

PARLIAMENT OF INDIA  
**RAJYA SABHA**

JOINT COMMITTEE  
ON  
THE CODE OF CIVIL PROCEDURE  
(AMENDMENT) BILL, 1968

**EVIDENCE**



सम्यमेव जयते

RAJYA SABHA SECRETARIAT  
NEW DELHI

AUGUST, 1970

## C O N T E N T

	PAGES
1. Composition of the Committee . . . . .	(i)
2. List of witnesses who gave oral evidence before the Committee . . . . .	(iii)
3. Verbatim record of oral evidence given before the Committee. . . . .	i

COMPOSITION OF THE JOINT COMMITTEE ON THE CODE OF CIVIL  
PROCEDURE (AMENDMENT) BILL, 1968

1. Shri Syed Ahmed—*Chairman*.\*

MEMBERS

*Rajya Sabha*

2. Shri Balachandra Menon
3. Dr. B. N. Antani
4. Shri Rattan Lal Jain
5. Shri B. N. Mandal
6. Shri Dalpat Singh†
7. Shri V. T. Nagpure
8. Shri Joachim Alva
9. Shri T. K. Patel
10. Shri P. C. Mitra‡
11. Shri T. V. Ananda‡
12. Shri Baharul Islam‡
13. Shri Pirthwi Nath‡
14. Shri Narinder Singh Brar‡
15. Raja Shankar Pratap Singh‡

*Lok Sabha*

16. Shri D. Balarama Raju
17. Shri Rajendranath Barua.
18. Shri R. D. Bhandare
19. Shri Krishna Kumar Chatterji
20. Shri N. T. Das
21. Shri Shivajirao S. Deshmukh
22. Shri Shri Chand Goyal
23. Shri Ram Krishan Gupta
24. Shri Heerji Bhai

---

\*Appointed Chairman on the 11th May, 1970 *vice* Pandit Sham Sunder Narain Tankha, retired on the 2nd April, 1970 from the Rajya Sabha.

†Appointed on the 25th March, 1970 *vice* Shri Rizaq Ram resigned from the Rajya Sabha.

‡Appointed on 27th April, 1970 *vice* Pandit Sham Sunder Narain Tankha, Shri Jagat Narain, Shri Purnanand Chetia, Shrimati Seeta Yudhvir and Shrimati Annapurna Devi Thimmareddy retired from the membership of the Rajya Sabha on the 2nd April, 1970.

25. Shri J. M. Imam
26. Shri Kameshwar Singh
27. Shri Mushir Ahmad Khan
28. Shri Thandavan Kiruttinam
29. Shri K. Lakkappa
30. Shri Brij Bhushan Lal
31. Shrimati Sangam Laxmi Bai
32. Shri Mahendra Majhi
33. Shri B. P. Mandal
34. Shri M. Meghachandra
35. Shri Viswanatha Menon
36. Shri Bhaljibhai Ravjibhai Parmar
37. Shri S. B. Patil
38. Shri Jharkhande Rai
39. Chaudhuri Randhir Singh
40. Shrimati Savitri Shyam
41. Shri P. N. Solanki
42. Shri K. Subravelu
43. Pandit D. N. Tiwary
44. Shri Tenneti Viswanatham
45. Shri P. Govinda Menon.\*

**MINISTRY OF LAW**

Shri P. L. Gupta, Additional Legislative Counsel.  
Shrimati V. S. Rama Devi, Dy. Legislative Counsel.  
Shri P. J. Menon, Asst. Draftsman.

**SECRETARIAT**

Shri S. S. Bhalerao, Joint Secretary.  
Shri S. P. Ganguly, Deputy Secretary.  
Shri Kishan Singh, Under Secretary.



**LIST OF WITNESSES WHO GAVE ORAL EVIDENCE BEFORE  
THE JOINT COMMITTEE**

Sl. No.	Name of witness	Date of hearing	Pages
1	Representatives of the High Court Bar Association, Delhi	16-9-1969	1
	(i) Shri Radhey Lal Aggarwal		1
	(ii) Shri B.C. Misra		1
2	Shri A. N. Gupta, Munsif Havali, Meerut	17-9-1969	20
3	Shri S.C. Mittal, Munsif Magistrate, Parbatsar (Rajasthan)	18-9-1969	36
4	Shri Anand Prakash Singhal, Advocate, Meerut	18-9-1969	36
5	Shri H.L. Tejwani, Retd., Chief Supplies Inspector, New Delhi	19-9-1969	51
6	Shri R. Thiagarajan Advocate Supreme Court, Malleswaram, Bangalore	23-10-1969	60
7	Representatives of the High Court Bar Association, Delhi—(Shri B.C. Mishra)	23-10-1969	60
8	Prof. M.S. Phirangi, Karnatak University, Dharwar	24-10-1969	89
9	Shri C.B. Aggarwal, Ex-Judge, Allahabad High Court	24-10-1969	89
10	Shri M.C. Setalvad, M. P.	25-10-1969	116
11	Dr. L.M. Singhvi, Institute of constitutional and Parliamentary Studies, New Delhi	25-10-1969	116
12	Representatives of the Incorporated Law Society, Calcutta.	15-1-1970	155
	(i) Shri R.C. Kar		155
	(ii) Shri P. K. Sen		155
13	Representative of the Bar Association High Court, Calcutta:— Shri Nirmal Chandra Chakravarty	16-1-1970	164
14	Representative of the Bar Council of Orissa, Cuttack—Shri Rajendra Chandra Mohanty	17-1-1970	177
15	Representative of the District Bar Association, Alipure, Calcutta:— Shri D. N. Mukerjee	19-1-1970	188
16	Shri S.K. Acharya, Advocate General, West Bengal	19-1-1970	188
17	Shri Hargovind Dayal Srivastva, Chairman, Bar Council of India and Senior Vice-President of Oudh Bar Association, Lucknow	27-1-1970 and 28-1-1970	206 and 222
18	Shri Syed Ali Zaheer	28-1-1970	222
19	Shri N.S. Das Bahl, Advocate, Supreme Court, New Delhi	28-1-1970	222
20	Representative of the Indian Law Institute, New Delhi—Dr. D.C. Pande	29-1-1970	250
21	Shri B.S. Wankhede, District and Sessions Judge, Chandrapur	3-2-1970	263

## IV

Name of witness	Date of hearing	Pages
22 Representatives of the Bar Association of Bombay High Court (Original side)	4-2-1970	279
(i) Shri P. K. Thakur		279
(ii) Shrimati Sujata Manohar		279
(iii) Shri Ashok N. Vyas		279
(iv) Shri Hemendra Shah		279
23 Representatives of the Advocates Association of Western India, High Court, Bombay	4-2-1970 and 5-2-1970	279 and 309
(i) Shri M. A. Rane		279,
(ii) Shri Shared Manohar		309
(iii) Shri C.R. Dalvi		309
(iv) Shri D. M. Rane		309
(v) Shri M. V. Paranjape		279
(vi) Shri S.C. Pratap		279
(vii) Shri K. J. Abhyankar		279
24 Representative of the Bar Council of Maharashtra:—Shri D.R. Dhanuka	5-2-1970	309
25 Shri B.R. Satarkar, Collector, Chandrapur	5-2-1970	309
26 Shri Cojande Dairianadin, Advocate-Council, Pondichery	12-2-1970	340
27 Shri Jaganou Diagou, Advocate-Council, Pondichery	12-2-1970	340
28 Representative of the Visakhapatnam Bar Association, Visakhapatnam:—Shri S. Ramchandra Rao, Advocate	14-2-1970	351
29 Shri R. Ramasubramaniam, Secretary to the Government of Tamil Nadu, Law Department, Madras	14-2-1970	351

THE JOINT COMMITTEE ON THE CODE OF CIVIL PROCEDURE  
(AMENDMENT) BILL, 1968

VERBATIM RECORD OF ORAL EVIDENCE GIVEN BEFORE THE COMMITTEE

Tuesday, the 16th September, 1969

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                           |                             |
|---------------------------|-----------------------------|
| 2. Shri Balachandra Menon | 8. Shri Purnanand Chetia    |
| 3. Dr. B. N. Antani       | 9. Shri Rizaq Ram           |
| 4. Shri Rattan Lal Jain   | 10. Shri V. T. Nagpure      |
| 5. Shri B. N. Mandal      | 11. Shrimati Seeta Yudhvira |
| 6. Shri Jagat Narain      | 12. Shri Joachim Alva       |
| 7. Shri Syed Ahmed        | 13. Shri P. C. Mitra.       |

*Lok Sabha*

- |                                  |   |
|----------------------------------|---|
| 14. Shri D. Balarama Raju        | 27. Shrimati Sangam Laxmi Bai           |
| 15. Shri Rajendranath Barua      | 28. Shri Mahendra Majhi                 |
| 16. Shri Krishna Kumar Chatterji | 29. Shri B. P. Mandal                   |
| 17. Shri N. T. Das               | 30. Shri Viswanatha Menon               |
| 18. Shri Shri Chand Goyal        | 31. Shri Bhaljibhai Ravjibhai<br>Parmar |
| 19. Shri Ram Krishan Gupta       | 32. Shri S. B. Patil                    |
| 20. Shri Heerji Bhai             | 33. Shri Jharkhande Rai                 |
| 21. Shri J. M. Imam              | 34. Shrimati Savitri Shyam              |
| 22. Shri Kameshwar Singh         | 35. Shri P. N. Solanki                  |
| 23. Shri Mushir Ahmad Khan       | 36. Pandit D. N. Tiwary                 |
| 24. Shri Thandavan Kiruttinam    | 37. Shri Tennesi Viswanatham.           |
| 25. Shri K. Lakkappa             |   |
| 26. Shri Brij Bhushan Lal        |   |

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.  
Shrimati V. S. Rama Devi, Dy. Legislative Counsel.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.  
Shri Kishan Singh, Under Secretary.

WITNESSES EXAMINED

Representatives of the High Court Bar Association, Delhi:

- (i) Shri Radhey Lal Aggarwal, President.
- (ii) Shri B. C. Misra, Vice-President.

(The representatives of the High Court Bar Association, Delhi, Shri Radhey Lal Aggarwal and Shri B. C. Misra were called in).

**CHAIRMAN:** You are welcome to appear before the Committee. You have not sent any comments and without your comments it will be difficult for the Members to put your questions. I noticed this fact only this morning.

**SHRI B. C. MISRA:** We have tried to draft a memorandum. We could not complete it. If the Members agree we will send a memorandum after oral evidence is recorded.

**CHAIRMAN:** Since you are before us we shall try to hear what you say and then you be good enough to send your comments and, if necessary, we will call you again.

Secondly, I have to inform you that proceedings here are not to be published unless the report is presented to the Parliament. They remain confidential till then.

Now, you may kindly tell us on what particular matters of the Civil Procedure Code you will deal with— which particular sections of the Bill— so that we may have an idea.

**SHRI B. C. MISRA:** With your permission and with the permission of my President, may I begin, Sir. I leave out the details which I will submit in my Memorandum. On the broad principles which I touch, I want to discuss.

1. It is page 3, line 5, Clause 7 i.e. Section 25 of the Civil Procedure Code. This is a very salutary provision for transfer of suits and appeals in civil matters from one State to another and the power has been rightly given to the Supreme Court as distinct from the previous provisions.

**CHAIRMAN:** Do you agree?

**SHRI B. C. MISRA:** It is a very salutary provision, I agree. But I

want to add further provision there. It should be added:

After 'it is expedient for the ends of the justice' and before 'direct' add 'is conducive to the convenience of the parties to the suit or at least the defendant and his witness.

**CHAIRMAN:** You want to restrict the powers of the Supreme Court.

**SHRI B. C. MISRA:** I want to expand the powers. I want to add further clause 'or is conducive to the convenience of the parties to the suit'.

**CHAIRMAN:** It is shifting the power of the Supreme Court, if the parties say that this does not suit us.

**SHRI B. C. MISRA:** The first clause and the second clause are independent of each other. The first clause 'in the ends of the justice it should be possible for the Supreme Court to do.

Now I want to add another ground on which it can be done. That is for the convenience of the parties. My reason in support of my submission is similar words which were added in Section 527 of the Cr. P. C. when the power to transfer criminal proceedings was conferred on the Supreme Court. There, the words were: 'expedient for the ends of justice' and the Hon'ble Minister, I believe, it was Dr. Katju, in his debate in Parliament had stated that if this is for the convenience of the parties, it should be given. Then there is expenditure and the findings of justice. Thereafter we found that the Supreme Court has not accepted that and the Supreme Court rules out. Do they do when there is misguided justice, as a ground under Section 526 of the Cr. P. C.? With that experience of the Supreme Court we might be conscious now that it should be possible to do it for the convenience of both the parties or if both cannot agree, at least one of them and that should be the Defendant. That is the additional ground. Normally expedient and in the interest of justice, if the parties cannot

have a fair trial, in that form where the suit or proceeding is pending. That is only expedient in the interest of justice and not the convenience of the parties.

SHRI J. M. IMAM: Convenience point of the litigant. They can move the Government which is convenient to them or both to transfer the case from one high court to the other. But now the power is in the hands of the Supreme Court. Will it not be of great inconvenience for those who live very far off and naturally it will involve extra expenditure for them.

At present it will be very convenient and less costly because they can move the local Governments, of course, the High Court, and they have been transferred from one court to another. If this power is given to the Supreme Court, people living in Kerala and other places will have to come all the way to Delhi. It will involve a great cost and expenditure and great trouble.

CHAIRMAN: That is a point of principle. We have to decide whether such an amendment should be made or not.

SHRI J. M. IMAM: This is not the suggestion which has been put forward by the gentleman. There, some words are to be added to the Bill so that it may rest with the Supreme Court to consult the parties and then decide. The object of this amendment is to avoid delay and to make litigation less expensive. That is the main object with which all these amendments are sought to be incorporated. So, my contention is this. If the power of transfer is taken away from the local Governments and if it is vested in the Supreme Court, will it not create an additional burden and make the litigation more costly?

I do not challenge it. But we have to see both sides of the picture.

CHAIRMAN: My own view is that this is not a matter on which the witnesses should be questioned. This

is a change which has been suggested by him. He is not putting forward this argument that the power should be given to the Supreme Court.

SHRI P. C. MITRA: Fundamentally the Hon'ble Member has got right to put the questions. Whether it will mitigate the expenses of the litigants or it will increase the cost?

CHAIRMAN: Naturally it will increase the cost. It is not for the witness to tell you.

SHRIMATI SAVITRI SHYAM: Sir, the information can be sought.

CHAIRMAN: Suggestions were made by the Law Commission. You have got 27th Report before us. As to why you have done it, reasons are there. This question may not be put to the witness.

SHRIMATI SAVITRI SHYAM: On this Bill, opinion of the learned witnesses and lawyers can be sought and it is for the Committee and for you to decide what to accept or not. But as a matter of fact the opinion can be sought.

CHAIRMAN: Opinion can differ certainly. It is for you to oppose it when we proceed clause by clause. I am making my own suggestion to you so that you might take that into consideration also.

SHRI S. C. GOYAL: The witnesses are at the Bar for the last 40 years and their vast experience should help us on certain controversial issues. So, it will be desirable that Members should be afforded opportunity to solicit their views.

SHRI B. C. MISRA: I am thankful to the President for trying to protect me as they protect the witness in a Court. But really speaking, I am open to answer all question on all aspects of the matter and it will certainly help me clear my thoughts, and also assist the Committee. May I now answer? The objection raised is that

this power of transfer to the Supreme Court is likely to increase the expense and the inconvenience of the litigants and the power should rest in the local Government. To that my answer is two-fold. Number one is that so far as the judicial proceedings are concerned and transfer from one court to another court on the same High Court or of a different High Court is concerned, it is a judicial work and should be entrusted to a judicial tribunal on judicial considerations and the executive can neither be expected nor should be entrusted with the interference in that kind of work in the very nature of things. Secondly, there is not much inconvenience or expense. The petition to the High Court costs only Rs. 10 and the party need not come to the Supreme Court personally. They can send the petition, and like all other writ petitions and other matters of the Supreme Court, this can also be dealt with. There are moving petitions in the criminal cases from one State to another and nobody has complained that they are expensive and inconvenient. Thirdly, when more than one local Government would come into the picture. An illustration was given here by an Hon'ble Member. If the defendant wants his case transferred from Kerala to Uttar Pradesh, which local Government would have that power to transfer the case from Kerala to U.P.? So, this local Government is out of question. This matter should be left to the Supreme Court which is the only authority to deal with judicial matters in inter-state matters. Fourthly, though a minor reason, the seat of the local Government is not extended all over the State. A man residing at Meerut or at Ghaziabad will find it more inconvenient to go to Lucknow rather than to come to Delhi. So, the question of inconvenience in this context is really a matter of not much consideration.

SHRI SYED AHMED: I just want to know from the Witness one thing. Your amendment is, if I have rightly heard it, "or is conducive to the con-

venience of the parties to the suit or at least convenience to the defendant". Am I correct?

SHRI B. C. MISRA: You are right.

SHRI SYED AHMED: Now, suppose the transfer is not convenient to both the parties, but only to the defendant. The defendant can under this amendment which you are proposing ask the Supreme Court to transfer his suit to suit his convenience. The local jurisdiction has been provided for not according to the convenience of any party but according to 'where the cause of action has arisen'. Now you want to eliminate this clause, in effect I should say 'as to where the cause of action arises'. If the defendant wants, he can apply to the Supreme Court and say that it suits his convenience only where he resides, whether the cause of action arises there or not. In that case the Supreme Court is bound to transfer the case to where the defendant resides, and this clause about of the cause of action absolutely becomes a nullity.

SHRI B. C. MISRA: I thank the Hon'ble Member for his observation. My answer is that the Supreme Court is not bound to transfer it because it has been requested to do so. The matter is of discretion. The Supreme Court can as well refuse. We are only given further jurisdiction to the Supreme Court to transfer it. Now, the question about its conflict with the other Sections 15 and 20, about cause of action, is the subject matter of another provision that I have made. I want another suggestion to be made in this Clause 25, Section 25, Sub-section 3 as inserted in Clause 7. I want these words to be added there—"the court to which such suit, appeal or proceeding is transferred by or under the orders of the Supreme Court shall be deemed to have jurisdiction to try the same notwithstanding anything contrary contained in the CPC or other provision of any law." The reason is the clause as it stands itself permits the transfer of the suit to

another State. And on the observation of the Hon'ble Member, for example, Section 16 requires a suit to be filed only where the immovable property is situated. Now, it is not convenient for the hands of justice to have the suit tried at that place; the party comes to the Supreme Court for the suit to be transferred to another State where the property is not situated. So, the transfer power must be invested with the jurisdiction. If these clauses stand, then there is absolutely no question of vesting the Supreme Court with any power to transfer. Any power of the Supreme Court to transfer the suit or appeal from one State to another in the very nature of things militates against the provisions contained in Sections 15 to 20 and 21.

SHRI SYED AHMED: The amendment of Section 25 gives the Supreme Court the power to transfer notwithstanding Section 20. Notwithstanding pecuniary jurisdiction and notwithstanding the local jurisdiction, the Supreme Court is given power to transfer the case. Now, if a defendant appears before the Supreme Court and says that everything apart, it suits his convenience to get the case transferred from Meerut to Bombay, the Supreme Court cannot refuse because such a transfer militates against other provisions of the P.C.P.

SHRI B. C. MISRA: At its own discretion.

SHRI SYED AHMED: Once you give right, to get a case transferred from one place to another, the Supreme Court will not refuse to exercise its power of transfer if this clause is there.

CHAIRMAN: The witness has suggested that these words may be added in this clause that this power should be given to the Supreme Court and it should be unrestricted.

SHRI SYED AHMED: What is the use of giving a power which should be restricted?

CHAIRMAN: It is for us to decide.

DR. B. N. ANTANI: You say, it should be to the convenience of both the parties. The defendant is an aggrieved party. Would you not be satisfied if you agree to add the words "only for the convenience of the defendant", not both the parties?

SHRI B. C. MISRA: I will not be satisfied with that. There are cases where both the parties may find it convenient. For example, the property situated is in Bombay and both the plaintiff and the defendant reside in Calcutta. As the hon. Member put it, under Section 16, the suit has got to be filed in Bombay. It is not convenient to any party. Both the parties may well agree.

DR. B. N. ANTANI: I have visualised that. But suppose there are cases which are filed in a vexatious manner. What is the protection to the defendant?

SHRI B. C. MISRA: I say, either convenience of both the parties or, if the Supreme Court so considers, the convenience of at least the defendant. That is my suggestion. But the matter must rest at the discretion of the Supreme Court. It is not intended to say that for the ends of justice the Supreme Court is bound to do it. There can be no fetters on the power of the Supreme Court like that. It is to be exercised judicially, not arbitrarily.

SHRI TENNETI VISWANATHAM: You have suggested the amendment that the Supreme Court should be given the power to transfer the suit if it is convenient to one of the parties. Now there is a reasonable amount of certainty as to where the suit will be filed under Section 16 and other Sections of the Civil Procedure Code. If you say, at the convenience of the defendant not of both the parties—I can understand if it is convenient to both the parties—the suit may be transferred to some other place, it may lead to further difficulties, say, in the case of immovable property where the con-

dition of the property may be affected. If one of the parties makes a request and a lawyer with a persuasive tongue appears before the Supreme Court for the transfer of the suit will it not make matters more uncertain? No plaintiff will be certain where the suit will be conducted.

**SHRI B. C. MISRA:** The strength of your objection can be tested when the High Court transfers the suit from one district to another. The same principle applies. In criminal cases, the prosecution starts at one place. There is no sanctity about the place of offence where it is committed and about the trial by a particular judge. It is transferred to another State. That objection has never been found to be relevant for the purpose. There is no sanctity about the place of suing. There is no sanctity of filing a suit where the defendant resides or where the plaintiff resides. If I may refresh your memory, there are some provisions, say, under Section 20 of the Civil Procedure Code, the suit is to be filed either where the cause of action arises or where the defendant resides. Then, under the Copyright Act, the suit is liable to be filed where the plaintiff resides. There is a departure. Nobody has thought of that.

**SHRI TENNETI VISWANATHAM:** You say, there is no sanctity about the place. Don't you think, if there is no sanctity where the suit has got to be filed, there will be no certainty at all? If each piece of legislation gives liberty for the suits to be filed wherever the defendant wants, then there will be no certainty at all as to where the suit is going to be filed.

**SHRI B. C. MISRA:** It is not like that. A suit will be instituted at the proper place under Sections 15 to 20 as the case may be of the Civil Procedure Code and the other party will be served the notice. Thereafter, if they like, they can move the High Court or the Supreme Court for the transfer of the suit. Nobody can file

a suit straightway in any place he wants.

**SHRI TENNETI VISWANATHAM:** After a suit is filed, if the defendant says that it is more convenient to him that the suit should be tried in Delhi, because he is a Member of Parliament, do you mean to say that the plaintiff and the clients from the area should be disturbed?

**SHRI B. C. MISRA:** I hope Members of Parliament will not have suits instituted against them.

**SHRI TENNETI VISWANATHAM:** He may be carrying on some business in Delhi. I am only asking whether it will not lead to greater uncertainty.

**SHRI B. C. MISRA:** There is no question of uncertainty. The suit is instituted at the proper place. Then, both the parties appear before the Supreme Court and the Supreme Court directs that it should be tried at a particular place.

**SHRI TENNETI VISWANATHAM:** I thought you said, for the convenience of either party, the Supreme Court must be given the power.

**SHRI B. C. MISRA:** What I said was that the Supreme Court must have the power of transferring the suit on the ground of the convenience of both the parties or of the defendant.

**SHRI KRISHNA KUMAR CHATTERJI:** The question of jurisdiction is a vital issue in the matter of litigation. When you suggest, if both the parties agree, then certain changes can be made according to their desire, I say, that will lead to a certain kind of situation where justice may be a rather difficult thing. On the question of jurisdiction, a certain person, as my hon. friend pointed out, by eloquence or by some subtle reasoning may find it easy to get the suit transferred to some place where it would be difficult for the litigation to continue in a proper climate. The amendment that you are suggesting might hit at the very



root of the question of justice being properly given.

**CHAIRMAN:** Please do not forget the fact that the Law Commission has made that suggestion. It is for the Committee to adopt or reject it. It is not that the witness is saying that this power may be given to the Supreme Court.

**SHRI KRISHNA KUMAR CHATTERJI:** That is not the point. The Law Commission has recommended that. But we want to get his opinion. He is an expert; he is the President of the Bar Association. Do you not feel that this will lead to certain difficulties so far as meeting the ends of justice is concerned? The "place" is a very important issue in the matter of litigation. Sometimes it has so happened that when a particular litigant finds out, either a defendant or anybody, that a particular court has taken a particular view and he finds himself shaky, probably, this court will not be advantageous to him, then somehow he brings about certain reasoning and tries to plead that the case may be transferred to some other district. stances and what they should do.

**CHAIRMAN:** That is vital but I understand that it is the supreme court which will decide whether or not that case should be transferred. Why should you take it that in respect of every petition that is presented they will transfer the case? They will see what is reasonable under the circumstances and what they should do.

**SHRI KRISHNA KUMAR CHATTERJI:** Am I to understand that his idea is, if Supreme Court is given power probably both the points of view will be adjusted?

**CHAIRMAN:** You must not forget that the 27th Report of the Law Commission gives the ground. It is very salutary on their part to make that change.

**SHRI KRISHNA KUMAR CHATTERJI:** I do agree; for clarification I just wanted this.

**SHRI B. C. MISRA:** Sir, the question is quite simple, the matter in controversy is also simple. It has been felt, and rightly felt, by the Law Commission that there should be power to transfer suits on appeal from one high court to another, and for multifarious reasons that power should vest in the supreme court. All that I have done is, it should not be confined only to the ends of justice which has been construed by Supreme Court but also convenience or parties and arguments that were put forward to me, that jurisdiction is important and somebody manages that way, and all that, is an argument not of really practical considerations because that would apply to every suit as it stands. You have an integrated country and integrated law. As a lawyer I refuse to believe that one party can have advantage in one court and not in another. As a lawyer I refuse to believe that. If we entertain such doubts we have to give goodbye to the rule of law.

श्री बी० ए० मंडल : चेयरमैन साहब, विटनेस को हम पहले से ही कह देना चाहते हैं कि हम हिन्दी में बोलेंगे और वह भी हिन्दी में जवाब देने की कोशिश करें तो अच्छा होगा।

श्री बी० सी० मिश्र : मैं हिन्दी जानता हूँ, हिन्दी में जवाब दंगा।

श्री बी० ए० मंडल : मेरा कहना यह है कि यह एक अच्छा प्रिंसिपल ज्यूरिप्रडेंस का है कि जितना जुडिशियल मैटर है उसको सारी कार्यवाही जुडिशियल आफिसर के जरिये से होनी चाहिये और इसलिये आपने इसको सपोर्ट किया है कि सुप्रीम कोर्ट के जरिये से ट्रांसस्फर वाला काम हो तो ज्यूरिप्रडेंस की जो मान्यता है उसके मुताबिक अच्छा होगा। इस प्रिंसिपल से हम एग्री करते हैं लेकिन साथ ही साथ आपने कंवीनियेंस की बात कही है तो कंवीनियेंस में एक सवाल खर्च का भी होता है। इसलिये हम पूछना चाहते हैं कि अगर कोई आदमी ट्रांसस्फर के लिये सुप्रीम कोर्ट में जायगा तो उस दरदवास्त के लिये उसको सिक्क्योरिटी जमा करनी पड़ेगी या नहीं करनी

ड़ेगी और अगर सिक्वोरिटी जमा करनी पड़ेगी तो दो हजार या कितनी जमा करनी पड़ेगी, तो हजार जो सिक्वोरिटी है उतनी जमा करनी पड़ेगी, या नहीं। एक बात। दूसरी बात यह कि सुप्रीम कोर्ट में जाने के लिये जो वहां कागज-पत्र की छपाई होती है, जो बुक बनती है, वह छपाई होगी या नहीं, वह बुक बनेगी या नहीं और अगर बनेगी तो उसका खर्चा भी बहुत बेसी हो जाता है। इसलिये जो साधारण आदमी है उसको वहां जा कर इतना खर्च करना कठिन है। ऐसी हालत में जब कि लोकल गवर्नमेंट के जरिये से वह काम होता था तब वह बिना पैसे के हो जाता था, तो कन्वोनियंस के ख्याल से यह अच्छा होगा या बुरा होगा। इस बारे में हम आपकी ओपीनियन जानना चाहते हैं। इसको जरा एक्सप्लेन कर दें।

श्री बी० सी० मिश्र: पहली बात तो यह है कि लोकल गवर्नमेंट को अब तक इस सम्बन्ध में, ट्रांसफर करने का अधिकार था इसमें कुछ गलतफहमी है। दफा 25 जो जास्ता दीवानी की है उसके टर्म्स इस कदर सख्त हैं। कभी उनसे किसी को फायदा नहीं हुआ। कम से कम मेरे ज्ञान में ऐसा कोई केस नहीं है जिसमें दफा 25 के मातहत कोई ऐसा सूट एक स्टेट से दूसरे स्टेट को ट्रांसफर हुआ हो।

इसकी शर्त यह है कि हाई कोर्ट के अन्दर एक ही जज होना चाहिये। जो दफा 25 है उसमें एक शर्त यह है और दूसरी यह है कि एक लोकल गवर्नमेंट दूसरी लोकल गवर्नमेंट को, स्टेट गवर्नमेंट को, रिपोर्ट करेगी और जब दोनों स्टेट गवर्नमेंट उसे कन्सीडर करेंगी तब यह होगा और यह सवाल तब पैदा होगा जब कि हाई कोर्ट जिसके मातहत सूट पेंडिंग है वहां एक जज हो। जुडीशियल कमिश्नर के लिये यह प्राविजन बना होगा लेकिन आज तक मेरी नोटिस में कोई ऐसा केस नहीं आया है। आई एम सबजेक्ट टु करेक्शन, लेकिन मेरे खयाल से कोई केस नहीं हुआ कि लोकल गवर्नमेंट ने ट्रांसफर किया हो। तो लोकल गवर्नमेंट को ट्रांसफर करने का अस्तित्थार

दिया जाय यह बात तो विस्तुल आउट आफ ब्रैश्वन है।

अब, आनरेबिल मेम्बर साहब ने फर्नाचा कि सुप्रीम कोर्ट की छगाई का खर्चा और सिक्वोरिटी का खर्चा है। मेरे खयाल में उनको पूरा पूरा ज्ञान नहीं मालूम होता, मैं माफी चाहुंगा, होसकता है उनको ज्ञान हो, लेकिन मेरी प्राईन है कि सुप्रीम कोर्ट में अपील के लिये दो हजार रुपये की सिक्वोरिटी जमा होती है, जो कि कानून में लिखा है, लेकिन यह अपील नहीं होगी यह तो दरखास्त होगी और इसकी कोर्ट फीस 250 रुपये नहीं होगी बल्कि इसकी कोर्ट फीस 10 रुपये होगी। अब जो दो हजार रुपये की सिक्वोरिटी की बात है उसके लिये भी सुप्रीम कोर्ट को अस्तित्थार है कि वह उसको घटा दे या गरीब आदमी है तो फिर विस्तुल माफ कर दे या कम गरीब है तो उसको घटा कर 500 रुपये कर दे या कुछ और कर दे। तो यह कोई खर्चा होता नहीं है और बाकी जो दूसरा खर्चा है वह भी ज्यादा नहीं होगा छगाई वगैरह पर। छगाई का खर्चा नहीं होगा क्योंकि कोई विछाना रिकार्ड प्रिंट होने की इसमें सम्भावना नहीं है। वह एक दरखास्त देंगे और दूसरी पार्टी उसका जवाब देगी, ज्यादा से ज्यादा अर्जीदावा या जवाबदावा लगायेंगे। जैसे कि क्रिमिनल केस के अन्दर होता है करीब-करीब वैसा ही रिकार्ड होगा। दफा 32 में रिट पेटिशन दाखिल करने हैं उसमें कोई कोर्ट फीस सुप्रीम कोर्ट में नहीं लगती है। तो बहुत कम खर्च होता है। जो खर्चा होगा वह इतना कम है और जो इसका एडवांटेज है वह बहुत है, सुप्रीम कोर्ट ट्रांसफर करता है यह इतने बड़े महत्व की बात है कि अगर उसके आगे मौ दो सी रजशा खर्च की बात है तो वह मामूली सी बात है, वह कोई डमाल न करने की बात नहीं है।

श्री नती संगर लक्ष्मी बाई : मैं एक ही बात कहना चाहती हूं कि आपने कहा कि सुप्रीम कोर्ट का खर्चा ज्यादा नहीं होगा लेकिन मेरा तर्जुबा है कि वहां पर बहस करने को

मामूनी वकील नहीं जा सकते और वड़े वकीलों के पास जाने के बावजूद 1600 रुपये देना ही होता है, यों अनर कह कर बाहर आ जाय तो भी 1600 रुपये देना पड़ेगा। तो सुप्रीम कोर्ट में जाने की हिम्मत होनी चाहिये, दिल्ली वालों की हिम्मत हो तो हो लेकिन बाहर वालों की तो हिम्मत होती नहीं। मेरा तो तजुबा है कि सुप्रीम कोर्ट में जाना एक हाथी को खरीदना है।

श्री बी० सी० मिश्र : वहन जी आप किसी गलत वकील के हाथ में पहुंच गई होंगी। मैं चैरमैन से प्रार्थना करूंगा कि सुप्रीम कोर्ट की वर्किंग का विषय यहाँ है नहीं इसलिये मैं ज्यादा नहीं कहूंगा, वह विषय आपके त्रिल में नहीं है, लेकिन उन्से इतना कहूंगा कि आप सुप्रीम कोर्ट के रूल्स को उठा कर देखें जिसमें कि वकीलों की फीस फिक्स की गई है, वह बहुत थोड़ी होगी। वह इतनी थोड़ी है कि 'आदमी एकोर्ड कर सकता है लेकिन अगर किसी लिटीगेंट के नुम्ब्रे में यही लिखा हो कि ए बी सी के पास ही जाना है, फलों वकील के पास ही जाना है तो 1600 रु० क्या दस हजार या सोलह हजार रुपये भी दे सकता है जो शैड्यूल आफ फीज है उसमें जहाँ तक मुझे याद है सीनियर एडवोकेट को 600 रुपये और जूनियर एडवोकेट को 300 रु० मिलने है। आप 125 रुपये में भी वकील कर सकती हैं। इसके बाद अगर यह भी नहीं कर सकते तो सुप्रीम कोर्ट में लीगल एड सोसाइटी है जो कि त्रिल्कुल फ्री वकील प्रोवाइड करती है। खैर, सुप्रीम कोर्ट की वर्किंग का जो विषय है वह दूसरा विषय है, इस विषय से सम्बन्धित नहीं है, चैरमैन साहब चाहते हैं तो उसको भी बयान कर दूँ।

श्री सयद अहमद : आपने बड़ी अच्छी पिक्चर पेश की। यू हैव गिवेन ए बेरी रोब्बी पिक्चर आफ दि सुप्रीम कोर्ट।

SHRI SHRI CHAND GOYAL: Sub-clause (2) of Clause 25, which is sought to be amended says that 'Every application in this connection shall be made . . . except when the

application is made by the Attorney-General or the Advocate-General of a State to be supported by an Affidavit or affirmation".

Now, this exception is being provided in this provision. Sir, I want to know why this exception is being made...

CHAIRMAN: This is not for the witness to reply.

SHRI SHRI CHAND GOYAL: I want his views. What does he think about that?

CHAIRMAN: Let us concentrate on matters which he suggests.

SHRI SHRI CHAND GOYAL: Why not to permit us to have his views on this provision...

CHAIRMAN: He has stated that he agrees to the suggestion subject to the two conditions which he has proposed.

SHRI SHRI CHAND GOYAL: Where is the harm in having his views?

SHRI RADHEY LAL AGGARWAL: Let me answer...

CHAIRMAN: This point may be considered by the Committee when it deals with the clause by clause consideration of the Bill. Let the witness make his suggestions and then we may ask questions.

SHRI B. C. MISRA: I have my suggestions to make in Clause 12 at pages 4-5. I am against this sub-section (4) which is sought to be inserted. It should be deleted completely. The reason is that the transferee court should have all the powers that the execution court possesses, as up to now. This bifurcation of the jurisdiction of courts even about this limited matter should not be encouraged. This is about execution. Section 42 permits the powers of the execution court to the transferee court.

CHAIRMAN: You want it to exercise all powers without any restriction?

SHRI B. C. MISRA: Yes.

My next suggestion is about Clause 13 on the same page—Section 47. This is a very important change that has been made in section 47. There are two aspects of the matter from the practical point of view which have not been considered. What this clause seeks to make is that it attracts the provisions of section 11 of the Civil Procedure Code. It does not take into consideration the nature of execution proceedings. This has considered only one aspect of the matter, that any execution party may not be vexed twice or thrice. And the party should consider all the possible objections that can be raised about execution or *vice versa*. So, I would submit that section 11 should not be applied.

Then, about things sought to be applied—and if the Committee is of the opinion that they should be applied then my suggestion is—and I want to be clear on this point—that Explanations 4 and 5 of the section 11 should not be applied in terms. Explanations 4 and 5 of Section 11 should not be extended even if section 11 is sought to be extended. I will elucidate this point. Section 11 is *res judicata*. Explanation 4 reads—“Any matter...suit., and Explanation 5 reads:— “Any relief...refused.” I tell you as an illustration. A decree-holder has moved an execution application and says that this property be attached, this be sold and the person be arrested. Now, the court grants one relief for the time being, all right, the proceeds can be attached but the immoveable property is not to be attached. The relief about the subsequent things will be completely barred. Similarly, a judgement-debtor raises an objection that this decree is not properly framed. That objection is debarred. Why did you not raise it earlier. This will place a very great fetter on the execution

proceedings. The result will be two-fold. Either the execution application will be tried as a full-fledged suit with all the attendant circumstances and expenses of a suit or there will be injustice. What happens is, the execution applications are treated by the courts as miscellaneous applications and they are somehow disposed of quickly. They are not treated as suits properly except in some very few cases. Section 11 in terms should not be applied. Otherwise, it should be saved from Explanations 4 and 5 so that it should be open to the party to claim further relief or raise objection. The objection which has been expressly tried and raised that should not be tried again. To that extent, the law as it exists is already clear now. But the other things which should have been raised, if they are sought to be debarred, then it raises these complications.

Another suggestion relates to clauses 14 and 15 relating to sections 58 and 60 of the Act.

SHRI K. LAKKAPPA: Sir, I could not follow what is going on. The first thing, is, we are recording the evidence of the witnesses and we have to follow it simply or we have to express our views in the matter. Let us understand how the evidence should be recorded here. When we are examining the witness, we have to express our views. We cannot follow it and the witness is saying something which we cannot follow.

CHAIRMAN: Have you not got the Act or the Bill with you?

SHRI K. LAKKAPPA: It should be regulated properly by the Chairman; otherwise, we do not follow it.

श्री: मुशीर अहमद खां : चेयरमैन साहब, हम यह महसूस करते हैं कि पहले सजेशन हमारे पास आ जाने चाहिये ताकि हम इन बारे में तैयार होकर सवाल कर सकें। इस समय यहां पर क्या हो रहा है वह बिल्कुल समझ में नहीं आ रहा है।

**चेयरमैन :** उनके सजेशन अभी हमारे पास नहीं आ सके हैं, इसके लिये वे माफ़ी चाहते हैं। वे कहते हैं कि हम सजेशन बाद में भेज देंगे।

**श्री नुजीर अहमद खां :** जब वे सजेशन भेज देंगे तब बाद में एग्जांमिन कर लेंगे।

**चेयरमैन :** विटनेस कहते हैं कि हमें इस बार में कोई एतराज नहीं है। अगर आप पूछेंगे तो हम जवाब देंगे।

**SHRI SYED AHMED:** The witness should go on putting forth his suggestions and then at the end we should ask questions.

**CHAIRMAN:** The recorded statement he will send and we can consider it. If you want to put questions, I do not mind.

**SHRI SHRI CHAND GOYAL:** Another difficulty is that the witness is not sitting in a position from where all Members can see him.

**CHAIRMAN:** That is the disadvantage of the room. The witness is not responsible for it.

**SHRI KRISHNA KUMAR CHATTERJI:** It is a great handicap. We cannot listen.

**CHAIRMAN:** He should be put in the centre. Shall we put him in the centre?

**SHRI SHRI CHAND GOYAL:** That will be the best position.

**SHRI RADHEY LAL AGGARWAL:** I think the consensus of opinion here is that they should have our views in writing first before any questions can be legitimately put. Hon. Members do not know what our views are. So, they cannot give their thought immediately to those questions. Therefore, I think, in the best interests of all concerned, we should be asked to give our written opinion on the several sections, on the proposed amendments say, within a week, and if you can find time after a week, we shall certainly be at your service to give whatever explanations are necessary.

456 RS—2

**SHRI KRISHNA KUMAR CHATTERJI:** That will be a welcome suggestion.

**CHAIRMAN:** When will it be possible for you to come?

**SHRI RADHEY LAL AGGARWAL:** Within a week or ten days, at the most ten days.

**CHAIRMAN:** Personally, I do not think there is any harm if we hear the witnesses at this stage and know what they have to say regarding the particular sections. Thereafter, when they send their notes, we shall examine them.

**SHRI SYED AHMED:** That is what I have suggested.

**SHRI RADHEY LAL AGGARWAL:** That would be duplicating the work. We do not mind it. We have absolutely no objection to that. But that will be merely duplicating the work.

**SHRI KRISHNA KUMAR CHATTERJI:** It is just like a preliminary hearing.

**CHAIRMAN:** It will not be duplicating in the sense that we shall first have an idea of the clauses and the sections which he wants to deal with and then, of course, after your statement is prepared, we shall proceed further.

**SHRI RADHEY LAL AGGARWAL:** As you like.

**SHRI RAJENDRANATH BARUA:** Let him proceed and give his views orally within about 20 minutes.

**CHAIRMAN:** That is exactly what I am suggesting. Let him make his remarks. The hon. Members may hear him and take notes.

**CHAIRMAN:** I think it is better you give your comments. But we would like you to expedite your written note.

**SHRI B. C. MISRA:** Clause 14. I want this clause to be deleted. There

is no good reason to keep changing the law on account of economic conditions.

Clause 15—I want this clause (i) should not be amended. Clause (g) should be deleted. Section 60 subsection a (ii) proviso thereto should be deleted.

CHAIRMAN: Kindly give reasons as to why you want this deletion.

SHRI B. C. MISRA: The reason is this is a special exemption made in favour of Government servants. Government servants who borrow money should really pay the money and their salary should be liable to attachment. The Parliament may well bring about conditions under which a Government servant does not borrow any money at all but if he borrows he should pay the money with the same care as anybody else does. There is no good reason why his salary should be exempt from attachment. Half is exempt for 12 months and another for 12 months and after 24 months he is given free licence not to pay. That is not quite democratic.

The other reason is it is the poor Government servant who wants to borrow money. If this clause is there then he will have difficulty in borrowing money when he is in need of the same. I do say there should be no occasion for borrowing money by a Government servant but if he borrows and a decree is passed he should pay with the same grace and no special exemption should be given. There should be no special privileges to Government servants under any account. This is my first suggestion.

If it does not find approval then it should be limited to persons drawing salary upto Rs. 400—500. Persons drawing higher salary should not enjoy any exemption. When the Government advances money to its employees it realises every pie. The salary is not exempted in that case.

CHAIRMAN: You want the proviso to be deleted.

SHRI LAKKAPPA: It has been suggested in the statement of objects and reasons. A special provision and protection has been made to the Government servant. So, the provision that we should extend some protection, no protection should be given either to the Civil Servants, the Government officials in private capacity or in Government capacity. They should also be equal in the ordinary rule of law. Such a special treatment ought not to be given as suggested by the Law Commission. That is my objection. I do not know how it has been stated in the statement of objects and reasons that special protection should be provided.

CHAIRMAN: For that you might see the relevant portion mentioned in the 27th Report as to what are the reasons for making it. So far as I understand the witness says the proviso should be deleted. That is his suggestion.

SHRI B. C. MISRA: My next suggestion is regarding clause 16 which deals with Section 80 of the C.P.C. I whole-heartedly support it but I want to be given retrospective effect in respect of those cases which are still pending in the court of first instance—i.e. in the trial stage.

CHAIRMAN: You agree with it that it should be deleted. What is your reaction?

SHRI SYED AHMED: We are listening to the suggestions and not asking any questions.

CHAIRMAN: I want to clarify this point from the witness.

There is a view that it some times happens, although not very often that when the notice is received by the Government, it takes into consideration the facts in settling the matter out of court. Not always, but certainly in some cases.

Therefore, what the High Court and Bar Associations have suggested

that instead of deleting it, the period of notice should be reduced from two months to one month and the technicality of throwing out the plaint because of the technicality of notice may be waived.

SHRI B. C. MISRA: It should be there. Otherwise, Government servants will exploit the situation. Every time they will go to the Supreme Court.

CHAIRMAN: Please do not discuss the matters among yourselves.

SHRIMATI SAVITRI SHYAM: Please give us the reasons.

SHRI B. C. MISRA: Do you want reasons in support of it or giving it retrospective effect?

CHAIRMAN: He agrees that this deletion should be accepted. The reasons are in the 27th Report. You will know that.

SHRI B. C. MISRA: I have other reasons also in support of it. The reason is more of political nature than legal. We welcome this change. But there is an additional reason for that. It is not relating to the money but also for injunction. For example Government wants to demolish my property. If I go to the court without serving the notice under Section 80, the suit is dismissed. In practice it has been found that many cases are settled on serving notice under Section 80 and in many cases the settlement is not reached. Usually the suit is tried and nobody takes the responsibility of saying that compromise is a good scheme once the notice under Section 80 is given.

The Railways which is a commercial undertaking, in the case of claim, 2 months period is absolutely wasted. That does not serve any purpose. Moreover, filing a suit is not cheap. It costs money. They make all kinds of representations to the Government, press the claim in writing and when they fail, they want to file a suit. In

the case of emergency when their property is acquired they want to file a suit. In the case of a Government servant, he has been removed, suspended, he wants to file a suit for injunction, etc. Two months is a waste and a technicality and nothing comes out of it.

CHAIRMAN: Mr. Misra, the experience of some others is that matters have been settled after notice has been given. Therefore, they have suggested that such a provision should be there. The period of two months could be reduced to one month.

SHRI B. C. MISRA: It should be omitted. I want to put an alternative suggestion. If notice under Section 80 is to be retained and the period is to be reduced to one month, I will suggest that it should be confined only to money suits. The suits for injunctions, declarations, they should be filed immediately. A provision like this exists in Municipal Acts. It is 476 or 477 of the Municipal Act. That suit should not be filed before one month but in the case of emergency and where the plaintiff is likely to suffer, no notice is necessary. The suit for injunction, declarations, should be filed without any notice. The suit for money can wait for a month.

CHAIRMAN: The Bar Council of U.P. have made a suggestion that it would be better to reduce the period.

SHRI B. C. MISRA: That is a matter of principle. The reduction of the period does not serve the purpose. It will not solve the problem, for one month is enough or two months are not sufficient.

CHAIRMAN: If some action has to be taken immediately.....

SHRI B. C. MISRA: Delhi Municipal Corporation Act Section 477 or 476 makes a provision, in the case of an emergency if the plaintiff is likely to suffer, the suit can be filed without notice.

I am here to assist you. In my view, the period may be completely omitted and the Law Commission suggested that. Supposing you do not agree to it, then I am answering the question that the reduction of the period does not solve the question one way or the other. Either something can happen in one month or nothing can happen in two months. If the plaintiff is likely to suffer injury, he should be allowed to file the suit immediately.

I have some new suggestions. In all fairness I should put them in writing. Now I want to read this. I want to refer to Clause 23, Section 115 of the C.P.C. on pages 8 and 9 about the revision. Here, I am opposed to this clause itself. I want the Section 115 to stand as it exists today. And the conditions and proviso and Sub-section 2 should go. They should be deleted. I am opposed to the proviso. In fact, I do not want any amendment in Section 115 as it originally exists.

AN HON. MEMBER: What is your argument?

SHRI B. C. MISRA: My argument is this. As laid down by the Supreme Court in 1964 (497 AIR), this power is a very salutary power and it remedies the defect of the trial court at a very early stage. And the power of the High Court is discretionary even to interfere in what are known as inter-locketary orders. By the amendment proposed by this Bill, it is sought to restrict the exercise of power to only what would be final order or orders which finally dispose of the matter. I want the power to remain in the High Court because it exercises in discretion in the interest of justice. The provision has been made with a view to avoid delay. For the speedy disposal they have made this provision and curtailed the powers of the division. That seems to be the main idea. The question of delays in important matters cannot be settled by amending the law. That has to be left ultimately

to the good sense of the judges, lawyers and litigants.

SHRI SYED AHMED: Conscience of the judge.

SHRI B. C. MISRA: The Hon'ble Member put it very well. Conscience of the judge. If the judge of the High Court thinks that this revision has been filed in order to delay the proceedings, he has the discretion to reject it even though the conditions contained in Section 115 are satisfied. This is what the Supreme Court expressly said. The High Court can best look after on the facts and circumstances of the case rather than be guided by the law. Secondly the question of delay does not arise in this way and cannot be solved by this amendment. I give you an illustration. The trial court refuses to issue a commission for the examination of a witness. The case is not completely closed. This is not covered by (a) or (b) and the High Court cannot interfere now. The first appeal is tried and the matter comes to the High Court in second appeal after three or four years, and all this process starts over again. The case of delay cannot be obviated by the rule of thumb or by passing any law or restricting the power of High Court. It has got to be left to the discretion of the Judges and if they are conscious of the delay, they will reject the matter. If on the other hand the matter is of important nature, it will be in the expediency of the justice to correct that error at the very start and allow the suit to proceed.

SHRI SYED AHMED: By means of revision, any party can drag on a case.

SHRI B. C. MISRA: If the Hon'ble Member says that the High Court was in error in admitting the revision, I will have no brief for the High Court. If the Hon'ble Member said that this is only the method of delay, I do not agree with him, because numerous other matters can be found of delaying the matter.



SHRI SYED AHMED: No, no. The litigants also. What happens is one party wants the case to be decided quickly and the other wants it to be delayed or dragged on and the balance of the Law has to be struck somewhere.

SHRI B. C. MISRA: Justice delayed is justice denied. But justice hastened is much worse. That is justice killed.

My suggestion is that Section 115 should remain as it is. It should not be further circumscribed.

Then, coming to clause 24, amending Section 135A of the Principal Act, for the word "fourteen", you want to substitute "forty". There is no good reason to raise it to forty days. The law need not be amended like that. There are very few such cases. There are absolutely no cases where a Member of Parliament is being subjected to this and he is claiming this privilege. If I may say so, if at all, the Members of Parliament are detained under the Preventive Detention Act. That is what usually happens. In civil cases, this has never happened. Then, I would say, imprisonment is not a very salutary provision. I will be very happy if the whole thing is deleted, the imprisonment provision itself, not only for civil decrees but also for arrears of land revenue. It is an anachronism of the British days.

CHAIRMAN: You are of the opinion that there should not be any provision of imprisonment at all for anybody.

SHRI B. C. MISRA: Yes, that is an anachronism of the old British days. That should be done away with. You may attach all the property and sell the property. About the salary, let there be more attachment of the salary. But there should be no imprisonment at all to anybody; he may be a Government servant or a Member of Parliament or a private person. That should go also for recovery

of the arrears of land revenue. That is really a remnant of the old British regime or a feudal law. This should go.

CHAIRMAN: Supposing clause 24 is deleted, will it not be possible that Members of Legislatures may at crucial times be deprived from performing their duties by some unscrupulous people by just filing suits against them and saying that they should be imprisoned?

SHRI B. C. MISRA: It cannot be done by merely filing a suit. A suit must be filed; a decree must be obtained and a full-fledged trial has to be there. If the Members of Parliament and Legislatures are to be deprived from performing their duties as Members, that may be done more under the Preventive Detention Act and the Criminal Procedure Code rather than under the Civil Procedure Code. Are there any cases where Members of Parliament or various Legislatures been detained under the Civil Procedure Code? This has never happened in recent history. If we are going to democratise the Bill, the detention provision should go. It is a meaningless provision. It is meaningless to have this kind of a privilege. Increasing the number of days from fourteen to forty days is not going to serve any purpose.

CHAIRMAN: You might know that the Law Commission has made a suggestion on the basis of the rights enjoyed by the Members of Parliament in Great Britain. There, it is forty days. They want to make it here also forty days.

