not

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be perpetuated even in a part of the country.

There is another provision in clause 14 with which I disagree. That is the provision in sub-rule (2) of the proposed new rule 20A which provides for that the endorsement of a postal employee on the return of a registered letter may be deemed to be *prima facie* evidence of service. If the summons is served by a registered letter and the endorsement is made, it may be that it is not actually served, but the endorsement is procured. It is not very difficult in our country to get the endorsement of a post man as you want it. You can induce the post man if he is corrupt enough by greasing his palm to say that a certain letter was personally served upon a certain person. It may be wholly untrue. But it may be done. Still worse, it may be said that an attempt was made to serve him, but he refused. That endorsement will come and that would practically amount to personal service. When this return would be sent to the court it would be *prima facie* evidence. The defendant may be blissfully ignorant of everything that had hapened and therefore he would not be able to defend and the decree will be made in his absence. When the decree has to be set aside it is he who would have to prove. The onus will be upon him to prove that service was not made; that it was not served. As a matter of fact, in such cases it is the plaintiff who should discharge the onus, because it is the plaintiff who has to prove that due service was made. Therefore, we do not save very much; we do not add very much to speed; we do not reduce very much from the expensive litigation by this clause and yet we open the way to all kinds of corruption, all kinds of attempts to prevent the course of justice in civil courts. Therefore, I would strongly suggest the deletion of this particular provision: sub-clause (1) of clause 14.

The greatest opposition I have is to the amendment of section 133 of the Civil Procedure Code. Section 133 of course needs amendment. As it stands today, the Government has the right to notify the classes which would be exempted from appearing in a civil court. You know that while the Criminal Procedure Code (Amendment) Bill was being debated we on this side strongly resisted the incorporation of provision exempting certain persons from appearing in court on account of their offices alone. I take the same view in this matter also. What has been done in this case is to exempt certain dignitaries, including yourself, from appearance in court,—the President, the Vice-President, the Speaker, Judges of the High Courts, Judges of the Supreme Court, Ministers, everyone. I can quite understand that you give the civil court a power to exempt certain persons from appearing in court on account of preoccupation with their business, for example, if the Prime Minister is asked to appear as a witness, it may be that he is very busy at the moment and he should not be called to appear in the court to give evidence as a witness. If you, Sir, are required to appear as a witness just at this time, it may be that your parliamentary preoccupations keep you away and make it undesirable to call you back and, therefore, you should not be called in to appear in the court. Similarly with all the other dignitaries. But then the claim for exemption should be based on the preoccupation of the person, not on the office he holds. If you are exempted, or the President is exempted or the Prime Minister is exempted because he is a Prime Minister, because you are a Speaker or because he is a President, then what happens is that you no longer remain a citizen equal to other citizens of India, you become somewhat deified in the eyes of the judge, in the eyes of the litigant, and in weighing the testimony which you give on commission, an added weight is put. When a dignitary is vested with some kind of halo, some kind of special privilege out of the ordinary, it cannot fail to

induce courts, particularly the subordinate courts, to give added importance to his testimony. It may be that we have a good President; it may be that we have a bad President tomorrow; it may be that the character or the reputation or the value of the testimony of the present President is unimpeachable, but it may be also that in future there may be a President whose testimony is unworthy of credit and he should not be put on a different level from the other citizens in the evaluation of testimony. A Judge of the High Court, a Judge of the Supreme Court or all these other persons, if justice is required, must be prepared to give their attendance in a court of justice, to appear and give evidence like any ordinary citizen does, and they should not be regarded as more than ordinary citizens before the court of justice. But what do we do here? We treat them with special privilege. I know it may be urged that they have to bear the cost of the commission. But I am not at all bothered about the cost of the commission; I am bothered about the principle itself. If I am summoned, if any ordinary citizen is summoned to appear before a court of justice, he has no right to say, "I am not going to appear before a court of justice, I will bear the cost and you issue a commission to examine me". He has no right to say it. Why should any dignitary of the State, however high he may be, be allowed to advance that claim? I can understand his advancing a claim that he is busy with his work and he should not be called to court. Now the court would no doubt give an exemption and issue a commission in such a case. You remember that a year or so back there was a case at Nagpur where an assault was alleged to have been made or attempted on the Prime Minister, and the Prime Minister was a witness. He was examined on commission, obviously on account of the fact that he had preoccupations. No one objects to all that. But suppose he has no preoccupations at all; suppose a High Court is in vacation and the Judge is enjoying the vacation, suppose the Supreme Court is in vacation and the Judge is enjoying the vacation, suppose you are on a holiday, why should you or the Judge of the High Court or of the Supreme Court object to appearing before the court as an ordinary citizen does? This kind of procedure would absolutely pervert the course of justice, would vest the particular kind of witness with an added importance which it should not happen. Therefore, I strongly oppose this provision and I think it should be omitted, and section 133 should be amended so that the court is given a discretion to issue a commission where the preoccupation of the person makes it advisable that he should be examined on commission and he should not be called to appear before the court.

It is quite conceivable that in deciding such a claim on the basis of preoccupations, the office of the person would be taken into account. For instance, it would be readily assumed that a Judge of the Supreme Court, while the Supreme Court is sitting, cannot be called before a court to give evidence because he must be preoccupied. It would be readily assumed that you cannot be called today to give evidence in a court in Travancore-Cochin or perhaps even in a court in Delhi. But suppose during recess you are in Delhi, why should you object to appear before a court in Delhi and why cannot the court issue a summons if the course of justice demands it? That is why I strongly oppose this provision, and I hope the Government will yet observe the rules of democracy and gratify the conscience of the country by deleting this very reactionary provision. The Government has not been able to show the instance of a single democratic country where any dignitary enjoys this right of exemption from appearance before a court of law by virtue of his office. There is the President of the United States, the head of a great country; I do not think he enjoys that right. And there are other dignitaries in other countries. I have not heard

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that any one enjoys that right. It is only given to dignitaries like Kings. For instance, the King of England, I understand, has not only the exemption but has not even the right to appear before his courts. That is a different thing. There it has been thought desirable, rightly or wrongly, to maintain the institution of royalty, and when you maintain it, you must vest it with much dignity. But here we have adopted a democratic constitution, a republican constitution, where every citizen is equal, every citizen is supposed to be entitled to hold any office up to the highest dignitary, and in this country this kind of a privilege is utterly reactionary, utterly against the conscience, the popular conscience, the democratic conscience, of the country.

Shri U. M. Trivedi: It is true that the Civil Procedure Code needed some amendment, but then what has been achieved by this amending Bill is more mischief than good. If completely the Civil Procedure Code was being overhauled, it would have been a different matter. As it stands, this patchwork has not been able to achieve what it was desired to achieve.

Regarding amendment to section 34 of the Civil Procedure Code, it has been pointed out by my hon. friend, Shri Sadhan Chandra Gupta, that it is very progressive in not allowing interest upon interest. The progressive thing has become a fashion, and it is these fashionable people who have become very conservative. Everything that savours of a particular thing which has been dubbed as progressive, must be followed. I see absolutely no justification for saying that interest on interest shall not be charged. It would have been quite a good thing and perhaps it was the object when this amendment was sought to be made that some indication must be given so that interest shall not be charged at more than a particular rate. But, there have been cases where the costs amount to Rs. 50,000 or Rs. 20,000. Conscious of the fact that no interest is to be paid on such costs, the defendants—I mean the people against whom a decree has been passed—do not exert themselves in the least or show any desire to pay the costs.

After all the Government has not considered one very progressive thing, which it ought to have considered, namely, doing away with the court fees. In England, no court fee is charged from any litigant. The fee charged is a small fixed sum of five shillings for any suit that may be filed. If this had been done by the Government, I would have very easily agreed to this proposition of charging no interest on costs. Where the money has to go into the pockets of the Government, every State has exerted itself to take the last ounce of blood out of the litigant. Even now, during the last three years, practically every State has amended its schedule of court fees and the court fees have been increasing. The Union Government had the power to make an amendment to the Court Fees Act which it had failed to exercise and had allowed the litigation to become very costly. After allowing that and after charging court fees from the plaintiff or the defendant as the case may, I see no reason for not allowing interest to be charged on the costs. So, this amendment is not a very happy amendment which will certainly not serve the purpose for which it is made.