SHRI B. C. MISRA: In the democratic set-up, the less privileges we have the better. We have got so many anachronisms of the old British days. These things remind us only of the old British days and serve no purpose. Forty days' privilege, instead of fourteen days, of not being arrested does not really do credit either to the Member concerned or to the House or to the public. If

you say, you will not be arrested for forty days, you may be arrested on the forty-first day. There should be no imprisonment for anybody. But if you want, let it remain as it is.

**SHRI JOACHIM ALVA:** I want to congratulate the honourable witness for his very liberal view on this point. When the Prime Minister announced in the Rajya Sabha that the Supreme Court had passed an injunction on the bank Nationalisation Bill, I said that the judges should display social objectives of the State in their mind. Unless they have those objectives, no legislation could be effectively implemented.

I mentioned my own case wherein my paper, once a famous weekly was closed down—it is a well-known paper—and there was a court decree that I had failed to pay an instalment of Rs. 100. I had a lot of difficulties but I managed to pay most of the debts. The matter had gone to the High Court. The liquidators, Advocates and Solicitor were quite content with my undertaking that I will pay the amount. But what did the Judge say? The Judge Mr. Shelat who is a judge of the Supreme Court now said, "Why not commit Mr. Alva to Jail?". That happened in 1956, not quite long ago. They have this kind of mentality. I can take care of myself. But what about the poor man? What about the common man? I have mentioned this to you to show you the kind of Judges we have. I mentioned the name of the Judge in the House. There are Judges with this sort of mentality. Our courts have got to be cleaned of this sort of mentality. This is not the only case of mine that I have mentioned. There may be many other cases also.

**CHAIRMAN:** The witness has already said about his opinion.

**SHRI B. C. MISRA:** This is not quite germane to my evidence or inquiry. There is a particular judge or judgement. Either the judge is to be trusted or not to be trusted. If he

is a bad judge I hold no brief for him. You have the rule of law. The judge has got to be trusted.

**SHRI JOACHIM ALVA:** You have taken a liberal view and that is all right. I can take care of myself. But I am talking of the poor man.

**SHRI B. C. MISRA:** I don't know if the judge, whom you called a bad judge, would have said the same thing to a poor man. He may not have said that to a poor man. I don't want to say something about any individual case or any individual judge. That is not the object of the Committee.

**CHAIRMAN:** Let us pass on to the next point.

**SHRI B. C. MISRA:** Clause 25 is a very salutary clause relating to sec. 144. I support it whole-heartedly. This is a very salutary provision which will reduce litigation. There are a few suggestions which will be given to you in writing for your consideration. There is one suggestion which I place before you for your consideration which I will further reduce in writing. The Law Commission has not given a thought to this problem. This is relating to provision in article 22 of the civil procedure code, and substitution proceedings when plaintiff or defendant or party dies and I do not find any amendment relating to that. My learned friend knows about it very well and the greatest delay is caused by this provision and it takes years before any substitution takes place. The other party has to bring his legal representative and evidence is recorded and that takes a long time. An amendment is very essential. My suggestion is this. It should be amended. It should be made the duty of the legal representative of the deceased party to come to the court and apply for substitution instead of it being the duty of the accused party.

**CHAIRMAN:** We will consider it. It is in his interest to put obstacles in the way of the suit to continue.

SHRI B. C. MISRA: I will give a few suggestions. The legal representative of the deceased party should apply to the court. If he comes to know of the death of the party he should inform the court. If one of the legal representatives has been brought on record, he should be sufficiently representing the estate of the deceased. The last thing is this. If a decree has been passed by the court against a person who has died after the institution of the suit the decree would not be a nullity but would be valid provided the legal representative of the deceased would have the right to move the court and apply to it for setting aside the decree on assigning a reason for not acting earlier on the lines of order 9, rule 13. In this connection I want to place before the Committee a provision of law which has not received the due and proper notice. There is a statute of the British Parliament relating to the practice of the judicial committee of the privy council. The case is 3 & 4 William 4, Chapter 41, known as Act for better administration of justice in his Majesty's Privy Council. The relevant article is Article XXIII which read like this:

"In any case where any order shall have been made on any such appeal as last aforesaid the same shall have full force and effect notwithstanding the death of any of the parties interested therein but that in all cases where any such appeal may have been withdrawn or discontinued or any compromise made in respect of the matter in dispute before the hearing thereof then the determination of His Majesty in council in respect of such appeal shall have no effect."

We have got a precedent that a decree passed by court of law against a dead person in the absence of his legal representative would have full force and effect. We can borrow this provision and place it in our jurisprudence either in the supreme court or the high court or in all the courts and

provision may be made on the lines of order 9 rule 13, or order 9 rule 9, and the legal representative comes forward and says: We do not know of the decree; it may be re-heard. The initial hurdle takes a long time and no substitution is coming forward and as my learned friend suggested the legal representative of the deceased defendant is interested in delaying the proceedings. Now, the plaintiff is here in Delhi. The party belongs to a far-off place like Nagaland. It is not known that the man has died. He does not know who is his legal representative. He brings forward an application after six months which is time-barred. The provisions of the law as it stands now are very stringent. The burden is cast on the opposite party who may not be in a position to do it. If this problem can be thought about and some method could be found out—of course, I shall make my suggestion which this Committee may consider—it will go a very, very long way in expediting matters which are lying in cold storage for a long time on account of the substitution proceedings.

CHAIRMAN: Don't you think that some element of injustice is being done is there?

SHRI B. C. MISRA: The provision is that the legal representative of the deceased party should apply and, very often, in practice, they know it, that a suit is pending. Then the burden is carried from the opposite party to the same party....

AN HON. MEMBER: Before his death or after his death?

SHRI B. C. MISRA: It will be after his death. Before death the question does not arise. After his death, very often they know it. Nobody can help it. He brings forward an application after two years. This is one provision which requires consideration.

My other suggestions are about sections 64 and 76 and if you will permit me I will put them in writing

and submit for your necessary consideration. Then, if I can also answer any questions.

**AN HON. MEMBER:** Have you any suggestions to make to minimise delays?

**SHRI B. C. MISRA:** This suggestion is to abolish court fees. It will minimize delays very quickly. I may quote a High Court Judge—it will not be proper to name him here—who said that in his court he had huge arrears for ten years and he said that if court fees are abolished it will work. There is a sensible reason behind this suggestion. These appeals have lost their interest, but since they feel that since they have paid the fees, why not might fight it out....

**CHAIRMAN:** In making this suggestion you have to bear this point in mind that this is an amending Bill, and if this amending Bill does not amend that particular section of the Civil Procedure Code, about the amending of which you are pressing, that cannot be done.

**SHRI B. C. MISRA:** I really thank the Chairman, and I stand corrected, I should have answered to that question of delay and expense that it is outside the purview of this amending Bill. This certainly is a larger question which requires careful consideration from many sources. That question cannot be answered by simple amending or not amending some particular provision of the Civil Procedure Code. There are various other factors. For example, there is the High Court Act, Court Fees Act, Limitation Act, etc.

**CHAIRMAN:** Will you like to make any suggestions, Mr. Aggarwal.

**SHRI RADHEY LAL AGGARWAL:** Yes. Firstly, I feel that there should be no limitation. The party is given the liberty to apply before the disposal of the suit. It should be all right. In many cases I have seen that the parties are living at great distance

and they do not know whether the person is alive or dead. And when an appeal is taken after ten years, objection comes that the party has died long, long ago and the appeal is dismissed.

The second thing is with regard to order 41, Rule 1. In that you will find that the words used are "copy of decree and copy of the judgement" which have got to be filed along with the memorandum of appeal. Now, a copy, as interpreted by the Supreme Court, means a certified copy. It takes a very long time to obtain a certified copy of the decree, with the result that in important cases where the party wants to get an interim order for stay, etc., he is seriously handicapped. So far as the judgment copy is concerned, the court is competent to grant him exemption, but so far as a decree is concerned, there is no exemption. Therefore, either exemption is granted for both or the certified copy should be dispensed with in suitable cases and a copy, duly signed, or an affidavit of the party should be accepted. That is one thing.

Then I find from the Bill that sub-clause 2 of Order has been deleted. I think this deletion should not take place.

Rule 2 says:

"The appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal but the appellate court shall in deciding the appeal not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of court under this Rule."

You delete sub-clause 2 of rule 1. Rule 1 does not say that the memorandum will contain any grounds. What purpose will it serve by deleting sub-clause 2 rule 1? I think it should not be deleted because it comes just as a plaint. In orders 6 and 7 it is said that the plaint shall contain a concise statement of facts

and not evidence and so on and so forth. Similarly, this also says that the memorandum shall set forth concisely and in distinct terms the grounds of objection. These are the grounds of appeal. Sub-rule 2 says that the grounds of appeal must be there. The first clause does not mention anything about it. Sub-rule 2 says, grounds. Therefore, the existence of this sub-rule 2 is very essential.

CHAIRMAN: Do you want deletion of the whole sub-clause(a)?

SHRI REDHEY LAL AGGARWAL: I say, it should be only amended accompanied by a copy of the decree..

CHAIRMAN: I have noted that point. You say, a certified copy of it should be filed by the party and that should be accepted.

SHRI RADHEY LAL AGGARWAL: This should be retained, not deleted.

SHRI B. C. MISRA: If the Chairman would permit me, I want to illustrate the first point my learned friend made. There is a judgement of the Supreme Court in A.I.R. 1969. The name of the case is Shakuntala Devi. There an interesting situation arose. An order was passed under section 47 of the Civil Procedure Code in execution of a decree as a decree and not as judgement. Now, the High Court passed an order dispensing with the filing of the copy of the order. The Supreme Court said, since

that order is a decree and there is no judgment, the High Court has not jurisdiction to dispense with that under Rule 41, rule 1. So that works very great hardship. So there should be power to dispense with that, unless the appellate court desires that a certified copy of the decree or order be there. The appeal should be entertained on plain copies or the judgment copies in order to save time and get expeditious justice.

After we receive the copy of our comments here we will prepare our memorandum within about a week or ten days and submit to you.

CHAIRMAN: It may be necessary for the Members to examine you again.

SHRI B. C. MISRA: If it is necessary, it will give both of us very great pleasure to be at the service of the Committee. It is public service and we are all interested in doing public good.

CHAIRMAN: The Committee and I are obliged to you for the trouble you have taken and we shall except your cooperation in future also. Thank you.

SHRI JOACHIM ALVA: The accompanying witness has enlightened us very much.

(The witnesses then withdrew)

---

Wednesday, the 17th September, 1969

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                           |                          |
|---------------------------|--------------------------|
| 2. Shri Balachandra Menon | 8. Shri Purnanand Chetia |
| 3. Dr. B. N. Antani       | 9. Shri Rizaq Ram        |
| 4. Shri Rattan Lal Jain   | 10. Shri V. T. Nagpure   |
| 5. Shri B. N. Mandal      | 11. Shri Joachim Alva    |
| 6. Shri Jagat Narain      | 12. Shri T. K. Patel     |
| 7. Shri Syed Ahmed        | 13. Shri P. C. Mitra     |

*Lok Sabha*

- |                               |                                      |
|-------------------------------|--------------------------------------|
| 14. Shri D. Bala Rama Raju    | 27. Shri Mahendra Majhi              |
| 15. Shri Rajendranath Barua   | 28. Shri B. P. Mandal                |
| 16. Shri N. T. Das            | 29. Shri Viswanatha Menon            |
| 17. Shri Chand Goyal          | 30. Shri Bhaljibhai Ravjibhai Parmar |
| 18. Shri Ram Krishan Gupta    | 31. Shri S. B. Patil                 |
| 19. Shri Heerji Bhai          | 32. Shri Jharkhande Rai              |
| 20. Shri J. M. Imam           | 33. Chaudhuri Randhir Singh          |
| 21. Shri Kameshwar Singh      | 34. Shrimati Savitri Shyam           |
| 22. Shri Mushir Ahmad Khan    | 35. Shri P. N. Solanki               |
| 23. Shri Thandavan Kiruttinan | 36. Pandit D. N. Tiwary              |
| 24. Shri K. Lakappa           | 37. Shri Tenneti Viswanatham.        |
| 25. Shri Brij Bhushan Lal     |                                      |
| 26. Shrimati Sangam Laxmi Bai |                                      |

Shri Mohammad Yunus Saleem, Deputy Minister in the Ministry of Law and the Department of Social Welfare attended the meeting by special invitation.

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.  
Shrimati V. S. Rama Devi, Dy. Legislative Counsel.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.  
Shri Kishan Singh, Under Secretary.

WITNESS EXAMINED

Shri A. N. Gupta, Munsif Havali, Meerut.  
(The witness, Shri A. N. Gupta, was called in.)

**CHAIRMAN:** There are two witnesses today—S./Shri A. N. Gupta and Tejvani. The witness before us is Mr. A. N. Gupta, Munsiff Haveli, Meerut.

**SHRI SYED AHMED:** My impression is that while examining those witnesses who have not submitted Memoranda, we have wasted a lot of time because nobody knew what were the suggestions. When we have no notes, how can we put questions to them? I think we should have notes before we examine the witnesses so that our time is not wasted.

**SHRI SHRI CHAND GOYAL:** It will not be correct to say that it will be a waste of time. We will have the view of the Hon'ble witness and later on we can discuss.

**CHAIRMAN:** We had very good suggestions yesterday. The witness promised to appear before you for your cross examining him again.

**SHRI SYED AHMED:** I submit that there should not be occasion for the witness to appear again. Had the notes been given in advance, there should not have been an occasion to call upon him to appear again.

**SHRI BALACHANDRA MENON:** I feel that whatever we did yesterday is the best way of doing it and finally let them give us his written notes. Yesterday, he was very helpful to us. We should not discourage the witnesses or cast aspersions on witnesses who come before us. I am very very ashamed of it.

**SHRIMATI SAVITRI SHYAM:** They are not men in the street. We must not treat them like this when they come here.

**SHRI K. LAKAPPA:** Whether we have this principle, while tendering evidence, we have right to cross-examine them and re-examine the witnesses

when he comes here again or whether we get all the suggestions once for all from the witness and the members will have the right to say something thereafter. What happened yesterday, every member was rising and cross-examining the witness. That was not a regulated thing yesterday.

**CHAIRMAN:** Cross examination should take place one by one.

**SHRI K. LAKAPPA:** After tendering the evidence by the witness now before us whether the Member has got the right to cross-examine or get clarification of the points or to get further more information from the witness or before tendering the evidence whether one by one we are to go on cross-examining the witness. It will create confusion and the Committee cannot go on. These things will have to be regulated by you.

**CHAIRMAN:** I will ask for the co-operation of the Hon'ble Members not to speak at one time, not to put questions at one time. I would expect you also to help me in that. We shall hear the Witness first in full and then put questions.

**SHRI SHRI CHAND GOYAL:** In that case, you must start from one end and finish at the other. Otherwise, a few members will monopolise all the time.

**SHRI P. N. SOLANKI:** There are some members who have not received the memorandum of the witness in advance. If the witnesses are approached today for their memorandum and if they are circulated as urgent papers, we could go through them in the evening and be ready for cross-examination tomorrow.

**CHAIRMAN:** When we ask for comments from witnesses, we also ask them whether they would like to appear before the Committee. In

the case of Shri Gupta, for instance, he replied to us stating that he would like to appear before the Committee but he regrets that it is not possible to send the comments earlier. So we requested him to come and he has come. It must be realised by us that he is a presiding officer of a court and he has agreed to spare his valuable time for us. We must show him all respect and hear him. Naturally, he is more concerned with the procedure in the lower courts. His views will be very helpful to us.

WITNESS: My first submission is that there should be constitution of Divisional Tribunals.

CHAIRMAN: At which stage? At the lowest stage?

WITNESS: Not at the lowest stage. To hear second appeals and revision and first appeals.

CHAIRMAN: Would you like to offer any suggestion regarding the lower courts at the munsif's stage or district judge's level. We will then to the appellate stage.

WITNESS: This is a general observation. I am not very much concerned with the CPC while making this suggestion. I am more concerned with procedure obtaining in the country.

At present, second appeals go to the High Court and there is such a block in the High Courts that in big Courts like those of Allahabad, Calcutta and Madras, they take 8—10 years. So if the Divisional tribunals could take some of the work from them, that will be very useful for litigants as well as for the courts. The tribunals may hear second appeals and also revision appeals from the munsif's courts. At present, actually High Courts are more occupied with writ petitions and with sessions cases.

CHAIRMAN: Why is there so much jamming at the lower level?

WITNESS: There are chiefly two reasons. One is that actually cases get blocked at the High Court level.

CHAIRMAN: That comes later.

WITNESS: Even in the first instance in several cases. Revision petition is filed and appeal is preferred and cases get stayed for 8—10 years. A writ petition takes about 4 years for disposal. Even for giving a fitness certificate to appeal two years are taken. This is at the first level in the High Courts.

SHRI J. M. IMAM: So far as the lower courts are concerned, it is stated that there is a lot of delay, because there is delay in the service of summons and secondly, there is delay on account of adjournments. Have you any suggestions to reduce the delays?

WITNESS: I have got that in mind. I shall proceed section by section. Adjournment section is order 17. I will come to it later. What I said was by way of a general suggestions, not actually concerned with CPC.

CHAIRMAN: This is an amending Bill. We can only go into those sections which are touched by the amending Bill.

WITNESS: This falls within the purview of CPC.

CHAIRMAN: But we are not amending the whole CPC; we are amending only some sections proposed in the Bill.

SHRI KAMESHWAR SINGH: But further amendments can be inserted for speedy disposal.

CHAIRMAN: That is a different matter.

SHRI KAMESHWAR SINGH: This is a very valuable suggestion he has made. People spend time and money and get no result.



CHAIRMAN: We do not know what will be the fate of the tribunals either. They may be holding up cases.

SHRI KAMESHWAR SINGH: We can examine the pros and cons and see what can be done.

CHAIRMAN: I would like you to confine your suggestions to those sections which are being amended here. Later on you may give your general observations.

WITNESS: The present procedure is to prefer an appeal to the High Court. The procedure could be amended and the appeals may be preferred before the divisional tribunals.

SHRI J. M. IMAM: The most important consideration is how to avoid delay and how to ensure speedy disposal of cases. So let the witness state before us what all he wants to say in regard to all the factors that contribute to delay in disposal of cases.

WITNESS: At present it takes about 8 to 10 years for a High Court like Allahabad, Calcutta, Bombay or Madras to dispose of a first and second appeal. In fact there is such a large accumulation of work before the High Courts that it is not possible for them to look after the routine work. Most of their time is taken up by their writ and criminal jurisdictions and as the famous saying goes, justice delayed is justice denied. The litigant public has started feeling the pinch of extraordinary delay in the final disposal of cases especially civil cases.

This delay can be curtailed if tribunals consisting of two or three senior district judges of the grade and rank of a Commissioner are constituted in every division. Such tribunals shall have final jurisdiction with regard to second appeals, first ap-

peals up to the valuation of 50,000—it may mean some amendment of the Constitution—arising out of or from the orders of Munsifs and appeals or revisions from the orders or convictions made by the magistrates. The High Court should be left to look after writ jurisdiction, criminal appeals from the orders of the sessions judges, matrimonial and company law matters. In the recent past, work has grown enormously and with the objective of socialism in view the executive excesses are likely to increase causing additional strain on the High Courts. In view of this also it is necessary to relieve High Courts of unnecessary burden. In every division as many tribunals as are necessary may be constituted. In fact this process of divesting the High Courts of some of their work has already started in States like U.P. In U.P. they have also raised the valuation upto Rs. 20,000 and they have recently raised the jurisdiction of the small cause court judges; they are increasing the jurisdiction of the munsifs. The High Courts should be left to decide only those questions which need their attention. Since devaluation the value of money has gone down and Rs. 5,000 in the old days is now worth Rs. 20,000. Therefore, the jurisdiction at the lower level should be enlarged and the High Courts should be concerned with some important work. In the districts it takes about two or three years for a civil suit to be decided. It may take even 25 or 50 years if it goes up to the High Court and Supreme Court. After I pass an order the party seeks time for filing a revision petition before the High Court and so a stay order is granted.

CHAIRMAN: You must have seen the suggestion that a stay order will not be granted.

WITNESS: If the High Court admits a revision petition, a stay order should be granted.

CHAIRMAN: Hereafter the rules will be changed.

WITNESS: I have made the suggestion. The Committee may consider it.

There is another suggestion with regard to the filing of appeals. The present procedure is that an appeal can be filed only if it is accompanied by a copy of the decree and judgment. It takes about two weeks for the preparation of the decree and actually litigants pass on some sort of illegal gratification to the staff to prepare decrees as early as possible so that they may prefer an appeal as early as possible. Provision should therefore be made that an appeal can be preferred without being accompanied by a copy of the judgment and decree. In most cases where an appeal is preferred against an order of the Munsif to the District Judge who is sitting just in the next room, the appellate court can call for the records and there is no need at all to obtain copies of the decree or judgment. If the appellate court is in another district or town that is another matter but that may not be the majority of cases. Then again notice has to be served on the respondents and they may adopt all sorts of tactics not to get the summons served. In that case provision should be made that service of notice of appeal on the counsel who was engaged for the suit should be deemed proper service of the summons and thus a delay of 4-5 months can be avoided.

CHAIRMAN: If the party retains that counsel it may be valid. It is not so in every case.

WITNESS: In that case time may be granted so that the party may engage another counsel so that the appeal will be ready for hearing the moment the counsel appears.

I shall now turn to section 20 which deals with territorial jurisdiction. In the commercial world transactions take place over the telephone or by post and it is difficult to determine the place where the contract had been entered into. In such suits invariably

the question whether a particular court has jurisdiction to try that suit arises and a lot of evidence is adduced. Section 20 should be amended so that a suit can be filed at any place where either of the contracting parties is residing.

SHRI IMAM: What about the execution of the decree?

WITNESS: The Court which passes the decree will execute it.

Section 24 refers to transfer of cases. The suits are instituted in permanent courts and several additional courts function in a district. The District Judge according to the existing provision cannot transfer a suit to be instituted. These instituted suits wait for sometime for transfer to additional courts. At places this time is quite large and they are transferred to an additional court after a few months. In case a provision is made empowering a district judge to transfer suits to be instituted, he can make an automatic permanent arrangement for regular transfer. For instance, I have three tehsils with me: Mawana, Hapur and Sardhana. All the suits relating to those places are filed in my court and they remain with me for sometime. I send a list to the District Judge and he transfers those cases to the additional courts and they are ultimately sent to those courts. Provision should be made that suits 1 to 50 may go to one court and 50 to 100 may go to another court. That arrangement can be made.

CHAIRMAN: That is not an amendment of the Act. It is a question of procedure which the District Judge can regulate.

WITNESS: At present he cannot transfer a suit to be instituted.

CHAIRMAN: It is not really a transfer. Supposing there are several Munsiffs, he can decide which case should go to which Munsiff.

WITNESS: Actually what happens is if suppose a suit is instituted in a

Court on 18th of September, the District Judge has no power to transfer it on 17th of September. He can transfer it only after it is instituted. If an amendment is made, it can be transferred on the 16th or on the 17th itself.

CHAIRMAN: Which provision can be altered?

WITNESS: Section 24.

SHRI RAJENDRANATH BARUA: How can he transfer a non-existent suit?

WITNESS: He may order suits 1 to 20 will go to such and such court, 20 to 50 will go to such and such court so that there is an automatic transfer of cases and there is no delay. Otherwise, it takes several months. The present section 24 reads like this:

"On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ...."

Therefore, the suit or proceeding must be pending before it before he can order the transfer.

SHRI P. C. MITRA: Without any notice how can be transfer?

WITNESS: He can make an arrangement about it.

CHAIRMAN: The witness's suggestion is that there may be some change in Section 24 in order to enable an automatic transfer of cases from one court to another.

WITNESS: That is precisely what I want.

SHRI P. C. MITRA: How can the Court transfer the case without receiving on application for it?

WITNESS: Suppose 100 suits are instituted on an average in a month. The first 50 suits can be tried in this court and the next 50 suits can be tried in the next court so that there is no delay.

CHAIRMAN: I am sure this section will not apply in the manner you want it to be done. The change you want to be made is only a procedural change. It is not that the Act empowers it to be filed in one court.

WITNESS: They have to be filed in one court only.

CHAIRMAN: There is nothing to stop the District Judge from acting in the manner you suggest. That transfer is not under Sec. 24. That is for a different purpose when the party wants to get it transferred.

WITNESS: Actually it is under Sec. 24. It is on the application of any of the parties or on its own motion. It is under this provision that the case is transferred from one court to another court.

CHAIRMAN: You want *suo motu* transfer by the court.

WITNESS: Yes, Sir.

SHRI P. C. MITRA: Without knowing the grounds of transfer?

WITNESS: All suits are instituted in one court and for expeditious disposal some suits are transferred to the other courts.

CHAIRMAN: He files a suit in your court because you have jurisdiction in that area. You want that area to be split up?

WITNESS: I do not want the area to be split up. Suits may be instituted in one court and some of them may be transferred to some other court.

CHAIRMAN: Transferred or distributed?

WITNESS: He should distribute them in advance.

SHRI P. C. MITRA: That is distribution and not transfer. Transfer here is on the application of the parties.

CHAIRMAN: Personally I think this matter will not fall under Section 24. It is an automatic arrangement which the court will look into. However, we have noted your suggestion.

WITNESS: Next is about Sec. 34. At present the maximum interest in a money suit which the Court can grant is 6 per cent. per annum. It is very low. Even banks charge 9 per cent. This should be raised to 12 per cent. I want the maximum limit to be 12 per cent. The court can exercise its discretion and grant from 1 per cent. to 12 per cent.

CHAIRMAN: Don't you think that raising of the rate of interest will cause hardship to the parties?

WITNESS: Not at all. Outside the lending rates are very high. The banks charge 9 per cent while lending money to the customers.

SHRI J. M. IMAM: It will make him pay the money earlier.

WITNESS: Next is Sec. 35. To my mind, an appeal allowing or refusing the costs should be barred.

CHAIRMAN: Suppose the lower court has acted wrongly in that matter?

WITNESS: It is such a trivial matter for an appeal to be allowed.

CHAIRMAN: It may be several thousands of rupees.

WITNESS: My suggestion is just to reduce the work of the appellate court.

My next suggestion is about 35(a)—Special costs. The UP Government has already made an amendment and I think that can be adopted. Under the present provision the court can award special costs only if a specific prayer is made on that behalf. The UP Government has made an amendment in 1954 that special costs can be awarded by the court *suo motu* without any prayer being made."

My second suggestion is that the party should be made to deposit the costs before it files an appeal. This is in order to make the provision more stringent.

CHAIRMAN: You want the amount to be deposited before the appeal is filed?

WITNESS: Before the appeal or revision is filed so that frivolous litigation does not get much of a fillip.

Next is Sec. 75—Purposes for which a commission can be issued.

SHRI KAMESHWAR SINGH: The witness should be allowed to express his views whatever he has got; later on it can be made more specific. Without interruption we can hear; we can understand better.

CHAIRMAN: You must realise that where the Committee has no power to make any amendment, how can you ask the witness to give suggestions?

SHRI KAMESHWAR SINGH: It is within the purview of the Committee. We can sort it out later.

CHAIRMAN: He may give suggestions on specific clauses which are sought to be amended. Later on he may give general impressions also. We will now proceed further.

WITNESS: Regarding Section 75, purposes of issue commission, there should be a provision empowering the courts to issue commissions for seizure and inspection of account books. In a recent case the Supreme court has

held that at present a court has no such power. The partner files a suit for dissolution of partnership. He cannot seize the account books etc. He has no evidence. The court also can't come to any conclusion. Therefore it is necessary to safeguard the interest of the dispossessed in cases of partition, profits and partnership etc. and therefore a provision may be made as suggested, in section 75.

CHAIRMAN: After (d), (e) should be added. That is your suggestion.

WITNESS: Yes, Sir.

Next I come to Section 80 which requires giving of 2 months' notice to any Government before suit can be filed. If the Committee decides to scrap the entire section I have nothing to add. In case it wants to retain some of the provisions about it, some exceptions may be made.

CHAIRMAN: What is your impression?

WITNESS: It should not be scrapped totally. It may remain.

CHAIRMAN: What is your suggestion?

WITNESS: There should be a section like Section 326 of the UP Municipalities Act. There a provision has been made that a notice is not necessary in those suits wherein the only relief claimed is an injunction of which object would be defeated by the giving of the notice or postponing of the commencement of the suit or proceedings. A similar provision should be made in section 80 CPC. This will also help reduce the work before the High Courts as the parties have to rush there in order to get an immediate relief.

CHAIRMAN: What about the time? Should it be 2 months or less?

WITNESS: If there is no imminent danger or injury. 2 months is reasonable time.

456 RS—3.

CHAIRMAN: It has been suggested by various high courts that time should be reduced.

WITNESS: That will not be an adequate relief. Exception may be made in those cases in which no time may be given. Otherwise it may remain as 2 months in all cases.

CHAIRMAN: All right. What is your next point?

WITNESS: I come to Section 82. This is about reporting of the matter to the State Government. This provision should be scrapped. It may be substituted by a provision which may prescribe giving of notice only. This provision should be amended so as to eliminate the reporting procedure and in its place a notice of 3 months may be substituted, or whichever time this August committee considers proper. Instead of this reporting procedure, that should be the procedure which I would hasten to suggest.

CHAIRMAN: Why should a notice be at all necessary—once decree is passed against the Government?

WITNESS: It takes even after this reporting procedure, about a year for the Government—there are inter-departmental quarrels. The concerned department asks the other department to pay the money and all that . . .

CHAIRMAN: Once you make change in the Act it is their duty to pay within prescribed period 3 months or 2 months and they will have to do it.

WITNESS: They must do it; but I feel they will not be able to do it . . .

CHAIRMAN: Where is the necessity of giving notice? Why should notice be given? Is notice given against an ordinary litigant? Why should it be necessary against the Government?

WITNESS: It is considered the most solvent party.

**CHAIRMAN:** When passing order the court can mention that this should be paid in 2 months or 3 months.

**WITNESS:** Because it will result in some very unpleasant things.

**CHAIRMAN:** What is hardship for the Government? Why they cannot pay?

**WITNESS:** They may refer it to the Department concerned. The Dept. concerned refers it to their lawyer.

**CHAIRMAN:** Only reasonable time should be given.

**WITNESS:** Otherwise it will result in attachment of treasuries daily in every district. Next I go to Section 87.

**CHAIRMAN:** I want to go back to Section 82. This is on page 7.

**CHAIRMAN:** Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

**WITNESS:** That may also be sufficient. I am giving another opportunity after the decree is filed. Otherwise, it will mean attachment of treasuries daily in every district.

**CHAIRMAN:** You do not want any change.

**WITNESS:** I want just a notice of two months be given after an execution application is filed.

Next is 87(B). It is not included in this Act but it is of general importance in the sense that it grants protection to former Indian rulers. I think, this should be removed as early as possible.

**CHAIRMAN:** When their privileges are taken away; all these privileges will be taken away.

**AN HON. MEMBER:** For this particular Section there are already Press

comments that the Select Committee might amend this Section. I think we should not ignore this particular Section.

**WITNESS:** 87(B) should be scrapped totally.

Section 96 and 100: Under Section 100 at present a second appeal can be filed in respect of execution cases. My suggestion is that a second appeal should be barred in execution cases. A party has enough opportunity to contest a suit and generally frivolous objections are filed in execution cases to delay the execution. I think that an opportunity upto the first appeal is sufficient against the order passed in an execution case and therefore a second appeal should be barred.

Next is, although it is not included in the Amending Bill, concerning 122 CPC.

**CHAIRMAN:** Have you got any suggestions for Section 115—Revisions.

**WITNESS:** It is enough which this Committee has proposed. It is very satisfactorily being amended. I will take up Order 1, Rule 10 which relates to Section 115. At present a revision lies against the order adding or refusing to add a party to the suit. It takes about 8 to 10 years in the High Court to dispose of a civil revision and it results into unnecessary delay. In case addition of party has been refused, a second suit by or against that Party can be disposed of twice during the time the High Court disposes of the civil revision. In case a party is ordered to be added, it has full opportunity to place its case before the court and therefore in either of the cases it is not necessary to provide for a revision. Thus a revision against the order adding or refusing to add a party to the suit should be barred.

**CHAIRMAN:** In what manner do you want it to be restricted?

WITNESS: No revision should lie against an order adding or refusing to add a party to the suit.

SHRI P. C. MITRA: In the lower court if the party applies for adding a party and if the court rejects it, no revision should be allowed. That is what you mean.

WITNESS: Yes, Sir.

DR. B. N. ANTANI: What are the grounds for taking away the right of revision?

WITNESS: Expediency.

In case addition of party has been refused, a second suit against that party can be filed and therefore, it does not act to the prejudice of that party. In case the party is to be added, it has full opportunity to place its case before the court. In that case revision is absolutely unnecessary.

DR. B. N. ANTANI: Is that sufficient justification?

SHRI SHRI CHAND GOYAL: Do you not think it as an amplification of litigation?

WITNESS: Actually the second suit can be disposed of in half the time than the other course.

CHAIRMAN: So far as adding of the party is concerned, adding the name will not effect materially the plaintiff. But if the party is dropped from the plaint, then it will effect materially.

WITNESS: It is about refusing to add the party. The court may reject that application or accept it. My opinion is that revision should be barred. In case the party is added, it can place full case before the court and it has an opportunity to go upto the Supreme Court. In case it is refused, then that decree is not binding upon it. It cannot effect him.

CHAIRMAN: I have not been able to follow your argument as to what exactly you want.

WITNESS: If the court permits a party to be added in a suit or it refuses to add, a revision lies against that order. My submission is that in case party is not added, that decree is not binding on him. In case a party is added, it has full opportunity to put its case before the lower court and Supreme Court. In either of the cases, it is unnecessary that the provision should be there.

CHAIRMAN: Mr. Goyal was just saying that it will lead to the multiplicity.

WITNESS: Revision will take twice the time.

This provision is mis-used by the persons and frivolous applications are moved generally—in 90 per cent of the cases.

CHAIRMAN: In what way are the parties effected?

WITNESS: In case the revision is barred, it is not going to effect the merits of the case.

CHAIRMAN: The effect of the revision will be that it will take time?

WITNESS: Not only time but the case will get very old. If the party is added, it will start like a fresh case.

CHAIRMAN: That will depend upon the stage. Suppose at the initial stage it is said that such and such a party be added and such and such be dropped, then?

WITNESS: I am not saying anything about the dropping of the party. That will not cover my suggestion. Dropping is more serious than adding a party.

Sir, next suggestion of mine is with regard to Section 122 C.P.C. which is not included in the Amending Act. High Court has been given power to frame rules or amend rules of the First Schedule. It has created a lot of confusion. There should be uniformity. My suggestion is that a sub-Committee of this august body may go into this and bring uniformity in those rules.

**CHAIRMAN:** Attempt has been made to bring them in line under this Amending Act.

**WITNESS:** I submitted that this is not included in the Amending Act. Since the Committee is going into it, a sub-Committee may be appointed so that those rules should be made uniform.

**SHRI RAJENDRANATH BARUA:** How are you affected?

**WITNESS:** I am not personally effected but there should be uniformity. Actually in some cases they are in contrast. Some courts have not framed rules and some have framed them.

**CHAIRMAN:** Do you want that the right of the High Court should be taken away?

**WITNESS:** Not that. Actually I wish that these rules may be made uniform as they vary. The rules were made in 1908. In the course of 60 years various rules have been made by them. There has been no attempt to make them uniform.

**DR. B. N. ANTANI:** Do you suggest uniformity of rules in all the High Courts?

**WITNESS:** Yes, Sir. Parliament may amend the rules at present and thereafter the High Court may go on amending it.

**SHRI JOACHIM ALVA:** You cannot pass an opinion as you are not of the higher rank of the judiciary. Supreme Court has neglected this business for the last 50 years.

**WITNESS:** Supreme Court has no authority to give any directions about it.

**SHRI JOACHIM ALVA:** Supreme Court would have at least given the direction like that.

**WITNESS:** They make rules under 122 C.P.C.

**SHRI JOACHIM ALVA:** There is a jungle of rules.

**WITNESS:** To my knowledge, no High Court has made the rules based on its inherent jurisdiction. A sub-committee is constituted to frame rules, then it goes to the State Government for approval and afterwards it is published in the gazette.

**SHRI RAJENDRANATH BARUA:** According to the requirements of local conditions and demands, they have done it. There is no conflict.

**WITNESS:** There is conflict. Some High Courts have not framed rules.

**SHRI RAJENDRANATH BARUA:** It is for the High Courts concerned to look into it.

**WITNESS:** If you feel that way, it is all right.

The next is Order No. 5—service of summons. The Allahabad High Court has made the rules; others have not. A provision should be made that a court may be empowered to issue summons or notice *suo motu* by registered post.

**DR. B. N. ANTANI:** In what way will it help the parties?

**WITNESS:** Because service through the process servers is never personal at least in the first instance. In 99 per cent cases, it is never personal. First it issued for three months' duration. At present, I am giving it for 8 months' duration. You can imagine the plight of the plaintiff.

**DR. B. N. ANTANI:** From your experience as a munsif, in how many cases will a court be inspired to take *suo motu* action in such matters?

**WITNESS:** At least ever since I have begun work in the court I have been doing it. I have put in 9-10 years and I have been doing it right from the very first day uptil now. In the first attempt, what happens is that the process server reports that he was



not there. It is in the third instance that I order that summons may be served by publication in the local gazette. What I feel is that the post-man is much more reliable than the process server.

CHAIRMAN: What is your exact suggestion?

WITNESS: The court should be empowered *suo motu* to issue notice or summons in the first instance itself by registered post also.

CHAIRMAN: That is already being made.

WITNESS: Yes, quite so.

SHRI BRIJ BHUSHAN LAL: By adding the proviso in 19A(1), will it not defeat the purpose?

WITNESS: It is very much necessary because it may be left to the discretion of the court in particular circumstances of a case. May be the parties are there.

SHRI BRIJ BHUSHAN LAL: Will not the powers be misused? The officials of the court will mislead the court and get orders passed. They just come in the morning and get the papers signed, are sent by registered post? There is a lot of corruption due to

WITNESS: No.

SHRI BRIJ BHUSHAN LAL: What is the necessity?

WITNESS: It varies from presiding officer to presiding officer.

SHRI BRIJ BHUSHAN LAL: Where is the necessity of this proviso when they have said 'shall' in the beginning—"The court shall, in addition to . . ."

WITNESS: If the word 'shall' is substituted by 'may', the proviso becomes redundant.

SHRI BRIJ BHUSHAN LAL: Will it not be ineffective in that case?

WITNESS: Yes.

SHRI BRIJ BHUSHAN LAL: In that case, the summons will not be served by registered post. What is the harm when simultaneously summons are sent by registered post? There is a lot of corruption due to this.

WITNESS: There is no doubt about that.

SHRI BRIJ BHUSHAN LAL: So the inclusion of 'shall' is a very nice amendment. But so far as the proviso is concerned, it is redundant; it lessens the effect of this amendment.

WITNESS: It becomes redundant.

CHAIRMAN: You want to take away the discretion of the court.

WITNESS: I think it is redundant.

CHAIRMAN: The question is whether discretion should be allowed to the court or not.

WITNESS: In the first instance, it is not necessary to allow discretion. Let the summons go by both the processes, through the process server as well as by registered post.

SHRI J. IMAM: What about through police?

WITNESS: The next is Order 17—regarding amendment of the pleadings. This is one of the most misused provisions. It is so wide now that at any stage the court may allow amendment of the pleadings. I think this should be made more stringent. At present, even the Supreme Court can allow amendment of a pleading which was originally filed before the lowest court, after the suit has been pending for 10-15 years. If a suit has been pending for ten or fifteen years, can it be done? Is it worthwhile to retain this provision in the present shape? The rule says: "...The Court may at any stage of the proceeding....."

SHRI RAJENDRA NATH BARUA: It is necessary to avoid multiplicity of rules. If it changes the character of the suit, it should be allowed.

WITNESS: If any fact developed after the suit was filed, an amendment in respect of that can be allowed. Otherwise there should be some bar after which no amendment should be allowed. Because, sometimes it means a trial denovo if an amendment is allowed. That leads to a lot of delay.

CHAIRMAN: You want some stipulation to be put that it will not be allowed at a later stage.

WITNESS: That is what I am suggesting. The parties concerned come to know about themselves or the other parties within the first six months of filing a suit. There must be some check about permitting amendments.

CHAIRMAN: The amendment in the Bill is not sufficient?

WITNESS: I think so.

At present under Order 9, rule 2 a suit can be dismissed if a defendant is absent. The suit can be decreed ex parte. There is no provision for the dismissal of a suit in case the plaintiff does not comply with an order of the court. I want that the court should be empowered to dismiss a suit in case the party fails to comply with the order of the court in an interlocutory matter.

SHRI RAJENDRA NATH BARUA: It will be a great hardship.

WITNESS: In a case suppose the party applies for a survey commissioner. That application is granted. It takes six months for the party to take further action. Meanwhile the court is waiting powerless. I cannot dismiss the suit. All I say is that this should be made more stringent. Then, there is order 9, rules 4, 9 and 13. These are the most abused provisions. The wording is "... On sufficient grounds". At present a medical certificate on payment of Rs. 2 and an application fee of Rs. 1.50 are enough to set aside an ex parte decree for Rs. 1 lakh for securing an adjournment of the hearing.

CHAIRMAN: You must consider genuine cases also.

SHRI RAJENDRA NATH BARUA: It is left to the discretion of the Court. If the court is not satisfied it can examine the doctor who gave the certificate and take further action in the matter. The other party can object to the adjournment.

WITNESS: If I may say frankly, the lawyers are interested in such things also. What I am saying is that the word 'sufficient' is too loose and it is so wide. We may have instead the word 'genuine'.

CHAIRMAN: The word 'sufficient' is not a loose word.

WITNESS: It is very wide.

CHAIRMAN: The word 'sufficient' gives a discretion to the Court.

WITNESS: But the practice obtaining practically everywhere is different.

SHRI P. C. MITRA: We may say 'or reasons to believe'.

WITNESS: What happens is: generally when an affidavit is filed, no counter affidavit is filed on behalf of the party.

CHAIRMAN: Who prevents them?

WITNESS: That is the practice. That is because the defendant cannot challenge it. It may be substituted by the word 'genuine' or a word like that.

Next is: Order 17, Rule 1—adjournments. It is clause 40 of the amending Bill. Actually Rule 1 is not covered. The Allahabad High Court has made an amendment to this Rule and it can be adopted.

Rules 2 and 3 under Order 17—my submission is that in case an adjournment has been granted to a party and the party fails to appear or if he appears just to move for another adjournment, then the Court should be empowered to pass a decree on merits and such a decree should not be set aside by a court on appeal unless legally that decree could not have been passed. That is the one

method to curb the practice of asking for adjournments on flimsy grounds.

**CHAIRMAN:** You say that if the decree is passed illegally?

**WITNESS:** On merits—that is what I submit, 'legally' means on merits.

Already one or two adjournments are granted. Thereafter there must be some finality or some check on the party asking adjournments.

**SHRI J. M. IMAM:** It is always left to the discretion of the Judge.

**WITNESS:** Unless there is a provision, there may be some scope for mischief.

Then Order 21, Rule 2. Under this Rule a judgement-debtor is entitled to make payment of the decree or to effect adjustment of the decree even outside the court even when execution is pending. This provision should be amended so that the judgement-debtor may not become entitled except by making payment or adjustment in the court itself. Otherwise, forged receipts are filed. Daily it is happening and lot of evidence is given by both sides. I have not come across even one genuine application. I have worked in 4 districts but I have never come across a single genuine case.

**CHAIRMAN:** Suppose they settle the matter outside the Court. What objection can there be?

**WITNESS:** In case a decree is passed and no execution is pending, then the party is entitled to make payment or get the decree adjusted outside the court. But, in case the execution is pending, then the party must pay or make the adjustment inside the court.

**CHAIRMAN:** Why not outside?

**WITNESS:** Then all this forgery is started.

**CHAIRMAN:** If the judgement-debtor pays out of court, where is the harm?

**WITNESS:** Actually, in genuine cases there is no harm. But genuine cases are practically nil. In genuine cases the payment is always made in the court. They will take a receipt and they will get the adjustment recorded in the court. Only in false or frivolous cases the payment is said to have been made outside the court. Suppose tomorrow is the date of sale, to-day an application is made that the payment is made and a forged receipt is produced for getting the matter postponed for about 2 years.

**SHRI SHRI CHAND GOYAL:** That means to suggest that actual payment is not made but evidence is given.

**WITNESS:** As I submitted, in 9 or 10 years of my service, I have never come across any single case where the payment is really made.

Next is Order 23, Rule 3. It is again like Order 21. When the defendant finds that a decree is imminent against him, he takes recourse to this procedure. The existing provision is:

"Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit"

It should be amended "so that the agreement or compromise should be made in writing". I should not be oral.

My second suggestion is that in this Rule an amendment should be made that a compromise or agreement may not take place in a pending suit except in the court itself. It should not be made subject to be made outside the court. When it is pending

in the court, there is no fun in making a compromise outside the court.

SHRI RANDHIR SINGH. Why not the village choudhuries decide it?

WITNESS: They may decide it. But that should finally come to the court.

Sir, that is all what I wanted to submit.

CHAIRMAN: Hon. Members desirous of asking questions may do so.

SHRI JOACHIM ALVA: Have you got the permission of your authorities to appear as witness? Whose permission have you taken?

WITNESS: I wrote to my High Court but there was not sufficient time. Therefore, I took the provisional permission of my district Judge.

SHRI SHRI CHAND GOYAL: You said that these appeals should be decided by the tribunal rather than by the high court.....

WITNESS: I suggested, second appeals....

SHRI SHRI CHAND GOYAL: You know the personnel that is manning the high courts. They are very senior advocates or district judges but same personnel will not be available for the constitution of these tribunals. That is number one. Number two is this. If we add more judges to the existing high court then also....

WITNESS: We have at present about 4 dozen high court judges at Allahabad. They are not able to cope with it. No State can manage at this level to provide 100 judges and therefore, some sort of an arrangement will have to be worked out.

SHRI P. N. SOLANKI: You never suggested shortage of personnel. Personnel is there; they are readily available.

WITNESS: Some judges may be appointed and subsequently may be promoted as High Court judges. He may go to the High Court.

CHAIRMAN: It comes to this, that the strength of the high court should be increased.

WITNESS: That will not be the solution. Already we have 45 High Court judges at Allahbad and it needs another 45 judges to finish off the arrears.

SHRI SHRI CHAND GOYAL: Punjab is a very small State; but we have 17 or 18 judges there. Even if we have 100 judges there is no harm....

WITNESS: The situation comes to the same. My suggestion is that selection grade district judges should be appointed among the tribunal who should be considered for promotion as high court judges.

SHRI SYED AHMED: You have referred to Section 80 of the CPC. Certain witnesses have said that in certain cases of urgency this notice comes in the way of further proceedings of the suit. May I suggest to you proviso to Section 80. The proviso will be that the provision of notice will not apply to suits under the Specific Relief Act; that is, for suits for injunctions and declarations.

WITNESS: That was specially my suggestion. I have already said about that. In respect of constitution of tribunals, for taxation that tribunal exists. For revenue it exists.

CHAIRMAN: They are not high court judges.

WITNESS: They are somewhere between High Court judges and local judges Commissioners is between Board of Revenue and Deputy Collector. Final authority is commissioner Except about the revision jurisdiction for taxation the final authority is tribunal except in certain legal matters etc. I have suggested this to relieve the high court.

CHAUDHARI RANDHIR SINGH: I would like to put one question to you Your real testimony is from the point of view of disposal of cases. As Presiding officer you are to see that cases are disposed of quickly. Have you taken the opinion or the interest of the public men who are taking advantage of the Bar?

WITNESS: I have taken due consideration of all these things and my point of view is that nobody suffers unduly on account of this thing. But at some stage you have to put a full-stop. If tomorrow you allow appeal against the judgements of the Supreme Court you will find several appeals; you have to put a full-stop somewhere.

SHRI KAMESHWAR SINGH: I would like to draw his attention to this point that in many districts, especially in Bihar, the work is so very heavy; lot of cases are pending. If additional appointments are not made the work will suffer. If more judges are appointed by the High Court or here, it will remain in the same method and so what is his specific suggestion? What should be done about it?

WITNESS: It is made up by subsequent recruitment.

SHRI KAMESHWAR SINGH: Younger people will get more chances to go up.

WITNESS: It is all the more if you increase the high court judges.

CHAIRMAN: Ultimately it will come to that.

DR. B. N. ANTANI: You have advocated retention of Section 80. Do you really believe that this section is not exploited by the defendant at all? Do you really believe that this sort of latitude given to Government is not exploited or abused?

WITNESS: In certain cases it is so; in case of demolition it is abused. In case some executive authority wants to demolish....

DR. B. N. ANTANI: This Section 80 is a British legacy. Do you think we have to retain that legacy even today?

WITNESS: Unfortunately, we are retaining the British legacy.

SHRI P. C. MITRA: Is it not a fact that this Section 80 is a check to the officers as complaints against them for any omission or commission are sent to higher authorities. If that is done away with then the officers will be free to fall out any case and their version will only go to the Government and not other party's.

WITNESS: That is why I suggested a middle way between the two.

CHAIRMAN: Well, Mr. Gupta, thank you very much for coming and giving your evidence.

*(The witness then withdrew)*

Thursday, the 18th September, 1969.

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman*.

MEMBERS

*Rajya Sabha*

- |                           |                            |
|---------------------------|----------------------------|
| 2. Shri Balachandra Menon | 8. Shri Purnanand Chetia   |
| 3. Dr. B. N. Antani       | 9. Shri Rizaq Ram          |
| 4. Shri Rattan Lal Jain   | 10. Shri V. T. Nagpure     |
| 5. Shri B. N. Mandal      | 11. Shrimati Seeta Yudhvir |
| 6. Shri Jagat Narain      | 12. Shri Joachim Alva      |
| 7. Shri Syed Ahmed        | 13. Shri P. C. Mitra.      |

*Lok Sabha*

- |                                  |   |
|----------------------------------|---|
| 14. Shri D. Balarama Raju        | 27. Shrimati Sangam Laxmi Bai           |
| 15. Shri Rajendranath Barua      | 28. Shri Mahendra Majhi                 |
| 16. Shri R. D. Bhandare          | 29. Shri B. P. Mandal                   |
| 17. Shri Krishna Kumar Chatterji | 30. Shri Viswanatha Menon               |
| 18. Shri N. T. Das               | 31. Shri Bhaljibhai Ravjibhai<br>Parmar |
| 19. Shri Shivajirao S. Deshmukh  | 32. Shri S. B. Patil                    |
| 20. Shri Ram Krishan Gupta       | 33. Shri Jharkhande Rai                 |
| 21. Shri Heerji Bhai             | 34. Chaudhuri Randhir Singh             |
| 22. Shri J. M. Imam              | 35. Shrimati Savitri Shyam              |
| 23. Shri Kameshwar Singh         | 36. Shri P. N. Solanki                  |
| 24. Shri Mushir Ahamad Khan      | 37. Pandit D. N. Tiwary                 |
| 25. Shri Thandavan Kiruttinan    | 38. Shri Tenneti Viswanatham            |
| 26. Shri K. Lakkappa             |   |

Shri Mohammed Yunus Saleem, Deputy Minister in the Ministry of Law and in the Department of Social Welfare attended the meeting by special invitation.

MINISTRY OF LAW

Shri P. L. Gupta, Addl. Legislatives Counsel.  
Shrimati V. S. Rama Devi, Deputy Legislative Counsel.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.  
Shri S. P. Ganguly, Deputy Secretary.  
Shri Kishan Singh, Under Secretary.

WITNESSES EXAMINED

- (i) Shri S. C. Mittal, Munsif Magistrate, Parbatsar (Rajasthan).  
(ii) Shri Anand Prakash Singhal, Advocate, Meerut.

(The witness; Shri S. C. Mittal, was called in).

CHAIRMAN: Mr. Mittal, I have to point out that the proceedings of this Committee are confidential and they are not to be publicised in any manner. Our difficulty, which all the hon. Members will experience, is that you have not submitted any memorandum, and without that it will be a great handicap to the Committee. However, have you brought any note with you which can be passed on?

WITNESS: I have brought some notes, but I have not got them cyclo-styled. I can only speak on the basis of these notes.

CHAIRMAN: Will it be possible afterwards to send a note to us, within a week or ten days?

WITNESS: Yes, I can.

CHAIRMAN: Now we have to deal with only such sections of the Code of Civil Procedure which are being amended by this Bill. You cannot go to the principal Act.

WITNESS: Hon. Chairman and Members of the Committee, I got a copy of the Code of Civil Procedure (Amendment) Bill, 1968, from the Rajya Sabha Secretariat and I have gone through it carefully. I have also gone through the principal Act and the various State amendments in the principal Act as they have been in force till now.