I will draw the pointed attention of the hon. Minister to the omission of clause 5. This provision was of a very controversial nature. There is a new crop of litigation in the Bombay High Court and it is of this type that I am speaking. I do not know whether the hon. Minister is aware of it.

Shri Pataskar: Yes, yes. I am aware of it.

Shri U. M. Trivedi: No, Sir. Perhaps he is not aware of the type of cases which I am narrating. There is a

provision in the Limitation Act that, if a defendant happens to be absent from British India for a particular time, the time he is so absent is not counted towards limitation. The Bombay State seems to have conquered the whole of Rajasthan and Madhya Bharat and on that analogy it is said that those who were living in the native States have now been brought into British India. They were not formerly in the British India and they have now come into the British India. So, the exemption limit which was granted under the Limitation Act to those who were not in British India is now being extended by the Bombay High Court and decrees are being passed. Deeds which were dead long ago and time-barred by all conceptions—10, 15 or 20 years back—are now being revived and decrees are passed on the basis that on 26th January, 1950, the Bombay State seems to have conquered the native States of Gujarat, Rajasthan or Madhya Bharat.

Shri Kasliwal (Kotah-Jhalawar): Which judgment of the Bombay High Court is the hon. Member referring to?

Shri U. M. Trivedi: Please read the judgments and you will find it. Such cases are pending before the Jaipur Bench also.

Then, there is another point. Section 39 allowed the execution of decrees to be transferred by virtue of the law which came into force on 26th January 1950. The ordinary interpretation of that section would be that such decrees could be executed. Somehow or other, our High Courts have not risen to the occasion. Some have interpreted in one way and the others in some other way. Perhaps some have interpreted on extraneous grounds and some on reasonable grounds. I am not here to discuss all those things. The views are differing. In omitting this clause, a very great injustice is being done to those who were in the native States. Every State is now an 'A' State. Many of these States integrated and decrees were passed by the various States. For instance, Sitapur, Ratlam, Jowra, Gwalior and so many States were integrated and Madhya Bharat was formed. Similarly, so many States have gone into the formation of Rajasthan. If this law is not suitably amended and the interpretation that is now prevailing in some of the High Courts is allowed to be followed, what will happen? In the State itself, the decrees passed by these States will not be executed, leaving aside the execution of these decrees in the various so-called British Indian States. So, it stands to reason and the Minister must apply his mind to clause 5 which has been deleted without perhaps going into the whole history and without knowing the conditions which are prevailing in the various States. If a decree was passed against a resident of British India by one of the States, if an *ex parte* decree was passed although there might not have been cause of action and jurisdiction, yet people in British India were strong enough as not to allow the processes to be served upon them. Even if they were served, nothing could have happened except that a decree could be passed. That being the condition, those who were in British India were protected completely. Similarly, there were people in the British India who wanted to obtain decrees against people living in the native States. Many of the Rajasthani people were carrying on their trade in Bombay or for some reason or the other, they had their dealings with Bombay. Bombay had no court fees. Till 1954, it can pass a decree for large sums of money and the court fees were Rs. 10. Even fictitious decrees were obtained in Bombay. I know of several cases where such decrees were obtained on forged promissory notes and fabricated documents. Lakhs and lakhs of rupees worth decrees were obtained in the Bombay High Court but they were dead letters. If these decrees or suits could not have been executed or filed in the native States, it stands to reason that such decrees which were obtained in the above manner, at least

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in the Bombay High Court, must not be allowed to be executed against persons who were then living in the native States and who were suddenly not conquered by the Bombay State. This aspect of allowing the law to lie as it is and thus allowing the mischief that is happening in the Bombay High Court to continue, must also be looked into. It was therefore very very reasonable that this provision ought to have been embodied in this amendment which is being sought to be made. I do not see how the Government yielded to give up this very reasonable provision from the amendment which is being sought to be made. To put the law on a uniform basis throughout India and looking to the conditions of the various B States which came into existence, this provision was very essential. A uniformity is called for in this law. It is high time that this deletion is again taken up and a suitable amendment with proper phraseology is brought in to the provisions made by the Joint Committee.

One more jarring thing which appears to me in the Bill as it has emerged from the Joint Committee is the amendment to section 35-A. So far as section 35 as it originally stood in the Civil Procedure Code was concerned, the compensatory costs, as we call them, were only allowable under certain circumstances. The note on clauses given in the original Bill reads like this in regard to this particular clause:

> "This clause seeks to enlarge the powers of Courts in granting compensatory costs in respect of false or vexatious claims or defence. This is necessary to check frivolous litigation. Under the existing section 35A, Courts can grant compensatory costs, only if the objection has been taken at the earliest opportunity."

It is not the question of objection being taken at the earliest opportunity. I raise objection to this amendment. The wholesome provision that existed then was this: "if the objection were taken at the earliest opportunity and if the court is satisfied of the justice thereof". That was the most important thing. That was the justiciable issue before the court. The court must say that there is justice and the hands of justice demands that compensatory costs must be granted. Now the whole thing has been taken away. The provision now made is "if it so thinks fit".

Shri Kasliwal: What about interests on costs?

Shri U. M. Trivedi: I have already spoken about it. I was saying that the provision now is: "If it so thinks fit". In other words, an arbitrary discretion has been given to the courts to grant compensatory costs. There may or may not be any justification for it, yet, if the court has been displeased in some manner—after all the human factor cannot be got rid of—and even if objection has not been taken by the party concerned, because the party is not affected in any manner, if the court during the progress of the trial feels one way or the other annoyed by the party concerned, there is nothing to prevent such a court or such a presiding officer from granting heavy compensatory costs against the party losing the case. Therefore my humble submission is that this fitful provision must not be embodied in the law. We know how the provisions of Order 40 have been worked in India. Appointment of receivers is refused on the whims of judicial officers because the words there are only "just and convenient". Every time the lower judiciary is not well trained. They have got their own prejudices. Sometimes they are recruited from persons who are not likely to succeed as lawyers. It is only when such unsuccessful lawyers become judicial officers that they create trouble for others. Therefore, if you allow this provision to come in and say "if it so thinks fit" the court will consider it proper to grant compensatory costs against the losing party on considerations which will not be considerations that may arise on the

face of the record or on the facts as presented to the court.

13-35 hrs.

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

Therefore, this provision should not be embodied in the Act itself.

I feel gratified to note that sections 68, 69, 70, 71 and 72 have been omitted. It is a very healthy thing that has been done. These were very mischievous and oppressive provisions and used to annoy litigants to a very great extent.

But this amendment to section 60 of the principal Act, which is sought to be made now, is not a very happy one. The original provision was that a man would be allowed at least Rs. 100 for himself and then, if he had a creditor who had obtained a decree from a court of law, one half of the remainder of his salary after saving him one half could be attached. That was a sort of bringing the people to a particular level. We were allowing the people a bare minimum for their maintenance, for keeping their body and soul together. This uniformity has been broken now and it is broken with this discriminatory provision. I do not see any reason why this discrimination ought to enter into the picture. If it is a case of maintenance then, all right, you can execute it. If it is a case of a man who has lent money to a person in his great hardship and to whom the other man does not want to pay or is reticent to pay, the court rushes to the rescue of the other man. He does not want to pay to a person who has obliged him when he had some necessity and the law is going to rescue such a person. It rushes up to him and tells him that so much is exempted. But in the case of maintenance the position is like this. In the case of maintenance this preference has been given. Why should it be so?

Shri Tek Chand: Because he must maintain.

Shri U. M. Trivedi: Maintain his wife who has obtained a divorce from him. Is it out of sheer, what you call, chivalry that this provision has been made, that he must maintain a woman who has quarrelled with him and who does not deserve any sympathy. Whatever may be the reason for divorce in thousands of cases the position would be that the man would not come forward with the true story about the divorce. At least in India the man would hang his head in shame to have a divorced wife. But you want to put a premium upon that and say that such a woman would get a better share if the man has got a lawful creditor.

Shri Pataskar: Maintenance may be by any other relation also.

Shri U. M. Trivedi: It is all theoretically good. We know that in practice no relation comes forward. Practically, it is the only thing that has come into the picture. I wish they had provided for something if the maintenance was claimed by the bastards, and that would have been something; but it is not so.

I would like to say a few words about the amendment to section 92 before I conclude. Section 92 of the Civil Procedure Code is a very healthy provision and if it is properly and honestly worked by the various States, perhaps the necessity for the provision of the Charitable Endowments Act of the various States could not have been felt, but, unfortunately, the Britishers who framed this provision had their own ideas of Government and they wanted to keep certain people always in their hands. Our present rulers have not seen the wisdom of the thing up till now, and they have always considered it a very healthy provision and a very healthy machinery in their hands with which they could continue the operation of the Britishers. Would it not have been possible to allow this section to be amended when the amendment was contemplated in regard to the Civil Procedure Code? This provision of asking for a permission or a sanction from the Advocate-General of the State concerned should be done away with. Would it not have been more conducive to the healthy growth of

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an administration—the administration of the charitable trusts or the public trusts—if it was provided that any *one*, instead of *two*, member among ten members of a society would be allowed to file suits without the sanction of the Advocate-General of the State concerned?

I know in so many cases sanction is refused only on the ground that the persons concerned with the people who commit breach of trust are high up in the hierarchy of the ruling Congress Party. It is such people who are protected thereby. Today, it may be the Congress Party, and tomorrow it might be another party. So, when you are amending the Act, there is no reason why section 92 should not be amended in such a way as to give a free hand to those who want to get the various public trusts in India administered properly. Therefore, my suggestion is that if the Government is anxious to do something by the people, to do something just by the people, then, it stands to reason that the provisions of section 92 should be so amended as to do away with the condition precedent to the filing of a suit under section 92, namely, obtaining the sanction of the Advocate-General. If that had been done, it would have gone a long way in putting some healthy and honest people on those trusts which are now being managed in a manner which is not conducive to the honesty or better morality of our people.

I should say that the amendment to section 102 is quite good. But it could have gone a long way if, instead of putting a further proviso, the proviso was done away with. It ought to be Rs. 1,000, without any proviso. If that was done, it would be still better.

I also appreciate the provision for exempting certain high dignitaries from appearance in courts as provided in section 133. My friend, Shri Sadhan Gupta, has said that it is not very democratic to allow this and yet, in the same breath, he has been kind enough to suggest that if these people are preoccupied with something, then, such an exemption could be granted to them and they may be examined in commission. I see no difference between the two provisions, because they will amount to the same thing. The moment an indication is given that some of these persons who have been mentioned here may be allowed exemption, on the ground of preoccupation, there would not be many magistrates and judges who would not agree to the granting of such exemptions. On the contrary, I say that the list is too small. It ought to be a little bigger than it is. I see no difference between the dignity of the Speaker of the House of the People and that of the Deputy-Speaker of the House of the People. Why should this exemption be not extended to the Deputy-Speaker of the House of the People?

Then, the Speakers of the State Legislative Assemblies have been granted exemption. Why should similar exemption not be granted to the Deputy-Speakers of the State Legislative Assemblies? Similarly, the Vice-President of India who happens to be also the Chairman of the Rajya Sabha has been granted exemption. I see no reason why the Deputy Chairman of the Rajya Sabha should not be granted similar exemption.

Mr. Deputy-Speaker: The hon. Member said that he would conclude with a reference to section 92.

Shri U. M. Trivedi: I thought so, but there is one more thing to which I should like to make a reference. Unfortunately, I received a copy—

Mr. Deputy-Speaker: Did the hon. Member's own remarks provoke him?

Shri U. M. Trivedi: Not my own remarks but my own points in the notes.

I also commend the provisions in order 20, rule 1, but I would go a little further. It would have been better had the power of the High Court to frame rules, contrary to the present

provision, been also done away with. There have been cases in some High Courts where the judgment is often reserved. Judgments or orders are not passed by single judges, and one fine morning, it is seen from the notice-board that judgment in such and such cases would be delivered. Then, if it is a judgment of a single judge, there would be an appeal to the Division Bench without the judge pronouncing an order, certifying that the case is a fit one for an appeal. Some of the High Courts in India, like the Allahabad High Court and the Rajasthan High Court and others, have provided that such an application for leave to appeal must be made either before the judgment is passed or at the time when the judgment is passed.

Now, the parties are taken by surprise, and so also are the advocates. They never come to know when the judgment is going to be delivered. They cannot watch every day. Suddenly, one fine morning, judgment is delivered. The advocate may not be present there, or he may not be present at the headquarters at all, and the parties, certainly in the High Courts, are never local parties. They come from other districts. Even if the judgment is patently wrong, yet, the parties are handicapped and they are not allowed any time whatsoever to obtain the leave by virtue of this provision which is inconsistent with the provision that has been made in order 20.

Therefore, my suggestion is that when the hon. Minister is taking pains to make this legislation a very explicit and healthy provision of law, he should also see to it that the High Court does not make provisions contrary to the provisions contained in this law.

There is one thing more and I will finish. The provision with regard to pauper appeals has existed before; now also it is there except that the proviso has been taken out, some redrafting has been done and a sub-section has been added. I have always felt that this was a redundant provision even before and now I feel that this redundancy has been given some premium. If a man who has filed an appeal by merely paying court fees can have his appeal heard as a matter of right, if it is a first appeal, I see absolutely no reason why the appeal of a man who is appealing in *forma pauperis* is not to be heard. After all, the provision is very clear, namely, if he succeeds in the appeal, then the court fees will be recovered by the Government as a first party from whatever he is entitled to get. Therefore, there is no reason to draw this discrimination in the case of a man whose original suit is in *forma pauperis* and not allow the appellant to proceed with his appeal.

Mr. Deputy-Speaker: It is apparently because the chances of the pauper getting anything out of the suit have diminished.

Shri U. M. Trivedi: That may be one aspect. But the other aspect is, if his appeal is heard, there are chances that he might recover a larger sum and the Government will benefit. Both the ways are there. But I say that there should be no discrimination. An appellant who pays court fees has his appeal heard as a matter of right. The first appeal is always heard as a matter of right and the facts are gone into. But in the case of pauper appeals, it is not so. It is said here:

> "The Appellate Court, after fixing a day for hearing the applicant or his pleader .... and upon a perusal of the application and of the judgment and decree appealed from, shall reject the application ...."

The mandatory provision is "shall reject the application". Then the proviso is there:

> ".... unless it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust."

[Shri U. M. Trivedi]

This is too much. This means that even if it is a first appeal involving a big sum of money, the poor man's appeal will not be heard simply because he is a pauper. That means you are putting a premium upon those who have got money at their disposal. Instead of helping those who are in penury, you are trying to put an obstacle in the way of those who want to succeed in getting what they are entitled to get.

The phrase "if the decree is contrary to law" means that you are relegating him to the position of a second appeal. Then there are the words "otherwise erroneous or unjust". He has not even had his preliminary hearing. Some judges are very impatient and do not want to listen. They sometimes look to the facts of the advocates and juniors do not count for them. But it is those juniors who would be engaged by such paupers. If it is Mr. Trivedi or Sardar Hukam Singh, the judge will admit it; but if Mr. Pataskar is appearing, the judge will not admit it. So, my humble submission is that this provision must be done away with and no discrimination should be practised in the court of law even if the appellant is a pauper.