First, I would like to express my views about the amendment Bill which is before the Committee for its consideration. I would like to take the provisions clause by clause. I have nothing to say about clauses 1 to 7. Clause 8 of the amendment Bill seeks to amend section 35A of the principal Act. Section 35A deals with the compensatory costs that can be awarded to the other party by the court if the party who raises some objection fails to prove them, or the

objections are made without any ground and they are vexatious. This section in the principal Act is somewhat defective. Sub-section (1) was amended by the U.P. Amendment Act of 1954 which has made this sub-section equivalent to section 182 of the Indian Penal Code. The U.P. Amendment Act of 1954 has provided: "If in any suit or other proceedings, including proceedings in execution but not being an appeal or revision, the court finds that the claim or defence or any part thereof is false or vexatious to the knowledge of the party by whom it has been put forward, and if such claim or defence or such part is disallowed, abandoned or withdrawn in whole or in part, the court may after recording its reasons in holding such claim or defence to be false or vexatious, make an order for the payment to the successful party of the costs by way of compensation, irrespective of the decision on other issues of the case." This clause 8 has also sought to amend the section by adding only that the compensation can be awarded up to Rs. 2,000, instead of Rs. 1,000. Sub-section (1) of the principal Act is not in conformity with the accepted principles of justice. In the Indian Penal Code it has been provided that when a person makes a false complain knowing it to be false and only to harass the accused and put the Government machinery into motion without any ground, then he can be prosecuted for an offence under section 182. Similarly in the Civil Procedure Code it should have been provided that when a person makes a defence or takes such a plea which is vexatious and false to his knowledge, action could be taken against him. This is the intention of the U.P. amendment. So, sub-section (1) of section 35A should be amended in terms of the U.P. Amendment of 1954.

Clause 10 seeks to amend section 37. It provides:—

"The Court of first instance does

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

The purpose of adding this explanation will be that two courts will have jurisdiction in execution cases, firstly the court which passed the decree, and secondly the court which by some order of the State Government might have become the trial court for a certain local area. That will, of course, not mean any change in the procedure, but it will create some practical difficulties, as, for example, A village is in the jurisdiction of court B in 1940 and a decree is passed in that year. Now, after adding this explanation, the decree will be executable in courts B and C because village A has gone into the jurisdiction of court C. The decree of court B will be that when the property of the judgement will be in the jurisdiction of court C, it will not be possible for court B to execute the decree in the local area of court C and the decree has ultimately to be transferred and, therefore, there is no necessity of adding this explanation. The court which passed the decree or which exercised jurisdiction over the area when the decree is sought to be executed should have jurisdiction for execution proceedings.

CHAIRMAN: Which court should have the jurisdiction, the original court or the transferee court?

WITNESS: The original court which passed the decree or the court which exercises jurisdiction for the time being when the application for execution is presented.

CHAIRMAN: Which court would you favour?

WITNESS: I think only the court which passed the decree or if there is any change in the local jurisdiction of the court, then the court which has jurisdiction for the time being when the application is presented.

CHAIRMAN: Would it not be better if the court which exercises original jurisdiction should have full powers....

WITNESS: This is what is meant by this explanation. There will be practical difficulty in it and that will be that the court which passed the decree will have full powers, but when the local area has been transferred to the jurisdiction of another court, the processers of that court are specially sent to that and that will mean a huge expenditure and unnecessary complications.

CHAIRMAN: From that point of view the court to which the decree has been transferred, should have complete powers.

WITNESS: Yes.

Then I come to clause 12 which seeks to amend section 42. This clause defines the powers of the executing court and one of the powers which is now being generalized is the power to send the decree for execution to another court under section 39. That is, clause 12(2)(a) empowers the court under section 39 to transfer a decree for execution to another court in certain circumstances. By adding this sub-section in section 42, the transferee court will itself have the power of further transferring the decree to another court for execution. And of course, there is a provision in sub-section (3) that the court passing an order in exercise of powers specified in sub-section (2) shall send a copy thereof to the court which passed the decree. Therefore, it means that once a decree has been transferred, it can again be transferred to another court. That means that an



execution application once presented in a court and transferred to another court will again be liable to be transferred to another court if it cannot be satisfied. That will mean that an execution application can remain pending for a period which cannot be imagined at present and that will frustrate, I believe, the purpose of section 48 which provides for a period of 12 years for executing a decree. In view of it I feel that the decree which has been once transferred by the court which passed it, should be only transferred by it and not by the court which has received it from transfer because the court which has received a decree after transfer has to certify to the court which sent it for execution about the execution and the reasons why the decree has not been satisfied.

**CHAIRMAN:** So what do you want now to be done?

**WITNESS:** I propose that a decree passed by a court should be transferred by the court which passed it and it should not be transferred by the court which has received it by transfer.

**CHAIRMAN:** Once a decree is passed on to another court, that court cannot pass it on further but it should revert to the original court and then that original court may send it elsewhere. That is your view.

**WITNESS:** Yes. Therefore, clause (a) of sub-section (2) and sub-section (3) of clause 12 are not wanted.

**CHAIRMAN:** What is the harm in the transferee court transferring it further if the party agrees that the property is there or if the decree is not satisfied here?

**WITNESS:** The decree-holder should take care in informing the court where the property is situate. Otherwise, by providing this way, the case becomes very old, for 10, 15 years one case can continue. The problem of old cases is already there.

**CHAIRMAN:** What is the difficulty which you think, is likely to arise if

the transferee court further transfers it? Why should it go back to the original court? If it goes back to the original court, then, it will have to call upon the parties again and then decide where to send it.

**WITNESS:** The difficulty is that the case will become older and older. That is all, otherwise, there is no harm.

**CHAIRMAN:** It will not be transferred without the consent of the parties naturally.

**WITNESS:** I do not think consent can be obtained. When the execution has to be transferred, that means the judgment debtor has not attended the court and he does not have the proper jurisdiction of the court.

**CHAIRMAN:** Decree-holder's consent? Why send it back to the original court?

**WITNESS:** It can be transferred; we can keep it like that.

This brings me to clause 16 of the amending Bill which seeks to delete section 80 of the C.P.C. This clause provides that section 80 of the principal Act should be omitted. And the reason given in the Statement of Objects and Reasons is that in a democratic country there should be no discrimination between an individual and the State. I quite agree there. But section 80 provides for a statutory notice of 2 months when a suit has to be instituted against the Government or a public servant for any act purporting to be done in his official capacity. This section has been held to be constitutionally valid by the various High Courts and the Supreme Court of India. The only difficulty in retaining section 80 in the principal Act is felt by the parties when they come to the court of law for seeking injunction in some urgent cases and there is no time left for them to give a notice of two months. It happens that in certain cases there is no time for a man to give a notice of two months and his suit is thrown out on this ground. The High Courts of Calcutta, Madras, Allahabad and Rajasthan have held that even in the

case of injunction suits the notice under section 80 is mandatory and the court should not even grant a temporary injunction in the case of Government or a public servant when notice under section 80 has not been given. This is the only difficulty which I believe might have acted in the minds of the framers of the Bill when they have suggested that section 80 should be omitted. But I feel that the way out of the problem is slightly easier than the omission of section 80. I think section 80 should be retained and it should be numbered as sub-section (1) and sub-section (2) should be added in the principal Act. It can be said that no notice as laid down in sub-section (1) shall be necessary in any suit . . .

**CHAIRMAN:** That means you want an exception?

**WITNESS:** Yes. Such a provision exists in the U.P. Panchayat Act, 1951 and the U.P. Municipal Act also. Such an exception can be made in section 80 and the difficulty which is being experienced by the public now objection to defeat justice.

**SHRI J. M. IMAM:** Why do you favour Government servants?

**WITNESS:** By retaining section 80 the only intention of the Legislature will be that the Government or public servants, when they act in their official capacity, should not be dragged into courts of law as and when it is found convenient to any party.

**SHRI J. M. IMAM:** It has been pointed out by the Law Commission that this provision has no influence on the Government servants, it is merely used in the court as technical objection to defeat justice

**WITNESS:** It may be a fact in many cases but it is also a fact that many cases were settled after the notice under section 80 was given.

**SHRI TENNETI VISHWANATHAM:** Have any cases come before your court where this notice has had any beneficial effect?

**WITNESS:** The cases in the court come only after the notice. So I cannot say that I have any such cases at present in my court.

**SHRI SYED AHMED:** I am one with you that section 80 should be retained. But do you agree that this exception should be extended to all the cases under the Specific Relief Act, e.g. possessory suits, declaratory suits and suits for permanent injunction?

**WITNESS:** I feel that in a case for declaration or in a case for possession there is no such urgency as is felt in the case of any injunction. In possession suits the period is 6 months.

**SHRI SYED AHMED:** Suppose a Revenue Officer wants to dispossess a man, then he must give notice. By the time he gives a notice he would have been dispossessed.

**WITNESS:** If he is being dispossessed, he can file a suit for injunction.

**DR. B. N. ANTANI:** In your observations you have pointed out one difficulty; On the other hand you are suggesting some clause to be inserted. Does not that prove that this difficulty is a major difficulty? In your experience have you come across some frequent abuse or misuse of this section by the opposite party?

**SHRI P. C. MITRA:** Sir, we were under the impression that the witness will first give evidence and then Members will put questions.

**DR. B. N. ANTANI:** Please allow me this question. My question to you is this. You say the only difficulty thereby removing the significance of the difficulty. Is not that a major difficulty? It is the experience of many and I am sure you too have experience of abuse or misuse of this section by the opposite party to the extent that sometimes justice is denied. I am afraid in my experience I have seen many cases where the very purpose is defeated and justice is denied.

WITNESS: I may like to agree with you on the point that difficulty is experienced by the public when the officers are not able to redress. . .

DR. B. N. ANTANI: Able or are not willing or inclined? There is no question of ability.

WITNESS: . . . the grievances but take for example a case where a person wants to file a suit against the Government or a public servant for damages or for some contractual obligation or for seeking some other relief in which heavens will not fall if he has to wait for a period of two months but in the case of injunctions only I feel that he has hurry to go to the court and he cannot be asked to wait for a statutory period of two months.

DR. B. N. ANTANI: Now I will cite an instance. After partition there are cases where some people suspected to be Pakistanis are deported to Pakistan under the Foreigners Act. People claim Indian nationality and go to courts for a declaratory suit to be declared as Indian nationals and in such cases where notices are issued under section 80 the authorities are found abusing it to such an extent that during the pendency of these notices, when the courts hesitate to give stay orders, they pass deportation orders and many Indian nationals have been in this way deported to Pakistan. Have you got such experience?

WITNESS: No; I do not have that experience and keeping in view your experience I would like to agree with the hon. Member who suggested that the exception should be extended to all cases under the Specific Relief Act.

DR. B. N. ANTANI: That is why we say, why keep this nuisance? Omit it altogether to be on the safe side; why dilly-dally..

WITNESS: It will not be safe; I believe it will increase litigation.

DR. B. N. ANTANI:..unless you convince the Committee that in the interests of justice its retention is essential. Could you give us some grounds? You will admit that this is a British legacy?

WITNESS: Yes.

DR. B. N. ANTANI: Why can't the Government be put on parity with ordinary citizens in civil matters? Why are you inclined to give protection to these people? What are your grounds? Let us hear them.

WITNESS: This section 80 does not deal only with cases against Government. It also deals with cases against public servants regarding the acts done by them in their official capacity.

DR. B. N. ANTANI: Where decrees are passed for years and years execution does not take place. I know of a case just now where from 1948 the decree is there but no steps are taken.

CHAIRMAN: May I read out to you from the 27th Report of the Law Commission? On page 21, paragraph 51, they have given the reasons why they have recommended its omission. Have you got the Law Commission's Report with you?

WITNESS: No; I have not got it with me.

SHRI MOHAMMED YUNUS SALEEM: When he has come as witness he must have read it.

CHAIRMAN: They are quoting from their earlier Report.

"The Law Commission in the 14th Report stated as follows:—

"The evidence disclosed that in a large majority of cases the Government or the public officer made no use of the opportunity afforded by the section. In most cases the notice given under section 80 remained unanswered till the expiry of the period of two months provided by the section. It was also clear that in

a large number of cases the Government and the public offices utilised the section merely to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of the section. These technical defences appear to have succeeded in a number of cases defeating the just claims of the citizens."

The 14th Report accordingly contains a recommendation that section 80 should be omitted. We have been unable to find a parallel provision in any other country in which the Anglo-Saxon system of law prevails. We think in a democratic country like ours there should ordinarily be no distinction of the kind envisaged in section 80 between the citizens and the State."

That is what Dr. Antani just now said. The Report goes on to say:

"When that section was originally enacted India was dependant under foreign rule and the main function of the Government was the maintenance of law and order. India is now a free country and a welfare State which engages in trade and business like any other individual. A welfare State should have no such privileges in the matter of litigation as against the citizen and should have no higher status than an ordinary litigant in this respect. Experience has also shown that the provision of this section has worked great hardship particularly in suits relating to injunctions. For these reasons we have recommended omission of this section."

SHRI MOHAMMED YUNUS SALEEM: Do you agree with this Report?

SHRI SYED AHMAD: He has already said that he does not agree with it.

WITNESS: The main difficulty is that the suits for injunctions.....

SHRI MOHAMMED YUNUS SALEEM: Do you agree with the observations of the Law Commission or not?

WITNESS: I agree.

SHRI MOHAMMED YUNUS SALEEM: That is all. That is the only question. Now, since how long have you been a judicial officer?

WITNESS: For five years.

SHRI MOHAMMED YUNUS SALEEM: You may have come across many cases filed against Government and you must have considered them. Have you come across any case filed either against the Government or against a Government official where merely by issuing notice Government has granted remedy to the prospective plaintiff conceding that the claims made by him in his notice are justified and that the Government was wrong in taking action against that particular servant. Have you ever come across any such cases?

WITNESS: I have already stated before the Committee a short while ago that I cannot stay the cases in which the party could get remedy after section 80. That I have already said.

SHRI MOHAMMED YUNUS SALEEM: You never practised as a lawyer or have you?

WITNESS: I have.

SHRI MOHAMMED YUNUS SALEEM: Have you come across any such case?

WITNESS: I came across cases where the Government paid the dues.

CHAIRMAN: I am enquiring from you whether, after hearing this portion of the Report, you still think that it would be better to change the wording of this section to be in conformity with the U.P. Municipalities Act?

WITNESS: Yes, I still feel that section 80 should be retained and a

sub-section should be added to provide for an exception in case of injunctions.

Then, this brings me to clause 17 which seeks to amend section 82. I wonder how there is a discrepancy between clause 16 and clause 17 of the amending Bill. Clause 16 seeks to omit section 80, while section 82, by the addition of sub-section (3), wants to grant power to the court to extend the time for the execution of decrees in cases against the Government. The purpose of these sections does not seem to be in conformity with each other. Sub-section (3) of section 82, as is sought to be amended by the amending Bill, makes this provision :—

“The Court may, in its discretion, from time to time, enlarge the period specified in sub-section (1), even though the period so specified may have expired.”.

Section 82 has already granted a period of three months after a decree is passed before any Court can start execution proceedings against the Government or public servants. I believe that the period of three months is sufficient and if the Government or the public servant cannot take steps to satisfy the decree within that period, the Court should not have any option or discretion to enlarge that period. If the Committee is of the view that section 80 should be deleted, then I would suggest that section 82 also should be automatically omitted.

SHRI SYED AHMAD : It will also be undemocratic.

WITNESS : It will be on the same pattern. Rather I would suggest that Part IV of the principal Act should be omitted which contains sections 80 to 82.

Then, I come to clause 23 which deals with section 115 regarding revision. Section 115 of the principal Act is sought to be amended and clause 23 is correct from the drafting point of view. But I would like to  
456 RS—4.

say that there should be the addition of a few words in it. It reads :—

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court....”.

I would like to say that after the words “The High Court”, the words “*suo motu* or on the motion of any party to the suit or proceeding” should be added.

CHAIRMAN : Why do you think these words are necessary? Even without these words the Court has the power. At its option the Court can always do it.

WITNESS : The Court does not have the power *suo motu*, unless these words are added.

SHRI SYED AHMAD : Do you think that the Court cannot act *suo motu* ?

WITNESS : The Court can not do it on the application of a party. The High Courts have never acted *suo motu*. In that way section 435 of the Criminal Procedure Code provides for that.

SHRI SYED AHMAD : We are not dealing with the Criminal Procedure Code here. The criteria in regard to the criminal and civil cases are different and the approach also is absolutely different. Bringing in the Criminal Procedure Code will not help us.

WITNESS : This is what I have suggested that the High Court should be given the power of exercising revisionary powers under section 115 *suo motu* also, not only on the application of a party.

Then, I come to clause 24.

SHRI SYED AHMAD : About *suo motu*, do you know if in the Act in section 115 it has been stated anywhere that the Court can act *suo motu* ? Is it not stated in the Rules that the Court can by itself call for

records and examine them? Is it not in Schedule I that the Court for the purpose of revising any decision or order can, by itself, send for the record and examine it? I do not refer to section 115, but is it not in the Rules?

WITNESS: I do not think that it is so.

SHRI SYED AHMAD: I am also not certain about it. So, I am asking you. My question is this. Is there nothing in the Rules that enlarges the sections of the Act. The First Schedule is the enlargement of the sections. I was asking whether there was nothing in the Rules by which the High Court is authorised to send for the record of any case in order to be able to examine any interlocutory order or any final order *suo motu*.

WITNESS: Schedule I does not contain any order regarding revision. It contains orders regarding the period of appeals, etc., but there is no order for revision. Section 115 is comprehensive in itself. Rules do not make any provisions for it. Therefore I suggested that to avoid unnecessary complication in interpretations the words may be put in the Amendment Bill so that the difference of opinion may be clarified.

SHRI RAJENDRANATH BARUA: Don't you think that the High Court can exercise its power even if the word *suo motu* is not there?

WITNESS: The High Court can exercise its inherent power but only when there is no provision in the Code itself and the grounds for exercising the inherent power as laid down in the various rulings of the Supreme Court and the High Courts are totally different from the grounds that are mentioned for revision under section 115.

Then clause 24 deals with section 135A. Before I put forward my suggestion I would like to be excused by the Members and I would like that they would not take it in any political way. It is meant specially for

Members of Parliament and Legislatures. The Amendment Bill provides that the period of fourteen days before and after the meeting of the Legislature or the Committee should be extended to forty days. I do not think that the forty days' period is necessary because the Parliament remains in session for almost four months in a year. Then there are meetings of Committees, and a Member can very well escape himself from any civil imprisonment or civil process if he happens to be an influential Member of Parliament and thus a Member of certain Committees also because the Parliament remains in session for four months and the Committees will remain in session for some period. Forty day before the beginning of the Parliament and the Committees and forty days after their closing, if they are excluded, then perhaps circumstances may come when it may not be possible to have civil process executed against a Member of the Legislature or Parliament. Therefore, I suggest that the period of fourteen days is enough and there should be no amendment in it.

SHRI TENNETI VISWANATHAM: If fourteen is reasonable, forty is also equally reasonable. This is barely the English practice. If on the other hand you say that the legislators should be arrested before they come to Parliament, it may be abused by several persons. That is the whole thing.

CHAIRMAN: The Parliament actually sits for more than six months in a year, practically seven months.

SHRI RAJENDRANATH BARUA: Have you got any experience of any M.L.A. or M.P., failing payment and evading arrest like this?

WITNESS: I do not have.

SHRI SYED AHMED: What I was saying about this amendment to section 115 is, the High Court will interfere in revision only where, if the order is reversed, it would have disposed of the case finally. Am I correct?

WITNESS: Yes.

SHRI SYED AHMED: My point is, why should it not be appealable? Why should it not come under section 104 of the Code i.e. appeals from orders? Is it not a matter of the conscience of the Judge? There is no guarantee that a revision would succeed except the conscience of the Judge. That is the only guarantee. Therefore, why not open it to appeal, so that this amendment can relate to section 104? Section 104 deals with appealable orders. This could be an appealable order, a reversal of which can be disposed of in the lower Court. That is my amendment.

SHRI MOHAMMED YUNUS SALEEM: You can move an amendment at the proper stage.

SHRI SHIVAJIRAO S. DESHMUKH: The hon. Member is inviting the view of the witness on a certain vital issue. The issue is under the Civil Procedure Code certain orders are subject to interlocutory appeals.....

SHRI SYED AHMED: I am moving an amendment. It was wrong on my part to ask the witness. Are you accepting it?

SHRI MOHAMMED YUNUS SALEEM: I will consider it.

WITNESS: I think that the hon. Member means that section 115(1)(a) should be replaced under section 104 (1).

CHAIRMAN: Appealable order. That is what he says.

WITNESS: I think the wordings of section 115 as provided in the Amendment Bill are not fitted for the purpose. That means that the grounds for revision have been enumerated in sub-section (1) of section 115 and the proviso says that if the above three conditions mentioned in the sub-section are satisfied the High Court shall not interfere in any case in revision except in respect of two matters.

That means that the amending section now provides that the High Court has to be satisfied on the three grounds of revision, firstly, Secondly, it has also to be satisfied that the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding and also the order, if allowed to stand, would cause irreparable injury to the party against whom it was made. That means that section 115 as it exists in the principal Act is now being tightened up and the powers of revision of the High Court are in a bit of way restricted that the High Court has not only to be satisfied on three points, it has to be satisfied on four points.

CHAIRMAN: In other words, you are against this suggestion?

WITNESS: I am not against it. If this is placed under Section 104 I agree with it.

SHRI SHIVAJIRAO S. DESHMUKH: This will have to be considered. Section 104 contemplates entirely another position. To mix up the two will not be in the proper spirit of the law.

CHAIRMAN: According to him, it should not be entertained and section 105 should be made an appealable order.

SHRI SYED AHMED: There are two appeals. After that, you can go into revision. There are always two appeals in certain cases. As you have so many orders appealable under section 104, this order also can be made appealable.

CHAIRMAN: May I remind hon. Members that we have a second witness at 11.15? Let us try to hurry up so that the other witness may not be delayed too long.

WITNESS: About amendment of section 144 (clause 25), one Explanation is sought to be introduced by

the amending Bill. The Explanation as provided in the amending Bill is in the spirit of the UP Amendment of 1954 which has been substituted for sub-clause (1) of section 144. The Explanation as is sought to be introduced in the principal Act is based on the UP Amendment and therefore I would suggest that the UP amendment should be adopted as sub-clause 1 of section 144 and the principal Act should retain its sub-section (2). The only difference between the Explanation being sought to be introduced in the principal Act and the UP amendment is that the UP amendment prohibits, as in sub-section 2, etc. of the CPC—"the institution of a suit for restitution purposes."

CHAIRMAN: Will you kindly read the UP section?

WITNESS: "Where and in so far as a decree or an order is varied.... which are properly consequential on such variation or reverse."

The Explanation as has been provided in this amending Bill has also been necessitated not only because of "revision or other proceeding" here but also because it refers to "set aside or modify any suit instituted for the purpose." That means that a suit can also be filed for restitution which has been necessitated by the reversal or modification in an order of the court which has been executed. That will mean multiclicity of suits and clause 25 has nowhere provided that sub-section 2 of section 144 of the principal Act should be deleted. That will mean that this Explanation will be in contravention of sub-section 2 and it will create unnecessary complication, and there will be two provisions in the same section. Therefore, I suggest that section 144, sub-section (1) should be amended on the lines of the UP amendment and sub-section (2) should be retained as it is.

CHAIRMAN: You want the Explanation deleted only or you want

the wording of clause (1) also to be deleted?

WITNESS: I want clause 1 to be deleted and substituted as in UP amendment.

CHAIRMAN: That I understand.

WITNESS: And if clause 1 is substituted as in UP, then, of course, there will be no necessity of adding the Explanation. This Explanation is based on the UP amendment. Simply it provides about a suit which is specifically prohibited by sub-section (2) of section 144. With this, I think, I have concluded the Code part of the amendment Bill. Now I would like to suggest some amendment to the principal Act.

CHAIRMAN: Since amendment has not been provided for in the amending Bill in respect of the principal Act we cannot entertain it. This Committee is not empowered to amend the principal Act.

SHRI P. C. MITRA: He can give his suggestion in writing.

CHAIRMAN: Please send a note and we shall forward it to the Law Ministry. Will hon'ble Member put any question?

*(No hon. Member put any question)*

WITNESS: I may suggest a few points regarding the rules in the amending Bill. The Bill provides to amend order 16 Rule 1 of the C.P.C. This amendment is based on the amendment in the Schedule made by the Rajasthan High Court only with the difference that the Rajasthan High Court has provided a period of 30 days for filing the list of witnesses while the amendment Bill provides a period of ten days for filing the list of witnesses.

CHAIRMAN: Do you not think it is too long a period?

WITNESS: In property cases 30 days is not a long period unless it is



provided in the Civil Procedure Code that the parties should be provided on the date the issues are framed.

**CHAIRMAN:** The idea is to reduce the time so that cost may be reduced. We are trying to shorten the period everywhere. In the interest of public the period may be shortened.

**WITNESS:** The Rajasthan amendment further provided that when the party filing a suit has led his evidence on the issues on which it is the burden and the other party is allowed to lead his evidence then the first party can, within a period of 15 days from the closure of the evidence by the other party, file a supplementary list of witnesses to be produced in rebuttal of the issues the burden of which lies on the defendant. The amendment Bill has not provided for any rebuttal by the party which is to rebut the issues the burden of which lies on the other party.

**SHRI SYED AHMAD:** There is some confusion. There is the framing of the issues which indicates the burden of Proof on each party. Then there is the rebuttal of issues. All the issues are there and same issues have to be rebutted. After rebuttal evidence is not allowed to be led. You want that there should be two list of witnesses, one at the time of framing of the issues and the other at the time of rebutting the evidence of the opponent Party. There ought to be two sets of issues, one, when you are about to give the evidence and, two, at the time of rebutting that evidence. All the issues are prepared soon after the pleadings have been completed, issues which tell you on whom the burden lies. Therefore, it is not necessary that two list of witnesses should be given, at a later stage. That will make the whole procedure cumbersome. If I bring my witnesses with me without summoning them, I put the other party to a very great disadvantage. Therefore, notice should be given to the other party, of the intention of Production witnesses without summoning them.

**WITNESS:** I agree with you that the list of witnesses is filed after the framing of the issues. Suppose in a case six issues are framed. The burden of four is on the plaintiff and of the two on the defendant. Then the list is filed by the party and the issues are framed. The plaintiff has led his evidence. The defendant has mentioned a number of witnesses in his list but he does not lead the evidence. Then it will not be necessary for the plaintiff to give any evidence in rebuttal. But when the party has given the evidence and it is necessary for the other party to give the evidence in rebuttal, he should be given the opportunity so that he would not be taken by surprise.

**SHRI SYED AHMAD:** He knows at the time of framing the issues what evidence he has to give and, therefore, he has to file a list of witnesses at that time. Ten days time is given.

**WITNESS:** Suppose in a case both the parties file in ten days. The plaintiff cannot know the names of the witnesses and the nature of the evidence that the other party wants to produce.

I would like to mention two or three important matters.

**CHAIRMAN:** If it is something outside the Bill it will be better if you send a note which will be passed on to the Law Ministry.

The Committee is very obliged to you for your coming and expressing your views. Please send your note within a week.

*(The witness then withdrew)*

*(The witness, Shri Anand Prakash Singhal, was at this stage called in.)*

**CHAIRMAN:** Mr. Singhal, I have to tell you at the outset that the proceedings of this Committee are confidential and they should not be disclosed or published. I would like to know if you have any further comments to offer apart from what you have written in your memorandum.

WITNESS: I can explain, if the Committee likes...

SHRI MOHAMMED YUNUS SALEEM: No, have you got anything to add to your memorandum?

WITNESS: No.

SHRI MOHAMMED YUNUS SALEEM: Then the Members may ask questions straightway.

SHRI P. C. MITRA: Mr. Chairman, his suggestions in the memorandum have hardly anything to do with the provisions of this amending Bill.

SHRI KRISHNA KUMAR CHATTERJI: I agree with the hon. Member; they are not relevant to this Bill.

SHRI MOHAMMED YUNUS SALEEM: The irrelevant portion of the memorandum may be ignored.

SHRI P. C. MITRA: But almost the entire thing is irrelevant.

CHAIRMAN: Mr. Singhal, this Committee cannot deal with sections which are not being amended by this Bill. We have to deal with such sections as are being amended by this amending Bill, and not the other sections of the Code of Civil Procedure.

WITNESS: I did not know about it. I only sent proposals which I wanted to be incorporated in this amending Bill.

SHRI KRISHNA KUMAR CHATTERJI: That is not within the purview of this Bill.

CHAIRMAN: Since you have studied the Bill....

WITNESS: I received a copy of the Bill only three or four days back, although I had demanded it much earlier. So I could not study it from that point of view.

SHRI KRISHNA KUMAR CHATTERJI: I want to seek a basic clarification from you, Mr. Chairman. We have circulated this Code of Civil

Procedure (Amendment) Bill to invite suggestions from witnesses on this amending Bill as such, and we want the witnesses to tender before us some advice on the amendments proposed in the Bill. So, his memorandum is entirely irrelevant, according to me. He has new proposals to make. What has this Committee to do with them?

CHAIRMAN: Mr. Chatterji, his comments are already in your hands. Now it is for you to decide whether you want to put questions on any one of those points.

SHRI KRISHNA KUMAR CHATTERJEE: The entire thing, according to me, is irrelevant. So, I do not want to ask any question.

CHAIRMAN: Is there any hon. Member on this side who wants to put questions?

SHRI RAJENDRANATH BARUA: Mr. Singhal, I want to know your opinion about section 80. One view is that section 80 should be deleted. The other view is that it should be retained. It is felt that because of the notice under section 80, a large number of officers, at least a considerable number of officers, after getting the notice, are either pressurised from the top to compromise the matter with the party concerned, or they themselves come round for a settlement. In view of that, are you in favour of retaining section 80 or not? Secondly, do you suggest that the technicalities in section 80—that at least 60 days should pass before a suit can be filed, that the defendant cannot raise objections on the ground that the notice is not within the period and things of that sort—should be avoided? What is your view?

WITNESS: My submission is that section 80 should be deleted.

SHRI RAJENDRANATH BARUA: Don't you feel that some Government officers do settle cases immediately after getting the notice, either on ac-

count of being pressurised by top officials or on their own accord? How do you save these people?

WITNESS: My submission is that I have hardly come to know of a case where the State Government or the Union Government has ever compromised just on account of the notice.

SHRI RAJENDRANATH BARUA: But the officer who is directly responsible is sometimes pressurised or is compelled to settle such cases. Such things do happen.

WITNESS: To my knowledge there is no single case of that nature which was compromised just after notice. In 90 per cent of the cases even the notices are not replied within the time prescribed.

SHRI KRISHNA KUMAR CHATTERJI: Mr. Chairman, his answer is very categorical. We do not want to elicit any more from him under pressure.

श्री एम० ए० खां : आपने जो मेमोरेण्डम दिया है उसमें आपने यह लिखा है :

“ . . . cases should be heard and decided by a bench of two Civil Assistant Judges and in case of disagreement, the matters should be referred to a third Judge of an outside district . . . ”

यह समझ में नहीं आया कि आप उसी ज़िले के एक जज पर एतवार नहीं करते हैं और वहां आप दो आदमियों की बेंच बनाना चाहते हैं और उनमें अगर ऐग्रीमेंट न हो तो दूसरे ज़िले के एक ही जज को आप रिफर करना चाहते हैं, इसमें आपका क्या मतलब है ?

साक्षी : मतलब यह है कि पहले दो जजों के सामने केस पेश हुआ और सपोज कीजिये कि दोनों ऐग्री नहीं करते हैं तो थर्ड जज के सामने पेश होगा । जो प्वाइंट्स आफ डिसऐग्रीमेंट होंगे वही रिफर होंगे जैसा कि हाई कोर्ट में होता है ।

श्री एम० ए० खां : सवाल यह है कि दो जज जिन प्वाइंट्स पर डिसऐग्री करते हैं उन्हीं प्वाइंट्स को रिफर करें दूसरे जज को तो क्या वह उनको डिसाइड करने के लिये कांपीटेंट होगा । दूसरी बात यह है कि सी० पी० सी० में जो डिले होती है उसको हम कम करना चाहते हैं । लेकिन जो आप चाहते हैं उससे क्या और ज्यादा डिले नहीं होगी ? पहले एक बेंच बनायें डिसाइड करने के लिये और उनमें ऐग्रीमेंट न हो तो केस को दूसरे ज़िले के जज के पास भेजें और वह डिसाइड करे । इस तरह से आपने प्रोसीजर और बढ़ा दिया है ।

साक्षी : मेरी गुज़ारिश यह है कि ऐसे केसेज बहुत कम होंगे ।

श्री एम० ए० खां : यह कम या ज्यादा का सवाल नहीं है । यह उसूल का सवाल है ।

साक्षी : सौ केसेज में एक आध ऐसे केसेज हो सकते हैं जिनमें इस किस्म का जिस ऐग्रीमेंट हो और उन्हीं में इस तरह की डिले होगी । अगर कोई इम्पार्टेंट प्वाइंट आफ ला होगा तभी यह प्रश्न पैदा होगा ।

श्री मोहम्मद यूनुस सलीम : आपने इस पर गौर किया है कि अपील का जुरिस्टिडिक्शन किसको हासिल होगा ।

साक्षी : सिविल कोर्ट्स की ऐक्ट भी हर प्राविस की अलग अलग हैं ।

श्री मोहम्मद यूनुस सलीम : आपके यहां अपीलेट अथोरिटी कौन है जिले में ।

साक्षी : डिस्ट्रिक्ट जज हैं ।

श्री मोहम्मद यूनुस सलीम : आपको मालूम है कि बहुत से डिस्ट्रिक्ट्स ऐसे हैं जिन में एक ही जज है ।

साक्षी : हाई कोर्ट में भी ऐसा है . . .

SHRI MOHAMMAD YUNUS SA-LEEM: The High Court is a different thing.

**चेयरमैन :** हाई कोर्ट में यह नहीं होता कि बाहर का कहीं से कोई जज रखा जाय । वे अपने कोर्ट के जजेज में से किसी एक जज को रिफर कर देते हैं ।

**सिन्धी :** मेरा सबमिशन यह है कि एक मुस्तकल बेंच बन जाय दो जजेज की ।

**श्री मोहम्मद यूनुस सलीम :** आप यह प्रोपोज़ कीजिये कि जूरी मुकरर की जाय ।

**श्री :** क्वेश्चन आफ ला जूरर्स को नहीं देना चाहिये । क्वेश्चन आफ फैक्ट जूरस को देना चाहिये ।

**SHRI KRISHNA KUMAR CHATTERJI:** Mr. Chairman, I do not think we should question him any more.

**DR. B. N. ANTANI:** Mr. Chairman, I want to ask him just one question for clarification.

**CHAIRMAN:** All right.

**DR. B. N. ANTANI:** In your memorandum you have drawn a gloomy picture with regard to the integrity and the malady of corruption even in courts. In making that suggestion you have advocated some decentralisation of revisional power of the High Court. What is the specific suggestion that you are making? You have gone

to the extent of wanting decentralisation. At present I understand there are judicial magistrates who have got civil powers to deal with civil litigation. In what way do you want decentralisation? You have gone to the extent of saying that there is bad draftsmanship of the statutes. How will you remedy this by decentralisation? Please be specific.

**WITNESS:** By decentralisation I mean that revisional powers of the High Court be decentralised to the District Judge.

**DR. B. N. ANTANI:** I do not know what specific suggestion you can make. But, will it eradicate this malady if the malady exists at all?

**WITNESS:** In certain CPC cases revision is heard only by the High Court. If it is heard by a bench of two District Judges, then the power of the High Court can be decentralised to that extent. I do not know how it will appeal to you.

**DR. B. N. ANTANI:** That is all right.

**CHAIRMAN:** Thank you very much Mr. Singhal. It is very good of you taking the trouble of coming over here.

*(The witness withdrew from the meeting)*

Friday, the 19th September, 1969.

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                           |                          |
|---------------------------|--------------------------|
| 2. Shri Balachandra Menon | 8. Shri Purnanand Chetia |
| 3. Dr. B. N. Antani       | 9. Shri Rizaq Ram        |
| 4. Shri Rattan Lal Jain   | 10. Shri V. T. Nagpure   |
| 5. Shri B. N. Mandal      | 11. Shri Joachim Alva    |
| 6. Shri Jagat Narain      | 12. Shri P. C. Mitra     |
| 7. Shri Syed Ahmed        |                          |

*Lok Sabha*

- |                                  |   |
|----------------------------------|---|
| 13. Shri Rajendranath Barua      | 24. Shri Mahendra Majhi                 |
| 14. Shri R. D. Bhandare          | 25. Shri B. P. Mandal                   |
| 15. Shri Krishna Kumar Chatterji | 26. Shri Bhaljibhai Ravjibhai<br>Parmar |
| 16. Shri N. T. Das               | 27. Shri S. B. Patil                    |
| 17. Shri Shivajirao S. Deshmukh  | 28. Shri Jharkhande Rai                 |
| 18. Shri Ram Krishan Gupta       | 29. Chaudhuri Randhir Singh             |
| 19. Shri J. M. Imam              | 30. Shrimati Savitri Shyam              |
| 20. Shri Mushir Ahamad Khan      | 31. Shri P. N. Solanki                  |
| 21. Shri Thandavan Kiruttinan    | 32. Pandit D. N. Tiwary                 |
| 22. Shri K. Lakkappa             | 33. Shri Tenneti Viswanatham.           |
| 23. Shrimati Sangam Laxmi Bai    |   |

MINISTRY OF LAW

Shri P. L. Gupta, Addl. Legislatives Counsel.

Shrimati V. S. Rama Devi, Deputy Legislative Counsel.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.

Shri S. P. Ganguly, Deputy Secretary.

Shri Kishan Singh, Under Secretary.

WITNESS

Shri H. L. Tejwani, Retd. Chief Supplies Inspector, New Delhi.

(The witness, Shri H. L. Tejwani, was called in.)

CHAIRMAN: We are now beginning the proceedings. The witness before us is Mr. Tejwani from New Delhi, whom we could not examine the other day. He has been good enough to come against today and we have to thank him for it.

Mr. Tejwani, I may tell you at the initial stage itself that these proceedings are confidential and they should not go out either in the Press or anywhere else. Now, may I know one thing from you before you start? Excuse me for asking that question but I believe you are not a lawyer.

WITNESS: No.

CHAIRMAN: Then in what manner have you experience of the law courts?

WITNESS: I will just explain the position. I am not an advocate or Special Judge or Judge but on the contrary I may state that I passed the Matriculation Examination in 1951 at the age of 54 and the B.A. examination at the age of 59 in 1956.

CHAIRMAN: Creditable.

WITNESS: When I joined service in 1918 I was subscriber of the *Amrita Bazar Patrika* paper and at that time I became Congress-minded and from 1920 I was a regular reader of 'Young India'. In 1929 I passed the Revenue qualifying examination which even the ICS officers had to pass in Bombay Presidency. Thereafter I could rise and retire as a District Magistrate but being Congress-minded at the time of migration I was only a Tehsildar. I retired prematurely at the age of 50 and due to partition I migrated to India. I have had no experience of Civil Procedure Code but I have gained experience here from Subordinate Judge's Court to High Court. There what I have seen is not written in the books or in the literature of this Administration. So I have to give you something from my own experience of how the Civil Procedure Code actually works.

CHAIRMAN: Your memorandum is before the Members and they have already glanced through your Memorandum. If you have anything to add to that memorandum you can do so.

WITNESS: Yes; that is not written even there because this was oral evidence. So naturally I could not put it in writing.

CHAIRMAN: You may speak on the points which you have not mentioned in your memorandum.

WITNESS: Only on Civil Procedure Code, is it not?

CHAIRMAN: Yes, yes.

WITNESS: Not beyond that; I shall not waste your precious time.

CHAIRMAN: What I am saying is you have dealt with the Civil Procedure Code in your Memorandum. Apart from that if you have got to add anything else, that you may point out.

WITNESS: Now, Acts and amendments are passed by Parliament and we see that their number is increasing, but the question is whether these amendments or Acts are being complied with actually. Statutory provisions which are already there are not being complied with. If we pass any amendments or Acts and they are not being complied with, what is the use of passing them?

SHRI SYED AHMAD: Your view is that these amendments should not be passed.

WITNESS: Amendments are very necessary. I do not say 'No'. I should not be misunderstood. There is some general talk that in the ordinary course we cannot bring in exceptions to the general rule. Parliament should see actually whether their Acts and amendments are being actually complied with. The question will arise, how will they know it? They have got no jurisdiction to go and see any office or the High Court. They have no jurisdiction. They cannot interfere in the administration. How are they supposed to know it? Only in some

cases when they come to know of them they can make enquiries. If anything comes to their notice they cannot take any action, because the legal procedure is there. Suppose something is wrong with the lower courts. The High Court is available there. This has to be noted.

Then I may say generally in the whole of India and especially in Delhi the policy of the Government servant, whether he is A or B is, knowingly or unknowingly, to increase the volume of work, increase the number of staff and again to have higher posts and scales.

SHRI SYED AHMAD: That is known as Parkinson's Law. Perhaps you have not heard about it.

WITNESS: They are not being complied with.

SHRI TENNETI VISWANATHAM: Mr. Chairman, can you request the witness to confine himself to the provisions of this Bill? In fact, he is giving a very interesting lecture. That would be very good before the Law Commission or some other body, but not here. We have got a restricted purpose. Kindly ask him to confine himself to the Bill.

CHAIRMAN: I have told the witness in the very beginning to confine himself to the Bill. Now, I ask you please to give your suggestions regarding the amendments to the Civil Procedure Code.

WITNESS: I am coming to that. The provisions are already there. So many good provisions are there. For instance, Order No. 10 is a good provision. There are three objects for this meeting to see. There should be no delay in giving judgment or decisions of the courts, all the courts. Secondly, there should be less of expenditure. Thirdly justice should not be delayed. Justice delayed is justice denied, it is said. Order 10, Rule (2) says:—

“At the first hearing of the suit or at any subsequent hearing any party appearing in person or present in court or any person able to

answer any material questions relating to the suit by such party or his pleader may be examined orally by the court and the court may, if it thinks fit, put in the course of such examination, questions suggested by either party. The substance of the examination shall be reduced to writing by the Judge and shall form part of the record.”

I think you may have got more experience, but generally I find that this provision is not being complied with. Generally verification is also formal in the plaints as well as in the written statements. It is all formal. Nobody cares whether one has to speak the truth. So, I have suggested that they should give their verification on oath.

SHRI SYED AHMAD: If they put down the word 'oath', you think they will tell the truth and nothing but the truth.

WITNESS: You must have read introduction to Fields Law of Evidence. I had read it in 1929. I remember it. The general impression was that the witnesses said lies in India on oath even. Especially when they came after a very long time to give evidence, naturally they forget so many things.

SHRI SYED AHMAD: You want them to tell lies on oath in the verification also. I do not want to discuss it with you.

WITNESS: There is no question of discussion. The witness is making a statement on oath. Here, if the plaintiffs and the parties give their statements immediately, naturally they would speak the truth and they would be bound down by that statement. So, these statements are very necessary. This is not the practice, I know. You may be knowing better, but as far as I have seen it, they are not being recorded immediately as provided for here.

Again, for instance, in Order No. 17 regarding adjournments it is written here:—

“Provided that when the hearing of evidence has once begun, the

hearing of the suit shall be continued from day to day until all the witnesses and attendants have been examined, unless the court finds the adjournment of the hearing beyond the following date to be necessary for reasons to be recorded."

The general complaint is that there is delay. Even for four months the Judges postpone the cases without any rhyme or reason.

CHAIRMAN: How do you know?

WITNESS: I have got my own personal experience. I have got documentary evidence.

CHAIRMAN: How do you know that the Courts have no rhyme or reason for postponement?

SHRI SYED AHMED: They may have their own reason.

WITNESS: I have got my personal experience. I shall give you in writing and there is documentary evidence available. How do I say that? Naturally I shall only say that I know it personally and from my personal experience. I have been conducting my own appeals and even in the Supreme Court or High Court....

SHRI TENNETI VISWANATHAM: You should engage a lawyer.

WITNESS: I do not need any lawyer.

CHAIRMAN: What are your positive suggestions?

WITNESS: My suggestions are that it is very essential that these provisions should be complied with. Even Order 1 of Rule 10....

CHAIRMAN: This Committee has been appointed to see whether the Civil Procedure Code as it is being amended by the amending Bill has brought out the points which were wanted by the Law Commission, namely, reducing expenditure, reducing time and other factors. If you think that the Bill as is amended is all

right, then it is to our advantage. Then you need not give us any other thing. If you have any practical suggestions to give, you may give. This Committee is not going to watch over the courts.

WITNESS: That I do not say. I myself say that the Committee does not do it. But I say the Committee can see and take note of these provisions. If the adjournments are for three months or four months, and for twelve months, nothing is being done. No arguments are being heard even for twelve months. Then where lies the fun of these statutory provisions if they are not actually complied with? In every court you will find that hearings are being postponed for a very long time. Here the provisions are statutory that they should not postpone it without any necessity. Why is there delay? Because there are adjournments. If there are no adjournments there would be no delay. If the day-to-day arguments are there and if evidences of witnesses are completed, there would be no delay. One officer also had to take thirteen months to give his statement which would require only two days at the most. If these provisions are complied with, there should be no cry as you have been hearing.

CHAIRMAN: If that is the point and no change is to be made in the law if the law is perfect, if the courts are not working properly, then of course the Committee has nothing to do with it.

WITNESS: You may not do anything. That is not for me.

CHAIRMAN: Wherever you find the Act faulty, point out those provisions.

WITNESS: Again, so far as expenditure is concerned, the fees of the advocates may be prescribed, because the fees of the advocates....

SHRI SHIVAJIRAO S. DESHMUKH: When you do not get vegetables at controlled prices, they should be prescribed by law. They are prescribed for purposes of costs. They



are not prescribed for purpose of being paid.

**WITNESS:** When they sanction costs, decide about the costs, they naturally put the advocate's fees also. Actually I have seen in the Supreme Court rules also that the fees are prescribed for senior and junior lawyers. I had seen it in 1962. Actually the provisions are very efficiently provided in all the enactments, whether it is the Indian Penal Code or the Civil Procedure Code or the Criminal Procedure Code. They are very efficiently provided. I am thankful that we have got these ready-made things already.

**SHRI TENNETI VISHWANATHAM:** You do not want us to tamper with them

**WITNESS:** I have suggested in 1957 that all these books after the partition should be revised, that all these Supreme Court reports and High Courts reports should be incorporated, and the law books should be translated so that even a common man like myself or any other man can represent a case and conduct a case personally.

**SHRI RAJENDRANATH BARUA:** On a point of order. I think the witness should confine himself to the specific points relating to the Bill. Otherwise the Committee's time is wasted.

**SHRIMATI SAVITRI SHYAM:** You give your suggestions on the proposed amendments in the Bill.

**SHRI TENNETI VISWANATHAM:** You have got a copy of the Bill. You talk on the Bill.

**WITNESS:** The Law Commission have said that section 80 is not necessary. I know that there were many complaints that equal treatment should be given, this thing and that thing. Why?

**CHAIRMAN:** Let us not go into that. Your view is that it should be retained.

**WITNESS:** Retained with this proviso that there should be no discussion in the law courts about the contents of the notice, because up to the Supreme Court these advocates make small things look big and make these simple matters complicated. These notices with the plaints they again compare and create complications saying this word is not there and that word is not there. That notice should not be discussed but notice is very necessary in my opinion. Why? What do the administrative Ministries generally do? The officers do not spend anything from their own pocket. They say, all right, let him go to the court. The result is the people have to go to the courts unnecessarily and litigation is increasing, because the officers have not to pay a single pie from their own pockets. Then what happens? The Law Ministry is there. They know it. Now they have got some fear. They are afraid of the Law Ministry. Suppose the Law Ministry do not agree with them, though in fact in several cases you would find that the Law Ministry is also an arm of the administration. They generally look to the noting of the Ministry rather than what the complainant or the aggrieved party has stated in his petition. So, they do not verify it so much. They only look apparently to the wordings. That provision in section 80 is very necessary and it is my opinion because they have got some ear and they have to think twice. The case will also be reconsidered by the Law Ministry. I think it is very necessary. But it is being discussed in the Supreme Court and the High Courts.

**CHAIRMAN:** I shall consider that aspect. We have noted your opinion. Will you tell me about one or two other matters?

**DR. B. N. ANTANI:** Sir, may I ask a question? Mr. Tejwani, in your observations you have said that section 80 may be retained to enable the Law Ministry to guide the executive after verifying the contents of

the notice to avoid unnecessary litigation in law courts. How do you explain?

WITNESS: The procedure is this. Suppose I give a notice under section 80 to any Ministry. They will put up a note and then consult the Law Ministry. The Law Ministry will look into it and sometimes say, that it agrees, sometimes it will say that it disagrees. Generally, of course, they do not go deep.

DR. B. N. ANTANI: How? How would you avoid unnecessary litigation?

WITNESS: Day by day, litigation is increasing. Why should there be so much litigation?

DR. B. N. ANTANI: Simply by the guidance of the Law Ministry, will the litigation go down?

WITNESS: Then, what is the use of having a Ministry at all? If the Law Ministry is not able to guide the administrative ministries, what is the fun of having the Law Ministry?

CHAIRMAN: Mr. Tejwani, in your memorandum you have stated that the discretionary powers of the courts require to be curtailed...

SHRI RIZAQ RAM: Sir, may I put one question? It is about section 80. He has stated that the contents of the notice should not be allowed to be discussed in the court. But if the contents of the notice are different they should be allowed to be discussed.

WITNESS: That is actually in practice up to the Supreme Court. Because of this notice trials have taken place again.

SHRI RIZAQ RAM: Are not the lawyers competent to raise those points?

WITNESS: Only now an aggrieved man...

DR. B. N. ANTANI: Under section 80, does not the notice itself form the basis of the plaint?

WITNESS: When one plaint is given there, there is no necessity of giving another plaint.

SHRI RIZAQ RAM: One other question—the notice should be discussed in the case of injunctions and emergencies. Would you approve of it?

WITNESS: On any point. If it is necessary, the matter will be reconsidered by the Law Ministry.

SHRI TENNETI VISWANATHAM: That is your pious hope. For the last thirty years, there had been a pious hope.

WITNESS: You can enforce the provision. Parliament is sovereign. Our sovereign Parliament can do any thing.

SHRI TENNETI VISWANATHAM: I do not think he is clear in all his points. I think we should not bother him any further.

WITNESS: I can answer any question on any point. Why is not the CPC being complied with? Actually there are many factors. The CPC is not being complied with. That is why there are more delays. There is so much of complaint because the CPC is, again, linked up with corruption and with administration. For instance, I may remind you that our former Home Minister, Mr. G. L. Nanda, had declared openly that he would eradicate corruption within two years, and I had written to him, "Only one thing, Sir. You should eradicate corruption from Delhi alone, not to talk of India. You will kindly eradicate corruption from the lowest rung. It should be eradicated from Delhi, in the Tis Hazari Courts where the CIDs are also sitting."

CHAIRMAN: Mr. Tejwani, we are dealing with the amendment of the Civil Procedure Code and not with the views of Mr. Nanda.

WITNESS: I am not talking of Mr. Nanda, I am talking of corruption, why there is delay. If you give Rs. 5 to a Reader of the Judge, he can give you the date postponed.

CHAIRMAN: What improvements do you want to suggest in the Civil Procedure Code.

WITNESS: In the day-today hearing, it is not being complied with. I will prove it.

SHRI TENNETI VISWANATHAM: If the rules are enforced strictly, everything will be all right. We should have an Enforcement Committee. I think his suggestion is that we might form an Enforcement Committee.

CHAIRMAN: I was asking you—you have mentioned in paragraph 3 of your note that the discretionary powers of the courts require to be curtailed. Which particular powers are you referring to, which need to be curtailed? Should they not be allowed to adjourn cases?

WITNESS: No, no. I do not say. We cannot say anything about that because discretion is necessary.

CHAIRMAN: Kindly point out the discretionary sections of the Bill which need to be altered.

WITNESS: I have already in my memorandum said that the discretionary powers should be sometimes curtailed. For instance, take review petitions. The High Court Judges have got under CPC discretion. You put in your application for review. The High Court Judges hear and they will decide whether it should be admitted or not. This is the procedure, and that is discretion. Here there is some suggestion also from the Law Commission on this point and if you go through my proposals, you will find them. I am not supposed to keep Law books but even then I can understand.

SHRI TENNETI VISWANATHAM: I suppose you tried some criminal cases.

WITNESS: Yes, I have also tried criminal cases.