Shri Tek Chand (Ambala-Simla): Mr. Deputy-Speaker, I share to a substantial extent the disappointment that has been expressed by some hon. Members who have preceded me, that there has been a niggardly approach to the amendment of the Civil Procedure Code. It is not a controversial matter at all, but all of us seem to have been agreed that the Code of Civil Procedure requires drastic changes of a very substantial extent. The law of procedure in any country is in the nature of a hand maiden to justice. The object of the procedure is to promote justice, not to hinder justice. But experience has shown that the Code of Civil Procedure substantially hampers justice with many clogging features. It is true that justice is denied when it is delayed. But, I am willing to consider that justice is also crushed when it is rushed.

Because of the fetters and manacles that the procedural law of our country imposes upon the parties, the witnesses and the courts who are there to administer justice, their efforts are retarded to a notable degree. Therefore, it would have been a lot better that the members of the Law Commission who are about to examine it should have, after they had examined it thoroughly, made their recommendations as to the substantial changes that had to be made. However, to the extent the amending Bill contributes towards resolving some of the difficulties, I offer my felicitations to the hon. Minister.

I do not agree in totality with the changes that are sought to be brought about and are incorporated in the Bill. Most of them are laudable, but in certain cases there are some objectionable features, which ought not to be there. Dealing with some of the salient changes that are sought to be introduced, I shall offer my comments.

In this connection, a reference has been made to section 35, sub-section (3) which, according to clause 3 of the Bill, is to be omitted. Not that I have usurious propensities, but I do not like this provision. It is true that there should not be any profiteering by the people; I concede that, but there are instances when the costs amount to five figures or more and there is no reason why, when an unsuccessful party is subjecting the successful party not only to a long dilatory and unending dispute, but also frivolous and vexatious litigation whereby he is out of pocket to the tune of several thousands, the law or the legislature should be so solicitous that such a person should not pay

interest, if he does not propose to pay or if he intends to delay the payment of the costs. One unfortunate and unhappy feature of administration of civil law in our land is, apart from delays and objections of frivolous and vexatious nature, justice is made available, if at all, at a very high and exorbitant price.

You may remember the well-known words of the Magna Carta whereby the King of England promised that he would not sell justice. Today justice is being sold at a very heavy price. I do not mean that Justice is being sold in an obnoxious sense. But, everybody who has to knock at the door of the law court to seek justice has to pay a very prohibitive court fee. If you happen ever to visit Paris, and there if you happen to go to the Hall of *Justice-Palais du justice*—the first thing you will find inscribed at the entrance hall is "Le justice est gratuit" Justice is gratis. No charge is being made by the State for administering justice to the litigants. But, as my hon. friend who preceded me remarked, there is hardly a State in which laws are not being passed enhancing the court fees. Every litigant is being told that he has to pay so much court fee. Not only that. There is hardly a High Court in this land of ours which does not insist that record of every first appeal must be translated into English and must be printed in the form of a paper book and the cost of printing a paper book is very heavy. All these costs are being incurred by the successful party. If he happens to be the plaintiff, he has also got to pay a heavy court fee. After having incurred these costs justly, after having got a decree of the court, the defendant can evade payment and yet, the law will not visit him with the extra penalty of a very mildnature of imposing interest at 6 per cent. The law as it stands today gives complete discretion to the court. It does not make it obligatory that interest must be imposed. What the present law says is, the court may give interest on costs at a rate not exceeding 6 per cent per annum and such interest shall be added to the costs and shall be recoverable as such. My submission to you, Mr. Deputy-Speaker, is, here is an innocuous measure whereby discretion is given to the court. You know by experience also as most lawyers have that experience, it is in very rare cases that courts award interest on costs. It is only in exceptional cases. There is no reason why we should be so solicitous or tender-hearted about a person who has caused his opponent, the successful party, to incur so much expenses, and why such a person should not be made to pay interest on costs if the court, in view of the entire circumstances of the case, considers it expedient. That discretionary power of the court ought not to be taken away.

I next take up clause 4 which deals with the proposed amendment of section 35A dealing with compensatory costs. I do not see if the hon. Minister has really scored substantially by bringing about this amendment. All that he has done is to make the whole matter improperly elastic, improperly flexible. The law as it stands at present, to my mind, is more appopriate and no change ought to have been brought about.

So far as clause 6 is concerned, I am very happy that the hon. Minister has brought about a necessary change in section 60 with respect to maintenance decrees. I do not agree with my hon. friend who has just preceded me that that change ought not to have been brought about. Here is some one, may be a husband, may be a father, whose duty it is to maintain his dependants and he does not discharge that duty, a duty which is imposed upon him not only by the civil law of the land, but by all laws of ethics and morality. He is in the enjoyment of a salary, a good salary, may be a fat salary. But, he is depriving his child or wife of their

[Shri Tek Chand]

maintenance. It is not proper to say that to the extent to which he is called upon to maintain, his salary should not be attached over and above one half of it. It is a very desirable measure that the hon. Minister has introduced and I lend to him my full and unreserved support.

A considerable amount of controversy rages over the original clause 5. There is, as has been brought about by several hon. Members and admitted by the hon. Minister, a sharp conflict in the view-point of several High Courts in our country. Bombay leads with one view; Calcutta leads with another. It is not for us to express our preferences though in suitable cases, we should and we can. Speaking for myself, I feel that the view of the Bombay High Court is more just and in consonance with the dictates of justice as much as it is in accord with logic. Maybe, the Calcutta view, for good reasons may be deemed sound. But, if there is a sharp conflict, we will be shirking our duty not to step into the breach and resolve the conflict by either accepting one view or the other whichever commends itself to the House to be just and also by suggesting a *via media*. It will be an unhappy state of affairs as the hon. Speaker observed a short time before you were pleased to honour the Chair, that it may be a case where the defendant has properties scattered over in more States than one and according to the view of one of the High Courts where the property is, it is attachable and according to the view of another High Court where another parcel of property is situate the decree is void. Therefore, when the matter cropped up before the Joint Committee, there was a consensus of opinion that this conflict should be resolved. I think it is Shri H. G. Vaishnav's note of dissent which, in a very clear and cogent language, has given very useful suggestions. You will find the relevant portion of his note of dissent beginning from the bottom of page 7 going on to the top of the next page.

He says:

> "In order to avoid further confusion and complications I am of opinion that the original clause 5 of the Bill be retained with a further proviso that such an *ex-parte* decree holder should be allowed to file a fresh suit on the same cause of action, the period between 26th January 1950 and the commencement of the C. P. C. (Amendment) Act being excluded for the purpose of limitation."

He says:

> "This would keep the remedy open to the *ex-parte* decree holder instead of leaving him in lurch."

I find myself complete agreement with these observations. To a similar effect is the amendment of Shri Sadhan Gupta which also substantially reproduces what is said in the note of dissent. Either of the ideas suggested deserves to be adopted and the matter must not be left in the lurch in any case, especially so when there is a sharp conflict.

Then, section 133 has evoked a certain controversy. No doubt in the new type of society which we are trying to evolve, class distinction ought to disappear. The privilege of rank ought to be there. Unfortunately, to a certain extent they are necessary and unavoidable. One good feature of section 133 as amended is that the matter is not left in doubt. The law as it stands at present leaves it to the State Governments by means of a notification in the Official Gazette to exempt certain classes of

persons and to confer upon them the privilege of exemption or immunity from attendance. It is a good feature that the immunity to a limited extent from the process of law is going to be of a uniform character. Whereas on the whole I agree with the list, with respect to two classes I am a little diffident. I do not like that the Ministers of the States should enjoy immunity. Nor am I enamoured of similar immunity being enjoyed by the Judges of the High Courts. If they are to appear as witnesses, by virtue of their status their testimony, after having been deposed to and after having been subjected to cross-examination, is bound to be a very substantial feature in determining the fate of the case. Why should not the citizen see that the highest in the land can step into the witness box and make a deposition and face the music of the cross-examiner when you are allowing the exercise of the same right by means of interrogatories on commission? But be that as it may, on this point perhaps I will not enter the lists against the hon. Minister but I do wish to invite his attention to a class mentioned under clause 12(1)(xi), that is the persons to whom section 87B applies, that is the ex-Rulers.

There is no reason whatsoever why they should be permitted to balk at the proceedings, why they should be allowed to enjoy the immunity from jurisdiction which they no longer should. The only reason was that in their small States they happened to be sovereigns, but now that they have become like any other citizen, that immunity ought not to be extended to them. And I say so out of experience, because I do know that there are small States; most of them have been borrowing small amounts of money running into thousands, executing promissory notes, and when the unfortunate creditor institutes a suit, the answer is: "I enjoy immunity of jurisdiction, I can snap my fingers at the process of the court and refuse to enter the portals of the court." I do not see any reason why such persons should enjoy that immunity which is being conferred.

Shri A. M. Thomas: Are such persons given immunity?

Shri Tek Chand: The persons to whom section 87B applies, and they happen to be the persons to whom the section applies.

Lastly I wish to make my comments, on Order XXV, that is clause 14, on which a short but very lucid note of dissent has been attached by my hon. friend Shri C. C. Shah. The new provision is that the court is at liberty to compel the plaintiff, on the application of the defendant, to furnish security for costs. To my mind, it is unthinkable. Here is the plaintiff who pays the appropriate court fee and then enters the portals of the court and has seemingly got a just cause. The defendant tries to stifle him by saying that he is a doubtful sort of character in the matter of finance or financial stability and therefore asks the court to compel him to furnish security for the costs. When the court compels him to do so, it is being assumed that he will not be in a position to make out his contention and *prima facie* the defendant's contention seems to be sound. That is virtually prejudging the issue. The law as it stands, and which is reproduced in the amendment also, is sufficient warranty against those types of plaintiffs who have no property in this country, who do not stay in this country and who may not be able to honour the commitments of the defendant in the event of the plaintiff losing in the litigation. The only commitment of the defendant will be costs, which in all cases, as you very well know, are much less than the costs incurred by the plaintiff, because the defendant has not to pay any court fee. To say that the court is at liberty to impose such a condition upon the plaintiff before his suit matures into a decree,

[Shri Tek Chand]

to my mind, is absolutely uncalled for. It is an attempt to strangulate and stifle the process of law and the plaintiff is being fettered and further restricted in the way of getting justice. He might be told: "You have got to pay court fee to the Government. You have got to pay diet money to the witnesses. You, of course, have got to pay your counsel's fee. You have also got to furnish now, before the fate of your case is decided one way or the other, security in case you happen to be unsuccessful"—and the whole thing at a time when the court can have no idea as to the extent of the cost that the defendant is going to incur. By the time summons are issued to the defendant, he comes out with an application under this provision requesting the court that the plaintiff should furnish security for his costs. And the costs we do not know. We do not know how many witnesses he is going to to lead, how many documents he is going to summon, how many commissions are going to be issued. The court will glibly turn round and say before I get justice, though I may have paid every other commitment, that I have also to furnish security as the defendant must be sure about his costs in case I lost the case. I feel that it is rather an unhappy amendment and I hope I will be able to prevail upon the hon. Minister to drop it.

With these comments, I offer my congratulations to the hon. Minister on such changes as have been introduced which proceed towards making justice easy and less dilatory.

Shri Kasliwal: As the last speaker Shri Tek Chand, mentioned, a lot of controversy has raged round the original clause 5, but it seems to me that all the four speakers who preceded me must have opposed one way or the other the deletion of clause 5.

At the consideration stage last time I was one of those who strongly opposed the inclusion of clause 5, and I gave certain reasons. What is really the object of clause 5? Virtually, the object of clause 5 was to revert back to the original position, the position as was obtaining prior to 26th January, 1950. The decrees that were passed in the Native States or in British India were foreign decrees for matters of execution in British India or in the Native States.

After 26th January, 1950, that distinction was abolished. Now, if you are going to have this particular clause inserted in the C. P. C. the position will again be the same as was before 26th January, 1950. During the course of these 7 years, thousands of decrees have already been executed and there are thousands of other decrees which are in the process of execution. How can you stay the execution of those decrees? Then, there may be cases in which the law of limitation has come into operation and claims have become time-barred. These are the three major objections which I had raised to this clause 5.

The speakers who have preceded me, though they indirectly mention that clause 5 should be retained, are of the view that there is a conflict of judicial decisions on this particular matter, one opinion being that of the Bombay High Court and the other that of the Calcutta High Court. It is for the Joint Committee to have set at rest this conflict of judicial opinion by embodying its own views in the report.

I respectfully submit that there are innumerable instances in the country where there is conflict of judicial decisions. I will give one single example. Take section 27 of the Indian Evidence Act. Almost every Indian High Court has held a separate view of its own and yet no such Bill has come before the House in which it has been asked that section 27 of the

Indian Evidence Act should be rectified or modified or that the view of a particular High Court should be embodied in it. The hon. Minister himself said that when the matter goes to the Supreme Court the Supreme Court itself will possibly decide whether the Bombay High Court's view should be upheld or the Calcutta High Court's view should be upheld.

Shri Sadhan Gupta questioned the deletion of this on the ground of logic and common sense. I respectfully submit, is it logic and commonsense to revert back to the same position which we had 7 years ago? It is not easy and it cannot be easy especially because it is now definitely made applicable to Indian States also that decrees will not be executed after 12 years. This was not the case before so far as the native States were concerned. That is also a point of view which has to be taken into consideration and so far as the deletion of clause 5 is concerned, I strongly support whatever the Joint Committee has done.

With regard to clause 3, I cannot put my view in better words than what my friend Shri Tek Chand has said. I do not see any reason why interest on costs should not be paid to a successful litigant. Shri Tek Chand and also Shri Raghavachari, who has appended a minute of dissent, ask that where there is a defendant who adopts dilatory tactics and refuses to pay why he should not be saddled with interest on costs.

I will refer only to two more clauses. One is clause 13. I was one of those members who opposed clause 13. It is really meant to take away the revisionary powers of the High Court in civil matters. I am very glad that clause 13 has been deleted by the Joint Committee. After all, what do the High Courts do? The High Courts do not intervene in revisional matters so far as civil cases are concerned. But, we, as practising lawyers, know that once a revision in civil matters is admitted, you may take it for granted that more or less that revision application would be accepted. I am very glad that the Joint Committee has been of this view.

With regard to clause 14(6), I am of the same view as Shri Tek Chand and the note of dissent which has been appended by Shri C. C. Shah. After all, why should a plaintiff be saddled with costs in such a matter? If the court is of the view that there is reason to believe that the suit which has been filed is either frivolous or vexatious, surely, under the ordinary procedure, it can ask the costs to be deposited in court beforehand. I do not see any reason why this clause should have been there. I do not know whether the Joint Committee has applied its mind to this matter. I would request the hon. Minister to see that clause 14(6) is omitted.

Shri Barman: (North Bengal—Reserved—Sch. Castes): Sir, some comments have been made on the deletion by the Joint Committee of original clause 5 of the Bill. What has been written on page iv of the Report is criticised. The point is, in the Report it has been written that uniformity throughout India as regards the procedure about execution of decrees that were passed before the 26th January, 1950, is neither practicable nor desirable. This has been very seriously criticised by the first speaker, Shri N. C. Chatterjee.

Though the first four speakers wanted the retention of the clause, at the same time, they wanted some amendment to it. So, they do not really want that. The only amendment that has been tabled before the House is that of Shri Sadhan Gupta. He also has added another sub-paragraph so that it may conform to the view he holds. The note of dissent of one hon. Member, Shri Vaishnav also wants something to be added to the original clause. The first point that has been made is whether it is desirable for this House to make uniformity in this respect.

[Shri Barman]

It is not that there is no uniformity about this law in this respect in India. There is one Civil Procedure Code that applies throughout the whole of India. There is no doubt about it. The point is that different High Courts have given different interpretations to the same law. So it is not a question of bringing uniformity in the law. The question is whether this supreme legislature should interfere with the decisions of the different High Courts and then strike out some *via media* or whether it should stick to one decision. It is not as if this Legislature is in any way hesitating to bring uniformity in law. The only question is whether this Legislature should interfere and where the High Courts have differed, put in their own interpretation to that law.