SHRI TENNETI VISWANATHAM: Do you think that work in criminal courts is much better than in civil courts?

WITNESS: That cannot be denied so far as expenditure and delay is concerned. But I know what is happening in the Tis Hazari criminal courts. Some cases are pending even for more than five years.

SHRI SYED AHMAD: You said something about having been in the Congress.

WITNESS: I was not a member of any party. I was born of poor parents. I become Congress-minded I said. Its principles I like very much even to this day.

CHAIRMAN: Let us know about the changes you recommend in some particular sections.

WITNESS: I have given a few suggestions here in my written note. To convince you I have brought three copies. You may take whatever action you may like to take.

SHRI P. C. MITRA: Do you not agree that Government officers will be benefitted if section 80 is withdrawn.

WITNESS: My view is that section 80 should be retained. But there should be a provision that there should be no objection raised in the court.

SHRI P. C. MITRA: But there have been cases where Government officers give notice of demolition of a building. There is no provision of injunction. The two-month period that is given, within that period there will be no semblance of the building. Do you not think that the party should have the right to go to court immediately and get injunction? If section 80 is retained, I suppose there will be no difficulty for the people. What is the remedy for the poor people?

WITNESS: The object *prima facie* of section 80 was that the Government, in consultation with the Law Ministry, should reconsider the position and minimise the number of cases going in litigation to the courts.

DR. B. N. ANTANI: In other words, to avoid the court work and the court procedure you will leave the justice to the executive side. It amounts to that.

WITNESS: If the aggrieved person gets justice from the executive or through the Law Ministry so much the better. It is a great punishment to go to law court.

DR. B. N. ANTANI: Why should Ministry discharge functions of a court?

WITNESS: This is a matter for the administration. They use their powers in excess, and because they do not spend anything they sometimes trouble the people and the people unnecessarily have to go to the court. I can assure you that the procedure is very good. The Government advocates because they have got some influence with the judges, they create confusion everywhere.

DR. B. N. ANTANI: In your suggestion No. 4 you say:

"The court may deliver judgment when the defendant has no defence in the written statement or in the reply to interrogatory or evasive and unsatisfactory."

Who is going to decide whether the answer is evasive and unsatisfactory if the judge does not hear them?

WITNESS: The judge is the deciding authority.

DR. B. N. ANTANI: But before he decides, you say that he should proceed to give judgment.

WITNESS: Where have I said that?

DR. B. N. ANTANI: Your suggestion No. 4 on page 4 reads:

"The court may deliver judgment when the defendant has no defence in the written statement, or his replies to interrogatories are evasive and unsatisfactory."

My question is: Who is going to decide whether the answers are evasive or unsatisfactory?

WITNESS: Everything is to be decided by the court. If you study this C.P.C. you will see that the chapters are different, but the object is the same, or they arrive at the same thing. First it says that the written statement should be there. If the written statement is quite clear that he has no defence, the judge should decide that it should not proceed further.

DR. B. N. ANTANI: That provision is already there.

WITNESS: I was also saying the same thing. I did not say there are no provisions. There are provisions but they are not being complied with. For instance, the Dowry Act is there, but it is not being properly implemented.

SHRI RIZAQ RAM: What do you suggest for making compliance with these provisions mandatory for the courts?

DR. B. N. ANTANI: Remove the courts and leave it to the executive!

WITNESS: I may tell you that even under the British Government there were some very dangerous dacoits who were hanged. Even now in Iraq some 15 spies were hanged. Why? Only to make an example so that fear is there.

DR. B. N. ANTANI: Thank God, we are not following that jurisprudence here. I may tell you that from your suggestion, one cannot avoid the impression that the very maxim on which the Civil Procedure Code is based, namely, *audi alteram partem*, i.e. "here the other side", is being nullified in your enthusiasm to shorten the process.

WITNESS: Sir, C.P.C. cannot be nullified. The whole C.P.C. is not being denied. Only some strong action is necessary. There is no fear, there is no discipline, there is disorder.

CHAIRMAN: You have suggested that the court fee may be taken in instalments. Now, if the court begins its work and the work comes to an end and the plaintiff does not pay the court fee.

WITNESS: It is for the judge to understand whether he has got a genuine case on the face of it, or a *prima facie* case, and secondly whether the complainant or plaintiff is a very poor man.

CHAIRMAN: There is a separate provision for poor men.

WITNESS: Yes, but the legal procedure is again very difficult. I may

also tell you that even in declaratory suits, a High Court recently passed orders, in 1964 I think, that it can be taken in instalments. So it depends upon the judge. We cannot snatch the discretionary powers of the High Court or the Supreme Court. But in certain cases, I have seen that they do not use their discretion to avoid work. Suppose I go to file a writ petition, the judge will say "We have already got too much work." So generally their policy is to get rid of many writ petitions. That has become one of the policies of the High Court and the Supreme Court, that is, to avoid work as far as possible.

CHAIRMAN: Thank you for having taken the trouble to come here and give us your views.

WITNESS: I am thankful to you.

*(The witness then withdrew)*

---

Thursday, the 23rd October, 1969.

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman*.

MEMBERS

*Rajya Sabha*

- |                           |  |
|---------------------------|--|
| 2. Shri Balachandra Menon | 10. Shri V. T. Nāgpure                       |
| 3. Dr. B. N. Antani       | 11. Shrimati Seeta Yudhvīr                   |
| 4. Shri Rattan Lal Jain   | 12. Shri Joachim Alva                        |
| 5. Shri B. N. Mandal      | 13. Shrimati Annapurna Devi Thi-<br>mmareddy |
| 6. Shri Jagat Narain      | 14. Shri T. K. Patel                         |
| 7. Shri Syed Ahmed        | 15. Shri P. C. Mitra                         |
| 8. Shri Purnanand Chetia  |  |
| 9. Shri Rizaq Ram         |  |

*Lok Sabha*

- |                                  |   |
|----------------------------------|---|
| 16. Shri D. Balarama Raju        | 28. Shrimati Sangam Laxmi Bai             |
| 17. Shri Rajendranath Barua      | 29. Shri Mahendra Majhi                   |
| 18. Shri R. D. Bhandare          | 30. Shri B. P. Mandal                     |
| 19. Shri Krishna Kumar Chatterji | 31. Shri Viswanatha Menon                 |
| 20. Shri Ram Krishan Gupta       | 32. Shri Bhaljibhai Ravjibhai Par-<br>mār |
| 21. Shri Heerji Bhai             | 33. Shri S. B. Patil                      |
| 22. Shri J. M. Imam              | 34. Chaudhuri Randhir Singh               |
| 23. Shri Kameshwar Singh         | 35. Shrimati Savitri Shyam                |
| 24. Shri Mushir Ahamad Khan      | 36. Shri P. N. Solanki                    |
| 25. Shri Thandāvan Kiruttinan    | 37. Pandit D. N. Tiwary                   |
| 26. Shri K. Lakkappa             | 38. Shri Tenneti Viswanatham              |
| 27. Shri Brij Bhushan Lal        |   |

Shri Mohammed Yunus Saleem, Deputy Minister in the Ministry of Law and in the Department of Social Welfare attended the meeting by special invitation.

MINISTRY OF LAW

Shri P. L. Gupta, Addl. Legislatives Counsel.

SECRETARIAT

Shri S. P. Ganguly, Deputy Secretary.

Shri Kishan Singh, Under Secretary.

WITNESSES EXAMINED

- (1) Shri R. Thiagarajan, Advocate, Supreme Court, Malleswaram, Bangalore.
- (2) Representative of the High Court Bar Association, Delhi—Shri B. C. Misra, Vice-President.

(The Witness; Shri R. Thiagarajan, was called in)

CHAIRMAN: Well, gentleman, the witness is before you. He is Shri R. Thiagarajan of Bangalore, Advocate, Supreme Court. He has sent his comments. We have circulated them to you on the 28th August last and I am sure you have gone through them.

Mr. Thiagarajan, at the outset I have to tell you that these proceedings are confidential and as such you should not give out any of the contents to the public or to the press. They can be released only after the Report has been placed on the Table of both the Houses. May I know whether you have to add anything to your comments sent to us or we shall proceed to examine you on the basis of the comments received?

SHRI R. THIAGARAJAN: I would like to add something to what I have already said in my memorandum. On page 14 of the Bill regarding Order III, the words 'pleader' has been used, that Pleader includes advocate and counsel and a legal practitioner. So, the consequential amendments will have to be made wherever the word 'pleader' has been used. 'Pleader' might be defined in some manner. That may be considered. After all, it is a matter of very small significance so long as the party is represented by a legal practitioner.

Regarding the provision for second appeal, we find that very often a single judge sitting in the High Court reverses the concurrent finding of the trial and appellate court and there is no provision in some High Courts for a letters patent appeal. This leads to gross injustice as I have seen in my experience of about 11 years in the Supreme Court Bar. I find that grant of special leave is refused in several cases and when letters patent appeal is also refused, the result is that the judgment of a single judge becomes final and it affects very many parties adversely. This is a matter on which there is bound to be difference of opinion. Mr. Gajendragadkar while

addressing the members of the Mysore Bar Association in 1964 said that giving scope for a large number of appeals would lead to more expense and delay and there may be few cases of injustice. But I have found that in very many deserving cases, somehow unfortunately the learned judge takes a particular view differing from the concurrent judgment of the court below. In such cases there should be a statutory provision for letters patent appeal. Where there is no provision for letters patent appeal, it should be introduced. One sometimes gets special leave, sometimes one does not get special leaves. Therefore, some provision should be made to have a letters patent appeal in all the High Courts.

CHAIRMAN: The procedure of the Committee is that the witness merely gives his opinion and the suggestions he has to offer. He need not give exact amendments. It is for the Members of the Committee to do that.

WITNESS: These are the two points which I wanted to submit in addition to my memorandum.

CHAIRMAN: Regarding clause 5 of the Bill, you have stated on page 1 of your memorandum that there should be a change in that. But do you not think that once a judgment has barred a suit, then all issues under that are also barred, by the rule of *res judicata*?

WITNESS: Not so. Let us take a case where a plaintiff's suit is dismissed. In that judgment there may be some findings against the defendant. Unfortunately, as he is not given the right of appeal, the rule of *res judicata* does not apply. For example, I am the plaintiff. X is the defendant. I file a suit. In that suit two issues are held in my favour, but the suit is dismissed. I can take up the matter in appeal. If I do not take up the matter in appeal, the defendant, as the suit has been dismissed, cannot file an appeal. That is why I have said that the words "and/or any decision on any issue" may be added. Otherwise.

it would be meaningless. Supposing a court has no territorial or pecuniary jurisdiction. It decides a case in a particular way. Later on, the decree is challenged on the ground of want of jurisdiction. Such a difficulty is sought to be removed by this amendment. My suggestion is to obviate the difficulty that once it has been decided, it does not become final. Under section 115 of the Civil Procedure Code, there is a provision when it becomes final. Ordinarily a High Court is reluctant to grant leave for revision petition. But in the amending Bill, there is a provision for granting of leave to file a revision petition. In view of the amendment to section 115, I think my suggestions may be acceptable, for the reason that it will avoid waste of time. Please see section 115 as it exists at present.

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

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

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

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

the High Court may make such order in the case as it thinks fit."

Now, clause 23 of the amending Bill says:

"For section 155 of the principal Act, the following selection shall be substituted, namely:—

115. (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court, and if such subordinate Court appears—

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

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

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

the High Court may make such order in the case as it thinks fit:

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

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

(b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made.

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

In view of this amendment, making it clear that an adverse finding on an issue can be taken up in revision, which the High Courts will grant especially when the successful defendant cannot file an appeal, I submit that the amendment I have proposed to clause 5 may be accepted.

**CHAIRMAN:** Regarding clause 7, you have said that after the words "affidavit or affirmation" in line 16, the word "of the applicant" should be added. Why do you want to debar a general agent or a special agent of the plaintiff from filing the affidavit as was the practice?

**SHRI R. THIAGARAJAN:** To me the reason seems obvious. Very often we find the party who must file an affidavit does not choose to do so but asks a friend or the relation who conducts the case for him. Later on,



it is found that certain facts stated therein do not come to be true. The applicant wants to avoid responsibility.

The cases of transfer from one High Court to another High Court, from one State to another are very few.

CHAIRMAN: He may avoid, but all the same the Principal is bound by the agent or by an affidavit which has been filed.

SHRI R. THIAGARAJAN: Suppose he is to be prosecuted. He may try to escape.

If the party wants to come to the court, what prevents him to file an affidavit himself.

CHAIRMAN: If the party is not in India, then?

SHRI R. THIAGARAJAN: Finally he can file the affidavit. The learned Counsel in regard to affidavits take the plea that the affidavit has not been filed by so and so and the court may give a decision which turns out to be wrong. If the parties themselves file the affidavit, that will help the court.

Such cases of emergency are very rare. In those cases the agent can say, at the moment my principal is not here, when he comes from abroad he will file an affidavit.

I wanted to make it clear. The court may say, as has happened in one or two cases, the party has not filed an affidavit. If some allegation is made against an agent, all this as has been said happens.

CHAIRMAN: There is a question on clause 30. You have stated that the insertion in the newspaper should be in the 'language of the court'. Advertisement should be made in the newspaper in the language of the court.

Suppose the defendant does not know the language of the Court, will you not leave it in the hands of the court to decide in which language the insertion should be made?

SHRI R. THIAGARAJAN: There are certain reasons. The regional language is being adopted. Sometimes to give wider publicity the insertion is made in English language.

Suppose the party is in Singapore and the insertion is made in Daily Newspaper—say in English, he may not be able to know anything. If the person knows only Telugu and he does not know any other language, he gets some kind of notice if this newspaper is circulated if it is in the language of the Court.

In my experience, I have found over 43 years that some judges asked when an insertion had been in the paper in Telugu, Tamil, does the Defendant know the languages? Actually, it is taken as a matter of procedure. Judges do not bother if the notice has reached or not. In one case a notice given in English paper 'Hindu' was considered sufficient, but the party never knew English, he knew Tamil. He was told that it was his duty to look to that. Adding these words 'language of the court' may be considered in this aspect.

CHAIRMAN: Why not leave it to the Court in which language it may be published. Let them decide.

SHRI R. THIAGARAJAN: Judges have got many cases.

About newspaper, there are varying rates. Some are costly and some are cheap. At district level some newspapers have these court advertisements. I am talking of 1926—1935, the average rate of advertisement charges was Re. 1 and then it came to Rs. 2. So, I thought language of the court to be used all over India will be very useful. There is reason for my suggestion.

CHAIRMAN: I am now asking other Hon'ble Members to put questions.

SHRI MOHD. YUNUS SALEEM: You kindly see page 9 of the draft Bill explanation to Section 115.

Are you aware that conflicting views have been taken by the High Courts—Allahabad, Madras, Hyderabad and Andhra Pradesh High Court? This question was also considered by the Supreme Court and there are one or two pronouncements of the Supreme Court also.

Do you think that this explanation satisfies or settles the controversy which was raised by different High Courts in different cases? Have you applied your mind?

**SHRI R. THIAGARAJAN:** I think the explanation has been put in the best way possible.

The expression 'in cases which have been decided'. The word used is 'includes'. Any order made in the course of a suit or other procedures including an order deciding the issue. Again there will be contradictory decision on interpretation.

Even with this explanation some High Courts may take different views as to quality or content of an order made in these courts. What suit or other proceedings against which revision could be entertained is a question of personal equation. This depends on judges. This is the best explanation which could be given.

I do not want to use the word 'whim'. Judges have their own opinion, views and how far it could further the cause of justice and avoid delay.

**SHRI SYED AHMED:** I will invite your attention to your suggestion for amendment of Section 21A—Cl. 5. As you are aware, this is a new section. Upto this time, as I understand, the law is that an objection as to the place of suing has to be taken before the issues are framed. Am I correct?

**SHRI R. THIAGARAJAN:** Yes.

**SHRI SYED AHMED:** The appellate court will not entertain an objection

to this. Now, as I feel it, this provision that has been introduced in Section 22A is very wide. It has been suggested by the Bar Council of Delhi that this ought to be deleted because it will open doors to all kinds of fraudulent practices on the part of litigants. A man can go anywhere in India and if the other party will not object to the jurisdiction. I can go and file a suit in Mysore in the court of Subordinate Judges, although under Sections 16—21 it should be in Delhi, and suppose by chance nobody takes objection as to jurisdiction the decision will be valid. So, the people go anywhere in India and take advantage of the other party not being able to take objection. Don't you think this thing ought not to be there?

**SHRI R. THIAGARAJAN:** The point is like this. We assume that in the court in which the suit was filed and in which this objection could have been taken, the defendant did not take it. Whether he appeared or not, whether he appears himself or through Counsel, it is his duty to take objection to the jurisdiction. If he does, it may be accepted or not. The difficulty does not arise if the defendant has not taken objection. If he comes to know after the passing of the decree, *ex parte* and if the services, personal or by registered post, were not available, generally courts will be reluctant to allow *ex parte* decrees to stand. The courts want to proceed after giving an opportunity to the defendant to appear. Therefore, the cases of *ex parte* decree and of some mischief will rarely arise.

**SHRI SYED AHMED:** About this Section, may I make one suggestion? I understand that in the Law of Limitation, where a time-barred suit is filed, it affects the rights of the defendant.

**SHRI R. THIAGARAJAN:** With great respect I say that the Section says that it is the duty of the court to dismiss a suit if it is time-barred, whether or not the defendant objects.

**SHRI SYED AHMED:** I am not making a statement on the Law of Limitation. In the case of Limitation, whether the court ought to take cognisance of time barred suits. Apart from this judicial point of view, it is the concern of the defendant also and primarily because his rights and liabilities are affected by the case being time-barred. But the duty has been cast upon the courts to take notice of time-barred suits and not to entertain them. The question of territorial jurisdiction is primary concern of the rights of the court, why should not the court be allowed to take cognisance of it. It should be within the power of the court to say that the suit is not within the jurisdiction of the court. Why should it be left to the litigants to say that it is outside the jurisdiction of the court? Why should not the court itself decide rather than leave to the party? Do you agree with this suggestion?

**SHRI R. THIAGARAJAN:** I agree with the suggestion because it is the Judge who has to find out irrespective of the defendant appearing and contesting, on the facts stated already. Supposing, a particular suit worth 10,000 is filed in Munsif's Court. The Court has not jurisdiction upto 5,000/-. The trial judge may appoint a Commission and have the property valued. Usually such cases do occur. In one case, unfortunately, both the lawyers did not take the question of jurisdiction. There is a case of insolvency in Tanjore district. In an insolvency petition, the amount has got to be stated and determined. In Madras state and several other States, 3,000 is the limit and beyond 3,000 it must be filed in the Sub-Court. What happened was that the debtor had debts of Rs. 3,500, and the court's jurisdiction is to the extent of 3,000. He got it valued at Rs. 1000/- within Rs. 3,000. The result was that the Court did not look into the question and adjudication was given. I also happened to be there. I found that I cannot do anything. I cannot challenge. My bitter

experience, when I was a junior in a District Munsif's Court in South, may I relate to the Committee. The property was undervalued. When the issue was raised the Commissioner held that the value of the property was much more than Rs. 10,000/-. It will not be too much to expect that if the case goes to the Sub-Court the client may engage a Senior man. Of course I am bound to do my duty. Ultimately the result was that the Commissioner's report was accepted. The Plaintiff was allowed to go to the higher court. The client of course forgot me. I was not engaged by him. He said 'look here. You are too unpractical. You should not have raised this objection.

Anyway these things do happen now and then. And I agree with you that the court has to decide the question whether it has pecuniary jurisdiction. In one case I had to decide and I found that the fees collected had not been correctly calculated. The Plaintiff lodged a claim against which higher court fees collected. Here I only wish to stress that in the interest of administration of justice the judges should be asked suo motu to go into the questions of jurisdiction. And either administrative instructions may be issued or rules may be made in this regard. Then only the problem can be solved.

**SHRI SYED AHMED:** You please turn to page 21, Sec. 6 (line 34). You have rightly suggested that instead of the words "if the defendant to the counterclaim" "if the plaintiff" should be inserted. Everywhere the bill has used the words 'plaintiff' in one sense'. Your suggestion is that the words 'defendant to the counterclaim' ought to be deleted and the words 'plaintiff' ought to be substituted. I suggest the words 'additional statement' in place of 'written statement'. Would you agree that this will be all right?

**CHAIRMAN:** If a plaintiff has filed a suit, the defendant has to put in a counterclaim. If you call him 'plaintiff' how is it helpful?

SHRI SYED AHMED: You have not followed my point. My suggestion is this. I want that the original plaintiff may be called 'plaintiff' and the defendant should be called 'defendant' throughout. The answer to the plaintiff's counterclaim should be called 'additional written statement'.

CHAIRMAN: I don't think the witness has any objection to it.

SHRI R. THIAGARAJAN: I would submit here that instead of calling it 'additional written statement' you can call it 'reply statement'. The written statement is always used to 'pleading' by the defendant. In the state of Madras and Mysore the procedure is to call it 'reply statement' i.e. when the plaintiff has to file a rejoinder. That is called 'reply statement'.

SHRI SYED AHMED: I only say that if you call both as 'written statements' that is likely to create confusion.

SHRI R. THIAGARAJAN: That is why I am saying that instead of calling it 'written statement' you can call it 'reply statement'. The plaintiff files a reply statement. There are many cases where there may be counterclaims. In view of certain facts alleged by the defendant in a written statement, it becomes necessary for the plaintiff to reply to that. He states that in the form of a reply statement with the leave of the Court. Suppose a defendant files a counterclaim. The plaintiff files answer. We shall call it 'additional statement'. To this the plaintiff will be asked to file a reply. Such reply may be called second additional statement.

SHRI SYED AHMED: Something has been suggested by the hon. Minister of law. Under Sec. 6E(1) counterclaim can be brought if the matter is connected with the original suit. Is it so?

SHRI R. THIAGARAJAN: Yes. The party is the same. There should be an identity of the party. Suppose he does not raise the objection, can

any such claim be brought under that? Am I correct?

(SHRI B. N. MANDAL began asking questions in Hindi. Witness expressed inability to understand Hindi. Then Mr. Mandal asked in English).

SHRI B. N. MANDAL: You say that at the end of sub-clause (2) of Clause 7, the words "of the applicant" should be added. That is your suggestion. My argument is that by putting in these words, the extent of the operation of the sub-clause will become restrictive and it will be restricted to such extent that an anomalous position can be created, and that position may be created due to this that the applicant may be such person who does not look after his own affairs, but which may be looked after by his servant. In that case, I think the servant is the proper person to submit the affidavit, and not the applicant himself, who does not know anything about that.

SHRI THIAGARAJAN: If the person who wants it to be transferred is the applicant...

SHRI B. N. MANDAL: My argument is that the person who knows everything of the affairs of a certain person is the proper person to make an affidavit, because it involves some liability. So the person who knows about the affairs, should make the affidavit, and not the person who does not know his own business. He may be the master, but he does not know. In that case, the servant is the proper person to make the affidavit.

SHRI KRISHNA KUMAR CHATTERJI: The point made by hon. friend is that certain informations may be in possession of some other person, who can give details of the correct facts. What are the particular reasons why you insist that these words should be added? What are the special advantages and what are the fears that you see by moving this amendment?

**SHRI THIAGARAJAN:** If it is given without the knowledge of the person interested, later on he can say that he does not know the contents of the affidavit given by his agent. It has happened also. We have given the powers to the Advocate General in the States and the Attorney General of India to apply for transfer in suitable cases....

**SHRI KRISHNA KUMAR CHATTERJI:** Are you prepared to accept the words "of the applicant or his agent"?

**SHRI THIAGARAJAN:** They can always file an affidavit.

**SHRI KRISHNA KUMAR CHATTERJI:** You have no objection if the words "or his agent" are added?

**SHRI THIAGARAJAN:** I would prefer "of the applicant and his agent", instead of saying "of the applicant or his agents". The applicant can fix the responsibility upon the other person. Sometimes allegations are made against certain members of the State Governments. The person who makes the application should be held responsible for making this.

**SHRI P. C. MITRA:** Is he not bound by it?

**SHRI THIAGARAJAN:** No, unless there is anything on record.

**SHRI P. C. MITRA:** The hon. Members. Point was that the employees know better about the transactions than the master. How can you insist that the applicant must file an affidavit? Perhaps the transaction may have been done by his employee.

**WITNESS:** With regard to the nature of the suits which have to be transferred from one State to another, I think they are very rare. The person who files an affidavit must be a responsible person and must know all the facts when a transfer is required. Otherwise there will be some sort of prejudice. These are all matters of a very serious nature and that is why the Attorney-General is given

the powers to make such an application. If a private party wants to make an application, should he not file a proper affidavit on his own responsibility? On the criminal side there is already a provision for transfer but very few cases are transferred for some reason or the other. If you ask for statistics, it may not be even 10 or 20 per cent., although we are having a number of transfer petitions. I do not want the repetition of the same experience on the civil side. Now they have made a provision to insist upon security and all that.

**SHRI T. KIRUTTINAN:** I want to put a general question. As the law stands at present, in the small cause suits the defeated party has got the right of revision in the High Courts. I feel that there should be a provision enabling the unsuccessful parties to prefer an appeal in the higher courts. What is your opinion on this issue?

**WITNESS:** With great respect I think it will be adding to the difficulties of the litigants, because from experience it is found that at least in 80 or 90 per cent., of the cases the judgments of the trial courts are confirmed, and the litigation cost is so much. There is already provision for asking for retrial by a larger Bench under the Presidency Towns Small Causes Act. If we provide for appeals, their number will increase considerably. Already there are so many cases pending and we are not able to find sufficient judicial personnel to dispose of those cases. Therefore it will not be in the interest of the public or for the persons who happen to be unsuccessful to be given a right of appeal. The statutes are self-contained. I think it will be opening the door to a large number of appeals; they may not be on merits but only to gain time. There may be a very few cases of injustice but I do not think it would be proper to make provision for appeals to prevent those few cases of injustice; there have not been many cases of injustice. After all there are Judges who do their duties with a high sense of respon-

sibility; only in a few cases they may not be well equipped.

**SHRI RAJENDRANATH BARUA:** Mr. Thiagarajan, you have submitted your Memorandum pinpointing certain provisions, which you have not done in regard to the other clauses. Therefore the presumption is that you have supported the rest of the clauses. Now my question is with regard to clause 13 of the Bill on page 5. It says :

"The provisions of section 11 shall, so far as may be, apply in relation to proceedings under this section as they apply to suits."

This means 'in full'. Normally this procedure applies only in a limited manner. Now if by this amendment it is meant 'fully applicable', don't you think that the execution proceedings will suffer a long delay, because they are of a summary nature? If the principle of *res judicata* is applied, then by the very nature of things, it ought to be elaborate and costly and the parties should be given the full opportunity to fight it out, as in suits. Therefore don't you think that this amendment is unnecessary?

**WITNESS:** I should think it is necessary for this reason that even at present all orders under section 47 are appealable as a decree, not only the first appeal but also the second appeal. Several courts have taken different views with regard to the principle of *res judicata* being applicable to several stages. The whole idea is that there should be some finality with regard to certain orders. Therefore what the courts have held is the principle of constructive *res judicata* applies in regard to the execution proceedings. I therefore think that this amendment ought to stand.

**SHRI RAJENDRANATH BARUA:** What is your objection if that amendment is not there and it is applied only in a limited manner as it is today?

**WITNESS:** We are giving by this amendment statutory recognition to

the applicability of section 11 with regard to execution proceedings. After all some courts may apply the principle of *res judicata* and some may not. Very often it leads to multiplicity of proceedings and unnecessary delay. For example a defendant is issued non-payment notice; he is bound to make that payment. Unless it is certified by the court within 90 days, he cannot raise the plea which he wants to raise. So unless there is such a provision the court is bound to go into it. In my humble opinion therefore the provision of section 11 is rightly made applicable to execution proceedings. It should be made applicable at all stages. Otherwise there is no responsibility on the part of the defendant and any person can take advantage at a later stage. Now they have been given the right to offer themselves as witnesses and so on and so forth in criminal matters; you must make the parties feel alert; they cannot just stand aside and later on say that they omitted to say something previously and therefore they should be heard now.

**SHRI J. M. IMAM:** This amending Bill is intended to minimise delay. This Bill aims at minimising delay in civil litigation, aims at speedy disposal of civil cases and also at cutting down the costs incurred by the litigants. You have observed in your opening remarks that the success of the Civil Procedure Code will depend upon the assiduous application of the provisions by the courts. So what has been your experience so far? Has there been no assiduous application of the provisions of the Civil Procedure Code and, if so, in what respects, and how to ensure assiduous application of the provisions of the Civil Procedure Code? What has been your experience so far? How far the courts are responsible for the delay? What are the reasons and how to avoid them?

**WITNESS:** I shall mention a few instances. I have already taken the liberty to refer to certain instances, some relating to the Bar and some re-

lating to the Bench. For example, there is a provision in the Code for straightway asking the court to pass a decree for the admitted amount. The party does not ask for it. The court does not look into it. Suppose the claim is Rs. 5,000/- and the defence raises an objection to Rs. 2,000/-. Now, straightway there can be a decree for Rs. 3,000/-. But the court does not pass such a decree because his office does not like to be saddled with the additional work involved in an interim decree like this. The judges have got to look to the convenience of the staff; otherwise they won't get their co-operation. And the plaintiff thinks, "Why should I not wait?" The result is that the admitted claim is allowed to stand over. Thus, the decision in the suit may take two years and three years. Again there is the provision for interlocutory proceedings, but this provision has not been fully used, and this has been the observation of the Law Commission in their reports. But some judges—I know some of them—have always followed the procedure. As soon as a written statement is filed the court, after looking into the pleadings of both the parties, frames the issues. But many judges do not have the patience, or they think they do not have the time to go through the pleadings. They simply come to the court at 11 o'clock. Both sides file their draft issues. The judge leisurely goes through them and then adumbrates a few issues and leaves it at that, thus prolonging the time. Some judges, District Judges, who later became the Judges of the Madras High Court, they did not like it. They warn the lawyers, the plaintiffs and the defendants if they do not come to the court and be present in time. Some lawyer's clerk is there. The party may not come. The draft issues are filed without following the provisions of the Code. All these issues are filed. Later on the trial is taken up. The court does not ask which are the issues you are going to press. And at the time of arguments the issues are not pressed.

SHRI SHRI J. M. IMAM: Can you suggest measures as to how to avoid this delay? What are your concrete proposals?

WITNESS: My concrete suggestion will be that all these subordinate courts should be informed periodically by circulars to strictly follow the provisions of the Code, and in the notes of inspection there can be the questions and answers. There can be various questions, about 70 or 80, in the form of a questionnaire, about various matters, and the answers elicited in reply to the questions, regarding the procedure followed, could be recorded in the inspection notes. If a procedure was not followed, it should be asked why it was not followed. For example, about the delay there must be issued a circular.

SHRI J. M. IMAM: Let me enlighten you further. There is delay before the trial. There is delay after the trial, and there is delay during the course of an appeal, and the cumulative delay may come to ten or twelve years. Have you any concrete proposals by which you can cut off the delay or at least minimise the delay?

WITNESS: I will give you a few instances. The suit is filed; the written statement is filed, and the issues are settled. Now the difficulty arises in a judge not applying his mind to framing the proper and absolutely necessary issues. A large number of issues are filed and his mind is not applied to the salient ones. So somebody applies for the amendment of the issues or for framing additional issues or for the deletion of some issues. Thus such applications are allowed. Then some decision is taken. Then there is the Revision in the High Court and the whole thing is got stayed. It will be in a suit of large value; it was Rs. 65,000 in a case. The

mother of the minor defendant put up the defence that the mortgage of the property for ancestral debts was illegal. For the main defendant there was not much defence. On behalf of the minor defendant that frivolous plea was raised. My senior counsel said, "It will be difficult to get an adjournment. I will make an application for amending the issues." Theonus was thrown on the defendant. A petition was filed. The court adjourned the hearing of the suit. The other side took time for the counter petition. And after the counter petition time is asked for filing the plaintiffs reply. Later on, after six months, when the application was heard, the application had to be dismissed. Supposing the court had applied its mind in time, at the initial stage, all this delay would not have happened. This is a case where the learned judge allowed the matter to be protracted like this falling a prey to the ingenious device of the learned senior counsel and thus allowed the parties to play with time. A similar case arose where, when such applications were made, the judge straightway dismissed them, and disposed of the case in two days' time. Therefore it all depends upon the co-operation of the lawyers, and the lawyers are expected to co-operate with the court. I never like to ask for such adjournments whether it be the District Judge or Sub Court or Munsiff's Court. In fact, the Hon. Justice Mr. Varadachari, when he was a Judge of the Federal Court, said, "The reason for the delay is not on the part of the court only. It is the court, the clients and my learned colleagues of the Bar." We should not fall a victim to the persuasion of the clients or the clerks or the other persons interested in getting adjournments. Generally the fault lies with the parties and the pleaders. In another interesting case, the case was being heard by a learned judge. At that stage he went on a month's leave. A Munsiff was promoted Sub Judge. He took charge when the trial was proceeding. One or two witnesses had to be

examined. We had marked all the printed records of the High Court including, the evidence recorded in the previous trial. These witnesses were not examined by consent. This particular judge always believed in setting aside alienations in favour of minors. He said, "I am not going to refer to the printed record". He was going to dispose of the suit to the prejudice of the defendant who had invested large sums of money, in thousands. Everybody was at his wit's end. "If you rely upon these printed records of the High Court for giving the reasons and justification for the alienation, you will have to examine those witnesses. We have ordered the issue of summons but those witnesses were not available." And luckily the witnesses were not available. Within a month the original judge came and took charge of the case, a case in which injustice was prevented by timely action. So it all depends—there cannot be a hard and fast rule—upon how we adjust ourselves to the judges. And the judges have got to adjust themselves to the lawyers if our aim is to have quick disposal of a case, a matter in which all of us should be interested. There are so many ways of obstructing the course of justice, e.g. by filing frivolous applications and so on. So, public opinion should be created and people should be told that if they come to court they would lose more by way of batta for coming to court, calling witnesses and then not being examined. They should be encouraged to be assiduous and quick in the disposal of cases. A person files a petition and then thinks that for another ten years nothing would happen. Then, he thinks he can appeal if before a particular Judge he may not succeed, so such kinds of delay should be avoided. To a large extent we have to depend on the co-operation of the lawyers and Judges. Some Judges go according to the chronological order. When I was a judicial officer where I was not able to dispose of the cases at the end of the month I gave very good reasons



**CHAIRMAN:** Mr. Thagarajan, you will do well to give shorter replies. There are still many Members to put questions.

**SHRI J. M. IMAM:** One more question. You have suggested that the words "acknowledgement prepaid" be added. Suppose the party is not available, the acknowledgement comes back to the court without it being served. Then what happens? What is the further step? Invariably after independence, we would like to avoid the issuance of summonses and notices and often perhaps in collusion with the postal staff they come back unserved. If you say that there should be a prepaid acknowledgement, perhaps the party will try to avoid it and both the summons and the acknowledgement will come back to the court unserved. Is it not the case that if your suggestion is adopted, there may be further delays in the service of summons and there may not be any service at all? So, what should be the means and way of serving it?

**WITNESS:** The procedure in the case of some courts is that they issue summons through the process staff and also by post simultaneously. Previously they tried this personal service. Now, in many places I find that the summons is served both by the personal staff and through post. A copy of the plaint is sent through the process server. The simultaneous service of summons will reduce the delay in the service of summons. This would work successfully.

**SHRI BRIJ BHUSHAN LAL:** Please refer to page 15, clause 30, of the Bill. It reads:—

"19A. (1) The Court shall, in addition to and simultaneously with the issue of summons for service in the manner provided in rules 9 to 18 also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent ordinarily re-

sides or carries on business or personally works for gain."

Along with it, there is a proviso which reads:—

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

My point is this. By keeping this proviso the very purpose of this amendment will be defeated. In the ordinary course every day the clerk concerned takes the papers to the presiding officer for signature. He places a huge bundle before him and the officer puts his initials in the case of ordinary business. It is not a judgement or any particular order. On routine papers he puts his initials. By keeping this proviso he will get an opportunity to say that there is no necessity of issuing the summons by registered post. So, I think this proviso is redundant and it should be deleted. I would like to know what your opinion is. Is it not redundant?

**WITNESS:** I agree with you that the proviso seems to be redundant. Rule 19A provides for the service of summons simultaneously, but I would like to know what are the cases contemplated in which a Court may consider the issue of summons by registered post as unnecessary. I am just trying to find out the position.

**SHRI BRIJ BHUSHAN LAL:** That is why I said that the proviso is altogether redundant. As my learned friend, Mr. Imam, has said, when an acknowledgment purporting to be signed by the defendant or the agent or an endorsement purporting to be made by a postal employee that the defendant or the agent refused to take delivery has been received, the Court issuing the summons may declare that there has been valid service. So, I think by not adding the proviso to rule 19A (1), the purpose is served by rule 19(2).

**WITNESS:** It should be looked at like this. Suppose the defendant is not served personally but his agent or somebody in his house has been served. It is open to the Court not to be satisfied with the service of summons on the party concerned. Probably such cases are contemplated. At various stages several kinds of notices have got to be issued. The proviso is perhaps intended to be applied to cases where a number of notices have to be served in various stages in civil cases. It may refer to the proclamation of a settlement or the issue of sale notice or objection notice, and proceedings of that kind. At certain stages such a proviso is perhaps necessary. They have given some reason in the Notes on clauses. It starts at page 65 and goes on to page 66. It says that the object of the amendment is to provide for simultaneous issue of summons for service in the ordinary manner and service by post. Suppose in a certain case there is an injunction and the party appears in Court. It all depends on the facts of each case. I do not think any Judge will make use of the proviso so as to avoid the issue of summons to the defendant, either in person or by registered post. The proviso is there so as to give some freedom to the court. What is the harm?

**SHRI BRIJ BHUSHAN LAL:** I just explained to you what happens in everyday practice. It is being misused by the clerk concerned. In order to avoid that and in order to check corruption, which is prevalent it is better to delete the proviso. One of the main reasons for delay—before the trial of course—is that the service of summons is not done properly. Then, it is delayed.

**WITNESS:** I think we can drop the proviso. I have known of a learned sub-Judge who used to stay on till 9 in the night to examine the return of summonses and the process staff were kept waiting and they had

to work till 9 p.m. He was very particular that the service of summons was done properly. He thought that it was important to have proper service of summons. The process service staff complained....

**SHRI TENNETI VISWANATHAM:** What is your view then?

**WITNESS:** We can drop it.

**SHRI P. C. MITRA:** I would like to refer you to page 16, Rule 20A(1A) where you have suggested that the language of the newspaper should be the language of the court. But do you think that the publication of one advertisement in one daily paper is sufficient if at any place there are more than one daily newspaper? The provision here is: "Where the Court acting under sub-rule (1), orders service by advertisement in a newspaper the newspaper shall be a daily newspaper circulating in the locality", etc. Do you think that publication in only one newspaper is sufficient? Besides, if you go through page 66, in notes on cases of the bill it is given thus: "It is considered that where substituted service by advertisement in newspapers is ordered, the newspapers should be those circulating in the locality". Actually if more than one daily newspapers are published, then certainly it should be published in all the newspapers. So, I would like you to suggest whether you would like it to be newspapers instead of restricting it to one daily newspaper. Besides, it may be that in many places still English is the language of the court. Your purpose is that persons knowing only regional language should also be able to know it. Therefore, "including newspapers of the regional language" should be added instead of only "language of the court". The purpose is that there are many clients who only read newspapers of the regional language. You want the language of the court. But still in certain courts English is used. So, why not include newspapers of the regional language?

**WITNESS :** Even as it is the cost of publication in a newspaper is very high, compared with the cost of service through the process staff or by registered post. The rates have gone very high. If the publication is to be made in all the newspapers circulating in the locality, English and other than English, it will be costly. It will be unnecessarily saddling the cost on the defendant. I know in one case the claim was Rs. 1000. For publishing in some newspapers the solicitors' office had to spend Rs. 250. The whole amount remained unrecovered.

**CHAIRMAN :** I suppose Mr. Mitra is not aware of the fact that insertion in a newspaper costs very much. Insertion in all newspapers means it will be very expensive. We have to pick and choose. I think the best thing would be to leave the matter to the court to decide after consultation with the parties in which papers it should be advertised.

**SHRI P. C. MITRA :** Here it is a newspaper only. There may be more than one newspaper. It may be two also. Why a daily newspaper? The court may have discretion. If you say newspapers including newspapers of the regional language, that would serve the purpose. If there are five, it may not be published in all five. If the word is 'newspapers', then the court will have discretion to publish in two papers instead of only one. Here in the draft it is only one daily newspaper. In the explanation the wording is "service by advertisement in newspapers". That is what is given.

**CHAIRMAN :** However, we shall look into this point at the stage of amendment. It is not a matter upon which the witness can enlighten us.

**SHRI P. C. MITRA :** Witness wants it to be the language of the court.

**CHAIRMAN :** You had his opinion on this point. He wants the language of the court so that the defendant

and other parties may understand the position.

**SHRI P. C. MITRA :** Then on page 65, about notice on the guardian, the guardian should state the age, date of birth, etc. of the minor. The guardian may say he does not know the age of the minor. He may not have date of birth of the minor and for this reasons there may be more delay.

**CHAIRMAN :** Mr. Mitra, the impression I got from the note of the witness was that he wants the minor, when he appears before the court, to state his age, not the guardian. He wants the minor or his representative to state in court what is the age of the minor.

**SHRI P. C. MITRA :** Do you accept this interpretation?

**WITNESS :** Previously there was no provision for issuing notice to the minor.

**CHAIRMAN :** When the minor is appointed.....

**WITNESS :** Previously under order 32 for those who had not completed 18 or for whom a guardian has been appointed by the District Court no notice was sent. There was considerable delay. The plaintiff had to file an affidavit as to who were suitable as a guardian. Notice will go to one after another. If he was not willing, then to the second man. There was considerable delay. The High Court said, do not waste time; issue notices to all the proposed guardians straightway; let us see which of them appear in the court. It so happened that there were conflicting claims. The net result was that the court had to decide. Then they thought that the best solution was to give notice to the minor, make him appear and ask him to choose by which guardian he wanted to be represented, as if at that age of 11 or 13 he had sufficient discretion—analogue to the provisions of the Guardians and Wards Act. Whenever there is a dispute

between rival claimants for guardianship, the minor is asked to appear and asked to choose, his preference being taken into account. Still his preference is being taken into consideration for selecting a guardian. It was for this reason a notice was issued to the minor. Usually in the majority of cases there is no difficulty. In a few cases the parties have got their own axe to grind. He cannot appear by lawyer. He has got to choose. Generally he would be tutored by somebody. In spite of it what later on happens is—fortunately now we do not have many minor suits—later on he will say, “my age was not this”. There will be all kinds of entries, the horoscope having a particular date of birth, the school register showing a different date of birth, and so on. The result was that whichever was advantageous to him he used to take the benefit of it. All this was not creditable at all. Suppose the minor is a student studying, he knows what is his age. That is why they have introduced the provision.

**CHAIRMAN:** Suppose the minor comes forward and tells the court that his age is 12. Do you mean to say that he can later on change it when he attains majority?

**WITNESS:** It should be supported by evidence. There would be something to show what his age is. In the high school course when he goes to the eighth standard, a declaration is taken from the parent or guardian about the date of his birth and that he will not change it. But this statement is not binding upon the minor. When he completes his age of 18 or 21, later on it may suit him to change the date of birth. This question arises during elections. In an election this actually took place. The result was that we had half a dozen entries about the date of birth. The horoscope gave one date. There were also dates according to different almanacs. The minor, after attaining the age of majority, should be asked to state his

age. I would like the court to issue notice to the minor.

**SHRI P. C. MITRA:** Notice is given to the guardian actually.

**CHAIRMAN:** What I have not been able to understand is this. Suppose the notice is sent to the minor, he comes forward and tells the court, I am a minor, and he agrees to a particular course of action. Will he not be shut off from repudiating it when he becomes a major? You cannot bind him when he made it when he was a minor.

**WITNESS:** If he has made a mere oral statement, there will be some force later on in challenging the correctness of it made when he was not able to form an opinion. When he is supported by the admission register about age, he can say it. He may later on be given an option to change it.

**CHAIRMAN:** I think the change will not make any difference.

**WITNESS:** I am quite aware of it. But to minimise the delay, I am suggesting it. When a minor attains majority, under the rules he has got to be declared a major and a notice goes to him at this stage. Then a provision may be made to give his correct age and he should not be allowed to go back on it.

**CHAIRMAN:** A minor, on attaining majority, can come forward and say, I did not realise the significance of this when I agreed to it.

**WITNESS:** In the Supreme Court whenever a person who is a minor is to be declared a major, they insist on the production of a birth certificate or extract from a school register. In the subordinate courts, they generally accept the statement or the guardian or the ex-guardian. There is a provision for issuing notice under IIA, page 55. I thought, when a notice goes to him, he may be called upon to furnish the particulars.

**CHAIRMAN:** I have not been able to understand the significance of your suggestion.

**WITNESS:** A minor's mouth cannot be shut. I understand your difficulty. When there is documentary evidence in support of his age about his date of birth, it is better to have it on record to minimise the evil.

**SHRI P. C. MITRA:** When the plaintiff applies and says that such and such is the minor person, he may have in his possession a certificate or something. Whatever he has got he should submit along with the petition, in virtue of which he can state that he is a minor.

**WITNESS:** That is a good suggestion. But the difficulty is there when you have got half a dozen things where the date of birth has been entered differently. In most of these cases, some guardians are appointed. If a notice goes to the minor you can try to get some material about his date of birth age or both.

**SHRI S. B. PATIL:** On page 3 of your memorandum—last but one paragraph—you have quoted one article regarding reform on CPC, published in the Mysore Law Journal. I would like to have your suggestions regarding minimising the delays and also your experience in various courts to cut delays, whether these delays are due to the parties or the courts or the pleaders and so on.

**CHAIRMAN:** Will it not be better for us to refer to the article in question rather than ask the question of the witness? He has given you the reference. You can refer to it.

**WITNESS:** I have got some copies of the article with me. I have only eight copies. I will pass on two to each side.

**SHRI S. B. PATIL:** Kindly circulate those copies.

**DR. B. N. ANTANI:** I shall certainly read the article and see what portion of it can be utilised. But have you any specific suggestions yourself to make arising out of this article?

**WITNESS:** That article only deals with delays which arise in the disposal of suits, first appeals and second appeals.

**DR. B. N. ANTANI:** Give some suggestions on your part.

**WITNESS:** The views given by the gentleman are that when the judgement is delivered, copies of it should be immediately provided to the parties. Now the judgements are being dictated. Previously these judgements had to be written. Now, when some judges dictate their judgements, they are not final in the sense that they want to peruse them and make corrections. We can make a suggestion to the subordinate and other judiciary to have all the corrections made before the judgement is delivered. Sometimes when you compare the draft as dictated with the corrected copies given to the parties you will find a lot of additions and subtractions. This causes delay. When a judgement is pronounced a copy should immediately be supplied with a copy to file an appeal. But now it takes 15 days and sometimes even 30 days. In this article it is suggested that the suit should not be treated as closed except for the purpose of disposal. He has suggested that as soon as the judgement is delivered, copies of it should be supplied to the parties. And in the first instance itself, they need not have to travel to the district court or to the High Court. The office examines the papers. As soon as the appeal is filed, the office checks the papers, checks the correctness of the court fees, etc., and straightway the parties are asked to appear on a particular day. He says this minimises delay in the disposal of first appeals. Similarly, in the case of second appeals, the delay can be minimised by this process. This article is entitled "Reform of Civil Procedure." This can be usefully adopted not in the form of a section, but by way of schedules or rules. Another reason

for delay is that a good deal of time is taken to draw up a decree. And when the decree is drawn, up, it is not shown to the parties as is done in the Supreme Court or the High Court. Sometimes there are mistakes and they have to apply for amendments or review. All this takes time. One learned judge used to dictate the decree also when the judgement was delivered, one was able to get a copy of the decree also. In certain difficult cases, he used to consult the advocates also. I also followed his procedure when I happened to be on the bench because I found it very useful.

**DR. B. N. ANTANI:** One more question. In your memorandum, you are quite silent over the proposed deletion of section 80 of the Civil Procedure Code. Do we take it that your silence indicates that you agree with the proposed deletion?

**WITNESS:** I am glad you have put this question. I was exercising my mind over it and I was in two minds whether it would be good to delete section 80 altogether because in our experience we have found that in very many cases the Central Government or the State Government or the public officer says "the threatened suit is awaited." So by giving the notice, litigation is hardly avoided because the Government is as much a bad litigant as the private individuals—I am sorry to say that. So this section does not serve the purpose for which it is intended, although in one or two cases in my experience, the matter had been settled without recourse to a suit. In one case, the matter related to some supply of irrigation pipes and the Collector said "I am glad you mentioned it to me. Let us hold a conference." And by reference to the Public Works Department and by making some changes in the irrigation channels, etc., the matter was settled without recourse to a suit. But these are very rare instances. Therefore, in one respect it is good to retain section 80. But there is the other danger also. Some ur-

necessary. There section 80 will be an obstacle.

**CHAIRMAN:** Supposing we say that the period of notice should be shortened from 60 to 30 days, and that wherever immediate orders are necessary—e.g. in the case of demolition of a house—then no notice will be necessary, and thirdly that for want of formalities regarding the notice, no suit should be thrown out?

**WITNESS:** What I am saying is that deletion of section 80 may not remove the difficulty any more than the section as it exists. But in regard to suits which have to be filed under section 80, may I make the suggestion that the deletion of section 80 may be there, but the difficulty may be sought to be obviated by a provision that he may not be awarded his costs. May I refer to the relevant clause.....

**SHRI R. D. BHANDARE:** The principle of rule of law is that all persons, whatever may be their place and position, must stand on the same base and between the same parallels. Therefore, this principle is incorporated by deletion of section 80. What have you to say?

**WITNESS:** That is a very valid argument for the deletion of this section. With your permission. I shall refer to the relevant provision. Clause 16 on page 61 of the Bill—Section 80 provides that no suit shall be instituted against the Government or against a public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months after a notice in writing has been given. The object appears to be to give to the Government or public officer an opportunity to examine the legal position and to settle the claim if so advised, and avoid litigation.

I appreciate it but we find Section 80 is an obstacle in obtaining the immediate relief where it is necessary.

I would like to refer to pre-trial procedure adopted originally in the

Madras High Court. There was a time when the learned judge in the Madras High Court tried to settle the issue before it is contested, or the parties filed a written statement. He used to call the parties, ask them the grievances and he used to discuss the matter and decided how the matter could be settled. The result was before the settlement of the issue, there was a compromise.

A certain portion of the fee is also refundable in such cases.

Mr. Justice Mac adopted this procedure. He was a very brilliant man. He tried this in the original side. He was successful. He issued a circular to the subordinate courts saying please try that method. They were also successful.

If there is a provision of pre-trial method, . . . this may be considered. I was discussing this with the Members of the Bar. I could not collect their views. So, I thought while giving the evidence I shall tell all this.

SHRI R. D. BHANDARE: Kindly see on this point whether Section 81 of C.P.C., is not a sufficient guarantee or protection.

CHAIRMAN: One suggestion has been made to us by the Member of the Bar. He has suggested that if Section 80 is not deleted, then this should be amended in the following manner:

In the alternative the provision of Section 80 should be made obligatory and not mandatory and we add sub-section 2 and 3 to the existing Section 80, similar to 478 of the Delhi Municipal Corporation Act of 1957.

Nothing in sub-section 1 shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object could be defeated by serving of the notice or the postponement of the institution of the suit. Provided, however, that the suit has been instituted without notice, the

suit will not be liable to be dismissed

but the plaintiff shall not be allowed the cost of the Court.

Do you agree that this method would be preferable to the abolition of Section 80?

SHRI R. THIAGARAJAN: I think this is a good provision.

CHAIRMAN: Do you agree with that?

SHRI R. THIAGARAJAN: That is one way out of the difficulty.

SHRI B. B. LAL: I would like to put one question to my learned friend. Justice has become very costly these days. So, there is a recommendation of the Law Commission also that the Court fees should be reduced. I would like your valuable opinion how justice could be cheaper.

CHAIRMAN: The question of Court fee is a State matter. Will the State agree to it? Supposing he says that the court fee should be abolished, do you think that the State Government will be prepared to forego that?

SHRI B. B. LAL: In the case of unanimous opinion of the Committee we can recommend.

CHAIRMAN: When the States are not prepared to give up taxation on prohibition, can they agree that the Court fee may be abolished?

SHRI B. B. LAL: I would like to know the valuable opinion of the witness.

CHAIRMAN: How can he say anything on this?

SHRI R. D. BHANDARE: In a suit instituted against a Public Officer in respect of any Act purporting to be done by him in his official capacity, the defendant shall not be liable to arrest or his property to attachment otherwise than in execution of the decree and where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt

him from appearing in person.

**SHRI R. THIAGARAJAN:** Section 80 works as a hardship unless it is *sine quo non* to Section 81 .....

**SHRI R. D. BHANDARE:** Are you not satisfied with the position of Section 81? So, please give us a note on 80 which has duties and 81 which has certain privileges.

**SHRI R. THIAGARAJAN:** So far as the equality of law is concerned, the Government cannot deny the individual the fundamental rights guaranteed to him under Article 32 of the Constitution. The Railway Department, etc., can be called individual. The object of Section 50 is to see whenever an individual has got a grievance against a Department or the State, he must first give notice in regard to his grievances and see redress. He must first give notice of his grievance. In this context I am considering that either Section 80 with that proviso as read out by Chairman under Municipal Act may be introduced, or in view of the recent law which has been passed for the appointment of officers like Ambudsmen at local, state and central level, to consider certain representations, it is not necessary. About some right to try against public officials, unless it is *mala fide* the question does not arise. I know one particular Inspector of Police put a person in custody for a few hours. It was said by the Trial Court that he exceeded the limits of his authority with a view to satisfy his private vengeance, and was mulct-ed in damages, but on his appeal this was reversed. But some allegations are there. Therefore, it is only to prevent the abuses of the Section, that the public notice is there.

**SHRI TENNETI VISWANATHAM:** The persons most interested with regard to Section 80 are the Government. In this case they agree to its deletion. Why are you going into its pros and cons? What is the point in Witness discussing it?

**SHRI R. THIAGARANJAN:** Therefore, I left it as it is.

**SHRI P. C. MITRA:** In most of the civil suits, the opposite parties are given at least one month's notice. What is the harm if the Government Servant is given some time to settle that claim instead of fighting the cases in the court?

**SHRI R. THIAGARAJAN:** Very often we find that notice is not given. If you look at the statistics, a random sample may reveal that at least in 50 per cent of the cases, notice is not given. In fact, in view of the cost of litigation, delay etc., many people think it is wise to settle the case out of the court. In spite of that, there are so many suits.

**CHAIRMAN:** I hope no Hon'ble Member wants to put any question. Mr. Thiagarajan, I thank you very much on behalf of myself as well as the Committee for your coming forward and helping us with your views. Thank you very much.

**SHRI R. THIAGARANJAN:** I may be permitted to thank you for the opportunity given to me to explain the views I hold on some of the topics.

**CHAIRMAN:** Thank you. We now meet again at 3.00 P.M. to follow up the evidence of Delhi Bar Association.

*(The witness then withdrew)*

*(The witness, Shri B. C. Misra, swears at this stage called in.)*

**CHAIRMAN:** Friends, shall we commence the proceedings as it is past three and the witness has also come before us?

The witness before us is Shri Misra who came before us earlier too and gave us his own ideas about the Civil Procedure Code Amendment which were very valuable and we requested him to appear before us again today. If any of the members want to put questions to him, they can do so. He has also promised to send us his comments in writing. They have been received by us and have been circulated.



ed to you all. I hope you have gone through them. The comments are very valuable; they are well written and are self-explanatory. I am indeed very thankful to Mr. Misra for having taken the trouble and having found time for writing such a note. I hope the Members will now ask him anything which they wish to ask.

At the outset, I shall just ask him one or two questions before I ask the other Members to follow me. Mr. Misra, on Sec. 21A you have suggested a verbal change viz., "Please add the word "merely" after 'objection' and before the phrase 'as to the place of suing. Would it not be better to use the word 'merely' before the word 'based' instead of where you have put in?

SHRI B. C. MISRA : That does not make a difference.

CHAIRMAN: I think it will be better to put it there.

SHRI B. C. MISRA : That of course the drafting committee may do.

Now, before I answer questions, I should thank you and other hon. Members for the compliments paid to me. I take it as my duty to be of assistance to this Committee in the onerous task which this Committee has undertaken and the duty it is performing.

There are two things. Two or three mistakes have crept in which, if you will permit me, I would like to correct before I proceed further.

CHAIRMAN: You may point out them.

SHRI B. C. MISRA : I do not know whether the pages will tally.

CHAIRMAN: Are they typing errors?

SHRI B. C. MISRA : They are typing errors. There is also some mistake in the suggestion.

CHAIRMAN: Would you point that out? You give us your comments as well as the page number.

SHRI B. C. MISRA : On page 12, on Rule 11, in D, I have quoted the authority of the Supreme Court. That is not a correct citation. I want 1962 Supreme Court, 227 to be corrected to 1962, Supreme Court 89 and 1964 Supreme Court 215. Another mistake is on page 13, Reasons—A. See line three 1958 Supreme Court 232. It should be changed to 321.

On page 15 last but 4th line, it is written as 1961, Supreme Court 575. It should be corrected to 1969 Supreme Court. Page is all right. I am sorry these mistakes have crept in. I should have really looked into them carefully.

With your permission I shall now answer any question. The first question that your honour put to me was about the addition of the word 'merely'. It does not really make much difference whatever the draftsman may say so long as it makes clear that the 'objection' that has barred is only on account of the territorial jurisdiction' and not otherwise.

CHAIRMAN : I do not see any difference. But I thought that the word 'merely' is to be added on after the word 'based'.

SHRI B. C. MISRA : I accept this suggestion and there should be no difficulty.

CHAIRMAN : On page 2, on Clause 7, this is what you have suggested. "Please redraft the sub-section so as to include within it the amendment proposed to be made in Section 24 C.P.C. vide clause 6 of the Bill, and please further add the following :

"That High Court or other court to which such suit, appeal or other proceeding is transferred by or under the orders of the Supreme Court shall be deemed to have jurisdiction to try the same notwithstanding anything to the contrary contained in this code or the provisions of any other law".

I quite agree with your suggestion. My only question is whether it is absolutely necessary or not.

SHRI B. C. MISRA : I think it is very necessary.

CHAIRMAN : If once the Supreme Court has transferred a case to a particular court, it may be deemed that it is within its jurisdiction.

SHRI B. C. MISRA : It may not be deemed to have jurisdiction over that because in Sec. 24 there is a similar provision which seeks to have an express provision for the purpose. And sections 15, 16 and 17 relate to immovable property. Under Sec. 16 a suit must be filed. Section 24 itself provides that after the suit has been transferred, the transferee court will exercise the same powers as the transferor court. This will have to be added to section 25. Particularly under section 24 it can be transferred only from one district to another. But section 16 cannot be violated. So it is necessary to have it.

CHAIRMAN : I only wanted to know whether you think it is absolutely necessary ?

SHRI B. C. MISRA : I think it is very necessary. If you look at section 24, you will see that that jurisdiction has to be conferred.

CHAIRMAN : Now I come to page 2, serial No. 3. You do not surely mean that the man be penalized twice? Supposing the trial court has awarded it and then the matter comes up to the appellate court, the appellate court may award it further....

SHRI B. C. MISRA : Supposing the trial court has not awarded it. Supposing the appeal is frivolous; then? The cause of the appeal may be trifling. I shall give you an illustration.

SHRI R. D. BHANDARE : Before putting in an appeal, there is a legitimate remedy at the time of preliminary hearing before admission. So frivolous appeals will not be admitted after having a preliminary hearing.

SHRI B. C. MISRA : In theory, the hon. Member is right. But in actual practice it seldom happens that first appeals are dismissed. Just as a suit cannot be dismissed even if it is frivolous, so the practice is to grant the first appeal, and not dismiss it. Second appeals are dismissed as frivolous, but first appeals are usually not dismissed, because the party is entitled to an appraisal of facts at both the levels. So far as the law is concerned, I want the law to be comprehensive.

CHAIRMAN : At page 3 you have said that the fines should be raised from Rs. 2,000 to Rs. 5,000. Is it not too much amount ?

SHRI B. C. MISRA : It is conceivable that the small cause court will award Rs. 2,000. Very often section 35(a) is not really in use in practice, except in rare cases. If you want to give that power, make it sufficiently deterrent and leave the minimum to the court.

CHAIRMAN : The value has gone down.

SHRI B. C. MISRA : This is one of my objectives which I am very much conscious of. Because of the change in economic conditions, do not go on revising the law.

CHAIRMAN : Of course, not.

SHRI B. C. MISRA . The value may go up or it may go down. You do not take that into consideration.

SHRI R. D. BHANDARE : The maximum is laid down here.

SHRI B. C. MISRA : Rs. 5000 is really a deterrent figure. The idea is to have a deterrent penalty, so that fictitious and false evidence is not taken up. It should be really deterrent. Make it deterrent. That is the idea. Either delete it or make it sufficiently deterrent. If the Committee really wants to make it, then make it really deterrent.

CHAIRMAN : The only point here is that if we make it Rs. 5000, some

court may put it into its head and award Rs. 5000, in ordinary cases, and then it may amount to a hardship.

**SHRI B. C. MISRA :** It may be a hardship. If the people are deterred from giving false defence, the purpose of the legislation is served. That is my suggestion. It is one of the fundamentals. So make it sufficiently deterrent.

**SHRI SYED AHMED :** It is used very rarely.

**CHAIRMAN :** On page 4, first paragraph, you have suggested that Explanations 4 and 5 should be deleted. I have not been able to understand why Explanation 4 also should be deleted. I appreciate that Explanation 5 may be excluded.

**WITNESS :** Explanations 4 and 5 go together. Explanation 4 says that the relief which the court does not expressly grant will be deemed to have been refused. I have given the illustration there. Suppose he takes one objection at the time of execution proceedings. He can take another objection, if it is a valid one. The first objection may have been dismissed. No court will entertain the same objection twice. The principle of *res judicata* is there but constructive *res judicata* is very dangerous. All execution proceedings are heard and decided on one day in a week and there may be about 60 or 100 cases pending and the court just disposes them of by one stroke of pen and the objections are not taken so seriously. The provisions of section 11 should not be extended. The principle of *res judicata* has been recognised by the courts. I have given one authority of the Supreme Court and this follows a number of other authorities of the Privy Council. The Committee is wanting to apply it to execution proceedings the whole hog. The dangers that arise out of Explanations 4 and 5 must be clearly safeguarded. It may just happen that he makes an application only for attachment of property and the court says 'All right, attach it.' Then he will apply for its sale.

That way it makes the law unnecessarily stringent without any advantage.

**CHAIRMAN :** Now refer to page 6, S. No. 9, section 64. Now section 64 is not being amended.

**WITNESS :** It is entirely a new suggestion; you can amend it, if you like.

**CHAIRMAN :** What I am saying is that the Committee has no power to make any changes to the clauses that are not being amended.

**WITNESS :** I am not aware of that. I thought the Committee had the power to do that. Anyway, that is my suggestion which really requires a serious consideration.

**CHAIRMAN :** I will ask the Law Minister to look into all your comments and if he finds he can make any further amendments to the Bill, he might do so.

(Interruption)

Now the next comment is about section 74, Sr. No. 10. My remarks about this are also the same as in respect of Sr. No. 9, that this is not being amended.

The same thing about Sr. No. 11 and 12.

**WITNESS :** You may consult the Law Minister about these suggestions.

**CHAIRMAN :** The Committee cannot do anything except to put it to the Law Minister.

Now about Sr. No. 18 you have suggested an alternative. Now which of the two do you recommend?

**WITNESS :** I prefer the first one to the second one. Notice is not at all necessary; if some party brings a suit against a defendant without previous notice, then the court deprives him of the costs. That is the normal position. The Govt. takes plenty of time to consider the matters. If, however, the Govt. is prepared to satisfy the claim, it has ample opportunity to do so. Instead of losing two months before the suit two months after the suit are well spent. I do not want notice at all. But if it found neces-

sary to retain it, as I understood last time—somebody suggested that the period may be reduced—I am not in favour of it or of the reduction of the period because that does not serve any purpose.

CHAIRMAN: This is one of the sections on which there is considerable difference of opinion not only among lawyers but also among judges.

WITNESS: Then my alternative suggestion is there.

CHAIRMAN: I think your alternative suggestion will be better.

WITNESS: About 115 I feel very strongly, Sr. No. 14. The amending Bill tries to lay down further restrictions on the powers of the High Court for revision. Now it is not appreciated that its revision powers do not really result in delay only but they are also able to do quick justice where it is wanted. If some court has closed the case of a particular party, it can go to the High Court and have the matter corrected at once. That it takes a long time in the High Court is a matter connected with the arrears of the High Court and not with the substance of section 115.

CHAIRMAN: But why do you say that sub-sections (3) and (4) restrict the powers of the High Court?

WITNESS: They do so because they say that they will not grant the stay.

CHAIRMAN: It says that the original records will not be called for.

WITNESS: It is not necessary, such a provision. The High Court may call for the record only if and when necessary. And is it necessary to write it in so many words like this? We should have faith in the discretion of the judges.

CHAIRMAN: What I say is that these sub-sections (3) and (4) provide that the High Court shall not do this. And what it will not do? It will not

call for the records, not that it shall have no power under Section 115. Only it will not call for the original records so that the work of the lower court may proceed on.

WITNESS: My submission is this. These (3) and (4) really are wholly unnecessary. When you are given the jurisdiction of Revision to a court like the High Court, then they know their job. They always do not call for the records. I think the amendment has been suggested in order to obviate delays; that seems to be the object behind it, but it is not appreciated that delays are not caused only on account of the exercise of the 'Revision' jurisdiction of the High Court. If the High Court finds that a matter is frivolous, it is in the discretion of the High Court to refuse 'Revision' straightway. And that power has been exercised, and that power is conceded even by the Supreme Court. If the High Court finds that an injustice has been done or a jurisdictional error is involved, then the High Court wants to correct that error immediately, and I have found from the practice prevailing that the High Court that entertains the 'Revision' sends for the records, decides the case and sends back the records doing all this as expeditiously as possible. Now another question in calling for the records; now it is not appreciated that the mere calling for the records by the High Court is not the cause of delay. Supposing there is the question that a Commission for a particular witness had not been issued and the matter was taken to the High Court. Now that particular witness has got to be examined. Now what is the trial court to do in such an event? It cannot proceed with the suit.

CHAIRMAN: When it finds it necessary, of course it can.

WITNESS: It cannot be like that, 'necessary' and 'not necessary'. A statutory power like that would only

indicate some distrust in the discretion of the High Court rather than expedite matters. You are limiting its powers when you lay down that "the High Court shall not call for the records." It is not necessary. Very many High Courts have themselves made rules on the point when the calling for records will be causing delay, and when not. Now, a curb on the procedural powers of the High Court like that in the matter of exercising its jurisdiction is not a very desirable thing for Parliament to lay down in this law—I refer to the proposed sub-sections (3) and (4). When to call for the records and when not to call for the records should be left to the discretion of the High Court. The proposed sub-section (3) is not the correct way really to obviate delay. They know when to do it and when not to do it. So, Sir, what is the good of putting it down like this?

CHAIRMAN: This has been suggested in order to save time; otherwise quick disposal of suits by the lower courts cannot come about, cannot come about if their records are called for in the middle. The lower courts' proceedings come to a halt because their records have been called for.

WITNESS: They may come to a halt for this reason, that is to say, unless and until the High Court disposes of the 'Revision' there is nothing for the trial court to do; it will have to wait till then till the 'Revision' petition is decided separately and the judgment or decree given.

CHAIRMAN: What happens is this. Very many cases are filed under Section 115 and the courts just order, "Let notice go. Call for the records, and all that." Now, three months and four months and six months' elapse in his manner. Then the matter is taken up, and it is rejected, so that the proceedings of the lower courts are held up during this period. That was the idea behind these amendments.

WITNESS: I appreciate the idea, but that is just only one way of look-

ing at it and saying that because the High Court sends for the records, therefore the proceedings are delayed. What I am suggesting is not for Parliament to really lay down the directions in a small matter like this whether to call for the records or not. Parliament may lay down the guidelines, the broad principles of jurisdiction, not this kind of thing as to when the records might be called for and when not, etc. That guidance is not necessary. Actually the High Courts themselves have made rules that the records shall not be called for unless it be in such and such circumstances. In some cases the High Court says that the records are to be called for and in some other cases that the records are not to be called for. It all depends upon the circumstances of each case, and the legislature, naturally, cannot really envisage all the situations in which it may be necessary for the High Court to exercise its power one way or the other, and you should trust the Judges of the High Court to do the right thing. I quite understand also that delay occurs in the High Court, but for that reason the remedy is not in making amendments like that.

CHAIRMAN: Not wholly.....

WITNESS: Not even partially. These amendments cannot really improve matters.

SHRI R. D. BHANDARE: So you are satisfied with Section 115 as it is.

WITNESS: Yes. This power is entrusted to a particular court, the highest court in a state, to the experienced judges there, and their discretion must be trusted. If they do not do their job properly, they will not still, in spite of these amendments, do their job properly. And how can the legislature help there? We can always persuade them if we are so inclined. I am telling my lawyer friends; if we are so inclined, we can always persuade a Judge, say to him, "Kindly look at this application. Please send for the records. They can be returned the day after. You have to trust the High Court and

have faith in the Judges' discretion. And writing an article like that will not help matters; it is hardly a matter deserving of legislative guidance.

CHAIRMAN: You have perhaps read that portion of the Law Commission's Report where they have dealt with this matter, where they have said that that is the main ground for the delay. For that reason they have suggested these amendments.

WITNESS: I know they say so, but I have got strong reasons to put forward against it. Take an illustration under Article 136. Can we restrict it finished and after several years, the High Courts' powers? It is confined only to jurisdictional errors, and the Privy Council has held that, if there is a jurisdictional error, it should be corrected at the earliest occasion. Otherwise, when the whole trial is finished and after several years the trial comes up to the High Court, then the question of jurisdiction is discovered and the trial has to be taken up again all over. Ultimately it all consumes more time. What really happens? This power is sometimes abused also.

CHAIRMAN: Not abused wilfully.

WITNESS: The abuse is quite enough. We need not attribute any motives to the abuse of power, but it is abused. That I certainly see, but that all depends if the system is there. The system is there in all the courts. All over the world there is the power of revision like that. In England you can always go to the court on writ for having jurisdictional errors set aside. In some other High Courts the revisional powers also rest on the question of fact, but here it is not so.

CHAIRMAN: Kindly turn to page 11 of your notes.

WITNESS: Excuse me, Sir. You asked me if there is any other manner in which it can be restricted. In sub-clause (4) you have added something certainly substantial to restrict the power. I for one will not do it, but if it is necessary the only power that

is necessary is if an appeal lies with another court, then you raise the question in that court. That does not solve the problem. I for one will not restrict it in any way. It is already restricted. There are very many cases quite shocking where the orders of the trial courts are not correct and which require quick correction by the High Court. They are delayed till the appeal is decided. In the long run it is dilatory. Merely because the power is being abused is no reason for taking away the power. It is also doing some good in other respects.

CHAIRMAN: I am drawing your attention to page 11 sub-para (a) of your comments.

WITNESS: This is a new suggestion which I have made.

CHAIRMAN: You say here that the advocate or the recognised agent shall lay before court information about the death of the deceased. I think it is too great a burden on the advocate. How will he follow it up? Suppose the litigant is from a village. He gets his instructions and he knows nothing more about what is happening. How do you ask him to keep a watch on the appearance of the party concerned?

WITNESS: Kindly consider the context of the provision that already exists. Now, you have very rightly pointed out that the advocate does not know about the death of a party who is his client or his legal representative. How do you expect the other party to know about it?

CHAIRMAN: I agree to a certain extent, but it should be for the party concerned to do it.

WITNESS: Very well. If you agree with me so far, then the position is like this. The advocate or his recognised agent should bring to the notice of the court information about the death of the deceased and who is his legal representative so far as it is known to him. Now, very often it happens that the advocate does come to know about the death of the party much earlier than anybody else. His

Vakalatnama terminates automatically. He is in correspondence with his client. The advocate gets in touch with his client. Of course, this does not apply to senior advocates of the Supreme Court. He would be writing some letter to his client about what is happening in the case. He is the person who is likely to know about it at the earliest moment. The legal representative of the deceased may be coming to him, in connection with some other matter. If a duty is cast on him to lay the information in court it will serve a very salutary purpose. If he commits any breach of it, there is no punishment. If he comes to know about it, he will have to lay the information before the court saying: My client has died. He died on such and such date and his legal representative is so and so. He should not postpone doing it till the date of the next hearing which may be after six months.

CHAIRMAN: Within a period of

WITNESS: I have not put any limitation for (a). For (b) it is 60 days and (c) 30 days. I think you may consider a period of 90 days. It should be most expeditiously done. Even otherwise if an advocate comes to know about the death of his client, it is his duty to inform the court. He must tell the court that his client had died on such and such date. You may give 90 days, but it would be better if he does it earlier.

CHAIRMAN: My difficulty is that if the party says that he is not interested in the substitution of any other name, the lawyer will not know it.

WITNESS: If the lawyer does not do it, who else will tell the court? I am not throwing any burden on him. It is a duty cast on him. He can tell the court that the client had died and the legal representative of the deceased is so and so. Why should he wait for the other party to send him a notice? The burden is not so heavy. It is his duty.

CHAIRMAN: According to you, it is a duty, but I do not know whether other lawyers would welcome it.

WITNESS: It is not one of those cases where any breach would entail any penalty. If he knows it, let him inform the court. What is the difficulty?

CHAIRMAN: If he knows it, he can certainly inform the court, but if he does not know it, he should not be bound to do so. Lawyers may object to it. They may ask. Why have you placed this burden on us?

WITNESS: He can tell the court: My client had died on such and such date. So far as I know he has left no legal representative.

CHAIRMAN: My relations with my client have finished. How am I to be kept informed of his death?

WITNESS: I am sorry probably we are arguing at cross purposes. I am talking of the lawyer who is actually appearing in court on his behalf and his relations can only be terminated by the death of the client and not otherwise. He would be knowing it. I am not talking of the lawyer of the trial court or in respect of a lawyer in the appellate court. The lawyer who is conducting the case is likely to know about it.

CHAIRMAN: The same provision will apply to the lawyers in the High Court and the Supreme Court also.

WITNESS: The lawyer must welcome it. Otherwise, under the law the authority to represent continues unless and until it is determined by the leave of the court or by the death of the party. Leave of the court has not been obtained and so the lawyer will be receiving summons and putting in his appearance without telling the court that his client died. If he does not know it there is no breach on his part. If he knows about it, he must inform the court.

SHRI TENNETI VISWANATHAM  
Some proceedings consequent upon

that information must start. Who will act and on whose instruction will notice will go to his legal representative saying that he is being brought on record. And who is the correct legal representative to whom this notice is issued?

WITNESS: Time will be saved. This is only to save time. If you collect statistics you will find that the largest number of cases of delay and the most patent cause of delay is the substitution of proceedings at all the stages.

CHAIRMAN: That is true and I agree, but how to get over that? That is the only point.

WITNESS: I have tried to put forward my point of view. After all you have to decide the matter, not I. I am only a witness trying to give my advice. You have to decide it. Parliament has to decide it.

Another thing you may add here. My suggestion has the effect of casting burden of laying full and correct information at the earliest opportunity on the erstwhile advocate of the deceased party as well as on his legal representatives. Then I have said that any decree passed in his favour or against him will be binding. This may be shocking to the principles of jurisprudence. For that I have found a way out. I have provided for reopening of the decree by the legal representatives appearing at a later stage and showing sufficient cause for non-compliance of the rules. Your honour may kindly correct it here. It is article 23 on page 13. This may be corrected to read: Article 23 of the statement known as 3 and 4, William IV, Chapter 41, relating to the jurisdiction and practice of the Judicial Committee of the Privy Council.

There is a precedent for that purpose.

CHAIRMAN: There is a well known principle of law that if a decree is passed when the defendant is dead, that will not be binding.

WITNESS: That is the principle of law unless the Legislature makes a departure. In this case I have suggested that the decree will be binding on him when the information has come to the court and the decree is passed. Only the legal representative will tell the court why they did not come earlier and have it set aside. That will save time. That will reverse the process. The decree will be binding subject to this. The result of this will be that the legal representative of the deceased party will be anxious to hurry up and to be brought on the record. I do not know if you are aware of the actual practice of how this is done. What happens is the legal representative knows about it, but they are not interested in any expeditious hearing and they want to delay the matter as much as possible. What they do is they depute one man to watch the case. If they find that it is going against them, they appear. If the process is reversed that it is their duty to do so, then the party will come forward. It is a revolutionary suggestion. I gave thought to the matter. If it finds approval of the Committee and Parliament, it is a matter worth trying.

CHAIRMAN: You please come to page 14, S. No. 20. This Order has not been amended.

WITNESS: Order 37 also has not been amended. I do not know if you will give a narrow interpretation to it. For example, you are amending Order 41 for insertion of sub-rule (3). I am suggesting amendment for insertion of a proviso to rule 1 sub-rule (1). It can as well be outside the purview of the committee.

CHAIRMAN: Where a particular section is being amended, you can suggest an amendment. Where no amendment is being made in the section as a whole, you cannot do it.

WITNESS: It is your interpretation. I have nothing to do with that matter. Order 22—it was a new suggestion.



Order 38—it was also a new suggestion. I want Order 37 to be deleted completely. It is not within the ambit of this Committee, but Order 37 should go. I want to submit before you the principle which is really working in my mind. If a party is poor, then you might attach all the property that he possesses in the world and try to realise the money, but do not shut out his defence. That is the principle on which I want this Committee to really work. Order 37 rule 3 says: if the court imposes terms on him and he does not give sufficient security, then he is not allowed to defend. You have suggested a similar thing in Order 41, rule 3, which says: his appeal will not be entertained unless he deposited the money that has been decreed against him. My suggestion is, do not do that. Hear his appeal, hear his defence, attach all the property that he possesses in the world, so that the poor man is not really prejudiced thereby. He may have a good defence. That is one principle which is working in my mind. I commend it for the consideration of the Committee.

श्री बी० ए० मंडल : यह जो प्रोपोज्ड बिल है उसमें कहा गया है कि कोई भी पार्लियामेंट का मेम्बर या कोई भी लेजिस्लेटिव एसेम्बली का मेम्बर सदन के शुरू होने से 40 दिन पहले और 40 दिन बाद गिरफ्तार न किया जाय। पहले इस सम्बन्ध में यह व्यवस्था थी कि किसी भी लेजिस्लेटर को 14 दिन पहले या 14 दिन बाद तक सिविल केस में गिरफ्तार नहीं किया जा सकता था लेकिन अब उस अवधि को बढ़ा कर 40 दिन किया जा रहा है। लेकिन हमारा कहना यह है कि अगर कोई मेम्बर अरेस्ट होने को हो या हो गया हो, तो उसे क्रिमिनल केस में भी सदन के शुरू होने से 40 दिन पहले और बाद में भी अरेस्ट न किया जाय और अगर वह अरेस्ट किया जाता है तो उसे पैरोल पर छोड़ दिया जाय ताकि वह अपना काम पार्लियामेंट में या प्रान्तीय एसेम्बली में जाकर कर सके।

श्री श्री ३० ए० मंडल : क्रिमिनल केस का विषय तो हमारे सामने नहीं है। क्रिमिनल केसेज में या पी० डी० ऐक्ट में जब कोई मेम्बर गिरफ्तार होता है तो उसको पैरोल में छोड़ने का विषय इस कमेटी के सामने नहीं है।

श्री बी० ए० मंडल : मेरा कहना यह है कि जैसे सिविल केस में किसी लेजिस्लेटर को 40 दिन सदन के शुरू होने के पहले और बाद में गिरफ्तार नहीं किया जा सकता है उसी तरह से क्रिमिनल केसेज में भी उसे इस अवधि तक गिरफ्तार न किया जा सके। हमारा कहना यह है कि जब आप सिविल केस में किसी लेजिस्लेटर को 40 दिन पहले या 40 दिन बाद तक गिरफ्तार न करने की बात को मानते हैं तो क्रिमिनल केसेज में भी उसे 40 दिन पहले और 40 दिन बाद तक गिरफ्तार न किया जा सके, इस तरह का प्राविजन इस बिल में होना चाहिये ताकि लेजिस्लेटर पार्लियामेंट में या असेम्बली में अपने कार्य को अच्छी तरह से कर सके। अगर आप उसे अरेस्ट करते हैं तो इस तरह की व्यवस्था होनी चाहिये कि वह इस अवधि में पैरोल में छोड़ दिया जाय ताकि वह पार्लियामेंट में या असेम्बली में जाकर अपना कार्य कर सके।

साक्षी : हमारी राय तो यह है कि क्रिमिनल केसेज में इस तरह की व्यवस्था नहीं की जानी चाहिये और न यह विषय कमेटी के सामने ही है। पार्लियामेंट के मेम्बर को ऐसा कोई काम नहीं करना चाहिये जिससे अरेस्ट होने की नीबत आये। यह कहना कि उनको अरेस्ट न किया जाय यह उचित नहीं है।

श्री श्री ३० ए० मंडल : हमारा कहने का मतलब यह है कि लेजिस्लेटर अगर इस अवधि में गिरफ्तार किया जाता है तो उसे पैरोल में छोड़ दिया जाय या फिर गिरफ्तार ही न किया जाय क्योंकि वह जनता का एक नुमाइन्दा होता है और उसे पार्लियामेंट में और असेम्बली में बहुत से काम करने होते हैं।

WITNESS: The privilege of everyone of us, including Members of Parliament, should be not to do anything wrong. If you do anything wrong, you should get the same penalty as everybody else should get. The only privilege that God has given us is to do the right thing and do no wrong. That you must exercise.

**चेयरमैन :** क्या आप 40 दिन के सजेशन के खिलाफ हैं या माफिक हैं ?

**श्री बी० एन० वंडल :** मैं इस सजेशन के माफिक हूँ लेकिन मेरे कहने का मतलब यह है कि जिस तरह से आप सिविल केसेज में इस तरह की व्यवस्था कर रहे हैं उसी तरह से आप क्रिमिनल केसेज में भी 40 दिन पहले और 40 दिन सदन के बाद को व्यवस्था को भी मान लें ताकि जो भी लेजिस्लेटर हो वह पार्लियामेंट में और सदन में अपना काम अच्छी तरह से कर सकें। इसलिए मैं चाहता हूँ कि अगर वह क्रिमिनल केसेज में भी अरेस्ट होता है तो उसको सेशन के दिनों में पैरोल में छोड़ दिया जाय ताकि वह अपना काम पार्लियामेंट में या असेम्बली में अच्छी तरह से कर सके।

**चेयरमैन :** पार्लियामेंट के सेशन के दिनों में किसी मेम्बर को या असेम्बली के मेम्बर को पैरोल में छोड़ दिया जाय ताकि वह सदन की कार्यवाही में हिस्सा ले सके यह बात तो समझ में आ सकती है।

**SHRI B. R. PARMAR:** Page 57—  
Statement of Objects and Reasons:

“(a) The Power to transfer proceedings in a High Court in a State to any other High Court, which now vests in the State Government, is being passed on to the Supreme Court. Section 25 is being suitably modified.”

What is your view in this matter?

- WITNESS: I entirely support it. It should be there. This is a very salutary provision. I have only added some suggestions there that the transfer should not only on the grounds of amendments proposed but on the additional grounds I have put in my memorandum. About parole, some Member is able to continue as a member of the Committee or of the House and if it is 40 days, then probably the whole year may pass out. Where anybody is arrested under S. 25 for not paying decrees, these cases are very few and the cases of MPs or members of legislatures arrested, those cases are practically rare. But why should you add a privilege which is of no practical advantage? If you want to abolish it then abolish it for everybody and if you want to retain it then retain it for everybody. We should not do any wrong and should not incur any debts. If they have done it and ask for a privilege, it is not in keeping with the spirit of the young democracy. To say that there should be a bar to MPs in criminal cases is a far more serious thing and you cannot have the privilege of extending I from 14 to 40 days.

**CHAIRMAN:** Well, Mr. Misra, once again, I thank you and Mr. Aggarwala, your President, for the kindness you have shown to us in cooperating with us and putting forward your points of view so well.

WITNESS: I am really obliged to the Chairman and the hon. Members for the patient hearing that they have given me and the curtesy they have shown to me and if the Law Minister is pleased to accept any of the amendments of mine. I will be happy, I place my services at your services as and when necessary and I will not grudge it. It is a very great public service that you are doing now.

(The witness then withdrew).

Friday, the 24th October, 1969.

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman*.

MEMBERS

RAJYA SABHA

- |                           |  |
|---------------------------|--|
| 2. Shri Balachandra Menon | 9. Shri V. T. Nagpure                      |
| 3. Dr. B. N. Antani       | 10. Shrimati Seeta Yudhvir                 |
| 4. Shri Rattan Lal Jain   | 11. Shri Joachim Alve                      |
| 5. Shri B. N. Mandal      | 12. Shrimati Annapurna Devi<br>Thimmareddy |
| 6. Shri Jagat Narain      | 13. Shri P. C. Mitra.                      |
| 7. Shri Syed Ahmed        |  |
| 8. Shri Rizaq Ram         |  |

Lok Sabha

- |                                  |   |
|----------------------------------|---|
| 14. Shri D. Balarama Raju        | 25. Shri Mahendra Majhi                   |
| 15. Shri Rajendranath Barua      | 26. Shri B. P. Mandal                     |
| 16. Shri Krishna Kumar Chatterji | 27. Shri Viswanatha Menon                 |
| 17. Shri Shri Chand Goyal        | 28. Shri Bhaljibhai Ravjibhai Par-<br>mar |
| 18. Shri Ram Krishan Gupta       | 29. Shri Jharkhande Rai                   |
| 19. Shri Heerji Bhai             | 30. Shrimati Savitri Shyam                |
| 20. Shri J. M. Imam              | 31. Shri P. N. Solanki                    |
| 21. Shri Kameshwar Singh         | 32. Pandit D. N. Tiwary                   |
| 22. Shri Thandavan Kiruttinan    | 33. Shri Tenneti Viswanatham              |
| 23. Shri Brij Bhushan Lal        |   |
| 24. Shrimati Sangam Laxmi Bai    |   |

Shri Mohammed Yunus Saleem, Deputy Minister in the Ministry of Law and in the Department of Social Welfare attended the meeting by special invitation.

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.

SECRETARIAT

Shri S. P. Ganguly, Deputy Secretary.

Shri Kishan Singh, Under Secretary.

WITNESSES

- (1) Prof. M. S. Phirangi, College of Law, Karnatak University, Dharwar.
- (2) Shri C. B. Agarwala, Ex-Judge, Allahabad High Court.

(The witness, Prof. M. S. Phirangi, was called in).

**CHAIRMAN:** Friends, as I have informed you yesterday we have requested Shri Phirangi to meet us at 11-30 A.M. today but we have specially contacted him to come a little earlier since the other witness has not come. Shri Phirangi is now before us. He is from Dharwar and is connected with the Law College. Perhaps he is a Reader there. He has made some suggestions to us and a copy of his comments has been distributed to you and I am sure you must have gone through them.

Mr. Phirangi, at the outset I have got to tell you that the proceedings of this Committee are confidential and that they are not to be publicised in any manner. I have also to tell you that there are some suggestions made by you and you referred to sections of the original Act which are not being amended by this Bill. The usual practice is that if any section is not being amended, then the Committee has no power to change the language. But, all the same, as I have said just now that since the Law Minister is here he will hear on all matters and will see if any changes are necessary. In that case he will bring forward his own amendments in due course of time.

Now I would like to know if you have anything to add to what you have already mentioned in your memorandum. If you have any, you may kindly state those points.

**SHRI M. YUNUS SALEEM (DEPUTY MINISTER IN THE MINISTRY OF LAW):** Before you begin, I would make a suggestion. In your note you have not given the reasons for proposing the amendments. It

would be very nice of you if you substantiate by reasoning for your amendments so that the Members of this Committee may be able to appreciate the spirit under which you have suggested those amendments. Many of the Members, as you know, are not very much familiar with this and they may not be in a position to understand why you have proposed such amendments. So, you will kindly bear this in mind when you say something on this Bill.

**PROF. M. S. PHIRANGI:** With this end in view I shall now give you the reasons why the amendments are suggested by me. First of all I shall take up proposal No. 1. This is with regard to Sub-section 2 of Section 2 of Sec. 35. Sub-section (2) of Section 2 relates to the definition of the decree. No appeal has been provided for under Section 35. Therefore, it is necessary that Sub-section 2 of Section 2 should be amended so as to include the words "35 or" after the words "The determination of any question within Section". This is my first proposal. As regards my second proposal relating to enforcement of decree by the legal representatives, there is no provision under the Civil Procedure Code for enforcement of decree by the legal representatives of the decree-holder. Therefore, it is necessary that in the interest of justice that Section 52A (new section) should be added after Section 52.

**DR. B. N. ANTANI:** What is the present position?

**PROF. M. S. PHIRANGI:** There are specific provisions regarding the legal representatives of the judgement debtors. Now, there is no specific provision about the legal representatives of the decree-holders. Therefore it is necessary to add a new section. So, Section 52A may be added.

DR. B. N. ANTANI: So, in your opinion, the present position is not satisfactory. So, you are tempted to suggest this. How does it effect adversely?

PROF. M. S. PHIRANGI: It does not effect adversely. The question is that there is no provision at all as regards bringing in legal heirs on record.

DR. B. N. ANTANI: We can always bring in.

PROF. M. S. PHIRANGI: This is with reference to execution of the decree. If a legal representative has to be brought on record, we have to resort to the general section, that is Section 146. My suggestion is that instead of the present general section, we should add Sec. 52-A.

Proposal in Section 50, after the words .... "The holder of the decree may apply to" the words

"The executing court" be substituted for the words "The court which passed it".

There are conflicting decisions on this point. So, that should be set at rest. One court says that the holder of the decree should apply to bring in heirs to the court. Another court says 'no' to this. But they say it is well and good if an application is made by the decree holder to the court with passed the decree itself. So there are conflicting decisions. To set at rest it is better that the decree holders make an application to the executing court as it will reduce the litigation and unnecessary time and waste of energy.

Now I come to proposal number 5. This is about furnishing security by the judgment debtor under Section 58. When a judgment debtor is arrested and brought to the court and if he desires to furnish the security, then he should be released. This is with reference the security, then he should be released. This is with reference to proposal No. 5 relating to Sub-section (1) of Section 58. Then I will come to proposal Number 6. This is about Section 80. Notice is necessary under Section 80 in respect of suits required

456 RS—7.

to be filed against Government. As regards the individuals, it would create a hardship. It would be hard for a litigant to issue a notice. Sometimes there may be cases where immediate steps might be required to be taken. Therefore, if the party wants to wait for two months and then file the suit, the purpose, or the object of the suit will be defeated if the Government wants to have notice.

CHAIRMAN: You must have noticed that in this the amending Bill it is proposed to delete section 80.

SHRI PHIRANGI: I fully agree.

CHAIRMAN: If you fully agree, then why do you suggest this amendment here?

SHRI PHIRANGI: I got the Bill subsequently.

DR. B. N. ANTANI: Are you satisfied that it should be deleted in toto?

SHRI PHIRANGI: I fully agree with it.

CHAIRMAN: The view of some of the people on this omission is that some cases are decided or settled out of court, and therefore it is desirable that some notice should be given so that the matter could be settled out of court; and if you abolish it, then no chance is left for settlement out of court and the litigants will have to incur all expenditure.

SHRI PHIRANGI: Before this hon. Committee I want to say something about my experience in the law courts—I have also been practising as advocate for the last 17-18 years. I have not come across any compromise entered into between the parties and the Government.

CHAIRMAN: That may be your view, but the experience of some others is that often there is compromise.

**SHRI PHIRANGI:** Very rarely. But that can be done only when there is a provision in law. Order 23 is there. It is unnecessary.

Then, coming to proposal No. 7, i.e. with respect to section 96, now, from the original courts the appeal will lie to the courts which are authorised to hear the appeals. My submission is that the appeal should lie from the original court to the District court. What I have found so far is that whenever powers of appeal have been conferred upon junior judges or civil judges, we have found that they have not discharged their duties properly.

**DR. B. N. ANTANI:** In what way?

**SHRI PHIRANGI:** It requires certain experience. The District Judge has the required experience. In some states the powers have been delegated to the civil judges.

**DR. B. N. ANTANI:** They are also experienced.

**SHRI PHIRANGI:** There are two things. Immediately after they are promoted as District Judge, then they will be taken up to the Benches. They have no experience as regards matters of appeal. My view is that it should be amended and the appeal should lie to the District court, and only the District Judge should hear.

**CHAIRMAN:** There are first appeals in the High Court.

**SHRI PHIRANGI:** That depends upon the appellate jurisdiction. Instead of going to the High Court, I like him to go to the District Judge. As regards this, there are certain pecuniary jurisdictions.

My submission is that there are two things; From original courts there will be appeals to the District court, whoever he may be—either the District Court or the Civil Judge. Then from the Civil Judge the appeals will lie to the High Court.

**CHAIRMAN:** That would be second appeal. We are not talking about the second appeal; we are talking about the first appeal. It is possible

that appeal against the order of the Munsif would go to the District Court.

**SHRI PHIRANGI:** Yes:

**CHAIRMAN:** The District Judges are very senior, on the verge of promotion to the High Court. Now, civil judges are fairly well equipped; they have about ten years' standing as Munsif, and then they are civil judges. Why can't they decide these small, petty matters?

**SHRI BRIJ BHUSHAN LAL:** They will not fare well, according to you?

**SHRI PHIRANGI:** According to me, the Munsif can be raised to the post of District Judge. Civil Judge's post is not essential.

**CHAIRMAN:** Usually, Munsifs are of a certain standing, and join the bench and immediately are promoted as Civil Judges. So, after four or five or six years' experience, they can certainly exercise jurisdiction over appeals.

**SHRI PHIRANGI:** I find that their work is not satisfactory.

**CHAIRMAN:** The question of satisfaction is a very difficult one. If your amendment is accepted, then there will be too much work for the District Judges. Therefore, I think that it is a good practice that civil judges are being used for hearing appeals. Why do you want particularly them to be excluded?

**SHRI PHIRANGI:** My experience is that satisfactory work is not being done by them.

**DR. B. N. ANTANI:** In what way? Illustrate.

**SHRI PHIRANGI:** Appreciation of facts has not been properly done. The law has not been properly applied.

**SHRI P. C. MITRA:** Is it also a fact that there are cases where civil judges are liable to be influenced?

**WITNESS:** I have no opinion on that.

**SHRI P. C. MITRA:** Formerly some lawyers of standing used to be appointed as munsiffs but now only after competitive examinations direct

recruitment is made and after three or four years they are promoted as subordinate judges; they have not got much experience and therefore they cannot do proper justice.

WITNESS: That is what it appears to me. That is why I am saying that there is no satisfactory working.

Now I come to suggestion No. 8. Add the new clause (aa) to clause (a) to sub-section 1 of section 100 as follows: "The decision being grossly and substantially contrary to the important materials on the record."

Our difficulty now is that if there is any question of law, the High Court admits appeals but now a stage has come where the High Courts should go into the question of facts also provided they are grossly and substantially contrary to the important materials on the record. That is my submission.

CHAIRMAN: Who is to judge whether the decision is grossly and substantially contrary to the important materials on the record?

WITNESS: When an appeal has been filed in a High Court, the High Court has to decide it.

CHAIRMAN: But where is the necessity of adding these words? In practice how does it hinder your work for want of these words?

WITNESS: Under the present law the High Courts will entertain appeals only on the question of law then only they will admit second appeals; I am talking of second appeals. If this is amended and if the High Court comes to the conclusion that the decision is grossly and substantially contrary to the important materials on the record, then it may entertain the appeal and admit the appeal.

DR. ANTANI: But in section 100 sub-section (a) contains the words "where the decision being contrary to law or to some usage having the force of law. . . ." Why are you not satisfied with it? Why do you want further adjectives 'grossly and

substantially? The High Court in your opinion also is a competent authority to decide. Why do you want to make it so emphatic? Sub-section (a) already provides that.

WITNESS: It only says that.

DR. ANTANI: Saying is providing.

WITNESS: If it is contrary to the important materials on the record, then the second appeal can be admitted.

CHAIRMAN: I have not been able to appreciate your argument so far. What is the practical difficulty for which you want the inclusion of these words?

WITNESS: I will elucidate this point. Whenever there is the question of law involved in the second appeal, certainly the High Courts will entertain it. If the High Court feels that the decision is grossly and substantially contrary to the important materials on the record, then the hands of the High Court will be tied, because there is no question of law involved.

SHRI TENNETI VISWANATHAM: I would like to draw your attention to section 103 where it has been said that in any second appeal the High Court, may if, the evidence on record is sufficient, determine any issue of fact necessary for the disposal of the appeal. I think there are also quite a number of cases so far as Madras is concerned. This section was used by the Madras High Court.

WITNESS: But my view is that it would be better if that section is amended adding these words. Then the High Courts will have ample power to go into the question of facts also.

SHRI TENNETI VISWANATHAM: You want the High Courts to be given the power to go into the question of facts also, more than what is given in section 103?

WITNESS: Yes.

**SHRI P. C. MITRA:** You want that facts might also be taken into account as a ground for appeal. Is that so?

**WITNESS:** That is true.

**CHAIRMAN:** Did you have the reply of the witness on the point you had put to him?

**SHRI TENNETI VISWANATHAM:** He says, in spite of that he wants it. That is his view; that is all.

**SHRI SYED AHMED:** I just want to ask you one thing regarding proposal No. 2 in your memorandum where you have suggested an amendment by means of the addition of a new section, Section 52A. May I know what is the present situation in the courts in which you practise? Does a decree-holder go without legal representatives?

**WITNESS:** No, because application will be made under Section 146 of the Civil Procedure Code.

**SHRI TENNETI VISWANATHAM:** It is Section 146; any persons claiming can do it, through any party, in any proceeding. Mr. Phirangi says it is not enough.

**WITNESS:** Yes, Sir.

**SHRI SYED AHMED:** Because I want to make the point clear let me read out this Section 146. "Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding could be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

**WITNESS:** Yes, it does contemplate it, but what I wanted was that there must be a very specific provision in that regard. This is just a general Section.

**SHRI SYED AHMED:** Not general. If it were a general provision, it will cover decree-holders only, but under

Section 146 an application can be made by a legal representative also that "I should be brought as party to the decree as the decree-holder in place of my predecessor." Then what is the necessity of this Section 52A which you propose?

**WITNESS:** Now, if we see the other provision....

**SHRI SYED AHMED:** You want to make it more specific?

**WITNESS:** Yes.

**SHRI SYED AHMED:** Otherwise the provision is already there; there is no dispute about that. Even now one can make application to the court under Section 146.

**CHAIRMAN:** Anyway Section 52 is not being amended and does not figure in this amending Bill.

**SHRI SYED AHMED:** Thank you, Mr. Phirangi.

**WITNESS:** There are other Sections also which speak of the legal representatives who may be brought on the records. Section 50 is there.

**SHRI SYED AHMED:** Yes, and in practice we have been doing it; when a decree-holder dies, the legal representatives or the heirs of the decree-holder are brought on the records, and there is the Section 146 already for the purpose. I may tell you that in the note you have submitted to the Chairman for presentation to this Committee there are only three suggestions which relate to the provisions or Sections incorporated in this amending Bill. Otherwise, all the other suggestions are outside the scope of this amending Bill and naturally outside the jurisdiction of this Committee. Anyway, we thank you because you have brought to our notice certain provisions of the Civil Procedure Code which need to be improved upon for the convenience of the public or for speedier administration of justice, but we are not concerned with them at present.



THE DEPUTY MINISTER IN THE MINISTRY OF LAW AND IN THE DEPARTMENT OF SOCIAL WELFARE (SHRI MOHAMMED YUNUS SALEEM): Are you convinced that with section 146 read with Order XX, Rule 10, there is no necessity of introducing an independent amendment as put forward by you? Are you convinced of it? Kindly read Order XXI, Rule 10.

WITNESS: I have not got the original with me.

SHRI MOHAMMED YUNUS SALEEM: I will read it for you:—

“10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions herein-before contained to another Court then to such Court or to the proper officer thereof.”

What have you to suggest? Under section 146 of the Civil Procedure Code an assignee or legal representative of a decree-holder or a transferee of a decree-holder becomes the holder of the decree. When he becomes the holder of the decree he is entitled to apply for execution under Order XXI, Rule 10. Is it not a fact?

WITNESS: I submit I am now speaking about Rule 10.

SHRI MOHAMMED YUNUS SALEEM: Rule 10 is only an enabling section which entitled a decree-holder to apply for execution.

WITNESS: That is true, but as regards the legal representative, what is the position?

SHRI MOHAMMED YUNUS SALEEM: The legal representative becomes the holder of the decree. Under section 146 the assignee or the transferee or the legal representative of the decree-holder is entitled to become the holder of the decree. Is it not so? First try to appreciate the

provision in section 146. Under section 146 either the legal representative of the deceased decree-holder or the assignee of a decree-holder or the transferee of a decree-holder will become the holder of the decree. Is it not so?

WITNESS: Yes.

SHRI MOHAMMED YUNUS SALEEM: When he becomes the holder of a decree, there is difference between a decree-holder and the holder of a decree. Read Order XXI, Rule 10. The holder of a decree will be entitled to apply for execution of the decree. When he becomes the holder of a decree, he is entitled to apply for execution also.

WITNESS: It is subject to section 146.

SHRI MOHAMMED YUNUS SALEEM: No. It is subject to Order XXII, Rule 12. Kindly read Rule 12 of Order XXII. It excludes rules 3, 4 and 8 and so the rest of the Order is applicable. Is it not so

WITNESS: Yes, for execution of proceedings.

SHRI MOHAMMED YUNUS SALEEM: It contemplates that all the proceedings of the legal representative to be brought on record will be governed by Order XXII. Now, read Order XXII with section 146, and Order XXI, Rule 1.

WITNESS: Order XXI is for the execution of a decree. It is not applicable completely. A further Rule has been laid down under Order XXII.

SHRI MOHAMMED YUNUS SALEEM: I am sorry, you have not been able to appreciate my point.

WITNESS: As regards bringing the heirs of the deceased on record, Order No. XXII is not applicable.

SHRI MOHAMMED YUNUS SALEEM: It is applicable, I say. You read it. If the plaintiff dies, under what provisions of court the legal

representatives are brought on record, it is under Order XXII only. Please read Rule 12 also.

WITNESS: Rule 12 says:—

“Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”

SHRI MOHAMMED YUNUS SALEEM: It means the rest will apply. Is it not so?

WITNESS: Yes.

SHRI MOHAMMED YUNUS SALEEM: Now, therefore, if section 146 is read with Order XXI, Rule 12, then, barring rules 3, 4 and 8, the applicant will be entitled to be brought on record as the legal representative of the deceased decree-holder, because the rest of the rules will be applicable and he could be brought on record. Is it not so?

WITNESS: May I just submit one thing, if you will allow me one minute? Now, rules 3, 4 and 8 speak only of the procedure.

SHRI MOHAMMED YUNUS SALEEM: No.

WITNESS: How is the legal representative to be brought on record? Now, under these rules alone, 3, 4 and 8, the legal representative of plaintiff or defendant will be brought on record. Now, it is only under rules 3, 4 and 8 the legal representative is brought on record.

SHRI MOHAMMED YUNUS SALEEM: No. Please read rules 3, 4 and 8. There are several plaintiffs. One of them under rules 3, 4 and 8 will apply. Kindly read it.

SHRI SYED AHMAD: The emphasis is one the survival of the cause of action.

WITNESS: Rule 2 speaks of the procedure in case of death of one of several plaintiffs or of sole plaintiff.

SHRI MOHAMMED YUNUS SALEEM: Therefore, excluding rules 3,

4 and 8, the remaining rules of Order XXII are applicable to execution proceedings. Is it not so?

WITNESS: Yes.

SHRI MOHAMMED YUNUS SALEEM: Therefore, under section 146, a person will become entitled to be brought on record as legal representative and if he is entitled to apply he will be brought on record legally. If he, she or they are brought on record, they will be able to apply for execution under Order XXI, Rule 10. Then, they become holders of decree. If they are brought on record under Order XXII, they become the holders of the decree. They step in the shoes of the decree-holder. Is it not so? They are entitled to apply for execution under Order XXI, Rule 10. That solves your problem. Where is the necessity of introducing a new provision, as you have suggested?

WITNESS: As I have submitted there should be a specific provision instead of leaving it for argument.

SHRI MOHAMMED YUNUS SALEEM: I hope you are satisfied now.

WITNESS: As regards that, I am fully convinced.

CHAIRMAN: Would you like to make some other important points?

WITNESS: Yes, as regards section 107, in respect of powers of an Appellate Court to remand a case, I have to say a few words. Proposal No. 9. The appeals have been remanded frequently. If there are sufficient materials on record, then the court has to decide the matter.