As the previous speaker has remarked, there are so many instances where High Courts have given conflicting judgments. It is not as if it is the duty of this supreme Legislature to jump in at once and put in their own interpretation in that respect. There is something more in it. It might have been desirable just when the occasion arose first, that is, after the 26th January 1950 on the first occasion when two High Courts differed about the interpretation of the application of section 39 of the Civil Procedure Code. But this Legislature did not interfere at that time. It has been stated that justice delayed is justice denied. In a way it comes to the same position considering the circumstances in this particular case. For long, for more than five years this Legislature did not interfere and India has practically been divided into two blocks, one block holding one view and the other block holding a contrary or contradictory view. Thousands of cases have occurred in which decisions of these High Courts have differed.

It is now for consideration of this House whether if we lay down one procedure for the whole of India, injustice will be done to anybody or not. If we find that no injustice is going to happen to anybody or that there can be some convenient method or convenient law by which the apparent injustice that is going to be perpetrated on some can be remedied, the case would be otherwise. The matter was debated at length in the Joint Committee of which I had the honour to be the Chairman and after long deliberations it was decided almost unanimously with the exception of a very few that we should not interfere in this matter.

In the case of endorsement this question does not arise at all. It is only in the case of *ex parte* decrees that the problem arises. It can be said, as the amendment here has suggested, or as the dissenting note of Shri Vaishnav has suggested, that in the case of decrees which are apparently time-barred, let there be some cessation of running of the limitation time for a certain period. In one case it has been suggested the period between 26th January 1950 upto 60 days from the passing of this Act be excluded. In another case it has been suggested by Shri Sadhan Gupta that the time when the suit was filed since 60 days after the passing of that Act be excluded.

Now it is very easy to lay down any law which you like. But you must see what the consequences of it will be. Suppose a decree has been passed, say, ten years before the 26th January 1950. That decree was subsisting provided it is a decree for which limitation runs up to twelve years. So long as the decree holder has got an *ex parte* decree, it is within his rights to file a suit in that foreign court. But he did not do that. Perhaps there was some defect or there was no defect but he did not file the suit. Now we ignore the time and allow him to file a fresh suit. What would be the effect? Supposing after 13 or 15 years the original judgment-debtor according to that *ex parte* decree has died. It is a suit on certain documents which are not registered—may be some accounts. He is dead. His successors and legal representatives are there. His succes-

sor might be a very young boy. Now, if a suit is to be filed against him as the legal representative of the judgment debtor, it would be very easy for that man to pass a fradulent decree. I take it that it might be the case of a fradulent decree. There may be such cases as has been mentioned by some of the hon. Members. If they are given the right, it would be absolutely impossible to contest the correctness of the suit. This is one hard case and there may be hundreds of others. There may be some cases in which the decrees have already been barred. According to some High Courts—the Calcutta High Court or the Allahabad High Court—the decrees are already barred. The judgment debtor, who had some property, had disposed of that property and the purchaser has in good faith purchased it. Now, to make a uniform law, you give him the right so that he can pursue the decree and realise the decreed amount. Now, those decree holders who knew that the decree is barred, they did not pursue the judgment debtor because it was a decree of a foreign court. Now they are given a right. But they have no means to realise the amount or execute the decree successfully. So, in either case, if you change the position and if you conform to the law which has been upheld by the Calcutta and Allahabad High Courts, you are doing injustice to thousands of persons who had all these five years been guided by the Bombay High Court and other High Courts that followed suit. Similarly, if you make it a uniform law by conforming to the decision of the Bombay High Court, you do injustice to those who are guided by the Calcutta and the Allahabad and other High Courts. That is another difficulty.

But the main point that the Committee considered was whether this Legislature should come forward with its own interpretation of the law in a matter which has been differently interpreted by different High Courts.

In the select committee, we wanted to know how many decrees were subsisting. There may be very few. I don't know. Nobody could inform us. Neither could the office give us any statistics as to how many cases are pending and what the nature of the cases are. But we were given the impression, as I told you, that one or two decrees involving very large amounts were subsisting. We thought, Sir, that rather than allowing the decree holder to pursue afresh the judgment debtor or his representative, the decree holder should be left with a chance under existing state of things. He might be a big judgment decree holder. He can go to the Supreme Court and have it settled there. That was the view of the majority of the Members of the Committee. As my hon. friend Shri Kasliwal has given the reason for it, I think this House may well consider the view of the Select Committee and pass their judgment thereon.

I personally oppose the amendment that has been tabled by Shri Sadhan Gupta, because it would create hardship in many cases. If you want to make it uniform throughout India, there will be anomalies all over the country. I oppose the amendment.

Shri H. G. Vaishnav (Ambad): Mr. Deputy-Speaker, Sir, much has been said by the previous speakers regarding revision of Clause 5. I am one of those who cannot agree with the deletion of Clause 5 which was originally provided. I see the Government had well thought to explain the position by introducing Clause 5 in the original Bill, in view of the various conflicting rulings of the High Courts. As I have stated in my Minute of Dissent, there are six High Courts which interpret that such decrees are executable. They can be executed. On the other hand, there are four High Courts which say that *ex-parte* decrees passed by an Indian State or passed by any other court in India to be executed in Indian States are not executable and the provision of Clause 3 of Article 261 of the Constitution was interpreted in a different way. Before going into the merits of this question, I think it is very important and essential that

[Shri H. G. Vaishnav]

Article 261, Clause 3 of the Constitution should be well thought over. It is provided in that Article that decrees passed by any courts in the territory of India are executable in India within any province. That is the salient feature of it. But the four High Courts say that the decrees passed prior to the Constitution are not executable. It cannot be said that those decrees have been passed by the Courts within the territory of India. It is said that Indian States were quite independent and they had their independent courts and their territory was not taken to be the territory within the jurisdiction of India, though the position seems to be very anomalous; but that legal position is still there. It is with this object, and to remove the conflicting authorities of the six Courts that this provision of Clause 5 was made. Of course, decrees may be made executable or may not be made executable. But there should be a decision which should be taken uniformly. However, litigants, in this respect are left to the sweet will and interpretation of various High Courts. We cannot say as to which High Court is correct and which High Court is not correct. We are not to comment over the judgment of the High Courts. But, when we see this anomaly, is it not proper for the House to see that the anomalies are removed and a clear interpretation is given to Article 261, Clause 3 of the Constitution, as well as about Section 39 of the Civil Procedure Code? It is with this idea that Clause 5 was inserted by Government, in which it was stated that decrees passed prior to the Constitution was made applicable to Indian States and decrees passed by those Courts in the Indian States should not be sent for execution under Section 39. That was clearly provided. I mentioned at that time in the Select Committee about this negative aspect. No doubt decrees will not be executed and the various conflicting rulings will be set at rest by this amendment to clause 5. But, what is to be done in respect of decrees which are passed by courts in Indian States before the 26th January, 1950? Of course, it was essential for the Government to provide remedy for such decree holders. That remedy should be provided. What I want to say is that, that remedy should be just and proper. Nothing should be left for any wrong or conflicting interpretation. There should be remedy under section 39. My submission is that some remedy should be provided for those decree holders for getting their decrees executed and that remedy should be provided without any hardship. If it had been provided in Clause 5 that decrees passed by the Courts in the Indian States could be executed, that would have been a sweeping provision. If such decrees are made executable, such a provision would have been certainly against the provisions of international law. Therefore, it should be provided that while such decrees are not executable, some remedy should be there about these decrees. That is why many amendments were submitted. I had given an amendment that Clause 5 of the Bill may be retained and there should be a proviso to the effect that, while the decrees are not executable or they should not be sent for execution under Section 39 of the Civil Procedure Code, there should be this provision and remedy given to the party. This should be the proviso which I had suggested in the Select Committee. Discussions had taken place. But at the end, the whole clause was deleted and the parties were left in the lurch. The proviso I had suggested was: "Such a decree holder may file a substantive suit on the basis of the *ex-parte* decree and in computing the period of limitation, the date between the 26th day of January, 1950, and the date of enforcement of this amendment shall be excluded."