CHAIRMAN: Item 9 of your note. You have stated that you want (b) of section 107 to be deleted. Why is that so? It relates to the remand of the case. You do not want the appellate court....

WITNESS: If there are sufficient materials on record to decide it, the appellate court can frame the issue and decide it.

**SHRI MOHAMMED YUNUS SA-LEEM:** If there is no evidence available to decide that particular issue . . .

**WITNESS:** There will be no power.

**SHRI MOHAMMED YUNUS SA-LEEM:** The appellate court decides whether this is a fit case to be remanded or not. There are rulings to that effect from every High Court. If there is sufficient material available to the appellate court to decide a particular issue, even though the issue was not framed by the lower court, the appellate court will frame the issue and dispose of the case, if sufficient evidence is available and the parties had an opportunity of producing evidence and there is no injustice caused.

**WITNESS:** That is true. If sufficient materials are there on record, the appellate court should decide the case.

**SHRI MOHAMMED YUNUS SA-LEEM:** Then no court would remand. It will only be done if a fresh issue is framed and the parties have not been given opportunity to adduce evidence for or against the issue; then only a case will be remanded.

**CHAIRMAN:** Therefore, it means that in all cases the power to remand should not be taken away from the appellate court while you have demanded that the power of remand should be deleted.

**WITNESS:** Subject to the other provisions.

**CHAIRMAN:** Proceed to the next point.

**WITNESS:** I have suggested that no court shall issue any notice except in accordance with the provisions of the Code.

**SHRI P. C. MITRA:** How can a court issue a notice without the provisions of any Code? It may be under some other law. Under the provisions of that law it will issue notice. Besides the provisions of this Civil Procedure Code, there may be provisions of some other law under which the court can issue notice.

**WITNESS:** I have no objection if the court issues notice under either the provisions of this Code or under any other law prevalent. Now there are cases where the courts are issuing notice under no provisions at all.

**SHRI P. C. MITRA:** Without any provision? That is illegal.

**WITNESS:** The illegality has to be challenged by the parties concerned.

**SHRI TENNETI VISWANATHAM:** Have you come across any notice which does not quote the provision?

**WITNESS:** During the proceeding itself. Sometimes the court will issue notice to the other side. For a long time the amounts are kept in deposit. The party will not be able to get the amount. If notice is given and when there is no provision at all....

**SHRI TENNETI VISWANATHAM:** The lawyer is there to contest that. The lawyer can object that no notice is necessary.

**WITNESS:** Apart from that if the court passes an order for issue of notice.

**SHRI TENNETI VISWANATHAM:** As you say, if it is a case where no notice is necessary and no notice is provided for in law, you can challenge. Suppose the court gives such a notice, you will have to challenge it. What is not provided for is prohibited.

**WITNESS:** Usually the courts will issue notices.

**SHRI TENNETI VISWANATHAM:** You can act also against the prohibition. The lawyer is there to contest it.

**WITNESS:** In spite of all facts the courts will issue notices.

**CHAIRMAN:** Kindly see some of the important changes which you have suggested and deal with them instead of giving point by point.

**WITNESS:** Point 11 is covered by the amending Bill. That is as regards the issue of summons by registered post to the defendant.

**SHRI BRIJ BHUSHAN LAL:** You refer to clause 30, page 15 of the Bill. We are going to amend Order 5. After rule 19 they have added a new rule 19A. It says: "The Court shall... also direct the summons to be served by registered post addressed to the defendant", etc. Along with that there is a proviso also: "Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it necessary". This proviso, I think, will defeat the very purpose of this amendment, if it is kept. In your opinion is it safe to keep it? It should be deleted, I think.

**WITNESS:** Yes.

**SHRI BRIJ BHUSHAN LAL:** It should be deleted?

**WITNESS:** YES, yes.

Then regarding Order 33, Rule 1 (my note No. 23), that is covered by the amending Bill. That is what I have submitted. The only difference is that the Bill says that if he is to be a pauper he should possess Rs. 1000. I have suggested only Rs 200.

**SHRI TENNETI VISWANATHAM:** I think he is quite right.

**WITNESS:** My proposal (No. 24) also is covered by the amending Bill. I fully agree with the amendment.

**CHAIRMAN:** Kindly state your particular reasons for bringing forward this proposal.

**WITNESS:** I have suggested Rs. 200 because it is not a big amount. Rs. 1000 will be a very big amount.

**SHRI TENNETI VISWANATHAM:** That is, anybody who says that he is in possession of property worth Rs. 200 he must pay. The Government is more liberal: why do you object?

**CHAIRMAN:** What is the value of property which he should declare before he can be declared a pauper?

**WITNESS:** That is Rs. 200.

**CHAIRMAN:** It is for the benefit of people that the amount is being raised so that any person who possesses Rs. 900 can be declared a pauper. It is for the benefit of the litigant public.

Then, if your proposal under No. 24 is not accepted, do you think that there is any bar to a person who has not been declared a pauper to continue his plant after payment of court fees? That is the usual order that the court direct. If ordered and if he pays the court fee, the suit will continue.

**WITNESS:** Sometimes there will be the question of limitation.

**CHAIRMAN:** Limitation will always be applied. The period spent in courts about deciding pauperism will not count.

**WITNESS:** If the order is not passed, the difficulty will arise.

**CHAIRMAN:** Once the decision is taken for declaring him not as a pauper, the usual procedure is that the court directs the plaintiff to pay the court fee and if he pays it, the suit will continue. Where is the need to add these words?

**WITNESS:** It says: 'If the application is refused.' The Court will say, "the application is refused". The applicant is not allowed to continue.

**CHAIRMAN:** At that very time, the court will pass an order—"Let him pay such and such court fee within such and such time".

**WITNESS:** We are presuming that the court will pass such an order.

**CHAIRMAN:** It does pass such an order in all cases. That is the usual practice in all courts.

**WITNESS:** That is the practice, but it has not been followed by all the courts.

**CHAIRMAN:** The fact that the Act is now being emended does not

imply that all the practices in vogue will be given up.

WITNESS: My humble submission is that instead of putting it as a matter of practice, let a rule be made.

CHAIRMAN: There is no need, because every court observes this practice. I have never come across any such case where it has not been observed. Have you come across any such case?

WITNESS: In lower courts it has happened on many times.

CHAIRMAN: No, I am sure it could never have happened. They will never say that even if he is prepared to pay the fee, the suit will not be entertained.

WITNESS: The application will be refused first.

CHAIRMAN: What is the subject you are teaching in the Law College?

WITNESS: Civil Procedure Code.

CHAIRMAN: Any other point which you wish to make?

WITNESS: That is all.

CHAIRMAN: I thank you on behalf of the Committee and on my own behalf for the trouble you have taken to come here and give us your views.

*(The witness then withdrew)*

*(The Witness, Shri C. B. Agarwala, was at this stage called in.)*

CHAIRMAN: Well, Hon. Members, I am very glad to introduce to you the witness of this evening, Shri C. B. Agarwala, who has been a very able and distinguished Judge of my State's High Court, namely, the Allahabad High Court. He is now practising in the Supreme Court. And I am grateful to him for accepting our invitation to come and appear before us and to help us with his suggestions.

MR. Agarwala as you might be aware, the contents of the proceedings of this Committee are of confidential nature and should not be divulged before the Report of the Committee is placed on the Tables of both the Houses.

You are well aware of the views why this amending Bill has been brought forward. Now, one of the Judges of the Allahabad High Court, Mr. Justice B. N. Lokur, has in his remarks mentioned "The amendments fail to secure expeditious disposal or to shorten the procedure", which, in effect, means that the Bill is doing hardly any good. May I know what is your reaction to it?

SHRI C. B. AGARWALA: My reaction is practically the same because the Bill touches only the fringe of the matter. It does not go far enough. It does not make any sweeping changes. And what is required is sweeping changes. In order to cut the delay in hearing of the cases or in the disposal of cases, you require something drastic and not merely touching here and there. This will not do, this will not help much.

CHAIRMAN: Will you kindly elaborate?

WITNESS: I will explain. The delay in the disposal of cases in the trial court is mainly due to two reasons. Firstly, there are very few judges who can dispose of the number of cases that come up before them for trial. The number of judges has to be increased. But that is a problem in every court, in the High Court and everywhere. Apart from that, one other big reason why there is delay in the trial court is adjournment. Adjournments are granted for no sufficient reasons. Counsel comes and says, I am busy in some other court and the court grants adjournment at once, for this reason or for some other frivolous reason. I suggest that there should be no delay; once a case is called up for hearing and a date is fixed, then there should

be no adjournment unless there is a very good reason for adjournment. Secondly, there are adjournments for filing of documents. Under the CPC, parties are required to file the document at the first hearing. But this seldom happens in practice. Again, delay is caused and applications are made for filing documents. Why should they not come ready with the documents? If the rule is strictly enforced, there will not be much delay thereafter. In the High Court or in the appellate court and in execution cases, delay is caused for various reasons. Our CPC is based upon the English practice and we have appeals, second appeals and revisions. And then you have got writ petitions and an appeal from a writ petition to a Division Bench and then an appeal to the Supreme Court. There are appeals, appeals and appeals and revisions in our system. That is the great drawback of our system. Once a decree is obtained, there no knowing when it will be realised. One sweeping change that I recommend is that all interlocutory matters and execution matters should go to the District Judge and not to the High Court at all except in revision. Second appeals. I am in favour of deleting altogether, and first appeals in interlocutory matters should go to the District Judges. We should be able to rely upon the District Judges. Therefore, one sweeping change that I would suggest would be, make all the appeals in interlocutory and execution matters, to the district judges and revision from those decisions to the High Court. But that is not envisaged in the amendments you have proposed.

CHAIRMAN: No, not in all cases.

WITNESS: But this can be done very easily. The load of work in the High Court will be reduced and quicker justice will be obtained in the district. Our District Judges are very efficient. Subordinate judges try original cases of unlimited value, why can't District Judges decide appeals,

at least in interlocutory and execution cases?

CHAIRMAN: Do you think that District Judges will have more time

SHRI C. B. AGARWALA: You can have Additional District Judges. There should be quicker justice. In the High Court once I had an appeal against an order of injunction. That case came before me for final hearing after 11 years. It was frivolous appeal that held up proceedings in the court below. I wept really on the Bench and I dismissed it in 5 minutes. Not less than 150 judges will be able to tackle the matter in the Allabad High Court. There 75,000 cases are pending. That is not a good state of affairs.

We should enlarge the jurisdiction under Order 37 I think. That is to say the summary procedure relating to trial of money suits under Negotiable Instruments. That may be enlarged to cover other kinds of cases which may be considered feasible. Once the decree is passed by the trial court, there should be some provision, that appeals will be heard forthwith but that can only be done in the District Court. Appeals should be heard more quickly. This procedure can be adopted only if appeals are to be heard by the District Judge. First appeals up to the value of 2000/- should go to the District Judge apart from interlocutory and execution cases.

CHAIRMAN: In that event the number of cases in the District Judge Court will mount.

SHRI C. B. AGARWALA: One District Judge has cases of one district only whereas in the High Court there are cases from many districts. You can appoint two, three or four Additional District Judges. It is less costly to the Government.

CHAIRMAN: The District Judges have so much other miscellaneous work. It is not true to say that they are sitting idle.

**SHRI C. B. AGARWALA:** But then you have to appoint Additional District Judges. We should take courage in our hands and entrust hearing of first appeals also in regular cases in addition to appeals in interlocutory matters. I do not want any revision in inter locutory matters to go to the High Court. That holds up the case. Unless you make some drastic changes in order to control the situation, the arrears are increasing every year in spite of addition of judges in the High Court.

**CHAIRMAN:** From your time, the strength in Allahabad has doubled.

**SHRI C. B. AGARWALA:** It is 43 now. You are incharge of the whole thing. You can take this step. There is no difficulty about it.

**CHAIRMAN:** What is your view about conferment of the power from High Court of one District to another instead of State Government? Do you agree that this should be done?

**SHRI C. B. AGARWALA:** It would be better that the Supreme Court does it. After all the State Government is a political body.

**CHAIRMAN:** Objection is taken that the cost for litigant will mount because they will have to go to the Supreme Court.

**SHRI C. B. AGARWALA:** The parties have more faith in the Supreme Court than they have in the State Government. They will be more satisfied in spite of the fact that they will have to incur more expenditure.

**CHAIRMAN:** There have not been many instances where litigants have been at disadvantage if we transfer cases from one place to another.

**SHRI C. B. AGARWALA:** Not many. At present the cases of transfer from one State to another, come only to the Supreme Court but there have not been many cases of that kind. However, they have more faith

in the Supreme Court than the State Government.

**CHAIRMAN:** It is a matter of cost.

**SHRI C. B. AGARWALA:** If they want the case transferred, they will have to bear the cost. Poor litigants generally do not want the transfer. It is the rich people who want the transfer.

**CHAIRMAN:** The next question I wanted to ask you was about the omission of Section 80 of the Civil Procedure Code in the Bill. Do you agree with that suggestion?

**SHRI C. B. AGARWALA:** I think it should be retained because the Government or the Government Officer should have some time to think whether they would contest the case or they would compromise or what they will do. If you take away this Section 80 from the code, then the situation will be when the case is filed, Government or the Officer has to contest the case willy nilly. That is a very salutary provision—time of 2 months may be given. Of course, in cases of urgency where injunction is required to be given immediately, that can be made an exception. But in other cases I think Section 80 should be retained.

**CHAIRMAN:** But the criticism against it is that time is not availed of by the State Government.

**SHRI C. B. AGARWALA:** That is the fault of the Officer or the State Government. The law gives them time. If the law does not give them time, then they will suffer. They suffer now by their own neglect and not by the neglect of the law.

**CHAIRMAN:** Neither time is availed of by them nor there is compromise.

**DR. B. N. ANTANI:** On the contrary do you not think that this Section is abused than more utilised in a bona fide manner.

**SHRI C. B. AGARWALA:** I do not think there is any abuse. But it is not availed of as they are busy in tion 80. It is a British legacy. It is a handicap.

**DR. B. N. ANTANI:** In Democracy you come in the shape of Section 80. It is a British legacy. It is a British legacy. It is a handicap.

**SHRI C. B. AGARWALA:** My experience is it is not a handicap. The plaintiff stays his hands only for 2 months. He does not feel handicapped. On the other hand the State Government has not exploited it and I do not think any client has come to me who has complained that he has to wait for two months for giving notice to Government.

**DR. B. N. ANTANI:** Do you not see here the Government says that the omission will be advisable?

**SHRI C. B. AGARWALA:** Well, if it is so, I have nothing to say. I will add that if the State Government themselves want the deletion of Section 80, then we need not worry. We should delete it.

**DR. B. N. ANTANI:** The Amending Bill has been drafted by the Government.

**CHAIRMAN:** It is on the suggestion of Law Commission.

**SHRI TENNETI VISWANATHAM:** This notice comes after several other notices—after long correspondence. This notice for two months is given only when man feels helpless. On reaching the stage of helplessness he goes to the lawyer for a notice. Therefore, Government has given it up as superfluous.

**DR. B. N. ANTANI:** My experience at the district level is that Section 80 is utilised more as a weapon for manipulation. I will cite an example. In the Foreigners Passport Law, when an Indian national wanted to be declared as an Indian national, the police harassed him as a Pakistani national. And in the meantime, they got him deported by

books and crooks. That has affected me so much adversely against this.

**CHAIRMAN:** Mr. Agarwala, will you agree that there are cases which are compromised out of court within the period of two months of notice and, therefore, it will not be very desirable to omit this Section altogether?

**SHRI C. B. AGARWALA:** State Governments themselves have suggested the deletion of the Section.

**CHAIRMAN:** I do not accept that. But, I would certainly like to reduce the period of time if you will agree with it. Instead of 60 days notice, it will be 30 days notice, and the suit should not be dismissed if certain regularities mentioned in the notice are not technically complied with.

**SHRI C. B. AGARWALA:** I agree with that. On technical grounds, suits should not be dismissed.

**CHAIRMAN:** Technical as well as matters relating to injunctions and all that.

**SHRI SYED AHMED:** Mr. Agarwala, lot of legal technic has developed round the Section 80, which is unfortunate. And the courts have been rather very reluctant to accommodate the litigants who are fighting their cases against Government. One objection that has been raised by many of my colleagues on the Committee is that in case of an emergency it is impossible for a man to wait for two months. Suppose a house is to be demolished and a suit is necessary. In that case he should get mandatory injunction. If he has to wait for two months, by that time the house will have been demolished and no compensation would be forthcoming. I am personally of the opinion that a Government which is always a plaintiff can never run the administration. As far as possible, the suits should be allowed to be filed against the Government, rather than by the Government against the citizens. I am in favour



of retaining this Section, and with the provisions in case of certain emergencies, the notice will not be necessary.

SHRI C. B. AGARWALA: I had already said that Section 80 should be preserved, but it should not be made compulsory in certain limited cases.

SHRI SYED AHMED: We want a suggestion about this provision limiting the scope of Section 80.

SHRI C. B. AGARWALA: One is the case of injunction as the Chairman has already pointed out. And there may be other cases of urgency in which notice cannot be given. And further, after retaining the Section, you can provide that the suit will not be dismissed on account of deficiencies or defects in the notice, but cost will not be awarded to the plaintiff because, after all the object of Section 80 is to give the Government certain reasonable time so that they could think over the matter. That object will not be defeated if you provide that no suits will be dismissed for want of notice or defect in notice. Only the plaintiff is deprived of his cost of the suit if the Government is willing to compromise the matter.

SHRI J. M. IMAM: The Law Commission has observed in their report that Section 80 has helped more in litigation rather than bringing about compromises between the parties. They have given some figures also. They observed that Section 80 has not at all been useful in bringing about a compromise or a settlement between the Government and the party. They have observed that the retention of this Section is quite unnecessary. And secondly, Sir, if you make a distinction as to exclude those cases of an urgent nature and interlocutory nature, then a fresh difficulty may arise. It may be contended that a particular suit is not urgent. So, I think it is best to do away with this Section, in which case the Government also is in a similar position as

the litigant. Secondly, it does not prevent a person who wants to seek remedy from issuing a notice to the Government and wait for two months. If he is confident that some compromise will be arrived at, he may issue a notice to the Government and the Government may be anxious to come forward. There is no need to make statutory provision compelling certain person to issue a notice to the Government.

SHRI C. B. AGARWALA: My suggestion is that we should provide that a suit shall not be dismissed for want of notice or defect of notice. But the Court may disallow costs to the plaintiff. That would serve the purpose.

CHAIRMAN: One of the topics which I wanted on the Bill at the initial stage is about Section 115. What is your reaction?

SHRI C. B. AGARWALA: There has always been a conflict in the opinion of the High Courts. Now the Supreme Court has held that a case decided may be an interlocutory matter and so a revision can lie under Section 115 against a decision in an interlocutory matter. I have always been against revision petitions being filed in the High Court in interlocutory matters. The High Courts, as usual take a lot of time in deciding even revisions. And so the case is held up in the lower court. I think we should make it clear that revisions under Section 115 will not lie in interlocutory matters.

CHAIRMAN: A difficulty may come at the end when the matter comes in appeal. We find that interlocutory order is wrongly given. In that case the whole thing is upset and the time is thus wasted.

SHRI C. B. AGARWALA: Appeals can also be filed against certain interlocutory orders. But in appeals against the final judgment interlocutory orders can be challenged under the law.

**CHAIRMAN:** That is true. But all the same the time is wasted. At the final stage where interlocutory order is passed, such an order may be upset by the appellate court. A case is finished before the appeal goes to the court. In that event this period is wasted.

**SHRI C. B. AGARWALA:** Quite so. What you are saying is correct theoretically. But practical experience shows that more often than not revisions are filed. In interlocutory matters to delay the proceedings. You have to tolerate some injustice. In some cases they are causing injustices. But, in a majority of cases, we have to keep in view the general public interest. There will be some difficulty in individual cases. But allowing revisions in minor matters cause greater difficulties to a larger number of litigants. So, from that point of view also we should not allow revisions in interlocutory matters. Even if you think that we should allow them, they should go to the district judge. If this is done the matter will be decided quickly rather than if they go to the high court.

**SHRI SYED AHMED:** Is a decree in a mortgage suit interlocutory?

**SHRI C. B. AGARWALA:** That is not interlocutory.

**SHRI SYED AHMED:** You will now please look to clause (a) of the proviso to section 115, page 2 of the bill viz., 'to have exercised a jurisdiction not vested in it by law etc., etc.'

The High Court will not interfere except where the orders have been made in favour of the party. It has been suggested by no less a person than the Law Minister as to why should we not remove clause (a) and take it to Section 104 Appeals should be made under that section.

**SHRI C. B. AGARWALA:** Well, it can go under Section 104.

**CHAIRMAN:** What Mr. Ahmed wants to know it is this. Would it not be a better method to provide that here itself rather than allow it to go to the High Court in revision or to the District Court.

**SHRI C. B. AGARWALA:** I am in favour of hearing by the district court in these matters.

**CHAIRMAN:** But his suggestion which he has put forward just now will not be as good as your suggestion.

**SHRI C. B. AGARWALA:** If the revisions are allowed to go to the district judge, whether it is taken in revision or by way of appeal there will be no delay in the decision of the case.

**CHAIRMAN:** That means the litigant will get a better chance.

**SHRI C. B. AGARWALA:** Litigant gets a better chance in the appeal from order under Section 104.

**SHRI SYED AHMED:** I think now in criminal matters revisions are decided by the District judges.

**SHRI C. B. AGARWALA:** They are now decided by the high court.

**SHRI SYED AHMED:** Revisions are essentially a matter in which points of law are involved. And so a judge is reluctant to interfere. In a civil matter if I go to the district judge and if he decides against me, it is appealable. For the second revision I cannot go in appeal to the High Court because there is no appeal that lies on them. In that event the decision of the district judge becomes the law for the purpose of that case. All the other cases are decided by the subordinate courts.

**SHRI C. B. AGARWALA:** That is true. I am thinking of interlocutory matters. I think these should go to the district judge. If he makes a mistake in deciding that, that error can be corrected by the high court in appeal against the final decree. The high court will be there to hear appeals from the final decrees when the value is 20000 or over. But in

interlocutory matters why should I not go to the District judge whether they involve revision or appeal.

**SHRI SYED AHMED:** If the interlocutory order is wrong I can go in revision before the district judge who is to decide one way or the other. If there is a final order, I can go to the High Court in revision.

**SHRI C. B. AGARWALA:** The High Court will decide according to law.

**SHRI SYED AHMED:** If that is not decided according to law

**SHRI C. B. AGARWALA:** A judge may make a mistake but that mistake will be corrected by the high court.

**SHRI SYED AHMED:** Then what is the use?

**SHRI C. B. AGARWALA:** The use will be that in 75 per cent of cases decision will be much quicker.

**SHRI SYED AHMED:** There is a dictum of a great jurist that there is no guarantee of justice excepting the conscience of a judge. I am of the opinion that there is no guarantee for accelerating the disposal of cases except the temperament of the presiding judge. You know the present position. If a judge is suffering from a headache he can be absent from court. Another judge can be present. The difficulty here is that an advocate may perhaps have to come from 300 miles away. He may have to come again. But if a party is ill, no accommodation is given to him. So, it all depends upon the convenience of the judge to take up the case. My experience is that in many cases and I know of a case which is still in preliminary stage pending from 1933.

You cannot make a judge by law.

**SHRI TENNETI VISWANATHAM:** The judicial set-up in our States, Madras and Andhra Pradesh, seems to be that the District Judges have also got original civil jurisdiction. He

and the person whom you are calling Civil Judge both have unlimited jurisdiction within the territorial limits assigned to them. Therefore, the suggestion that appeals against orders, interlocutory applications, go to the District judge will not be applicable to our State. I just wanted to point it out.

**SHRI AGARWALA:** That is right.

**SHRI SHRI CHAND GOYAL:** So far as the section is concerned, you have offered your written views. You have suggested the deletion of these words: "except in a case where an order of stay has been made under sub-section (2)"; and your reason for saying so is that there is actually no difference between a case in which stay is granted and a case in which the stay is not granted.

**SHRI AGARWALA:** So far as the summoning of the records is concerned. Summoning of the record entails delay. That is my experience. This is in spite of the fact that it is ordered by the Court that the record be sent forthwith. The record goes to the office. Somehow or other it is not sent in many cases. So, then what is the necessity of calling for the record? The record remains in the lower court. Only decide the law point or the jurisdictional point. That can be decided on the documents which are placed before the court.

**SHRI SHRI CHAND GOYAL:** The record does not move unless there are silver wheels provided!

**SHRI SYED AHMED:** There is no remedy for delay.

**SHRI SHRI CHAND GOYAL:** But at the same time you have suggested that in section 104, sub-section (2) must be incorporated.

**SHRI AGARWALA:** If they want some documents, they should file copies.

**SHRI SHRI CHAND GOYAL:** But there is one difficulty, and that is that in our amending Bill we are not

touching section 104. Therefore, it will be beyond the jurisdiction of the committee to touch a section which does not find a place in the amending Bill.

SHRI AGARWALA: If you have no power, the Parliament has the power.

SHRI SHRI CHAND GOYAL: At a subsequent stage. At the moment we are considering this piece of legislation. That is our difficulty.

Do you think, with your large experience on the Bench as well as on the Bar, that the provisions of section 115 of the C.P.C. are too narrow and they should be widened further?

SHRI AGARWALA: I would think that if there is provision for second appeal to the High Court, then there is no necessity of enlarging section 115. The need of the present situation is that we should avoid delay.

SHRI BRIJ BHUSHAN LAL: Will you please refer to Clause 14, page 6 of the Bill. In this amendment, the amount is to be increased—instead of 50 to 200. You have suggested Rs. 1000 on the ground that it is only the poor who suffer.

I will go a little further. After 22 years of independence in this country and this democratic set up, will it not be advisable to delete section 58 in toto?

SHRI AGARWALA: I agree with you.

CHAIRMAN: Don't you think that in very many cases, the danger of imprisonment acts as a deterrent?

SHRI AGARWALA: That's true. But I think that imprisonment for non-payment of money decree is a barbaric method, a medieval method.

CHAIRMAN: You must also look at the creditor's point of view.

SHRI TENNETI VISWANATHAM: Creditor's point of view has been

met. He would not advance money to a man of doubtful means, and bring himself into trouble like this.

SHRI AGARWALA: I think that this should go. More often than not, he is unable to pay. That's why he does not pay.

CHAIRMAN: There are some who deliberately avoid paying.

SHRI AGARWALA: But they have some ostensible properties, moveable and immovable property. You can get it attached. I am in favour of this also that one residential house should not be attached or sold so that the man should not be thrown on the street. He should have one residential house. There should be this amendment: one residential house should be free from attachment.

WITNESS: We have to move with the times.

CHAIRMAN: If the owner mortgages his residential house, then will it not be attached and put to sale?

WITNESS: In that case it has to be sold. Apart from that at present but the law does not operate in the case of agriculturists' houses are saved from attachment. But I say that it should be the case for everybody's house; I am speaking for everybody. Nobody's residential house should be attached and sold, but the law protects only agriculturists now.

CHAIRMAN: Supposing a person mortgages his house and takes money, then what?

WITNESS: I think in that case it has to be put to sale.

SHRI SHRI CHAND GOYAL: Some States have already made the amendment that nobody will be sent to prison for non-payment of decretal amount.

WITNESS: Yes, because the creditor gets nothing else but the mental satisfaction that he has sent the debtor

to jail. He is not reimbursed so far as his money is concerned. The provision should be deleted altogether.

**SHRI TENNETI VISWANATHAM:** Not only that, he has to pay for the food of the prisoner.

**SHRI SYED AHMED:** He can go to a court of insolvency.

**SHRI RATTAN LAL JAIN:** In Punjab even residential houses are exempted.

**SHRI SHRI CHAND GOYAL:** The words are "occupied by him".

**SHRI BRIJ BHUSHAN LAL:** Mr. Agarwala, will you please refer to page 15 of the Bill, to the rule 19A which is going to be inserted after rule 19? Here they are going to add "by registered post". Let me read out the relevant portion from the proposed rule 19A. "The Court shall, in addition to and simultaneously with the issue of summons for service in the manner provided in rules 9 to 16 also direct the summons to be served by registered post" \* \* \* Now, along with that there is this proviso also which reads: "Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post where, in the circumstances of the case, the Court considers it unnecessary." Will it be in conformity with the passage above in the same rule 19A?

**WITNESS:** No, I think this proviso should go. It is wholly unnecessary. It renders the provision almost nugatory.

**DR. B. N. ANTANI:** Mr. Agarwala, you say in your memorandum dealing with Clause 15 "There is no reason why pensioners of private employers should be treated at par with pensioners of Government or of a local authority." Will you please elucidate as to why there should be this disparity?

**CHAIRMAN:** If you kindly follow it up and read the whole of it, then you will find that Mr. Agarwala has

made another suggestion down below that stipends and gratuities allowed to private employees should be added after the word "salary" in clauses (i) and (i) (a).

**SHRI SHRI CHAND GOYAL:** This looks anomalous.

**DR. B. N. ANTANI:** Mr. Agarwala in his memorandum says, "I therefore suggest that the words "or of any other employer" should be deleted from the proposed amendment in Section 60, Clause (g), and in place of that, in Clauses (i) and (i) (a) of Section 60 the words "stipends and gratuities allowed to private employees" should be added after the word "salary". If this suggestion is accepted, necessary amendment in the proposed Explanation 1, after the word 'salary' "or stipends and gratuity allowed to pensioners of private employees", should be added."

**CHAIRMAN:** Dr. Antani, please read also the two lines ahead, from where you began. The two lines are "Pensions of employees of private persons should be placed in the same category as "salaries."

**WITNESS:** That is my suggestion. In addition to salaries, pensions and gratuities also.

**SHRI BALACHANDRA MENON:** In the case of employees it will be a lump sum payment. What do you do with that? Private employees, when they get a gratuity, it is a lump sum payment. In that case, that should be exempted.

**WITNESS:** That will be put in the same category as 'salary'.

**SHRI P. C. MITRA:** It means that if it is more than two hundred rupees, then the excess of the gratuity amount will be attached?

**WITNESS:** Then alone it will be attached; that is the meaning.

**SHRI BALACHANDRA MENON:** Now fifteen months' wages will be

paid as gratuity when he retires. He has no pension or anything. In such a case would it not be advisable that the entire amount is not to be attached? It is gratuity for the entire period he was in service.

WITNESS: If he gets the gratuity in a lump sum, that will be attachable.

SHRI P. C. MITRA: Generally the private employees do not get any pension month by month. Gratuity is the real amount they get in lieu of pension. Therefore, if you say that only two hundred rupees out of that gratuity amount will not be attached, then it will be too hard on the private employees. Whereas the employees of the Government or of a local authority are getting a pension month by month, the private employees get only a lump sum.

WITNESS: But the gratuity is in a lump sum.

SHRI P. C. MITRA: So that should not be attachable, whereas your suggestion gives him the benefit to the extent of only two hundred rupees.

SHRI BALACHANDRA MENON: If this is treated as part of salary, in that case the whole salary can never be attached. Therefore only a portion of it will be liable to attachment.

WITNESS: That is what I have said. The difficulty raised by the hon. Member there is, in case the gratuity is paid in a lump sum, then what will be required to be done about that, and I think his suggestions is that the whole amount should be exempted.

SHRI P. C. MITRA: That should be non-attachable; that should not be attachable. That amount of gratuity should not be touched. It is the same as pension for a long period. No private employee gets a monthly pension. Only they get a gratuity and it cannot be so much that on calculations causes to more than two hundred

rupees per month for the remaining part of their lives. Therefore, in that case I would suggest that the amount of gratuity should be not attachable. I would like to know whether you will accept that.

WITNESS: I now think that gratuity has to be placed in a different category from salary and pension. A small pension will be paid month by month, but gratuity would be paid in a lump sum. A separate provision should be made for gratuity. My own view is that there is no reason to exempt gratuity from being attached. When a person has got a lump sum and a large amount in his hands, there is no question of his being made miserable or destitute if you attach a portion of it.

SHRI BALACHANDRA MENON: Then, the percentage will have to be decided. It should not be anything above one-fourth. Otherwise, it would make him miserable.

WITNESS: Some portion will have to be stipulated and decided. The proportion has to be decided.

SHRI TENNETI VISWANATHAM: If the creditor does not take the amount, the son-in-law will knock it away.

SHRI BALACHANDRA MENON: If he is to live for another ten years what will happen? All his life he has to starve.

SHRI SHRI CHAND GOYAL: You have also suggested the deletion in clause 15 of the sub-clause (a) (i). You have suggested the deletion of the words "or of any other employer".

WITNESS: Pensions of employees of private persons should be placed in the same category as salaries. Private employees should be placed on the same footing as the pensioners of Government. Private employees' salary can be attached to a certain level. So also his pension. It should be put on the same footing.

**SHRI SHRI CHAND GOYAL:** You want that the pension of a private employee should not be attachable.

**WITNESS:** It should be attachable or non-attachable according to the salary being attachable or non-attachable.

**SHRI SHRI CHAND GOYAL:** It goes with that.

**WITNESS:** Because gratuity is paid in a lump sum, it should not find a place here. It should be dealt with separately.

**SHRI SYED AHMED:** If salary or pension is attached, it would cause difficulty. It is paid from month to month. In the case of gratuity it is paid in a lump sum. Therefore, it should not be exempted.

**WITNESS:** It should be placed on a different footing.

**SHRI SYED AHMED:** You cannot equate it with a person's salary or pension.

**WITNESS:** Yes.

**श्री बी० ए० डल :** एक क्वेश्चन में भी पूछना चाहता हूँ। यह जो बिल लाया गया है इसके पीछे बहुत बड़ी एंजाइटी है कि डिजेज जो होती है इसको कैसे रोका जाय। उसके लिये हर स्टेज पर विचार किया गया है जैसे सूट के इन्स्टीट्यूशन पर, समन की स्टेज पर, विटनेस, स्टेटमेंट फाइल करने के स्टेज पर उसके बाद इश्यू के स्टेज पर, हीयरिंग और जजमेंट की स्टेज पर, हर स्टेज पर विचार करके यह अमेन्डमेंट लाया गया है। जस्टिस डिलेड इज जस्टिस डिनाइड ऐसा कहा जाता है लेकिन हमको ला कोर्ट्स का जो एक्सपीरियेन्स हुआ है उसके सिलसिले में हमने पाया है कि जैसे वाला आदमी इफीशियेंसी और जल्दवाजी में काम करा लेता है लेकिन जिसके पास पैसा नहीं है उसके केस इंस्टीट्यूट करने में, समन दाखिल करने के सिलसिले में, तलवाना दाखिल करने में, जहां जैसे की जरूरत पड़ती है, अगर जल्दवाजी में और इफीशियेंसी से काम कराना चाहे तो वह शुरू

में ही उसका केस खत्म हो जायेगा क्योंकि सोसाइटी का ढंग कुछ इस तरह से है। इसलिए क्या कोई ऐसा रास्ता निकाला जा सकता है कि जो आदमी फाइनेंशियली अनेबल हो कि वह देरी से ही सही लेकिन अपने मुकदमें में पैरवी कर सके तो उसको टाइम दिया जाये। इस ढंग का प्राविजन ला में हमारे तो क्या कोई हर्ज है।

**साक्ष :** मेरे खयाल में यह काम तो लीगल एड कमेटी का हीना चाहिये। वह उसको मदद कर सकती है वह उसको तरीका बता सकती है, सही रास्ते पर ले जा सकती है, कानून का तरीका बता सकती है। ऐसे आदमी का केस लीगल एड कमेटी के सुपुर्द होना चाहिये। अगर लीगल एड कमेटी हर डिस्ट्रिक्ट में हों तो वह आदमी वहां जा सकता है और कह सकता है मुझे मदद की जरूरत है लीगल एड कमेटी उसकी मदद करेगी।

**श्री बी० एन० मंडल :** दो तरह का मत है। एक तो अगर आदमी अपने को पोपर डिक्लेयर कर दे, लेकिन जो आदमी अपने को पोपर नहीं डिक्लेयर करना चाहता है क्या उसके लिये लीगल एड कमेटी से कुछ मदद मिल सकती है। क्या लीगल एड कमेटी फाइनेंशियली इतनी इविवण्ड है कि जितने ऐसे जेनरल केसेज उसके सामने जायेंगे सब में पैरवी कर सकती है?

**साक्षी :** हो सकता है। लीगल एड कमेटी हर उस शख्स की जिसकी आमदनी किसी खास रकम तक है उसको हेल्प करती है। यह नहीं है कि सिर्फ पोपर की ही हेल्प करती है।

**SHRI BHALJIBHAI RAVJIBHAI PARMAR:** I want to know this from you, regarding section 80. It is proposed to be deleted. Do you think that it is in the public interest.

**WITNESS:** I have already said that it should not be deleted absolutely. What I suggest is if notice is not given or it is given in a defective manner,

then the suit should not be dismissed but costs should be disallowed to the plaintiff. That should be the only penalty. If you do not delete it but retain it, amend it so that no suit should be dismissed because of non-giving of notice or defective notice, but the plaintiff may be deprived by the court of his costs. The penalty for not giving notice under section 80 should be deprivation of cost. The court may deprive the plaintiff of his cost. Why should the suit be dismissed?

SHRI J. M. IMAM: One question of a general nature. You have given very good suggestions to minimise delay in the hearing of appeals and revisions. May I know if you have any suggestions to minimise delay and also the cost in trial suits, in the lower courts? Disposal of suits in the lower courts takes a lot of time and there is a good deal of delay. Have you any suggestion to make to curtail delay in the trial court?

WITNESS: I would suggest that when a date is fixed, the case should be adjourned only for very good reason and not because the counsel wants an adjournment or because a witness has not appeared. Sometimes on insufficient grounds courts adjourn the case.

SHRI J. M. IMAM: The observation has been made in the Law Commission Report that litigation has become very costly. What is your reaction to this observation? Are there any methods of bringing down the cost so that justice may be made available to every person irrespective of his position?

WITNESS: So far as that is concerned cost is because of the court fee payable. In other countries there is no court fee so far as I understand. In our country there is court fee. I wonder if the Government will do away with court fee because that is a source of income to the Government. I cannot suggest removal of court fee altogether. That may not be acceptable to the Government. The

other reasons for cost is that cases are adjourned and the fees for counsel and witnesses are paid. Once adjournment is limited and is shortened and is done away with, except in very special cases, cost will be reduced automatically.

SHRI TENNETI VISWANATHAM: I do not know whether you attended any time the trial court.

WITNESS: I have practised for ten years in the lower court.

SHRI TENNETI VISWANATHAM: Did it not happen that the court had to adjourn a case for want of time.

WITNESS: That is perfectly true. Very often the court has no time to take up the case because it is engaged in some other case, and it is adjourned, and it is adjourned for three months.

SHRI TENNETI VISWANATHAM: Therefore what is your remedy against that?

WITNESS: My remedy against that is the appointment of more Judges. I do not know of any other remedy.

CHAIRMAN: What is your experience? Has the addition of Judges brought down the arrears?

WITNESS: Mr. Katju, when he was Law Minister, used to say that the addition of more Judges will increase the arrears. That is absolutely wrong. That is not true.

CHAIRMAN: The figures actually show that.

WITNESS: Figures show that for another reason, not because the Judges have increased. The reason is it depends on the Judges. As one of the learned Members said previously, it depends upon the Judge, how he is acquainted with the law on the subject, how he can understand the matter. One Judge can dispose of eight cases in a day. Another can dispose of only one case a day or even one case in four days. That depends



on the selection of Judges. It is really very difficult to find a remedy for this sort of thing. If you entrust it to the Chief Justice, he has also his friends. If you entrust it to the Government to do that, political consideration may come in. There is no remedy I can think of in the selection of Judges.

**SHRI J. M. IMAM:** It is said that the courts including the High Courts and the subordinate courts enjoy more holidays than other Government Departments. I think every year the total number of holidays is more than 25 per cent of the working days.

**WITNESS:** The holidays are fixed under the Act. You cannot have more than 200, or a little less perhaps, number of days as holidays. So, the summer vacation has been cut down. Saturdays are very necessary to be left for the Judges to write judgments, so that you cannot increase the number of working days now. They are as many as they should be. You cannot reduce the holidays. They are already reduced.

**SHRI J. M. IMAM:** The summer holidays are three months in a year.

**WITNESS:** It is my experience that Judges do not sit at home. They would like to come to the court and decide cases.

**CHAIRMAN:** So that they finally dispose of cases.

**WITNESS:** That depends on the calibre of the Judge. It is very rarely that a Judge takes casual leave. He would like to sit in the court and deal with the cases. That gives him more pleasure.

**SHRI TENNETI VISWANATHAM:** He sees more varieties of human beings.

**SHRIMATI SAVITRI SHYAM:** It is admitted that there must be no delay in justice. You have suggested that at the district level there must be one appeal. But my experience

is that the litigant is not satisfied at that level. Moreover I can say with certainty, I cannot quote instances, but I can say with certainty that whereas the proper time is 10 o'clock, it is not so at the district level. Mr. Lal remained in the court for so many years and he knows well that mostly the District Judges come at 3 o'clock.

**CHAIRMAN:** I do not know if the hon. Lady is aware that the Judges sit in the Chamber and transact their work. You cannot wholly blame them.

**SHRI BRIJ BHUSHAN LAL:** They come at 12 or 1 and the entry will be 10.

**WITNESS:** The situation can be remedied by the Chief Justice.

**SHRIMATI SAVITRI SHYAM:** You are in favour that the number of Judges should be increased at the district level, not at the High Court level?

**WITNESS:** But at both levels you need more Judges because the arrears have accumulated tremendously, at the district level as well as the High Court.

**SHRIMATI SAVITRI SHYAM:** Is the dimension of work at the district level more or at High Court more? What is your experience? The bulk of work is more at the High Court level or at the district level?

**WITNESS:** More at the High Court level; 75,000 cases are pending in the Allahabad High Court. There is a tremendous load. You require at least 150 Judges. Of course it depends on the Judge as to how much time he takes in deciding a case.

**SHRIMATI SAVITRI SHYAM:** My question is whether the number of Judges should be increased at the district level or the High Court level.

**WITNESS:** At both levels.

**SHRIMATI SAVITRI SHYAM:** How can it be made that the Judges should attend at a particular time, at 10 o'clock?

**WITNESS:** That can be done. It depends on the Chief Justice how a District Judge works.

You can correct this.

**SHRI TENNETI VISWANATHAM:** There is another method which is followed in some States. The Governments there have resorted to the practice of passing legislation depriving the courts of their jurisdiction. That is their method of speeding up matters. Remove the jurisdiction of civil courts over several matters, or reduce their jurisdiction, as they are doing now. The district judge comes exactly at 11, but he has no work after 12—30; he has got to go. In our State the jurisdiction of the courts is being removed gradually.

**SHRIMATI SAVITRI SHYAM:** One question more. I would like to draw your attention to page 9, clause 24.

In section 135A of the principal Act, in sub-section (1), for the word "fourteen", the word "forty" shall be substituted.

What is your reaction about this amendment? Will it not be discrimination? In the eyes of law all are equal.

**WITNESS:** Forty days may be considered by save to be too long a period.

**CHAIRMAN:** This provision will apply even in the case of Committees on which Members of Parliament sit during the inter-session period. This means that they will be exempted all the 12 months.

**SHRI TENNETI VISWANATHAM:** In the U.K., it is forty days.

**CHAIRMAN:** The reasons for this change is mentioned in the Twenty-Seventh Report of the Law Commission. It is said there that this change

is brought about in accordance with the provision obtaining in Great Britain where this exemption of 40 days before and 40 days after is given.

**WITNESS:** I think there is no harm in substituting 40 days for 14 days.

**CHAIRMAN:** Then, will there be any period of time left at all

**WITNESS:** There may not be any time left. Let them not be arrested because they are doing public service.

**SHRIMATI SAVITRI SHYAM:** Does it not create discrimination?

**WITNESS:** I am in favour of this amendment.

**CHAIRMAN:** I would now like to take you to certain suggestions made by other members of the Bar. A member of the Supreme Court Bar has suggested that on page 3, clause 7, in sub section 25(1), after the words "ends of justice" and before the words "direct that", the following words should be added: "Or the court considers it conducive to the convenience of all the parties to litigation or at least the defendant (or respondent) or his witnesses, if any." What is your opinion?

**WITNESS:** I do not think it is necessary to add them because the court will consider all the aspects of the matter and if it comes to the conclusion that having regard to the circumstances of the case, it is expedient for the ends of justice to transfer the case, then it will take action under section 25(1).

**CHAIRMAN:** The reason given by him is this. The phrase "expedient for the ends of justice" occurring in section 527 of the C.P.C. has received from the Supreme Court a narrower interpretation than was envisaged by Dr. K. N. Katju, Member introducing the Bill, regarding the aforesaid provision and the convenience of the parties has not been held to be a sufficient ground for transfer within

the expression "expedient for the ends of justice."

WITNESS: Then, it should be the convenience of both the parties, not of one party.

CHAIRMAN: It is convenience of all the parties.

WITNESS: Then I am in favour of this amendment.

CHAIRMAN: Then I would like to draw your attention to page 3, clause 8 (a) and (b) regarding section 35A. He has observed:

In my opinion, the words "excluding an appeal" should rather be omitted from the principal section than preserved and addition of the words "or a revision" not be made.

WITNESS: I think the word "revision" be added. If "appeal" is to be excluded, then "revision" should also be excluded.

CHAIRMAN: He has given this reason that it should be possible to award compensatory costs even in appeals and revision, and since they are a continuation of the suit, the same provision should apply to appeals also.

I asked him, "Don't you think this will result in the same man being punished twice? At the initial stage, he has been fined so much money. And when the same matter goes up in appeal, the court, if it has the power to impose a fine will again impose a fine. This will not be a proper thing to do".

WITNESS: If he has already been taxed with compensatory costs, then the court of appeal will consider that matter also and will not impose further costs.

CHAIRMAN: I told him. "The matter may go up in appeal and you cannot enforce another penalty upon him once he has been given a penalty."

WITNESS: That is why "excluding an appeal" has been mentioned here. When it goes up in appeal, no compensatory costs are allowed.

CHAIRMAN: This appeal should be deleted. Addition of the words 'revision' should be deleted.

SHRI C. B. AGARWALA: If the appeal is to be excluded then I do not see any reason why 'revision' should not be excluded. If appeal is to be retained, then revision should also be included, Appeal and revision stand on the same footing.

If appeal has come frivolously, the appellate court can enforce compensatory costs.

It will be done in regard to appeal only. But repeal and revision can go together.

CHAIRMAN: That is true.

I refer to page 4 clause 12.

The suggestion is clause 4 should be omitted and the transferee court should have the power of original court as has been laid by the Supreme Court 359 of the Supreme Court.

SHRI C. B. AGARWALA: If this is omitted, it will be better. The transferee court should have all the power of the original court.

CHAIRMAN: I feel that should be done, and the executive court should have the same power as the original court in all matters.

Then I refer to clause 13, Section 47. His view is clause 13(a) should be omitted completely.

SHRI C. B. AGARWALA: This is intended to cover cases of resjudication where the point was not taken but is implied. 'ought' or should have taken an objection. That is what is meant here.

CHAIRMAN: Yes.

13(a) should be omitted and Section 47(4) should not be added.

**SHRI C. B. AGARWALA:** I am in favour of the addition of this because in my experience great delay is caused by taking objection after objection in execution proceedings. Once an objection is taken. That is decided. Then another objection which has not been taken before is taken. Before any action is taken that has to be decided and the tendency of the court is to stay the case till the objection is decided.

So, the judgement debtor should take all objections at one time. He should not be allowed to take objection after objection and cause delay.

**CHAIRMAN:** If the principle of resjudication is applied in a limited measure as held in AIR 1954 Supreme Court 55 and the provision of section added, should not be extended. That is what he said.

**SHRI C. B. AGARWALA:** This should be extended. I am opposed to his suggestion, so that the judgement debtor should take it at the initial stage. One objection after another objection should not be allowed to be taken up as in this way the matter is delayed.

**CHAIRMAN:** Kindly turn to page 8, Section 115.

He says the proposed amendment is strongly opposed. The insertions of sub-section 3 and 4 of Section 115 are again not called for and the matter is to be left to the discretion of the High Court and the power should not be restricted by any statutory provision by sub-section 3 and 4 of 115.

**SHRI C. B. AGARWALA:** They should not be deleted. I do not agree with that. As a matter of fact I have made a suggestion of amending sub-section 3.

I have made a suggestion that if the case can be decided on the material before the court without calling for the record from the trial court when no stay is granted, it can equally be done here too. So, these words should be amended 'except where the stay has been made in sub-section 2' This

may be deleted. Clause 3 and 4 should remain. This is very wholesome.

**CHAIRMAN:** Now, I invite your attention to Order 22 Rules 2, 3 and 4. He wants these to be omitted and substituted by: "In the event of death of a party to the suit,—

(a) the advocate or the recognised agent, if any who had been appearing for the deceased party shall lay before court information about the death of the deceased together with the date of death and the names and addresses of the legal representatives so far as be known;

(b) the legal representative of the deceased party shall within 60 days of the date of death, make an application to the court for being brought on the record as legal representatives of the deceased:

(c) within 30 days of the information or application received by the court as mentioned, the opposite party shall, if necessary, take steps to add or substitute the legal representatives of the deceased party in the suit if the right to continue or defend the suit survives."

Now what is your opinion about this:

**SHRI C. B. AGARWALA:** I think the present Rules 2, 3 and 4 should remain. In the proposed amendment, the burden is cast on the lawyer of the deceased party.

**CHAIRMAN:** The other party should find out and make an application. The lawyer cannot do that. But the recognised agent can do it.

**SHRI C. B. AGARWALA:** But he does not appear before court. The party appoints a lawyer and the lawyer appears before the court. Recognised agents appear when no lawyer is there. Everybody has no agent. They got mostly lawyers. The burden should not be on the lawyer.

**CHAIRMAN:** Then, what are we to do?

**SHRI C. B. AGARWALA:** The opposite party will have to file an application.

**SHRI TENNETI VISWANATHAM:** The decree holders will be anxious to come to the court. Therefore, they would not make any delay.

**SHRI C. B. AGARWALA:** The matter does not rest with the decree holder.

**SHRI TENNETI VISWANATHAM:** The plaintiff's successors will be anxious to bring it to the notice of the court.

**SHRI C. B. AGARWALA:** That is the present law. I do not think there is any alternative. That is the whole difficulty. There is a defect in the law and I do not know how it can be cured. You cannot blame the lawyer. The lawyer will not be in a position to know who are the heirs and legal representatives. We cannot cast the burden on the lawyer.

**CHAIRMAN:** That is what I thought

**SHRI C. B. AGARWALA:** I do not think there is any way to help in this matter. It is better to allow the law to stand as it is. I cannot suggest anything better.

**CHAIRMAN:** Something should be thought of in this matter.

**SHRI BRIJ BHUSHAN LAL:** Sir, I would like to draw your attention to one fact. Here none of the ministers is present when such an important and experienced witness is before us.

**CHAIRMAN:** But the Law Ministry's representative is here.

**DR. B. N. ANTANI:** When an important witness is before us some minister must be here. At least his deputy should have been present here. It seems this morning the

Minister was present by an invitation. Why invitation? He must remain present throughout when such an important matter is being discussed. Either the Minister of Law or his deputy must remain present when we are discussing this important Bill.

**SHRI TENNETI VISWANATHAM:** Unless the minister is present here we cannot know his mind. We cannot exchange informations with the officer. How is it possible?

**DR. B. N. ANTANI:** The minister comes and goes away without remaining present.

**CHAIRMAN:** I shall ask the official of the Ministry to inform the Minister about the feelings expressed by the Members here.

Shri Menon who is the Member of this Committee is out of station and so I have invited his Deputy to come here. He was here this morning. You might have noticed that.

**SHRI B. N. ANTANI:** But when such an important witness is here he should have been present. Otherwise we cannot do full justice to our work.

**SHRI BRIJ BHUSHAN LAL:** If he were present he would have put the Government's point of view and it would have lessened our burden.

**CHAIRMAN:** Anyway your feelings will be communicated to the Minister. Mr. Agarwala, thank you for having spent your valuable time to come before us and offering your valuable suggestions.

**SHRI C. B. AGARWALA:** I am grateful to you Mr. Chairman and the Members of the Committee for inviting me to this meeting.

*(The witness then withdrew).*

*Tenth Meeting Saturday, the 25th October, 1969*

**PRESENT**

1. Pandit Sham Sunder Narain Tankha — Chairman  
*Rajya Sabha*
- |                           |                             |
|---------------------------|-----------------------------|
| 2. Shri Balachandra Menon | 8. Shri V. T. Nagpure       |
| 3. Dr. B. N. Antanj       | 9. Shrimati Seeta Yudhvir   |
| 4. Shri Rattan Lal Jain   | 10. Shri Joachim Alva       |
| 5. Shri B. N. Mandal      | 11. Shrimati Annapurna Devi |
| 6. Shri Syed Ahmed        | Thimmareddy                 |
| 7. Shri Rizaq Ram         | 12. Shri P. C. Mitra.       |

*Lok Sabha*

- |                                  |                               |
|----------------------------------|-------------------------------|
| 13. Shri D. Balarama Raju        | 26. Shrimati Sangam Laxmi Bai |
| 14. Shri Rajendranath Barua      | 27. Shri Mahendra Majhi       |
| 15. Shri Krishna Kumar Chatterji | 28. Shri B. P. Mandal         |
| 16. Shri Shivajirao S. Deshmukh  | 29. Shri Viswanatha Menon     |
| 17. Shri Shri Chand Goyal        | 30. Shri Bhaljibhai Ravjibhai |
| 18. Shri Ram Krishan Gupta       | Farmar                        |
| 19. Shri Heerji Bhai             | 31. Shri S. B. Patil          |
| 20. Shri J. M. Imam              | 32. Shri Jharkhande Rai       |
| 21. Shri Kameshwar Singh         | 33. Chaudhuri Randhir Singh   |
| 22. Shri Mushir Ahmad Khan       | 34. Shrimati Savitri Shyam    |
| 23. Shri Thandavan Kiruttinan    | 35. Pandit D. N. Tiwary       |
| 24. Shri K. Lakkappa             | 36. Shri Tenneti Viswanatham  |
| 25. Shri Brij Bhushan Lal        |                               |

Shri Mohammed Yunus Saleem, Deputy Minister in the Ministry of Law and in the Department of Social Welfare attended the meeting by special invitation.

**MINISTRY OF LAW**

Shri P. L. Gupta, Additional Legislative Counsel.

**SECRETARIAT**

Shri Kishan Singh, Under Secretary.

**WITNESSES EXAMINED**

- (1). Shri M. C. Setalvad, M. P.
- (2). Dr. L. M. Singhvi, Executive Chairman Institute of Constitutional and Parliamentary Studies, New Delhi.

---

*(The witness, Shri M. C. Setalved, M.P., was called in.)*

**CHAIRMAN:** Mr. Setalvad, kindly give your general impressions about this amending Bill? Do you think that it will do the good that is expected of it?

**SHRI SETALVAD:** Well, as I have said in my letter sent two or three days ago, the Bill is, really speaking, for the purpose of clearing certain doubts that called for clarification and certain conflicts of decisions. Those are sought to be resolved by taking one view or the other, High Courts having expressed conflicting opinions. In other cases it deals with matters of drafting. The Bill does not introduce any far-reaching changes. In many cases what they have suggested is the mere carrying out of the recommendations of the Law Commission made in 1958. There is no general scheme in these amendments. It has to be seen whether it is a clarification or it is resolution of conflicts. Of course, there are two or three matters like section 80 which in my view, is a very good step forward, and that also is recommended by the 1958 Report of the Commission. I think that the recommendations for amendments are useful so far as they go. But as I have already said, they are not really basic. In most cases they are of the nature that I have mentioned.

**CHAIRMAN:** The object of bringing forward this amendment, as mentioned in the Report, is that the time taken up in the law courts should be cut down; and secondly, the cost of litigation to the public may be reduced. Now, the question is whether these amendments which have been proposed are sufficient in their nature to achieve these two objects in view.

**SHRI SETALVAD:** In my opinion, these amendments do not really very much touch that problem. To deal

with that problem, some root and branch changes are necessary and these have not been recommended by this Report, and naturally, therefore, they are not in the Bill.

**CHAIRMAN:** I suppose the Committee, if it has sufficient material before it, can take some other steps. I think it will be wise if we make those changes.

**SHRI SETALVAD:** It would be best to let the Committee express an opinion that these suggested amendments are good as far as they go but they do not touch the basic problem, and therefore, the Committee is of opinion that a more radical or a more root and branch Bill should be brought before the House.

**CHAIRMAN:** Don't you think that our labours will be wasted if these two objectives are not achieved? The main problem is that delays and arrears are pending in every High Court. So how are we to tackle this from the public point of view and the litigant's point of view? Arrears are pending for the last ten years or twenty years. Let us touch the basic problems.

**SHRI SETALVAD:** But for basic problems there are no worth-while recommendations.

**CHAIRMAN:** But the Committee can consider them.

**SHRI SETALVAD:** Unless there are some proposals put forward or some ideas, how would the Committee deal with the matter?

**CHAIRMAN:** Such of the clauses as are being amended in the amending Bill can always be amended in such a manner as may be considered better or more suitable.

**SHRI SETALVAD:** My own idea is—I do not know the procedure—that it would be really necessary to refer the Bill back to the proper Ministry, saying, 'make some proposals which will achieve these results'. I do not know whether that is possible.

**CHAIRMAN:** I think the report of the Committee itself mentions that the suggestions we have made are from the point of view of these two matters. If they fail to achieve the object, I think the Committee will be within its powers to suggest that those things are not enough and certain more changes should be undertaken.

**SHRI M. C. SETALVAD:** Yes, in a Committee by itself naturally would not be in a position to make suggestions. These suggestions would have to come from the proper quarters, from the Law Commission itself or from the concerned Ministry. The Ministry may ask the Law Commission to make proposals intended to achieve the ends you have mentioned.

**SHRI SHRI CHAND GOYAL:** That will necessitate bringing forward another piece of legislation.

**SHRI M. C. SETALVAD:** Yes, in a very different form.

**DR. B. N. ANTANI:** Would you suggest that instead of pushing forward with this Bill, we should have a fresh Bill dealing with the basic problems introduced?

**SHRI M. C. SETALVAD:** Why not deal with the Bill in so far as it goes? For example, the amendment regarding sec. 80 is a very important change. It had been recommended as far back as 1958. It has come into this Bill in 1969. Why delay such reforms further? Why not deal with this Bill and insist on a further Bill to be brought forward later as you desire?

**CHAIRMAN:** The difficulty is that in important matters of procedure like this the law is not changed from day to day. As you know, the Civil Procedure Code was passed in 1910.

We are now in 1969. After 60 years, these small modifications have come. It may take another 50 years for the country to get the Bill in a form which we consider most suitable.

**SHRI M. C. SETALVAD:** For the purpose of expeditious disposal and avoidance of delays—I think I have referred to this matter in public speeches and eminent people have done so also — a severe curtailment down of the right of appeal and revision has been recommended. What happens now-a-days is that many orders are subject to appeal and revision which delay matters considerably. As a matter of fact, the papers and records go up to higher courts and do not come back for a long time and so on. To avoid these delays, you have to cut down the rights of appeal and revision.

Another suggestion made — I think it is in the 14th Report also— is that care must be taken in the selection of judicial personnel because so much depends on their quality. It is not so much the number of judges as the quality of the judges we appoint that is important. I remember Dr. Katju telling me once that the more the judges the greater the arrears. That was his view. If you have more judges, the ratio of work per judge falls and the court becomes unwieldy and so on. All these considerations have to be taken into account.

**CHAIRMAN:** My impression was that the Bill is amended would carry us much further forward. But one of the Judges of the Allahabad High Court, Mr. Justice Lokor, mentioned in his remarks that the amendments fail to secure expeditious disposal or a shortened procedure. This was put by me to Mr. C. B. Agarwala, an ex-Judge of the Allahabad High Court and he agreed with this view. Therefore, I am putting this before you at the initial stage because I think that not much good will be served by our deliberations unless these objects are achieved.



**SHRI M. C. SETALVAD:** It is all for you to decide. But the amendments suggested do go a step forward in setting right many things, clarifying matters, resolving conflicts of decisions and so on. Why not deal with these and also ask for another peice of legislation to deal with the real problem, namely, law's delays.

**SHRI KRISHAN KUMAR CHATTERJI:** You say in your letter to us that the Bill consists of detailed provisions necessary by way of clarification and avoiding delays and 'so on arising from the conflict of decisions. Do you think that the Bill will not serve that purpose?

**SHRI M. C. SETALVAD:** It will serve the purpose to a small extent. If there are two courts deciding one way and two other courts deciding another way, when the matter comes before the court, the time of the court is taken in citing all those decisions. If this can be avoided, it will shorten the proceedings.

**SHRI KRISHNA KUMAR CHATTERJI:** Is it your suggestion that a more comprehensive amending Bill should be there for the purpose? We can proceed with the present Bill to achieve certain beneficial results. Then after the Law Commission has come out with its own proposals for comprehensive reform, we can make certain other amendments to this amending Bill.

**SHRI M. C. SETALVAD:** Yes, that is what I think you can do with this Bill because this Bill will help to a certain extent. So if you like, you may suggest that what is required is a much more comprehensive legislation which should be brought before the House. The matter may perhaps have to be referred back to the Law Commission.

**SHRI JOACHIM ALVA:** We attach great importance to your views. You said that there should be a lesser number of judges

**SHRI M. C. SETALVAD:** I said the mere increase in the number of judges does not help unless you also look after the quality of the persons whom we appoint.

**SHRI JOACHIM ALVA:** We respect you. You have enjoyed a commanding moral position by virtue of being the most illustrious and leading living lawyer in India today. You have been the leader of the Bar and have occupied the post of Attorney General.

The position in the country today is that we have not been able to have quality judges. As present — I am ashamed to say this—we have judges who are accessible. How do we improve this position? How do you improve the quality of judges? Giving amenities like increased salaries is not enough. Even after 20 years we have not been able to put this matter right.

**SHRI M. C. SETALVAD:** Even when the 14th Report was written in 1958, the then Law Commission said that the right kind of people were not appointed. Since then things have deteriorated very much further.

**SHRI JOACHIM ALVA:** Another thing is that the right type of people do not permit themselves to be appointed. Is it possible to bank on the patriotism of people in being requisitioned to serve for at least five years making a sacrifice of their lucrative income at the bar? Could we enlist the services of these patriotic men so that we have eminent judges?

**SHRI M. C. SETALVAD:** That reminds me of the interim report of the Law Commission given in 1958, suggesting that some senior Members in each Bar should be asked as a matter of duty to take up the burden only of wiping out the arrears. The lists before them should consist only cases in arrears. After finishing the arrears, in a year or two, they can go back to the Bar.

**SHRI M. YUNUS SALEEM:** They should be permitted to practice in the same High Court.

**SHRI SETALVAD:** They can go back and practise. When the Additional Judges are allowed to go back and practise, why not they? They can work for a couple of years, wipe out the arrears and with their experience they can make quick disposal and go back to the Bar.

**SHRI JOACHIM ALVA:** We have not been able to put that into practice.

**SHRI SHRI CHAND GOYAL:** The important problem is that the Law Commission has made certain recommendations which are the basis of the present Bill. As far as I know you were also there in the Law Commission. May I know as to what was the difficulty before the Law Commission to go to the root and branch as you have suggested and bring forth a more radical measure so that expedition and avoidance of delay could be achieved? Did the Law Commission think it advisable to bring a Bill at this stage or did they think that it was not possible? I want to know the mind of the Law Commission on this.

**SHRI SETALVAD:** Are you talking of the present Law Commission? I am not concerned with the present Law Commission.

**SHRI SHRI CHAND GOYAL:** The Law Commission which brought forth this report.

**SHRI SETALVAD:** I am not concerned with this Law Commission. I am talking of the Law Commission's 14th report which was made for back in 1958.

**SHRI SHRI CHAND GOYAL:** I am referring to the 27th report.

**SHRI SETALVAD:** I am not concerned with it.

**SHRI SHRI CHAND GOYAL:** Can you give us an idea whether it was not possible for the Law Commission.

**SHRI SETALVAD:** I am sorry I cannot. I do not know how they considered the matter and how they proceeded.

**SHRI SHRI CHAND GOYAL:** You are of the opinion that such a radical measure ought to be attempted in order to solve this problem of expedition and avoidance of delay.

**SHRI SETALVAD:** I think it is very necessary in the interests of administration of justice. At present what is happening is that a person does not go to a court of law unless he is forced to do so because he knows going to a court of law, apart from being expensive, means immense delays and the people who do not want to pay and who do not want to carry out their obligations, are the people who go to the court knowing very well that litigation will drag on for years and years.

**SHRI SYED AHMED:** I think no other witness could be so competent and so equipped mentally and intellectually as yourself to advise us on the amendments to the Civil Procedure Code. I mean we have got to give the greatest consideration to whatever opinion you express. Therefore, I am putting this question about delay. Is it not a fact that the question of delay is the question of temperamental make up of Judges?

**SHRI SETALVAD:** To a certain extent, yes—both Judges and the appearing advocates.

**SHRI SYED AHMED:** There is the second question. I was a member of the Joint Selection Committee on the Amending Bill of Criminal Procedure Code. There they prescribed a certain period for the disposal of cases under Section 145 Cr. P.C. I was practising in the District Court and I did not come across a single case under Sec. 145 which was disposed off in less than a year. I think this prescription of a period for the disposal of a suit is wishful thinking. Nobody can dispose of a case under Sec. 145 in 45 days. That is why I said that it

can be prescribed by law that Judges should eliminate delays in this manner: manner; or in that manner. causes of delay are as varied as human nature. The Judge becomes ill or he is transferred. There are other causes like the temperament of Judges. Sometimes they are mentally not inclined to work. It is all a question of human nature. If the Judges are trained to such an extent that they realise that the cases have to be disposed of as soon as humanly possible, I think we should be able to accelerate the pace of disposal. That way we can eliminate delay to some extent, but not altogether.

**SHRI SETALVAD:** You can eliminate dilatory procedures. For example, one appeal to one court should be enough on a question of fact. In several matters to-day there are two appeals on questions of fact, sometimes there are three appeals. Surely all that can be eliminated by cleaning up procedure.

**SHRI SYED AHMED:** Why, is there only one appeal on a question of fact? As a matter of fact the law has not provided for second appeals on questions of fact. It is judicial interpretation that has allowed the appeal. Law has not provided for second appeals on questions of fact. In second appeal you go only on a question of law.

**SHRI SETALVAD:** This is only illustration which I gave. There are many other matters like this. You can curtail the right of revision, you can allow appeal only with leave in certain cases—leave of the court which decided it.

**SHRI SYED AHMED:** In that case we expect that you would suggest certain cases where we can eliminate delays. If you will give us more such suggestions, it will help the Committee.

**SHRI SETALVAD:** But I am afraid this Bill on which I have come before you to give evidence does not provide these remedies I have not thought of other remedies. If there is a Bill

before you dealing with laws delays, I could have perhaps gone back to the 4th report and tried to give you an idea of measures which can be useful. I am not ready to put forward those suggestions to-day before you.

**SHRI P. C. MITRA:** A second appeal is prohibited in cases whose money value is Rs. 3000 or less instead of the present Rs. 1000. Will you suggest that there may be only one appeal but the appeal must be at least to the District Court and not below that? The appeal should be heard by the District Judge, not below that officer. Otherwise, many cases are filed within that amount and present standard of Munsiffs and Subordinate Judges is such that proper justice is not available from them. Formerly Munsiffs used to be recruited from the Bar and experienced lawyers used to be recruited. Now they are recruited directly by open competition and they have no experience. So their decisions are not always fair.

**SHRI SETALVAD:** I am one of those who hold the view that perfect justice is very difficult to attain. We know cases in which one court takes one view, the higher court takes another view and the second higher court takes a third view, and so on. Of course, that is ideal justice. But that we want is substantially correct decision quickly arrived at. It may be that they may not be the highest form of justice but Justice to a certain degree. But it is much better for the people and for the administration of justice that the decisions should be quickly arrived though it may not be of a higher judicial standard. The quality may be a little inferior. But if you arrive at a quick decision the matter is finally decided. After all in law there is no absolute certainty and different courts can well take different views.

**SHRI P. C. MITRA:** But the appellate authority should have certain

experience. Therefore, should not the authority be the District Judge?

SHRI SETALVAD: Why could not a senior subordinate judge be competent to decide civil-questions of fact? He is a man of experience of many years. He can favour the judgement of witnesses; he can pronounce on questions of fact.

SHRI P.C. MITRA: A standard must be there, say, 10 years' standing.

SHRI SETALVAD: You can provide for that standing.

CHAIRMAN: Mr. Mitra, that will be for the State Governments to determine. You cannot bind them that he should be a man of ten years' experience.

SHRI P. C. MITRA: Regarding section 80 about officers, if no notice is sent to the Government, each case will be fought out by the officer below. Now the question is this, if the case is bad and in spite of it the officer insists that it should be fought, then the Government says, all right, you may fight it, but the Government would not bear the cost. If he lost the case. Now he will go upto the Supreme Court without the Government coming into the picture, but at public cost.

SHRI SETALVAD: It is the fault of the litigant. We need not go into the system of justice. Government is the litigant in this case. If the case is not a good one, Government should not go ahead with it. Should be advised by its lawyers to give it up or compromise it and put an end to it.

SHRI P.C. MITRA: If it is deleted, the costs to be borne by the Government for such cases may become higher.

SHRI SETALVAD: Take a man in the district—the Government pleader or the district pleader in charge, he may be able to tell the authorities, whoever is appearing, that he does not

think that case is worth fighting. The defence will not succeed.

SHRI P.C. MITRA: Who will ask him?

SHRI SETALVAD: Whoever is superior. He has to ask for a report.

SHRI P. C. MITRA: When a case is sent to the Government, the Government consults the Advocate-General and after eliciting opinion, they communicate to the officer what he should do. If no notice is sent, naturally, the local government will not be aware of any case. Naturally, the officers will prefer that this should be abolished.

SHRI SETALVAD: As soon as the case is filed, I suppose the Government machinery will provide for someone or the other to examine the merits of the case and then Government will take action just like an ordinary citizen. What does he do? when a suit is filed against him? Sometimes suits are filed against him without notice.

SHRI P. C. MITRA: When it is obligatory, it is sent to the local Government. A District Magistrate will not send it to the higher authorities?

SHRI SETALVAD: It appears to me not a matter for the amendment of the CPC; it appears to be a matter for tightening up or regulating the relevant Government machinery for dealing with the litigation whatever it is.

SHRI RAJENDRANATH BARUA: In our anxiety to cut down delays, we want to minimise the procedure on the one hand. But on the other, we are confronted with a number of judges, particularly district judges, with not good quality, with the result that justice will not be done properly . . .

SHRI SETALVAD: Have as good a quality of judges as you can. I started with that.

**SHRI RAJENDRANATH BARUA :** The quality of the judges is the problem. Will you suggest a *via media* to relieve our anxiety about delays—to reduce the delays and to cut down the procedures—so that the people will not have to go to the higher courts? That is our practical experience.

**SHRI SETALVAD :** The litigant has to be kept always under some restraint. Every day in the Supreme Court I see—that a person comes to the Supreme Court. If he loses in one court he enquires whether there is a court to which he can appeal. That is the mentality of the people created by so many appeals and revisions. If he feels that something has gone wrong, he thinks that he must have remedy in the next higher court. The people's mentality should be that after a thing has been investigated by a proper court, it should end there.

**SHRI RAJENDRANATH BARUA :** I came across a case in which the District Magistrate passed orders against a man who was a permanent resident. Before the amendment of Section 435 there were some provisions empowering the District Judge. The man was a serious sufferer. Somehow or the other, the District Judge granted the stay order. Meanwhile, the civil suit had to be filed so that the man could get the property. That was the case, I should think, of perverse judgement. Some facts were there. The Judge was kind enough to grant a stay order for a civil suit to be filed for his right to his possessions. These things do happen at the district level.

**SHRI SETALVAD :** This is a matter of opinion. I would rather have a little inferior texture of justice than wait for five years to get justice dispensed by the highest or the best courts.

**SHRI J. M. IMAM :** Mr. Setalvad, you have rightly remarked that so far as the appointment of judges is concerned, you must aim at quality and not quantity. You have also

456 RS—9.

said that the delay is due to the inefficiency of the judges to handle these cases. You know that at present so far as the appointment of the judges is concerned—it is a direct appointment—politics plays a good deal and sometimes communalism and other considerations weigh rather than the quality or the efficiency of the person concerned. And on account of this, you must also be aware and we are also aware that the efficiency of many of these High Courts is not the same as it was before. So, can you suggest some method by which we can appoint persons who are competent to fill these posts in the High Courts and in the lower courts and who will be free from prejudices and local influences?

**SHRI SETALVAD :** One thing broadly I can suggest is, leave as little as possible to the executive and give the Chief Justice a predominant voice in the appointments.

**SHRI J. M. IMAM :** At present the procedure is that person is appointed judge of the High Court on the recommendation of the concerned Chief Minister of the State and the Home Minister. And you know in these days of democracy, party politics play a prominent part and sometimes it is possible that they are influenced by party considerations and other considerations. I think it is an accepted principle that our judges who determine the destiny of a person must be free from such prejudices and local influence. What procedure would you recommend for the appointment of judges of the High Court so that they may be free from any sort of influence from any quarter?

**SHRI SETALVAD :** We did in 1958 suggest a procedure in the Fourteenth Report and that procedure provided that the recommendation for the appointment of a High Court judge should proceed from the Chief Justice and it should not be open to the Chief Minister to make any recommendation at all. The Chief Justice should write direct to

the Chief Justice of India making his recommendations. Then the Chief Justice of India may invite the views of the Home Ministry and of the local executive, but it should not be open to the local executive to suggest an alternative name. Supposing the Chief Justice suggest A and for some reason A is not acceptable to the local executive, then all that the local executive can do is to say "We do not think it advisable to appoint A. Would you suggest some other name?" So the initiative would always remain with the Chief Justice of the High Court. That was suggested in 1958.

SHRI J. M. IMAM: But that is not being implemented.

SHRI SETALVAD: Many things suggested by that Report have not been implemented.

SHRI J. M. IMAM: What about the Bar Council of the State? Is it not necessary to take their opinion?

SHRI SETALVAD: I do not think the Bar Councils have yet attained a status at which we can ask them to give an opinion. They may in the later years reach that status, but they have not yet reached that states.

SHRI J. M. IMAM: So, I think I agree with you that the appointment must be done by the Chief Justice of the High Court and the executive should have no voice to overrule his recommendation.

SHRI SETALVAD: It should have no right to veto it. There are many matters which the executive may know but which the Chief Justice may not know. So, the executive may be permitted to say "We do not think this gentleman is desirable, but you may suggest some other name", and so forth.

SHRI TENNETI VISWANATHAM: With reference to the appointment of judges, the present procedure is this. Some time before a vacancy is likely to arise, the Chief Justice

proposes a name and sends it to the Chief Minister. The Chief Minister of the State is not permitted to make any comment upon it. If he agrees, he will say "I agree with the name." Otherwise, he proposes another name. Both these names are sent to the Governor to the Home Minister at the Centre. He likewise sends names, with his choice if he differs with Chief Justice and Chief Minister and the Home Minister in consultation with the Chief Justice of India makes the appointment order and sends it to the President who signs the order. That is the present procedure as far as I know. Now in this procedure the only place where the Chief Minister comes in is where he proposes another name. I agree with you that even at this stage, his recommendation need not go on record. I suppose then that will satisfy the requirement made by the Law Commission in 1958.

SHRI SETALVAD: Yes.

SHRI TENNETI VISWANATHAM: You suggested that the rights of appeal should be cut down. Some friends have already said about the present calibre of the judges at the district level and at the subordinate level. Now, without an improvement in the quality of the judges, do you think it safe to cut down the rights of appeal?

SHRI SETALVAD: Both these things should go together. You must improve quality and cut down appeals and revision.

SHRI TENNETI VISWANATHAM: Then I agree with you; both these things should go together.

DR. B. N. ANTANI: I am glad you have referred to some general principles involved in section 80. The Law Commission in the amending Bill has recommended complete deletion of section 80. Would you agree with that *in toto*?

SHRI SETALVAD: I do. In fact, we recommended that very thing in 1958.

DR. B. N. ANTANI: Some witnesses have said that it could be deleted only to the extent of important matters like injunctions. Don't you think it is not fair?

SHRI SETALVAD: I think so.

SHRI BRIJ BHUSHAN LAL: Please refer to clause 14 of the Bill on page 6, regarding amendment of section 58. The proposed amendment seeks to substitute "two hundred rupees" for "fifty rupees". There is a suggestion by Shri C. B. Agarwala that the amount should be Rs. 1,000 instead of Rs. 200 on the ground that it is only the poor people who suffer and so the amount should be increased. I would like to know your opinion on this. Also I would like to know your opinion on the question of deletion of section 58 altogether.

SHRI SETALVAD: Do you mean that no arrest should be made for non-payment of money?

SHRI BRIJ BHUSHAN LAL: Yes.

SHRI SETALVAD: Then how do you enforce a decree for payment of the money?

SHRI BRIJ BHUSHAN LAL: From his assets, whatever they may be.

SHRI SETALVAD: Take the case of a man who is affluent; he is moving about and spending money. He says "I have no assets." All the assets are in the name of his wife, relations and so on. What do you do in such cases?

SHRI BRIJ BHUSHAN LAL: That is all right, but these lenders of money will think twice before lending their money, won't they?

SHRI SETALVAD: Once the court has said that the man has taken money and he is a debtor and if he is a man of the kind you have described, surely he should be brought to book in some way.

SHRI BRIJ BHUSHAN LAL: Is it proper these days to put a man in detention for non-payment of money?

SHRI SETALVAD: There are people who move about and take away lakhs of rupees of the people's money. You have seen that in the newspapers. They remain completely free. They in effect tell, 'I have money, but you find out where it is'.

SHRI B. B. LAL: The amount should be increased to Rs. 1,000, do you agree?

SHRI SETALVAD: I agree with that.

CHAIRMAN: We were discussing methods to reduce the delays. I thought you wanted to ask that. But you are taking him to some other area.

SHRI JOACHIN ALVA: In regard to the Chief Justice of the High Courts, personal conduct is very important. We had a case of Mr. Sinha—the former Chief Justice of the Supreme Court accepting a tea party by Mr. James who was involved in Vivan Bose case. Likewise is the Mundra case. Some kind of moral force is required. What is the remedy in a democracy?

Unfortunately as my friend pointed out generally the Chief Minister has his nominee. You know previously Chief Justice never accepted Government's invitation for tea even.

SHRI SETALVAD: May I know the question.

My answer is only one i.e., the Chief Justice should be selected very carefully and that is all.

You are looking at some very dark sides of the picture.

So many other bright sides of the picture are there. Why then you concentrate on the very dark side.

SHRI JOACHIN ALVA: We consider judiciary as the best part of the Constitution.

**SHRI SETALVAD:** However careful you may be in your choice, even after the best scrutiny there would always be some black spots in all matters, in all other departments of life. So, is the case of Chief Justices.

**SHRI MOHD. YUNUS SALEEM:** Kindly see page 8 of the Bill—clause 23—amendment to Section 115 of the C.P.C. This amendment is on the basis of the recommendation of the Law Commission. You will find that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court; 'in which no appeal lies thereto' this phrase has been omitted in the amending section. Do you not feel that by omission of this phrase there are apprehensions of protracted litigation and revision.

**SHRI SETALVAD:** You are, therefore, enlarging the field.

**SHRI HOHD. YUNUS SALEEM:** That is what I say. Instead of narrowing, it has been enlarged.

**SHRI SETALVAD:** How does the Commission support the enlargement?

**SHRI HOHD. YUNUS SALEEM:** The Commission has substituted subsection 4 to clause 23—page 9 of the Bill.

The High Court shall not under subsection 1 vary or reverse any decree or order against which an appeal lies either to the High Court or to any other subordinate court. This is the substituted subsection in place of the phrase existing in the original section 115 of the C.P.C.

The difficulty is this that this stage would arise only at the time of the disposal of the revision petition. That the High Court will be able to apply its mind whether the order is to be reversed or not. But at the time of admission if the revision is filed against an interim order against which an appeal lies, the petition under Section 115 will be tenable. Therefore, the mischief will be done.

**SHRI SETALVAD:** And the matter may be delayed.

**SHRI HOHD. YUNUS SALEEM:** How does the Commission deal with it? Why do they suggest it?

**CHAIRMAN:** Page 23 of the Report of the Commission. There are relevant lines on page 24—3rd line, etc. These have been reiterated.

**SHRI SETALVAD:** In spite of these rulings the High Court has continued to exercise very wide and extensive jurisdiction under this Section. The result is that the High Courts are flooded with revision applications.

They seem to be thinking the contrary.

**SHRI MOHD. YUNUS SALEEM:** That is what I think.

**Shri M.C. SETALVAD:** Probably, the removal of the clause in which no appeal lies would result in following revision applications.

**SHRI M. YUNUS SALEEM:** That is what I am feeling.

**SHRI M. C. SETALVAD:** It seems to be the impression that this change will result in stopping the revision petitions. On the contrary, it may increase the flood of revisions.

**SHRI M. YUNUS SALEEM:** How do you feel if Section 115 is totally deleted? Ultimately, law has got to come to appellate court where the appellate court will be able to consider the question of law as well as the facts. Why Section 115 at all?

At the most, provide appeal where appeal is not provided and do away with Section 115.

Mr. Setalvad, I hope you will agree with me that experience shows that there are cases where a High Court has exercised revision jurisdiction *suo matu*, in 99 per cent the revision applications are filed by the aggrieved party. In very rare cases, one among thousands, the high court exercises the



inherent jurisdiction of having supervision. And, therefore, Section 115 has become a weapon in the hands of the litigants to prolong the life of the litigation under some pretext or the other. When the aggrieved party finds convenient, straight away goes to the High Court and files a revision.

**SHRI M. C. SETALVAD:** By giving effect to your suggestion that there shall lie an appeal against every order, would it not be worse?

**SHRI M. YUNUS SALEEM:** There are very few orders which are not appealed. Take the illustration which I gave you. For the aggrieved party, the only remedy is to go to the High Court. You can provide appeal for that, instead of making it final, you can provide an appeal and do away with appeals and revisions against interlocutory orders, may be an order is appealable or non-appealable.

**SHRI M. C. SETALVAD:** No appeal and no revision against interlocutory orders may do serious injustice. Take the appointment of a receiver. Now, if you do not give an appeal here, then the man has to give up possession of his property and he cannot do anything. That may be very serious. Take a partnership dispute. One partner goes to the court and asks for a receiver. The court refuses the receiver. Surely, the suit has yet to be decided and so on. He has no remedy. There ought to be a remedy. There should be an appeal.

**SHRI M. YUNUS SALEEM:** We could overcome the difficulty in this way. We can say that the question of appointment of the receiver technically speaking is not an interlocutory order. It is a final order so far as the question of disposal of that particular application is concerned. Therefore, it has nothing to do with the trial of the suit.

**SHRI M. C. SETALVAD:** My recollection is that, I am speaking from memory, the appointment of a receiver is always, regarded as interlocutory order.

**SHRI M. YUNUS SALEEM:** Yes. Technically it is. But take for example, injunction—Order 29, Rule 1 or appointment of receiver. In such matters we are providing an appeal in a suitable way, where the apprehension is that injustice will be caused to the aggrieved party.

**SHRI M. C. SETALVAD:** In fact, in the present Civil Procedure Code you have got express provisions providing appeals against certain orders. You may provide appeals against some such orders. The advantage of Section 115 is that any thing which really is a matter of substance dealt with by a court and in which no appeal lies. The man is able to go to the revision court and make an application. Now, how will you keep that advantage to the party?

**SHRI M. YUNUS SALEEM:** The question is as to how to make the scope of Section 115 very limited and narrow, that only in cases when it is absolutely necessary. There is no other aggrieved party. Only Section 115 may be applicable, otherwise not. For example, what happens when an issue is decided. The aggrieved party goes to the High Court and files a revision petition and the matter is there for two years. The party deliberately files an application to summon a particular witness or a particular document. The Court says that it is not necessary. Against that order, a revision is filed and stay is obtained. Ultimately the High Court dismisses the revision. With Rs. 25 the life of the case is prolonged for two years. How to overcome that difficulty?

You remember that there was conflict of opinion in giving interpretation to a phrase. There was lot of controversy and Allahabad Court took a different view. The Commission suggested a remedy but that does not solve the difficulty. The difficulty continued.

**SHRI M. C. SETALVAD:** I do not understand all you have said. I would not be for deletion of Section 115 altogether.

**SHRI SYED AHMED:** One thing I wish to submit. I do not agree with the Law Minister that Section 115 ought to be done away with. If all powers of the revision are done away with, there would be some difficulty in the case of those suits from the judgement of which only one appeal lies. An appeal goes to the District judge from a judgement and a decree of a subordinate court, and that appeal is decided and that is the end of the case whether the judgement of the District judge is right or wrong.

**SHRI M. YUNUS SALEEM:** So, this phrase "the case is decided" has been considered by the Law Commission. You please refer to page 9 of the Bill, Explanation. It says: "In this sub-section, the expression 'any case which has been decided' includes any order made in the course of a suit or other proceeding, including an order deciding an issue."

Have you seen this?

**SHRI M. C. SETALVAD:** I think it is surely an enlargement.

**SHRI M. YUNUS SALEEM:** This explanation in Clause (4) is an enlargement so as to cover the cases which are not covered. The different rulings of the High Courts are now covered by this phrase.

**SHRI M. C. SETALVAD:** But this works in that direction. It has enlarged the scope of Sec. 115.

**SHRI M. YUNUS SALEEM:** That is why I want to get your opinion on this.

**SHRI M. C. SETALVAD:** I would not enlarge the scope of Sec. 115. I would like to cut it down and not completely omit it as you suggest.

**SHRI SYED AHMED:** I just wanted to point out one thing. There is a suggestion here to cut down the powers of the High Courts under Sec. 115. You know it is his Bill and not your Bill or my Bill. Ye are here and we suggest amendments to the Amending Bill which he has brought

forward. Sec. 115 has been provided for in the amending Bill and he wants to eliminate it. I thought that he was fighting for retaining it as it is. I do not know why he wants to eliminate it. I am suggesting here that Sec. 115 cannot be eliminated altogether. You can have some changes to this section if you want. But it cannot be eliminated. I shall give you one illustration. In case where there is only one appeal under Sec. 104 of the C.P.C. what should the party do to go in revision against the decision in the appeal if there is some law point involved which is important. Suppose the case has been wrongly decided by the Additional District Judge. Then that should be decided by the High Court of the State, but there is no provision in the C.P.C. under which the party can go to the High Court to get the wrong decision by the district judge corrected. So it is necessary that the revision provision ought to be retained. The use of this Section should be minimised by the High Court. But if you eliminate it that will not be in the interest of justice.

**SHRI TENNETI VISWANATHAM:** Sir, before going further, I want to know whether the Law Minister's suggestion means that the Government is thinking of omitting Section 115. Or is it a casual suggestion? In fact we wanted his presence yesterday to know the thinking of Government on various suggestions. To-day he has come here and is good enough to omit Section 115. I think that if you omit several other sections likewise from the C.P.C. half of the sections of C.P.C. will be eliminated?

**CHAIRMAN:** Mr. Setalvad, may I enquire from you if it is possible to omit Section 115 as the Law Minister suggested so as to get those cases covered by the writ jurisdiction of the High Court? After all the high courts have writ jurisdiction also where there is considerable regularity of law. Is it possible to cover all those cases by some other section?

SHRI M. C. SETALVAD: You mean Section 226.

CHAIRMAN: Yes.

SHRI M. C. SETALVAD: But how can you omit it?

CHAIRMAN: If we omit Section 115 and allow such matters to come up to the high courts under Section 226, will it not be all right?

SHRI M. C. SETALVAD: I do not think that all matters which are decided by the High Court under Sec. 115 can be dealt with under Section 226.

CHAIRMAN: That is what I wanted to know. Now may I take you to page 7, fourth line, clause 16 at the top?

SHRI M. C. SETALVAD: Yes, I have got Clause 16.

CHAIRMAN: Section 80 of the principal Act shall be omitted. And this is your own view also. So may I ask you whether under Section 80, on several occasions the case is settled out of court instead of compelling the party to go to the court? If that is so why should we omit this section altogether and why not reduce the period of two months which is provided for under Section 80 or in any manner prescribed for by this procedure?

SHRI M. C. SETALVAD: In my experience I can say that it is in very very rare cases that Government takes advantage of Section 80. So it really comes to period of limitation.

CHAIRMAN: The advantage is not taken by Government. It is given to the litigant public.

SHRI M. C. SETALVAD: I may tell you that in 99 out of 100 cases no action is taken by government.

CHAIRMAN: I agree.

SHRI M. C. SETALVAD: This is practically a dead-letter. The whole purpose of this section is for the government to be vigilant. If they were vigilant they would not allow the

matter to go to a suit and compromise it. This does not happen.

CHAIRMAN: However, there are good many lawyers who have had the experience say that the matter is compromised. And so it has not been necessary for the litigants to go to the court of law. Therefore I was of the view that we might allow this to be retained and circumscribe it by other provisions so that the time may not be wasted. For instance instead of 60 days we might reduce the period of notice to 30 days. Rather we might provide that in cases where it gives the litigant to see the case in the court he will not be compelled to give the notice. For instance take the case of a house which is to be demolished. If he wants to go to the court it may not be necessary for him to give the notice. If there are any defects in the notice, the court should not dismiss the suit merely on the ground of this technical defect in the notice.

SHRI M. C. SETALVAD: I do not agree with the courts suggested for the simple reason that even within the days provided the government do not act in most cases. If it is limited to a smaller period it would be impossible for them to act. You know that in various courts, even in the matter of making affidavits, they ask for more time. You cannot expect anything to happen within thirty days. I think the best thing would be to do away with Section 80 altogether.

CHAIRMAN: Some witnesses have suggested that this section should be framed in such manner as provided for under the Municipalities Act.

SHRI M. C. SETALVAD: I don't agree with this suggestion.

SHRI SHIVAJI RAO S. DESHMUKH: I draw your attention to the fact of abolition of Section 80. What effect it would have in cases of statutory Corporations and so on. There is a provision under Section 80 to give notice for filing any civil proceedings against those statutory bodies. So in such cases of conflict,

what would be the position? I mean the Acts like the Municipal Act, the Zila Parishad Act, etc.

**SHRI M. C. SETALVAD:** So long as those Acts are not amended, those provisions will have to be given effect to. If, supposing, a man wants to sue the Municipal Committee, he will have to follow that Act, and so on.

**SHRI SHIVAJIRAO S. DESHMUKH:** There are well-settled distinctions. So, in view of these distinctions if Section 150 is abolished, it would also abolish those distinctions.

**SHRI SETALVAD:** I have already stated that I am against the deletion of Section 115 altogether.

श्री बी० पी० मंडल : मैं जानना चाहता हूँ कि इसमें जो अमेन्डमेंट हो रहा है, एक नया क्लॉज (डी) जोड़ा जा रहा है, क्या यह जोड़ना अच्छा होगा। पहले सेक्शन 11 का जो प्राविजन था और सेक्शन 47 की जो प्रोसीडिंग है, उसका जो डिसीजन है, उसका भी वही इफेक्ट होगा जो सूट के डिसीजन का होता था. . . .

**SHRI M. C. SETALVAD:** If I understand you, you mean the rule of *res judicata* ?

श्री बी० पी० मंडल : रेस जुडिकेटा का जो डिसीजन होता था। जब सेक्शन 27 का जो डिसीजन होगा वह भी रेस जुडिकेटा का काम करेगा। तो क्या यह अच्छा होगा ?

**SHRI M. C. SETALVAD:** It is a matter of doubt whether this *res judicata* applies or not. Some courts have held it one way, and some the other way.

**SHRI RAJENDRANATH BARUA:** Arising out of this, I would like to ask one question. I draw your attention to the original Act. Explanations 4 and 5 may be read. This is Section 11 of the Civil Procedure Code. If Explanations 4 and 5 are also applied

to the summary proceedings and the execution cases, will it not amount to the hardship on the one hand and make the proceedings dilatory and cumbersome . . .

**SHRI M. C. SETALVAD:** The suggested amendment says: "So far as may be . . .". That leaves an option to the court.

**SHRI RAJENDRANATH BARUA:** My point is this: If Section 11 is to apply, then in an objection in execution proceedings the party shall have to take up all possible defence.

**SHRI M. C. SETALVAD:** Why should not that be so?

**SHRI RAJENDRANATH BARUA:** What is the advantage of that? The court will have to give more time for the disposal of execution proceedings.

**SHRI M. C. SETALVAD:** Give more time at the initial stage. That is better.

**SHRI RAJENDRANATH BARUA:** Supposing the claim is for attachment, demolition, etc. There are so many reliefs. Only one relief is granted. Then other things, according to Explanations 4 and 5 will be considered as *res judicata* in subsequent proceedings.

**SHRI M. C. SETALVAD:** Unless the court reserves it. The Court can always provide for that.

**SHRI J. M. IMAM:** My experience is that in trial courts the appointment of judges and munsifs and others is made very haphazardly, and often suitable people are not appointed. In fact, persons who have practised for two or three years are considered suitable for these appointments. So I think that there is a greater chance of appeals being made to higher courts because of the inefficiency and incompetency of officers of the trial court. Can you lay down the conditions and qualifications that are necessary for the officers of the lower court, Munsif's court and small-cause courts?

**SHRI M. C. SETALVAD:** The Constitution itself lays down the qualifications.

**SHRI J. M. IMAM:** The present qualification is that if a person has practised for five years, he is competent to be appointed as a Munsif, with the result that invariably we have got raw-hands, who are perhaps not able to assess the evidence properly and to come to right conclusions. So this gives room for re-appraisals. My anxiety is that in the lowest court, the presiding officer must be quite competent and must be quite confident of himself and must know the law very well. So what qualifications would you prescribe?

**SHRI M. C. SETALVAD:** The remedy is to leave these appointments to the High Courts as much as possible and keep the executive out of them.

**SHRI J. M. IMAM:** It is our experience that inexperienced people are appointed who have to learn their work as judges of these lower courts. Better justice will be ensured by appointing experienced people.

**SHRI BALACHANDRA MENON:** P. 6, cl. 15, sec. 60 of the Principal Act, in (a)(i), they say after the words 'pensioners of the Government', add 'or of any local authority or of any other employer'. Should private employees not also be allowed the benefit regarding non-attachment of their pension, gratuity etc.

**SHRI M. C. SETALVAD:** The words 'any other employer' are there. That includes pensioners of all employers.

**SHRI RAJENDRANATH BARUA:** Is it not undemocratic to specify a certain class of people for exemption leaving the wageearners, farmers and others out of the pale of this section? Why not abolish it in the modern age?

**SHRI M. C. SETALVAD:** This refers to pensioners. The idea is to protect people who are dependent on a pension.

**SHRI RAJENDRANATH BARUA:** There are people with very poor in-

comes. There are farmers and wage-earners. Here a provision is made for government employees. Why should the poor farmers and others be deprived of this benefit?

**SHRI M. C. SETALVAD:** If you want that people with income of so much and no more should also be given the benefit, you can add another clause. But this is only for pensioners, people receiving a monthly stipend for service rendered in the past.

**SHRI RAJENDRANATH BARUA:** Why is it necessary?

**SHRI M. C. SETALVAD:** Because it is their means of livelihood.

**SHRI RAJENDRANATH BARUA:** Government employees drawing Rs. 500 and Rs. 1000 also come under it.

**SHRI M. C. SETALVAD:** They have after all finished their service and are drawing a pension.

**SHRI RAJENDRANATH BARUA:** Even government employees are there.

**SHRI M. C. SETALVAD:** This is only for pensioners, all pensioners.

**SHRI SHIVAJIRAO S. DESHMUKH:** This removes the distinction; all pensioners are treated alike. It is a socialist step which should be welcomed.

**CHAIRMAN:** The Bar Council of India was to be examined today. They have submitted their memorandum. But yesterday they wrote to us saying that since Shri Setalvad is appearing and is the President of the Council . .

**SHRI M. C. SETALVAD:** Not the Bar Council, but the Bar Association. I had a telephone from their Secretary yesterday saying that I should represent the Association. I am not concerned with the Bar Council.

**CHAIRMAN:** The Bar Association has not sent a memorandum, but if there are any other aspects dealt with in the Bar Council's memorandum on which members would like to put questions, they may do so.—

As there are no more questions, I thank Shri Setalvad for the great trouble he has taken at my particular instance in coming over and helping us with his suggestions which will be of great value to us.

SHRI JOACHIM ALVA: We are very fortunate to hear the witness's views; it is a rare honour to have the benefit of his valuable advice.

SHRI M. C. SETALVAD: Mr. Chairman I thank you and all the members of the Committee.

*The witness then withdrew*

*(The witness Dr. L. M. Singhvi was called in).*

CHAIRMAN: Hon. Members, the quorum is now complete and the witness, Dr. L. M. Singhvi, is before us. As you all know, Dr. Singhvi, until the last General Elections, was a member of the Lok Sabha and I am very glad to say that he has, even after leaving the Lok Sabha, taken great interest in the legislation that the Parliament is passing from time to time and he has been good enough to give the Committees the benefit of his views.

He just now told me that he was here in response to my summons. But I might say that it is not at the instance of my summons that he has come but at my special request. I made a special request and he is here. I hope we shall benefit by his views. Being a busy man, he was not able to find time to give us detailed comments about the Bill but we shall try to have some of his views as best as we can.

Dr. Singhvi, I need not remind you that the proceedings of the Committee are confidential and they should not be publicised.

Will you kindly give us your own views about the bill in a nutshell and then we can proceed to put questions.

DR. L. M. SINGHVI: Mr. Chairman, I am extremely grateful to you for having expressed your personal wish and for having conveyed to me the desire of the Committee asking me to appear before the Committee. It is with the greatest pleasure that I comply with your wishes and the desire of the Committee.

This Committee has had a considerable advantage, if I may say so with great respect, because on the Code of Civil Procedure we have in addition to numerous reports of various Committees, two authoritative and comprehensive expositions on the subject in the 14th Report of the First Law Commission and in the 27th Report of the Law Commission which went especially and in detail into questions involving amendments in the Code of Civil Procedure. That advantage is exemplified in the fact that a great many points which have arisen from time to time in respect of the working of the Code of Civil Procedure have been taken into account. I am extremely sorry to add to this the comment that unfortunately the Code of Civil Procedure has been sought to be amended in various instalments and there has always been a sort of piece-meal approach to the problem of law reform particularly when it comes to the basic Codes on our statute book. Here is for the first time a fairly comprehensive amendment embodied in the Bill of 1968 and yet, if I may say so, the Code of Civil Procedure Amendment Bill, 1968 commends itself for what it contains and also disappoints us for what it does not contain. One would have wanted a truly definitive restatement of Civil Procedure in the country through this most comprehensive piece of legislation because this was indeed an opportunity for the Parliament and the Government to attempt a truly comprehensive, a truly definitive and a truly complete amendment of the Civil Procedure Code. You will recall that the First Law Commission had gone into the various questions

connected with our legal system. It considered relevance and efficacy the competing claims both of the indigenous system and the European system of law. The first Law Commission found that it was safest to rely on the 200 years of experience that we had acquired in the working of what is essentially an Anglo Saxon system of law and it is in this context that the code of Civil Procedure has to be viewed. For if the code of Civil Procedure is viewed from the angle of any other assumptions then, I am afraid, the enquiry is bound to be out of time with the legal system that we have adopted.

This Committee, I take it, proceeds on the basic assumption of the legal system in the country and, therefore, it is within the frame work of that basic legal system, that the Code of Civil Procedure and amendment in the C.P.C. has to be viewed. The two main objectives before us in this country in respect of amendment of the Code of Civil Procedure are to secure expedition and to reduce costs. These indeed have been the two basic guide-lines in the entire thrust of the movement for law reform in so far as civil procedure in our country is concerned. There is no doubt that the delays have exasperated the common man to an extent that the credibility of the system is in jeopardy. There is no doubt that the delays in our system of law have caused considerable concern among the thoughtful citizens and even among those who fully subscribe to the basic assumption of our legal system.

The cost of litigation is another factor which is alarming. The costs which you find, Mr. Chairman, in the rules of the High Courts and what are known as taxable costs are a far cry from the realities of the situation. In reality the costs on litigation are very much higher. The counsel fee are very much higher. The court fees have risen in a very indiscriminate and in a very un-controlled fashion,

particularly because court fees happen to be a State subject. The Law Commission pointed out on one occasion that it was most unconscionable for the State to collect fees for doing justice between citizen and citizen and between citizen and State but what is more, it is quite unconscionable for the State to try and make profit out of the business of justice as it were, and thus convert a fee into a tax which in my opinion is illegal. That was the finding of the Law Commission and I think it is in this context also the amendment in the Code of Civil Procedure has to be considered and that is why I submit, Mr. Chairman, that as a piece of law reform it is not enough. I think it would be appropriate for this Committee under the Rules of Procedure, under the Rules of Procedure which obtain in both Houses of Parliament to draw the attention of both Houses of Parliament to these basic factors of omission so far as the present code of Civil Procedure is concerned. I need not refer to the particular rule under which the Committee is entitled to do particular rule under which the familiar with the explicit provisions in the rules which so entitle the Committee.

I shall confine my testimony mainly to the provisions of the Bill as it is before the Hon'ble Members of the Committee. Before I do so, I should like briefly to refer to what the 14th Report of the Law Commission had to say:

"It has been frequently asserted that the chief cause of delay are the laws of civil and criminal procedure which it has been said, are cumbersome, wasteful and time-consuming. It is pointed out that very often the suits are made to depend upon the procedural technique to be gone through to bring them on the files of the court for adjudication. However, it is not possible to refer to a single factor as either the sole or the main cause of delay in civil litigation in India. Every system of legal institutions designed to ad-

minister justice in accordance with law must necessarily be based on an adequate procedural machinery aimed at promoting the just adjudication of causes before the law courts."

In concluding, the Law Commission had this to say:

"The object of procedural laws is to bring the disputants together for the purpose of trial, to ascertain the facts and the law in dispute so as to enable the court to reach a conclusion after full investigation. The provisions of the Civil Procedure Code are based on the theory that there must be a full disclosure by each party of his case to the other, that the rival contentions must be reduced as quickly as possible to the form of clear and precise points or issues for decision and that there must be a prompt adjudication by the court upon those issues. An ordinary civil action brought before a court of law must, therefore, necessarily take some time before its final adjudication by the court. The time which must elapse before the matter is thus brought to its conclusion will depend on a number of factors like the number of parties to the litigation, the time reasonably required for effecting service, the time spent by parties in collecting and producing documentary and oral evidence and in prosecuting bona fide appeals or revisions in important interlocutory matters and above all upon the normal state of the court's business. A good deal of the criticism against the procedural laws as the cause of delays when carefully analysed will show that justice is delayed not so much by any defects or technicalities in the prescribed procedure as by its faulty application or by failure to apply it."

That was the view of all responsible and experienced persons who answer our questionnaire or gave evidence before us."

I cite this particular passage from the Report of the First Law Commission to emphasise the point that not all the blame in respect of our litigation can be laid fairly on the doors of Civil Procedure. It must be realised that Civil Procedure code is a fairly tested document. It has proved its soundness by and large over the years and many of its shortcomings in practice, Mr. Chairman, are really not so much the shortcomings of this document but the way in which it is worked. That is where indeed no Committee of Parliament and no piece of legislation can bring about a radical change. That is where the quality of our judicial officers, the quality of the legal process itself would have to be improved. That is where a great deal of improvement has to be done, which cannot be achieved by mere legislation. But that is no argument, of course, for saying that the law itself should not be made to keep pace with the times and that is where I would make some submissions on a few limited questions in so far as the Bill before this Committee is concerned.

An important change that this Bill proposes to make is the omission of Section 80 of the Act.

CHAIRMAN: Before you go to deal with the specific sections of the Bill, I would like to ask you whether you feel satisfied with the views which the Commission had in mind for bringing the changes in the Act, have been achieved. You said just now that there are two main purposes of the Law Commission—to reduce delays and to cut down costs.

DR. L. M. SINGHVI: That indeed is the substance to which the Committee should address itself, Sir. My respectful submission is that while the changes the Bill seeks to bring about are very much welcome in themselves, they are merely peripheral. It will not help in reducing the cost of litigation substantially nor will it achieve the object of expediting the administration of justice so substantially as to make a conspicuous difference.



That is my submission. I shall very briefly submit as to why I have come to that conclusion.

The cost of litigation, Mr. Chairman, depends on a variety of factors. One of these factors, of course, is the time taken in the disposal of a case before the court. If the witnesses do not have to go to the court frequently and on numerous occasions, if adjournments are not sought or given day in and day out, then naturally the cost of litigation to that extent will be reduced. But, so far as the cost of lawyers' fees are concerned, I am sure, the Committee is aware that they are derivative and moderate. The Committee knows that in most of these cases, the lawyers fees are not based on daily appearances and, therefore, particularly in trial courts and in many of the appellate courts, barring a few and barring the Supreme Court, the lawyers fees are payable on a consolidated basis and, therefore, the lawyer does not really make a great deal more out of the case if the case is prolonged. There is a misconception in this respect. People think that the case is prolonged by the lawyer because he gets more. That cannot be so except possibly in some cases where they are paid the fees on the basis of the days that the matter is argued or taken up.