So, this would have been a just provision in the sense that remedy would have been provided to the decree holder, while as to the defendant against whom the *ex-parte*

decree was passed, the whole suit could have been agitated by him by filing written statement and so on. If the plaintiff was correct in the eye of law, certainly he would again get the decree against the defendant, and if he could not establish his case, he may lose it. But not to provide any such remedy at all and to say that the decrees passed by courts within the States prior to the Constitution are not executable, is really a great injustice. Some learned friends have quoted that decrees were passed *ex parte*, without the court fees having been paid, without the matter having been fully investigated and so on. If that is so, it is not the fault of the plaintiff that the defendant remained absent—the defendant against whom the evidence was led. Whatever evidence was led, was led in the court and the decree was passed. Does it mean that the court which passed the decree has done it illegally or wrongly? According to procedure current then, the court was quite correct in passing the decree. But to give too much support to the defendant, because he remained absent and did not submit himself to the jurisdiction of the court, and the decree is made unexecutable, would mean shere injustice to the decree holder. Therefore it was thought after proper and due consideration that the decree, though not made executable, should be left in such a way that still a remedy could be provided to the plaintiff to file a fresh suit against the very defendant who may contest that suit to the fullest of his capacity. I think that was a salutary provision which was greatly discussed in the Select Committee but somebody at the last moment suggested that the provision should be deleted and was done accordingly. I think this was the most appropriate provision. Not only that, it is the business of this august House that when six High Courts differ and give one ruling, interpret the law in one way, and four High Courts interpret law in another way, this House should give what is the correct meaning of the law. It is for the Supreme Court or the High Court to interpret, but here it is a question of making a provision. Interpretation is only for the Courts. So far as clause 5 is concerned, there is no question of interpretation. It was stated that the decrees are not made executable. Coming as I do from Hyderabad, I know the tremendous difficulties the people had to face in acquiring the decrees, and later on if they were not to be executed, the decrees in reality were quite useless.

Shri Barman: They could have filed a suit in the proper forum.

Shri H. G. Vaishnav: It is for the plaintiff to choose his own forum. The suit cannot be filed at the sweet will of the defendant. It is for the plaintiff to decide his forum, where the evidence is available, where the cause of action arose, where the evidence can be led at his convenience and so on. If it is correct according to law, the defendant cannot say that the plaintiff has selected a wrong court, that the decree cannot be made executable and so on.

My submission is that that will be too much for the defendant to say. Without injuring the interests of the defendant or the judgment-debtor, so called, this remedy of fresh suit would be very appropriate if it had been provided that decrees passed by the courts within the Indian States are not executable under section 39, and this proviso could have been added that on the basis of that decree, a fresh suit can be filed. Of course, the question of limitation would arise. But this is not the fault of the plaintiff or the decree holder, and this question arose after the Constitution was made applicable to the States, some courts said that the decree was executable and some said that it was not executable. My submission is that it was quite correct for this House to put in some provision and do away with this anomaly. That is why I have given a long dissenting minute. I think this provision should be accepted. When this Bill was before the Select Committee, opinions of the States were called for, and I have seen that the majority of the States were for this provision excepting

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three or four States which said that there should not be such a provision. But various Bar Associations, various courts, various provincial legal authorities and others have opined in this respect, namely, that there should be some such provision as this, and they have suggested that if clause 5 provides not to make the decrees executable, then there should be some provision or remedy awarded to the decree holder to see that the decrees are made executable by way of a fresh suit being filed against the defendant. Various legal authorities, various High Courts and various other Bar Associations have given opinion in favour of this amendment. I do not see any reason why this provision should be deleted all of a sudden, particularly when it was provided by Government themselves.

My humble submission to the Minister of Legal Affairs is that he should really try to do away with this injustice done to the parties, and see if anything can be done by way of providing a remedy, just as I have suggested, that is, while accepting the principle of the original clause 5, this remedy should be there that he can file a fresh suit; of course, the period of limitation which would come in his way should be condoned because that is a legal act, because it has suddenly arisen not due to the fault of the parties. Some such provision must be there, and my submission is that the hon. Minister of Legal Affairs would consider this aspect.

With regards to the other amendments, I have not to say much, but the salutary principles of the amendments are very clear. For instance, in clause 6 the principle of *res judicata* is made applicable to the execution proceedings. Certainly it is essential. There were also some authorities speaking against this. Therefore, to put the point at rest, this provision has been made. So also about auction purchaser, there are conflicting rulings, and some High Courts say that the auction purchaser is not a party and should not be taken to be a party to the suit. But now in clause 6 that point is made clear and he would be taken to be a party to the suit. These amendments were essential because there were various interpretations, and so also taking the constitutional authority, clause 5 together with the proviso I had suggested would have been very appropriate. In view of this my submission is that the clause 5 in the original Bill should be retained with the proviso which I have stated just now.

15 hrs.

Shri Pataskar: I am happy to note as I already stated, there has been considerable discussion in this House only with respect to the deletion of clause 5, and as hon. Members will find from the remarks that I made with regard to the deletion of this clause, I tried as fairly as I could to put both points of view before hon. Members of this House. We first thought that we should have something in the nature of clause 5, but ultimately, the Joint Committee, after prolonged discussion thought that probably making any change in the legislation at this stage would not be of any great use or would not be the right thing to do. Well, there are certainly difficulties and hardships in both. As hon. Members are aware, there is the High Court of Bombay which has held that such decrees could be executed. What must have happened is that during the last 6 years or so, probably, there are many decrees which are already executed. If we really want to lay down something new, naturally it cannot be with retrospective effect and we will have to leave untouched those decrees which have been executed and we rather prefer the other view held by the Calcutta and Allahabad High Courts. There might be many difficulties on account of the decision of the Bombay High Court and certainly there are decrees which are at the present moment pending execution, and I do not think that we are left with

any remedy or we have suggested any remedy which we can, as a matter of fact, follow.

Then, similar is the case with respect to those States where the High Courts held that the decrees are not executable. Then my hon. friend Shri Vaishnav and certain other friends suggested that in such cases, when we say that such decrees could not be executed, then we might provide some extended period of limitation, so that after all that period those people may again file suits. I do not know how far that also would be the right thing to do, because even as the laws stood then it was open to any decree-holder, even if he succeeded in obtaining an *ex parte* decree to file a suit in the British Indian States. My hon. friend Shri Vaishnav comes from Hyderabad State which adjoins my state and I was going there at that time in my capacity as an advocate and as there were large claims, I naturally advised the clients to file suits in the adjoining court in the then British India. So in respect of claims generally, it was possible. Probably, it may be that in certain cases it was no doubt open to the defendant if he was stationed in British India to file a suit in a native state and perhaps he kept quite. So there is difficulty in whatever we do, and ultimately I must say not that the Joint Committee has not paid any attention to it, but it is impossible to devise anything which would suit all the states; it is quite possible that it may affect some people adversely, whether they are debtors or creditors. defendants or plaintiffs. This is not possibly a matter where according to our own theoretical ideas we can make any change in the legislation and I have personally come to the conclusion—though I was naturally responsible for putting in that clause—that in view of the fact that so many issues have lapsed after the introduction of the Constitution, it would only increase litigation if we allow fresh suits to be filed. Further it is likely to create all sorts of complications. As recently as in 1955 the Allahabad High Court has given its own decision and has very extensively considered the several issues which have been discussed by other High Courts. I tried to ascertain whether, as a matter of fact, any appeal is pending anywhere, but it is very difficult to get any accurate information on a point like this. So far as I have been able to gather, I do not think that there is anything pending in the Supreme Court, but it is just possible that there may be some cases pending there. I think it is just as much the work of the Supreme Court to take salutary action when the matter comes before them and when different views have been expressed by the different High Courts. Further we are not quite sure, and we feel that complete justice cannot be done by accepting any of the two views; I do not think that we should try to legislate in a matter like this. Having heard the speeches of hon. Members, I find that there are two groups, *i.e.*, one that feels justified in the deletion and the other that it should be retained. Therefore, I am inclined to think that in spite of the fact that we ourselves at a stage wanted to make a provision as we did in clause 5, I think it is best to delete this clause. This is not a matter which is likely to arise again here.

With regard to the remarks of my hon. friend, Shri Trivedi, he seemed to suggest as if the Bombay Hign Court probably has been passing a number of decrees *ex parte* against the unfortunate people who were residents of former Indian States, but the figures supplied to me tell exactly a contrary story. As a matter of fact, from the information that I have got, I find the number of decrees passed by courts of law in the former Indian States such as Rajasthan, Madhya-Bharat etc., pending execution in Bombay come to 1,104, which is a very large number, whereas the number of decrees passed by courts in India pending execution in territories of former Indian States, so far as Bombay is concerned, is only 237. I find the hon. Member is not here but

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the facts disclosed give an entirely different state of affairs. Having been responsible for introducing clause 5, I am myself inclined to accept the other view of the high courts. There is nothing to differentiate between one high court and the other and this charge made seems hardly justified by the facts I have just disclosed.

I think there is hardly much criticism with respect to the other provisions. Of course there was the general criticism that this is not what amounts to a overhauling of the whole code. As I have been repeatedly saying, it is not the object with which this Bill has been brought forward. All the same whatever little could be done within the framework of the present code has been attempted to be done by the Bill which has been brought forward. It is much better to wait for the overhauling of the whole system of civil administration till the Law Commission, after an exhaustive enquiry, makes its report. It is not because we are not keen on seeing the administration of civil justice made cheap, speedy, etc. The fact remains that the first Civil Procedure Code was passed as early as 1859. Since then, this system has been there for almost a hundred years. If it is to be overhauled, it cannot be done without due regard to the various factors involved. A system of judicial administration which was not previously known in our country came to be introduced in 1859 and it has been in operation in one form or another. It has undergone some changes; it has been changed about thirty times; some minor amendments have been made. Naturally, procedure is a matter in which changes are inevitable because the conditions which existed in 1859 do not exist in 1956. So, some changes have to be made when ideas in justice also undergo so many changes. From that point of view, this attempt has been made to improve the present procedure consistent with our present ideas of what ought to be done. It is not with a view to shirk our responsibility in the matter of overhauling the whole system of civil administration to make it cheap, speedy and efficient also that we have brought this.

There were so many appeals etc. pending in the different High Courts. We are aware of it. But, the problem cannot be solved merely by amending the code. There are other matters with which it is connected.

I am glad that so far as the present Bill is concerned it has been accepted by a large section. The omission of clause 5 had been thoroughly discussed. Probably some hon. Members do not like it or some other provisions here and there but the Bill as a whole has been welcomed by the House and I hope that it would be acceptable to the House.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: There are no amendments to clauses 2, 3 and 4. I shall put them to the vote of the House.

The question is:

"That clause 2 to 4 stand part of the Bill."

The motion was adopted.

Clauses 2 to 4 were added to the Bill.

Mr. Deputy-Speaker: There is an amendment No. 6 for the insertion of a new clause—clause 4A in the name of Shri Sadhan Gupta. But, he is not in his seat. So, I shall put the other clauses also to the vote of the House.

The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 to 11 were added to the Bill.

Mr. Deputy-Speaker: There is an amendment to clause 12—No. 3.

Amendment made:

Page 3—

for lines 21 and 22, substitute:

"(vi) The Governors of States and the administrators of Union territories;"

—[*Shri Pataskar*]

Mr. Deputy-Speaker: The question is:

"That clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, as amended, was added to the Bill.

Clauses 13 to 16 were added to the Bill.

Mr. Deputy-Speaker: There is an amendment to clause 1.

Amendment made:

Page 1, line 4—

for "1955" *substitute* "1956"

—[*Shri Pataskar*]

Mr. Deputy-Speaker: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. Deputy-Speaker: There is an amendment to the Enacting Formula.

Amendment made:

Page 1, line 1—

for "Sixth" *substitute* "Seventh"

—[*Shri Pataskar*]

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula, as amended, stand part of the Bill"

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

Shri Pataskar: I beg to move:

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

Mr. Deputy-Speaker: Motion moved:

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

Shri Mulchand Dube (Farrukhabad Distt.-North): I welcome this Bill. My first reaction on reading the Joint Committe's report was that clause 5 should not have been deleted. I have, however, since revised my opinion and have come to the conclusion that it is for the best that clause 5 has been deleted because the law at present is settled in States under the various High Courts even though there are conflicting views so far as the High Courts are concerned. In this state of affairs the principle of State decision comes into play and it is best that *Status quo* should be maintained.

I have not found myself in full agreement with the abolition of interest on costs. My opinion is that in cases where the defendants have succeeded in protracting the proceedings and putting the decree-holder to heavy costs, there does not seem to be any justification for depriving the decree-holder of the interest on the costs. Probably, the Government had in view the case of professional money-lenders only and then, in order to penalise them, and also to save the judgment debtors, they have done so. It is not always that professional money-lenders get decrees against poor and indigent persons. There are other persons also who occasionally lend money and are

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harassed by debtors by protracting their proceedings by false and frivolous pleas. I feel that the hon. Minister may think over this matter and, if possible, the law should be suitably amended.

I am in full agreement with Shri U. M. Trivedi in regard to panper appeals. The poor people who are unable to pay the court fees should have the same rights to prefer appeals as other people because after all there is a provision in the Act itself, that if they succeed the court fee will be charged on the fruits of the decree according to law.

In regard to the other matters, I find myself in agreement with the Bill, as it has been passed, and I support the Bill.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

MANIPUR (VILLAGE AUTHORITIES IN HILL AREAS) BILL

The Minister in the Ministry of Home Affairs (Shri Datar): Sir, I beg to move:

"That the Bill to consolidate and amend the law relating to the constitution and functions of Village Authorities in the hill areas of the State of Manipur, be taken into consideration."

This Bill goes a further step towards the democratisation and also the rationalisation of the administration of the Manipur State. Last year, this House passed a Bill known as the Manipur Courts Bill, whereby a whole hierarchy of civil and criminal courts was introduced in the Manipur State even in the hill areas of this State. But, it was considered that in respect of certain offences, suits, etc., judicial powers should be conferred on what were known there as village authorities and what are known ordinarily in the rest of India as village panchayats. Therefore, after having the Manipur Courts Bill passed, the present Bill has been brought forward for the purpose of the establishment and also the composition of what are known as village authorities in the hill areas of Manipur State.

May I point out to this hon. House that a very large portion of the Manipur State is hilly. The total area of the whole State of Manipur is 8638 square miles and the population is 5,77,000. Out of this, as much as 7938 square miles—that is about seven-eighths of the whole area—form the hill area. But the population is not so great; it is only 1,94,000. In these hill areas there are small and a few big villages, though not very big as those in other parts of India. The total number of these villages is 1,300. So far as these villages are concerned, they have got a system—a sort of government, though not exactly self-government—of government according to which the chief of the village is hereditary and the post, therefore, passes on hereditarily. In respect of the village authorities the right of nomination is given to the head or to the chief of the village.

In 1947 there was a regulation passed by the then ruler or Maharaja according to which the formal sanction of the State authorities like the Sub-divisional Officer, District Officer, Chief Commissioner and other higher officers had to be taken. Still it was a more or less formal sanction and there was no question of any election so far as these village authorities were concerned. There were demands made that this village administration should be democratised at least to a certain extent, and especially where there was a demand in that respect made by the villagers in different parts. Therefore, this question was taken up.