**SHRI S. C. GOYAL:** What is happening in U.P.?

**DR. L. M. SINGHVI:** It may differ from place to place. I speak of the general practice. Even in UP, the daily fee is an exception rather than the rule. By and large the lawyers fees are paid in UP in district and mofussil courts not on the basis of daily appearance but for the whole case. I am speaking of the trial courts, district and mofussil courts, because that is where the problems arise in the first instance. Of course, there are parts of the country where fees are payable on the basis of daily appearances, but I speak of the general practice. But the cost of litigation

goes up very high because the incidental costs are high. The man has to travel to the seat of the court and witnesses have to travel a number of times. The result is that it all adds up to the cost of litigation. Therefore, the first principle is that expedition secures cheaper justice. The cost of litigation, however, has certain components which this Committee or some other Committee should look into. Anyway those components are, the court fees which I think are exorbitantly high in the country.

**CHAIRMAN:** Court fee is a state subject.

**DR. B. N. ANTANI:** We will very much appreciate if you give your views with regard to the important factors—expedition and cost. You very rightly discussed just now about costs. But the difficulty as you said was that it was a state subject. The state incurs expenditure in maintaining the establishment of judiciary. Would you like to suggest that the state should make a law or should run this machinery on the basis of welfare state for the sake of justice or would you like the state to have it on the basis of no profit no loss. After all it is a proposition which any state will look at from financial point of view.

**SHRI SYED AHMED:** What should be the basis—the Government should charge expenses of the litigation as on a welfare state basis or on no profit no loss basis?

**DR. L. M. SINGHVI:** The basis at present is first to defray the cost on administration, and unfortunately to make as much out of it as possible. I submit that both these are not worthy objectives to be attained by the State and one does not have to swear by socialism or welfare state to say that. I would invite the attention of the Committee to the principles that have been enunciated by the Law Commission on that question, particularly in response to the question of Dr. Antani. These are enumerated in the 27th Report of the Law Commission of India, at page 5. The Commission said: "It

is one of the primary duties of the state to provide the machinery for the administration of justice and on principle it is not proper for the state to charge fees from suitors in courts. Even if court fees are charged, revenue derived from that should not exceed the cost of the administration of civil justice. The making of a profit by the state from the administration of justice is not justified". And, Mr. Chairman, you will recall that this Report was based on a fairly detailed investigation of the inclusion of the profit element in the economics of the court fees imposed in various States.

SHRI S. C. GOYAL: What is the position in other countries? Do they make profit?

DR. L. M. SINGHVI: Hardly any country imposes court fees on a scale which is done in this country. As far as I know, nowhere is any profit made out of the business of doing justice. Indeed in most countries there is no court fees to speak of. Court fee is imposed on a very small scale as a kind of fixed charge. But the kind of heavy court fee imposed in this country is wholly out of tune with any social objectives that we might set forth before ourselves. Then the Commission went on to say:

"Steps should be taken to reduce court fees so that the revenue from them is sufficient to cover the cost on judicial establishment. Principles analogous to those applied in England should be applied to measure the cost of such establishment. The salaries of judicial officers should be a charge on the general tax payer."

The salaries of judicial officers should never be payable from the revenues raised by levies of court fees. There, a very important principle is involved. Further, the Report says:

"There should be a broad measure of uniformity in the scales of court fees all over the country. There should also be a fixed maximum to the fee chargeable. The rates of

court fees on petitions under Article 32 and 226 should be very low, if not nominal. The fees which are now levied at various stages such as the stamp to be affixed on certified copies and exhibits and the like, should be abolished when a case is disposed of *ex parte*, or is compromised before the actual hearing, half the court fee should be refunded to the plaintiff. The court fee payable in an appeal should be half the amount levied in the trial court".

Mr. Chairman, the Commission made its recommendations in two parts, that it is the primary duty of the state to provide the machinery for the administration of justice, and on principle it is not proper for the state to charge fees from suitors in courts. And then the Commission provided that if, however, this principle is not fully accepted, then also court fee should not be levied so as to make profit.

SHRI J. M. IMAM: Sir, the cost of litigation comprises of court fees, cost of bringing the witnesses, lawyers fees, printing charges and other incidental expenses such as obtaining the copies etc. Of this entire cost, I would say that the court fees comes to about 10 per cent. 90 per cent of the expenditure is consumed by lawyers, witnesses and specially printing charges. Printing charges in High Court are enormous. For example, some of our colleagues, if they file election petitions, they have to incur expenditure to the extent of thousands of rupees. So, some reduction of court fees which I recommend will not bring down the cost of a litigation.

So, will the witness please clarify as to what steps are necessary to bring down the cost of litigation and cost of lawyers' fees, printing charges process fees? Our experience shows that a litigant has to incur on lawyers fees and other expenditure and he does not grudge to pay the court fees which is a very low percentage of the entire cost.

CHAIRMAN: I do not think that it is only 10 per cent now.

DR. L. M. SINGHVI: No statistics on fees have really been worked out on precisely on each component and proportion of each item of cost in litigation, as a whole. But by and large the cost of fees on the lawyer and the court fees is almost equal. It is not as if the lawyer's cost consumes a lion's share and the court fee is a very small part. That is not so. The lawyer's cost is very expendable item and a man can engage a good lawyer that he can afford without necessarily indulging in the luxury of engaging a most expensive counsel. But, so far as the court fee is concerned it is not tailored to one's purse or pocket. It is a charge which is fixed by statute and by and large it works out to be very high. Apart from the principle that such a heavy court fee is contrary to the principles of justice, it has to be recognised that it is the duty of the State to provide a machinery for the administration of justice. But even if it is assumed that in a country like ours it would be incurring ,100 heavy a burden for the State particularly now that we are accustomed to paying the fees, I would suggest that something ought to be done. Firstly we should reduce the court fees and secondly we should enlarge what is known as the *in forma pauperis* proceedings so as to make justice available to those who cannot afford it because the cost of litigation is too high.

I shall come to it later. There is a specific provision in the Bill before this Committee in respect of *in forme pauperis* proceeding which I feel should be very substantially enlarged not only to provide relief in respect of court fees to a small class of people below a certain income bracket but also to provide them with legal costs that and other things.

To come back to the twin questions of cost and expedition, I would very briefly submit to this Committee that this Bill is not likely to achieve anything substantially. The object of the measure should be to reduce the costs substantially and to expedite proceed-

ings. These, I think, are to be borne in mind while you approach this particular amending Bill. But, we will not be able to go out of the orbit of high costs and delayed litigations. I would invite this Committee's attention now to two or three specific provisions of the Bill. One is, as I said, in respect of Section 80 of the Code of Civil Procedure the Committee would refer to clause 16 of the Bill which provides that Section. 80 of the principal Act. shall be omitted. Discussing this, the Law Commission of India, in its 27th Report has something to say. I fully agree that so far as present Section 80 of the Code of Civil Procedure is concerned there is no rationale for its continuance. It is, I think, quite correctly stated in the 27th Report of the Law Commission that it is unjust indeed. It is contrary to the spirit of the Constitution though not to its letter. I welcome the proposal to do away with Section 80 of the Code of Civil Procedure.

The Law Commission had recalled in its 27th Report that the evidence disclosed that in a large majority of cases the Government or the public officer made no use of the opportunity afforded by the section. In most cases, the notice given under Section 80 remained unanswered till the expiry of the period of 2 months provided by the section. It was clear that in a large number of cases, Government and public offices utilised this section merely to raise technical defences contending that no notice had been given or that the notice actually given did not comply with the requirements of the section. These technical defences appeared to have succeeded in a number of cases defeating the just claims of the citizens.

I would also invite the attention of this Committee to bottom portion of page 22 of the 27th Report of the Law Commission where it has cited a passage from the 14th Report. This, I think, is very relevant. It says:—

“Generally, the filing of suit is preceded by an advocate's or a soli-

citor's notice demanding redress, and these notices form the foundation of the suit which is filed subsequently."

"To rush to court without sending lawyer's notice in advance is to invite a disallowance by the court of the costs incurred in the suit."

"Costs are always in the discretion of the court and where a suit is instituted against the government without adequate notice, the courts will no doubt deal with the question of costs in a proper and just manner. If any provision regarding costs is to be made it should not only deprive the plaintiff of his costs but also provide for costs being paid to the Government irrespective of the result of the suit. In this connection we may invite attention to section 1(d) of the Public Authorities protection Act, 1893 which was in the following words:—

court, the plaintiff has not given the the defendant a sufficient opportunity of tendering amends before the commencement of the proceedings, the court should award costs to be taxed as between solicitor and client."

"(d) If in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the court may award to the defendant costs to be taxed as between solicitor and client."

So I submit that the provisions of clause 16 which seek to omit Section 80 are most welcome. But, I think the provision like the one referred to at page 23 of the Bill can be approved for this reason that if such a provision is included, it would be mandatory for the court and not merely discretionary to take into account the circumstances in which a suit is filed. In a sense, so far as ordinary notice is concerned section 80 is based on good principles. But it is wrong to make distinctions as between a citizen and citizen and as between a citizen and the State. But I think it is only fair that the law itself

at this stage should provide that where the plaintiff does not give the defendant sufficient opportunity of tendering amends before the commencement of the proceedings, the Court may award costs to the defendant, in this case the state. I submit that this principle should be applied not only to litigation as between a citizen and the State but also to the litigation as between a citizen and citizen, but, certainly this principle should be stated specifically, because experience shows that the question of allowing costs is not considered on an elaborate reasoning. Generally, a notion has come to be developed in this country, wrongly though, that costs are in the uncontrolled discretion of the court. Indeed this is not so. There are certain rules which regulate the discretion. That regulation of discretion has not always been adhered to, and, therefore, it might be appropriate for this committee to consider the inclusion of a provision that where the plaintiff does not give the defendant a sufficient opportunity of tendering amends before the commencement of the proceedings, the court should award costs to the defendant. That is one suggestion which I should like to make in respect of clause 16.

CHAIRMAN: Some of the lawyers have put before us the point of view that there are cases in which matters are compromised out of court, and therefore, they suggested that if we dispense with section 80 altogether then they will lose all chance of an amicable settlement out of court.

DR. L. M. SINGHVI: There are two main reasons of opposition to Section 80. One was, as I pointed out, the fact that the opportunity of making amends was seldom availed of by the State. The other is that it was unjust, discriminatory and inequitable to make this distinction when the State is a party to a litigation.

I submit that so far as the first ground of opposition is concerned, it points out not so much to the shortcoming of the provision contained in section 80 but the shortcoming on the

part of the administration. My own experience is that, by and large, notices under section 80 do go unheeded, and they come in course of time to be availed of by the administration only to raise some technical plea. This is most unfortunate. That was not the real purpose for which section 80 was brought into existence, and certainly this was not the proper kind of approach. The fact remains—and this is a fact on the basis of which legislation has to be framed, because legislation has to take into account certain existing facts—that the Government has generally availed themselves of technical pleas based on section 80 rather than availing themselves of utilizing the opportunity offered by a notice under section 80 to make amends in good time so as to remove the hardship and harrassment of litigation in respect of a citizen's claim and also to avoid prolonged litigation. Mr. Chairman, I may say that informally the Supreme Court has, in the course of arguments on many occasions made the observation that it is hardly fair and hardly proper for the State to come forward with technical pleas. Indeed, I might say here that the Supreme Court has found it necessary, therefore, to dilute the rigours of the requirements of section 80 which were imposed by the decision of the Privy Council. The Supreme Court has really departed from the trend of observations and dicta of the Privy Council and have relieved the rigours of the requirements of section 80. The Supreme Court have said that so far as the prayer for relief is concerned, we should try to read that liberally rather than strictly. The Privy Council had interpreted this some what differently.

There is however no way of compelling the State to do the needful in utilizing the time given by section 80 for settlement of claims. Had it been so, it would have been beneficial to the citizen because it would then have enabled the citizen to get redress of his grievance or to get his claim satisfied without the harrassment of going

to a court of law. Therefore, there was this beneficial aspect and section 80 has, unfortunately, come to be ignored by the administration. That is why a situation has arisen where repeated pleas based only on taking advantage of section 80 against the claims of citizens, and not really making use of it to provide relief to the citizen and to avoid litigation, are taken. Perhaps the State would realise that it has deprived itself of a valuable procedural opportunity to deal with the claim justly and expeditiously. Perhaps when section 80 is no more, the citizens would also realise that they have been deprived of a valuable remedy. But, unfortunately, there is no possibility of compelling the administration to do what section 80 had enabled them to do.

CHAIRMAN: Supposing we retain this clause 80 and modify it and say that instead of 2 months' notice, only one month's notice shall be enough and that no suit which is filed in a court will be dismissed on the grounds of technicalities.

DR. L. M. SINGHVI: I submit that this can be done. As a matter of fact, to a certain extent, as I pointed out, the Supreme Court has already done it by relieving the provisions of section 80 of its earlier rigours. After all, section 80 is couched in mandatory terms, and to a certain extent, the judiciary can only dilute it. They would not re-write the section; it has to be re-written by the Legislature.

SHRI SHRI CHAND GOYAL: I cannot understand how a citizen will be put to loss.

DR. L. M. SINGHVI: He is to suffer in this way. It can give him a further period of limitation. Once it is not there in the law, it will not give him the advantage so far as the limitation of the suit is concerned. He will have to go to the court. Of course, it is always open to him to give notice and to have his claim satisfied as in the case of dealing with another citizen.

**SHRI SYED AHMED:** Is it correct to say that to a certain extent the provisions of sec. 80 are beneficial but that they have been mostly misused by the Government?

**DR. L. M. SINGHVI:** That would broadly be the upshot of what I have said. I would put it differently: that Government have not availed themselves of the beneficial aspects of the provisions, that it can conceivably be beneficial both to the State and the citizen,

**SHRI SYED AHMED:** Mr. C. B. Agarwala, an ex-Judge of the Allahabad High Court appeared before us and he made a suggestion on the lines you have indicated, that section 80 can be retained but with some proviso, i.e. if the notice is found to be defective, the suit cannot be thrown out, but the plaintiff should be saddled with the cost of the defendant.

**DR. L. M. SINGHVI:** That would produce one difficulty. Unless the notice discloses, broadly speaking, the cause of action, it will not serve any useful purpose. If somebody were merely to write two lines to the Government: 'In respect of my contract, would you please pay', without showing how his claim arises, they would not be able to settle it. In any case, it is open to any litigant, any plaintiff, to give a notice. As a matter of fact by and large, claims in court are preceded by claims contained in notices given earlier. But if you were to remove the penal aspect of sec. 80 and retain it merely for the purpose of the beneficial aspect, it is possible to do so. It will however not be particularly beneficial if the notice is not sufficiently clear.

**SHRI SYED AHMED:** Is not what I have stated be a sufficient deterrent for the plaintiff to comply with the requirements of the notice?

**DR. L. M. SINGHVI:** That would be better rather than abandoning the principle, throwing the baby with the bathwater.

**SHRI SYED AHMED:** The Law Commission in their 27th Report have proceeded mostly on the ground of democracy. They say that because we have now become free and have a democratic Constitution—at that time we were slaves—section 80 may be dispensed with. But that is not the question.

**DR. L. M. SINGHVI:** They have largely relied on the democratic argument, but that argument does not survive if the penal sting is taken out of sec. 80.

**SHRI SYED AHMED:** I am of the opinion—and I think you will agree with me—that no government should become frequently a plaintiff. If Government frequently becomes a plaintiff, no government can be run efficiently. The difficulty is that in the present set-up, we have got such a complicated nature of litigation and so much of bureaucracy, which we have inherited from the Britishers, that it is not possible to prepare for the defence after examining the case within the time. If a certain contractor prefers a claim and says that his claim should be paid or if he files a suit, Government have to prepare the defence. This was the beneficial aspect. But this has been misused by Government by bringing in technical objections in the courts, not objection on the merits of the case.

So my point of view is that sec. 80 is beneficial even from the point of view of the administration. Therefore, it ought to be retained with a rider that nobody in government or on behalf of government should take the technical plea that because the notice is defective, or is short of the stipulated period, it should be thrown out. They should not be able to say that this line is not in the notice and therefore it should be thrown out. To be on the safe side, the other side gives a copy of the plaint beforehand to the Government as part of his notice. All these are technical objections. To get over this, Mr. Agarwala has made a suggestion which I have

placed before you, that if the notice is defective or falls short of the statutory period, the suit cannot be thrown out on technical grounds but the other side because he has not given all the particulars he should not be allowed the cost. That would be a sufficient deterrent.

DR. L. M. SINGHVI: I would make a three-fold proposal: (1) The penal consequences of any defect in a notice under sec. 80 should be removed from the provisions of sec. 80; (2) an express provision should be made either generally or at least in respect of the litigation between a citizen and the State that if the defendant is not given a definite and sufficient opportunity of tendering amends before the commencement of the proceedings, the court shall not award the costs to the plaintiff. This is a milder penalty, but an absolute ultimate penalty of non-suiting plaintiff. (3) The question of limitation should be considered by this Committee and an express provision made. The beneficial effect of notice vanishes if the man has to file a suit on the last day on which the normal period expires. The matter might be under consideration; he has been in correspondence on the subject. He has to rush to the court to file his suit. If that benefit is not given to him, his incentive to give notice, his interest in the proceedings consequent on notice disappears. Therefore, this has to be taken into account, that once a notice is given a specified period would be available, in addition to the normal period of limitation. So, these three aspects would have to be taken into account. Subject to this, the beneficial effects of Sec. 80 can be retained. Its penal and undesirable aspects should be removed and the citizen can then pursue this remedy as well. One can only hope that the administration would be more and more inclined to take advantage and avail itself to this particular opportunity for settlement that is given.

The hon. Member said that the State should not be too often a plaintiff. I would say it should not also be

too often a defendant as far as it can help it. If it can help in being a defendant by satisfying a just claim in good time, it should welcome the opportunity that arises as a result of the existence of a provision. The penal effect of it must be taken out and the State should no longer be permitted to press into service the provisions of Sec. 80 for defeating the just claims of citizens on technical and hyper technical pleas that the notice does not correspond to the claim to a degree of exactitude.

CHAIRMAN: It seems to me from a reading of paragraph 52 of the Commission's report on page 22 that the main reason for their recommending that Section 80 should be deleted is as they have stated:

"We have been unable to find a parallel provision in any other country in which the Anglo-Saxon system of laws prevails. We think, in a democratic country like ours there should, ordinarily, be no distinction of the kind envisaged in Section 80 between the citizen and the State."

So, that is the main reason.

DR. L. M. SINGHVI: That is so. I submit that at no time did the Law Commission really consider the matter from the point of view of the beneficial component of Section 80. As a matter of fact, from the point of view of the citizen as well as from the point of view of the State, to avoid the harassment and hardship of litigation for the citizen, this was not really considered at all by the Law Commission nor has it been considered in the various remarks and writings of scholar in the country from this point of view.

I submit that so far as the democratic objection to Section 80 is concerned, it is very valid. But it is valid only as long as the penal aspect of Section 80 is pressed into service. Once that sting is taken out of Section 80, it will not offend against any democratic principles.

**SHRI TENNETI VISWANATHAM :** Now, Sir, this section was introduced in the Civil Procedure Code for the convenience and benefit of the administration. You agree. Now, therefore, when this section was omitted in the present draft prepared by the Government, who should be the persons that should be worried by this omission? Is it the Government or somebody else? In this case the Government has agreed to omit this. The Government has said, 'We can do without this notice. We are sufficiently advanced now. We do not want two months notice. We can meet any challenge by any plaintiff at any time.' So they have agreed with the Law Commission and they said 'Drop it'. Why should others plead for the Government?

**DR. L. M. SINGHVI :** May I say that the Government has not said at any time that they are prepared or equipped to meet the challenge. As a matter of fact, what has happened is that the Government has realised that there is no real excuse because they have generally tended to raise it not for settling claims of citizens but they used it really to defeat the claims of citizens. It is not a plea of the Government that Section 80 should continue without its penal sting. The only part of Section 80 which may conceivably benefit the Government, if the Government are deemed to be hostile to the citizen, is the penal provision and I am strongly in favour of abolition of that part. Once that penal provision is taken away, its beneficial aspect remains. That beneficial aspect really is for the benefit of the citizen. But I must also add this that the past experience does not justify the expectation that the Government Departments would more expeditiously enough to take advantage of the beneficial aspects of Section 80 and settle the claims of citizens in order to avoid harassment and litigation. If it is so, our optimism and hope would have been misplaced. All that one can do is to hope for the best.

**SHRI B. N. ANTANI :** I cannot use as soft language as you might but the suggestion has come from the Ministry in the amending Bill that it should be omitted. Why should we, saviours of the citizen, plead for retaining that obnoxious section—I use the word 'obnoxious' very advisedly—because in my practice in a backward district, I have seen Government exploiting the section to defeat the ends of justice. I would cite an instance. In passport legislation and in foreigner's legislation, whenever some Indian nationals desired to avoid the declaratory suits for maintaining their Indian nationality, try in the amending Bill that it should see that these people without resorting to the court were deported to Pakistan. Why should we keep it when Government itself comes forward for its omission?

**DR. L. M. SINGHVI :** I share the feelings of the hon. Member. But I would like to say that one has to be more against the sin than the sinner. If Section 80 is expurgated of its obnoxious aspect—and I am all for expurgating it of its obnoxious aspect and not retaining it—once that is removed from Section 80, the penal consequences of Section 80 are wholly taken away and then I do not see what objection can there be merely to the continuance of Section 80. Our opposition is not really to Section 80 but to the obnoxious provisions of Section 80 which provided that if a notice in a particular form or in a particular manner was not given, then the claims of the citizens would be defeated. Once that obnoxious provision is taken out and it is retained only for the benefit of the citizen to enable him to extend the period of limitation and once again try and get relief and redress from the Government, I do not see what objection there can be. I fully share the feelings of the hon. Member but I submit that the opposition of the Committee should be to the obnoxious aspect of Section 80 and we should be able to separate the grain from the chaff.



**SHRI SHIVAJIRAO S. DESHMUKH:** Removal of Section 80 would create the difficulty of not being in a position to remove similar provisions in similar statutes in relation to statutory bodies or corporations. You will find similar provisions of notice in all other Acts. Only if it is removed from the parent Act, it will remain in the specialised Acts of specialised bodies and this Committee would be charged of removing it.

**CHAIRMAN:** But that difficulty will arise even if we alter it. Once we alter it and it is not altered in the local Acts, then the same difficulty will arise.

**SHRI SHIVAJIRAO S. DESHMUKH:** The anomaly would be that it would be abolished in the parent Act but the procedure will remain in the special Acts of the specialised bodies.

**CHAIRMAN:** It is possible.

**SHRI TENNETI VISWANATHAM:** In all the States you do not have the provision in respect of local authorities. In our State we can file the suit straightaway.

**CHAIRMAN:** Your State is more liberal.

**SHRI TENNETI VISHWANATHAM:** It is more advanced.

**DR. L. M. SINGHVI:** My submission is that the removal of its obnoxious aspects and the retention of its beneficial aspects would not be inconsistent with the objective of law reform that the country or this Committee has before it. It would not in any way bring by any backdoor that obnoxious aspect of Section 80. So far as the observation of Shri Deshmukh is concerned, I would submit that all that can be done by this Committee considering this particular Bill is to amend the provisions of the code of Civil Procedure as mentioned in this Bill. The hon'ble Member is quite right when he says there are several acts in which similar requirements of notice are contained. All that one can hope is that such provision

would also undergo similar legislative changes because the amendment and the radical alteration of Section 80, if not its omission altogether, would I think create a certain climate and a trend in the country. I might also think that if this happens and this should be a massive and important change. I think the judiciary would also be inclined to dilute the requirements of notice under other acts because C.P.C., is somehow a Central Act and it has always been regarded with greater consideration. Once from Section 80 its penal consequences are taken out, I am quite sure over a period of time the judiciary would do the rest.

Mr. Chairman, I will go on to clause 17 which seeks to substitute a new Section 82.

"Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, execution shall not be issued on the decree unless it remains unsatisfied for a period of three months computed from the date of the decree."

I submit, Mr. Chairman, this clause 17 which seeks to substitute new Section 82 also suffers from infirmities from which the existing Section 80 suffers. There is no reason to make this kind of distinction—a decree passed against a citizen and the decree passed against the Government.

Now I submit, Mr. Chairman, if the State wishes to satisfy the decree, the State can satisfy it rightaway. You might adopt other procedure rather than postponing for 3 months in the first instance and thereafter for an unspecified period at the discretion of the court.

Sub Clause 3, Section 82,—I think it is as a matter of fact far more destructive of the rule of law than even the existing Section 82. Section 82(3) says:—

82(3): "The court may, in its discretion, from time to time, enlarge the period specified in sub-section (1), even though the period so specified may have expired."

Mr. Chairman, I feel that so far as the amendment of Section 82 is concerned, it leaves a great deal to be desired and that this Committee in my respectful submission should give its anxious consideration to re-casting the provisions of Section 82. Far more obnoxious than the provisions of Section 80 are the provisions of Section 82 and particularly of clause 3 of amended Section 82 which gives an unlimited, uncanalised discretion to the Court. Mr. Chairman you may see this 'the court may in its discretion from time to time'. The court does not even have to make a proper order, reasoned order, to justify such enlargement from time to time of the period for the satisfaction of a decree.

The distinction that I make is, I think, valid. Here is a question of not merely a claim against the State but the decree against the State. Here is a clause which has been proved and accepted and yet that claim can be postponed in the first place automatically by 3 months. It is not such a long time but in the second instance to an indefinite period of time. This, I submit, Mr. Chairman, is wholly improper, illogical, irrational and it does not subserve any purpose at all.

CHAIRMAN: I find the Law Commission has not given any reasons for bringing forward.

DR. L. M. SINGHVI: I looked anxiously in the Report of the Law Commission to find anything to persuade me to see that there might be some reason and I see no reason to justify these provisions of Section 82 (3) as it exists and much worse still the provisions of Section 82. I think that is where the Committee should consider that such conferment of uncanalised jurisdiction is certainly not consistent and if Section 80 is omitted, Section 82 would be a lingering anomaly which this Committee should not permit.

SHRI TENNETI VISWANATHAM: May I ask you in what particular section where the suit is by or against the Government, by or against a Public Officer and then later it refers to decree only.

SHRI L. M. SINGHVI: That is because when the suit is filed by the public officer, then the decree is passed not against him personally but against the Government.

SHRI TENNETI VISWANATHAM: But where the Public Officer is a plaintiff.

DR. L. M. SINGHVI: I am saying about the decree passed against the Government or public officer.

SHRI TENNETI VISWANATHAM: We want to understand the language. What happens when the Government files the suit 'by or against' the Government?

SHRI SYED AHMED: In a suit by or against the Government, if a decree is against the Government.

DR. L. M. SINGHVI: The situation is that when suits are filed against the Government or public officers and decrees are passed, Section 82 would apply. Even in a suit which is filed by the Government, a decree may be passed against the Government.

Mr. Chairman, I would now make two-fold submission, so far as Clause 17 concerning the provisions of Section 82 is concerned. My first submission is that so far as the proposed Section 82 and Clause 3 is concerned, it is wholly unwarranted because Clause 3 gives to the court a discretion from time to time to enlarge the period specified in Sub-Section 1, and that that provision is so obnoxious that it should not be permitted to stay on the statute book. My second submission is that so far as the period which is allowed in the first instance to the state is concerned, it is possible to take two different views. One view is that some little time may be allowed to the Government to satisfy the

decree. Mr. Deshmukh, an Hon'ble Member of this Committee referred to provisions in respect of notice in other Acts, and that there should also be notice in respect of giving time to public authorities some times to satisfy a decree. My submission is that this is not necessary. If Section 82 is not necessary, then certainly this would be inconsistent. But if that is kept, then the period should be substantially reduced to a month at the most in order to allow the Government to satisfy the decree. That submission I am making in the alternative—if the first suggestion does not commend itself to the Committee. So far as Clause 13 is concerned, it is so obnoxious and it should not be allowed to stay on the Statute Book. So far as Clause 1 is concerned, either the Clause should go and no particular time should be allowed to the Government or if time is to be allowed to the Government, it should be one month at the most.

**SHRI SYED AHMED:** I want to know one thing. A decree is passed against a government official or government. He is given under Sub-Section 1 three months to pay up the amount. He does not pay up the amount but on the expiry of three months he appears before the court and asks that he be given another three months time. Is the court under the present Law not empowered to give time even if Sub-Section 3 is not there?

**DR. L. M. SINGHVI:** I think that is a very pertinent question. The obnoxious part in this provision is this that a special provision is being made in the first instance to allow the decree to remain suspended for three months automatically and in the second part to allow to make a special provision for decrees against a State and a court to make an order from time to time for an unlimited period of time. These two are obnoxious parts. If the court is satisfied, then time may be given to them to satisfy the decree on certain conditions because, you will appreciate Mr. Chairman, that time is not given as a matter of right or

course and it is always given on certain conditions. Therefore, this provision so far as Clause 3 is concerned, is wholly unwarranted and so far as Clause 1 is concerned, it effects an undue suspension of the decree. What should be done is to reduce the time even if the time is to be allowed.

**SHRI S. C. GAYAL:** Dr. Singhvi, you had suggested that there should be no distinction between a citizen and a State. If this facility of retaining Sub-Section 2 is there, then that will be placing the state at a higher level than the citizen. Why should we retain this Sub-Section 1 also because when a decree is passed against a citizen, it may be executed immediately after its passing. Why should State be given some time.

**DR. L. M. SANGHVI:** I have submitted as a matter of fact that it should not be given as a matter of course. Particularly if Section 89 is to be omitted, for a variety of reasons it would be inconsistent to retain a similar principle in another provision on the Statute Book. I have submitted various alternative proposals also.

**SHRI SYED AHMED:** Suppose a decree is passed against the Government of India. Before the amount is paid, all the formalities have to be gone through. The decree has been passed against the Union of India and reported to the Department or Ministry concerned.

Don't you think that it takes office time to move the files?

**DR. L. M. SINGHVI:** That is precisely the reason why on this I wish to join issue. Why should the law provide for that?

**SHRI SYED AHMED:** But time ought to be provided for the departments to complete formalities.

**DR. L. M. SINGHVI:** By law how else are you to compel the office to move the files faster than is done?

**SHRI SYED AHMED:** If a decree is passed, the property of the Government is attached and that too without giving an opportunity to them.

For this some time ought to be provided.

**DR. L. M. SINGHVI:** The Civil Procedure Code will take care of that and so far as attachment of government property is concerned, it is all regulated by other provisions.

**SHRI SYED AHMED:** The court cannot do that even if an application is made in regard to the attachment of the property.

**CHAIRMAN:** The difficulty arises only in cases where a decree is passed against a government servant. He will have to move the department stating that a decree has been passed against him. Then the government must find out a way out. That will take time. Can't we reduce this time?

**DR. L. M. SINGHVI:** How much time is to be kept?

**SHRI SYED AHMED:** It takes time. Don't you know how the files move in Government offices?

**DR. L. M. SINGHVI:** I do know how the government functions. But I would not make that as a reason for a dilatory or a discriminatory provision to be put on the statute book. That is not an ideal norm which the Legislators would accept.

**CHAIRMAN:** We might put down the period as two months which is smaller and reasonable within which government is appropriately informed of it.

**SHRI TENNETI VISWANATHAM:** Suppose if it is a decree for a specified purpose, then what is this three months' period for?

**DR. L. M. SINGHVI:** I have already submitted an alternative if my main suggestion is not acceptable. The Committee might determine in its own way the reasonableness of time and provide a certain time. So far as Clause 3 is concerned it is wholly unnecessary. So far as

clause 1 is concerned, it can be omitted but, if it is sought to be continued, then the period of time should be reduced since three months' time is too long a period. At the most it should be one month after the decision of the decree. My submission is for omission of this clause. If this does not commend itself to the Committee, I feel that the basic reason for that is that Government takes time. One would understand that the government takes time to a certain extent. But one would not understand in accepting that as the basis or standard or norm under the law. I know of cases where the Government have taken very much longer than 4, 5 or 10 years. I would expect that the Committee would come to its own conclusion as to the reasonableness of time. Unfortunately the tendency of the department is to delay things unduly thereby causing undue hardship to the person.

**SHRI TENNETI VISWANATHAM:** There was a case in the Hyderabad High Court for reinstatement of a government servant. The court's direction was that he should be reinstated. If there is a provision like this what is the point in having three or two or even one month? The whole thing is misconceived. How does it function?

**DR. L. M. SINGHVI:** So far as the decree especially with regard to the direction of the court is concerned, what happens is this. If it is a civil liability, the decree regarding a property becomes effective immediately. But there is always a certain time lag between the award of a decree and its execution. The point is whether you would permit the time lag to be so elongated as to be unfair and unreasonable?

**SHRI SHIVAJI RAO S. DESHMUKH:** Whatever may be the nature of the decree, if clause (3) is to be read with clause (1), then it will give almost an unlimited period to government because any officer

against whom the decree attaching anything is passed, he is bound to take the reasonable plea in the court to make the payment unless he has obtained the sanction of the higher authority. The higher authorities sometimes may take the plea that without the budget being passed, they won't be in a position to pay even the decretal amount. The point made by the witness is to be well taken note. This period has to be reduced if possible.

CHAIRMAN: We shall consider that when we take up clause by clause consideration of the Bill.

SHRI P. C. MITRA: Actually in every case it is not as if after the decree is passed immediately the execution is ordered. If the court finds that there is a reasonable ground then they would give time of one month or so. On the government side they can also put a reasonable argument that for this or that reason they want some more time. No court will refuse time on reasonable plea. Therefore I feel that there should be no provision for retention of this clause. The government also should not get such privilege.

CHAIRMAN: Anyway we can discuss this point when we go through the clause by clause consideration stage of the Bill. We know the position of the witness.

DR. L. M. SINGHVI: Mr. Chairman, I may submit that the court has the inherent jurisdiction to deal with a decree and its execution. Therefore, it is not really necessary to provide any special protection. As Shri Deshmukh pointed out, Sec. 82 might be taken as an indefinite charter for the prolongation of the period of execution of the decree. That is not necessary. Otherwise, of course, in the circumstances and the facts of the case, Government, just like any other litigant or any other party to

an execution proceeding, may come forward with an application. The court may or may not grant relief by this provision.

CHAIRMAN: It was agreed that this should not be done.

DR. L. M. SINGHVI: What is reasonable time is the question. This again is being taken care of partly by the inherent jurisdiction of the court. But once the decree is passed, it is for the court to give time for the execution of the decree. No difficulty would arise in this regard. If it is felt that some period should be allowed, I think a month is not a long period as such. There be a short period of time after a decree. The first period is the period of suspension. Clause 3 of course requires government to go to the court and then to seek further extension of time. But the first period of three months granted under clause (1) is a period of automatic suspension of the decree. If the Committee comes to the conclusion after its deliberations that it would still prefer to provide a short period of time to government during which it might execute the order of decree, two or three months' period is too long. It should be shortened to one month at the most.

CHAIRMAN: Kindly pass on to the other matters.

DR. SINGHVI: Another point I wanted to make is in respect of Clause 50, at page 46. I wish to make two-fold submission in respect of the entire concept of suits and appeals *in forma pauperis*. In a country like ours, in a sense, a very large number of people are, in effect, "paupers" as they are unable to prosecute litigation. I feel that both the Code of Civil Procedure and the Code of Criminal Procedure should make ample provisions to take care of the situation in which a large number of people in this country often find

themselves; namely, that they are unable to prosecute their legitimate causes for want of resources. The whole concept of *in forma pauperis*, I think, needs to be radically revised in this country. It has already been revised, Mr. Chairman, in every countries of the world. May I say, very briefly, that now the legal assistance and aid is considered a pre-requisite of the judicial process in a large number of countries of the world? Take for example the United States of America, which today is thought to be a very affluent country. Even the administration of that country has been led to wage a programme which is known as the 'War on Poverty Programme'; or, more officially and formally this is known as the Office of the Economic Opportunity. The Office of Economic Opportunity soon after it was established found that the war on poverty cannot be waged unless the common man in the country is armed with legal advice, with legal power and with legal capacity to prosecute his causes. Therefore, it established a Legal Services Division as a part of the Office of Economic Opportunity in the country and legal services are provided through the grants made from the public exchequer. Very large amounts of funds have been made available in the United States for providing legal services to the poor and to the indigent and to those who on their own cannot afford to prosecute their causes in courts of law. Unfortunately, while we have given ourselves the entire apparatus of the rule of law, where we have established fundamental freedoms, and rightly so, yet we have not thought of providing a modicum of legal service to the common citizen. I am not mentioning this as an emotional factor for consideration by this committee; I mention this as a very practical consideration because this committee is entrusted with the task of amending the Code of Civil Procedure. I submit that the Committee should seriously consider revising the whole

concept, the extent to which assistance should be available to a person who is indigent.

The whole point is this. Even in countries like Sweden and the U.S.A., with the highest standard of living and which have the highest *per capita* income, a great deal of stress is laid on the availability of assistance, both legal and otherwise, for those who cannot afford these things, who do not have the capacity to prosecute their just causes. The concept is there even in our Code of Civil Procedure, but that concept is a 19th Century concept. This is a concept of charity of doling out something to a poor man who has nothing of his own. This concept is wholly out of tune. I would respectfully submit that there is no use finding fault with the legal system. After all, this is a legal system which is based on the objective of providing a fair, equitable deal to the citizens. This system cannot succeed when a very large number of people in this country, a very large section of our population, is unable to articulate its grievances and carry them to the courts, when necessary. That, it appears to me, is wholly out of tune with the premises on which the whole programme of social transformation is based. This is a 19th century concept and should be revised.

Having said this, I would also like to mention that it is not merely the pauper to whom assistance should be given but it is the man who has not sufficient wherewithal, to whom assistance should be given. Not only should the word "pauper" go, but the concept behind it should also go. It should be the concept of one's capacity. If a litigant does not have the capacity to pay for litigation, it is the duty of the State to provide him with a measure of assistance; it is also the duty of the legal profession to provide him with a measure of assistance. I think it is necessary for us, particularly while considering amendment of

the Code of Civil Procedure, particularly in relation to cl. 50, to first jettison this word "pauper" and put in its place the concept of providing assistance to a person who does not have the capacity to pay for prosecuting his just cause. We have to bring into this question the twin tests of merit and need. Full or partial assistance should be available to him according to the need a subject to merit at least on the trial stage if not at the appellate stage also.

There I realise the argument would immediately be raised that it takes a tremendous amount of money to underwrite legal aid for the whole country. I do not think so. Already you are providing for waiving court fees under certain circumstances. What is needed is an enlargement of this concept a little to see that a person who is unable to prosecute his just cause is armed with a remedy—and this can arise in all kinds of fields, whether it is between tenants and landlords, or in relation to untouchability offences or anything else. The point is whether you are prepared to enable the disinherited, the dispossessed, the poor man, to prosecute remedies under the law I consider this to be an essential pre-condition to the success of the legal system. Therefore, cl. 50 should be wholly re-written first to redefine the concept on the basis of merit and need, then to waive the court fees and also provide for other expenditure incidental to litigation; including a provision for legal services on a certain basic scale of payments. I am sure the legal profession would be more than glad to join in the task of providing this essential social service. This is the time and place for this matter to be reviewed and considered from a very fundamental angle.

If any further assistance in this matter is needed, I would be prepared to send material to the Committee or submit a brief memorandum or even supply a draft, once the principles are

settled on the basis of the submissions I have already made. Once the concept has been changed, it would be easy to draft new and more progressive, more sensible and more just provisions which would be in keeping with the postulates of our legal system. A country like America has done it, It is not as if this is a kind of nationalisation of the legal profession. It is providing an essential legal service to meet out justice as between one citizen and another or as between a citizen and the State. In this view, cl. 50 should be recast lock, stock and barrel.

CHAIRMAN: What should be the criterion for the assistance?

DR. L. M. SINGHVI: I have mentioned two basic determinants, merit and then need.

First, there should be a *prima facie* inquiry into the merit of the cause. If it is frivolous, if it is wholly indefensible, he does not require assistance of the type I am speaking of. The second is need. What is his capacity? While some provision is being made now, where reference is made to the total assets being, worth Rs. 1,000 if I may say so, this is nothing but window-dressing. Assistance has always to be related to the kind of conditions in which we live. A total picture should be evolved, some kind of economic formula might be evolved and you should prescribe either a flat amount of money that he has or a combination of assets which are not disposable and income which he has. Let us say a man earns Rs. 100 per month and has assets worth Rs. 1000 in the form of a small hut. Merely because he has a hut and Rs. 1200 annual income, you throw him out. Do you think that this man does not deserve your consideration? Is he not entitled to justice? I think this has to be considered.

On the question of need, several factors would have to be laid down and an authority or procedure has

to be devised for determining questions of need. By and large, discretion should be left to the judges, or the legal profession and the judiciary, to consider this and evolve a criterion.

Any figure I might now suggest would be arbitrary—figures are always, in the ultimate analysis, arbitrary. But I would say that this is not a basis on which assistance should be refused.

There is no provision here in the Bill for assistance other than waiving of court fees. Much more assistance is required for prosecuting a cause. There is the expenditure of lawyer's fee, printing cost and other things. You cannot have democracy or the rule of law on the cheap. We have been trying to do that, but it is not possible. Unless you provide this basic service to the citizen, you cannot have a proper functioning of the rule of law.

**CHAIRMAN:** Would you suggest it is the duty of the State, as in criminal cases, murder cases, to undertake this at the cost of the State?

**DR. L. M. SINGHVI:** In capital sentence cases it is there. I may say that the Law Commission is now seriously considering that in the code of Criminal Procedure there should be a greater enlargement of the available legal services to the accused. At this stage, it is in the informal stage, they are considering that legal service should be available to the accused at much more than the capital sentence level. As a matter of fact, this is equally important in civil cases because there too the need for justice is equally fundamental.

**CHAIRMAN:** That depends on whether lawyers would agree to do it without charging any fee. If they are not, money has to come from somewhere. Would you say that it should be the duty of the State to do this?

**DR. L. M. SINGHVI:** I would make two submissions on this. It is the

duty of the State to provide these services. I think it is also the duty of the legal profession to contribute to these services in such measure as they can. Those who say that the legal profession should entirely take this responsibility on itself are, I think, a little unfair. Lawyers are citizens and pay taxes. It is for the State to provide the services. But that apart, I think the legal profession has a tradition and because they have certain privileges by virtue of belonging to a noble profession, they should also join in contributing to this service. These services should be provided jointly by the State and the legal profession:

May I also say that the state which makes a profit on the basis of heavy court fees is particularly obliged to render some of these services, at least to the extent of spending the money it takes on this account on these services?

**CHAIRMAN:** I do not know whether the State Governments would accept this fact that they are making money out of this administration.

**DR. L. M. SINGHVI:** This is the finding of the Law Commission and I think in most States it is possible to identify, if I may say so, the litigation surpluses. There are litigation surpluses which are identifiable.

**SHRI SHRI CHAND GOYAL:** I want to make one observation regarding providing legal aid in capital sentence cases. There, the position is that lawyers who have not got much work, who are new to Bar and who do not really possess the capacity to discharge their duties towards their clients, are entrusted with these cases. So long as the client does not get the lawyer of his own choice, no proper service is being rendered to him. What have you to say? When they are not forthcoming in criminal cases, do you expect that lawyers would be forthcoming to give free legal aid in civil cases?



DR. L. M. SINGHVI: I submit it is basically wrong to expect the legal profession to provide the services entirely without any charge—for two reasons. One is that the nexus of money is a regulator of standards. The client is entitled to expect a certain quality of services from his Counsel. If you put a novice in the profession without experience who might come forward to help him, he would need supervision. Of course, they will be learning their profession, but it will be at the cost of the client. The law students and new lawyers should be used under supervision? I submit that a reduced scale of compensation should be devised for the lawyers which should be paid at the direction of the court. I think it is only fair that a properly trained and experienced lawyer, not necessarily a man on the top of the legal profession, is provided in these cases.

CHAIRMAN: That is what I asked you. You want this service to be provided at Government expense?

DR. L. M. SINGHVI: Yes. That is what I submit, the legal profession by agreeing to a reduced scale of fees for them in these assisted or aided cases and the State by paying at least at this reduced scale of fees should join in providing legal assistance.

CHAIRMAN: How this thing should be arranged is another matter. The only question is whether in civil matters also you want the State to undertake to pay the lawyers a fee which it pays in murder cases.

DR. L. M. SINGHVI: No. I am speaking of cases where a person is able to show the merit of his cause and his incapacity to prosecute the case. The payments would be on a reduced scale.

CHAIRMAN: In the criminal side also it is not necessary that the Government should provide in every case. If the client himself is prepared to engage a lawyer, he can do so, and the question does not arise. There is one thing—legal aid to the poor is a State subject. Can it be provided

under this Code?

DR. L. M. SINGHVI: My submission is that this is a problem which has really caused considerable difficulty. When I was a member of Lok Sabha, I happened to raise this question several times on the floor of the House and naturally the Law Minister said that while he is prepared to help and is very much interested in helping, he cannot persuade the State Governments to come forward and join in this massive effort. It is true that legal aid is a State subject. If the Committee finds that it cannot make any provision in the Code of Civil Procedure, then, of course, it will have to bring the matter to the attention of the Lok Sabha and the Rajya Sabha and let the matter rest there. My submission is that while you are embarking on amending the Code of Civil Procedure and when you are raising the limit e.g., when you are changing the definition of 'pauper' and changing the limit, you are also to an extent interfering in a matter which is in the State List because court fees is a matter within the State subject. The matter is not free from doubt. I submit and I would suggest that the matter be examined from this point of view. If you like, I would examine it myself and let the Committee know. The Committee can also have it examined whether it is possible to make a provision in the Code of Civil Procedure. It seems to me that it is possible. It is germane to the amendment of Civil Procedure. If it is a part of the Civil Procedure, I do not think that the State can advance the plea that legal aid is a State subject. I think it can be done even in the present scheme of distribution of powers. But, if on an examination, it is found that it cannot be done by means of an amendment of the Civil Procedure Code, then the matter should be brought to the attention of the Parliament and this Committee would be doing a great service to the nation by bringing this matter to the attention of Parliament in case it is unable to recast the provision in respect of *in forma pauperis*

**CHAIRMAN:** I am looking at it not from that point of view but from the point of view of Sec. 50. In what way can we make it easier for the courts to decide that this can be unable to pay. What should be the criterion?

**DR. L. M. SINGHVI:** Merit of his case and his lack of capacity even by accepting one part of my submission, you would be helping those who do not have the capacity to prosecute their causes, namely by enlarging the area and the definition of the word 'pauper'—which word I do not like—enabling many more people to qualify for getting at least some help from the State. Even that would go a long way, I submit, Mr. Chairman, in relieving the rigours and incubus of the existing system.

**SHRI RANDHIR SINGH:** Mr. Singhvi has said about provision in the Civil Procedure Code. You see that in rural areas there is a lot of litigation, lot of revenue cases, litigation between landlord and tenant and ejections are there. People who are absolutely landless tenants and people who hardly make both ends meet are there.

**CHAIRMAN:** We are not talking about that.

**SHRI RANDHIR SINGH:** I am putting a question specifically about revenue cases. Canal cases are also there. There are also industrial disputes. They are also tried by courts. 70 per cent of these cases are on revenue side and canal side. Don't you think that a provision should be made that lawyers and Bar associations should come forward to render assistance in such cases? Can you give some concrete suggestions? Here what should be the standard laid down? You say it should be on the merits of the case. First an inquiry has to be made. In a country like ours where 85 per cent of the population consists of backward people and Harijans what concrete suggestions can you make? Would you kindly give us an idea of the standard which

should be adopted in the special conditions in India, specially in the rural areas? There are landless peasants, small peasants holding less than one hectare. Eighty per cent of the people own less than an hectare. Can you put forward some specific schemes which this committee could consider, not only for Civil cases but for cases of other denominations also?

**CHAIRMAN:** This matter is outside the scope of this Committee.

**CHAUDHURI RANDHIR SINGH:** In many cases the C.P.C. applies

**CHAIRMAN:** I don't deny. But I think it will be a little wrong for us to take any evidence on this point.

**CHAUDHURI RANDHIR SINGH:** I am talking about revenue courts. How can you say that it is irrelevant? If you go exactly by the C.P.C., you will get 5 per cent cases.

**CHAIRMAN:** Can we make any recommendation in this Bill about these cases?

As far as I understand, Dr. Singhvi says that if we fix the limit above 1000 to any figure, it will be arbitrary.

**CHAUDHURI RANDHIR SINGH:** With all respect, I am not convinced. I am sorry that you have not able to follow my question. There are revenue cases and there are canal cases also. They are also covered by the C.P.C. He is asking about civil matters. Revenue cases are not civil cases.

**CHAIRMAN:** Therefore, the Committee is not competent to decide.

**SHRI SHRI CHAND GOYAL:** Let us have Dr. Singhvi's views whether those cases can be helped.

**DR. SINGHVI:** All I would say, Mr. Chairman, is that to the extent the revenue cases and other cases are covered by the Civil Procedure Code, naturally any change you make here would cover it.

**CHAUDHURI RANDHIR SINGH:** I am talking about rural cases—land revenue cases—and these courts deal with canal water cases.

DR. SINGHVI: There is a very large chunk of litigation which will not be affected even by the change that you may make in the Civil Procedure Code. Unfortunately, as the position obtains today, any change in Clause 50 would not, as the hon. Member points out, necessarily cover all cases of revenue and other industrial disputes cases. There the need for legal aid is as greater as in the urban cases. But the point is that you can do it in two ways. If you want to make changes only in the Code of Civil Procedure, only in so far as Clause 50 goes, the scope would have to be limited, that is to say, in the first place, limited because somebody might raise the objection that legal aid is on the State List, and not on the Central List or Concurrent List. Secondly, it will be limited by the scope of the Act itself. The other supplementary as well as alternative way of doing it is that either this committee should recommend that so far as this particular chapter of the Code of Civil Procedure is concerned it should be taken out from here and an Act should be made by Parliament with the concurrence of the States, or by passing a resolution in the Council of States, because Mr. Chairman, then the problem that you pointed out earlier, would come up directly in the sense that nobody would say that legal aid is a State subject, and not a Central subject and the Parliament is not competent to enact legislation.

My submission is this that so far as the changes in this Code of Civil Procedure are concerned, they would create a climate. They may not help all those cases of which the hon. Member spoke and which are themselves extremely important because they really concern the people who need these services most. For them, I suppose, so far as these changes in the Civil Procedure are concerned, it would create a sort of climate for assisting them also and then, I think, a pressure would develop in the country which would also enable them to benefit. A beginning has to

be made somewhere. The point is to create a certain climate. That is my submission. But so far as the Code of Civil Procedure is concerned, its ambit would necessarily be limited.

CHAIRMAN: It is a little out of our jurisdiction to make this recommendation.

SHRI SHRI CHAND GOYAL: We want to understand the legal position. For instance, take revenue cases. Would the provisions of the amended C.P.C. govern those cases? We want to understand that.

DR. SINGHVI: That was pointed out by the hon. Member that to many of the revenue proceedings the provisions of the Code of Civil Procedure are made applicable. If they are made applicable, then, of course, it will apply in full. But if they are not made applicable then it will not apply. I do not know what the position in each State is.

CH. RANDHIR SINGH: With all humility, let me put what I feel, Sir, I am giving you my practical difficulties in villages. 90 per cent of the cases are in revenue courts. 95 per cent of the people are very poor peasants. You say that the benefits of this Committee should go to only 5 per cent. I want your assistance to find a *via media* as to how C.P.C. provisions may be made available to the poor people also. You know the subject. You tell us in what manner we can make recommendations. There is no use of making such recommendations to only 5 per cent of people.

CHAIRMAN: Move a resolution in the House.

CH. RANDHIR SINGH: Unfortunately you say that this is not the function of this Committee. But it is the function of this Committee.

DR. L. M. SINGHVI: My submission is, Mr. Chairman, that so far as Cl. 50 is concerned, this Committee has undoubted jurisdiction. So far as the other very large body of cases is concerned, I am suggesting that this Committee is entitled to draw the

attention of the House of Parliament to the need for providing full and comprehensive system of legal aid and advice. As a matter of fact it is contained in the Rules of procedure of Lok Sabha and I am sure they are similarly contained in Rajya Sabha Rules. The Committee is entitled to bring matters arising out of its work to the attention of the Parliament. That is what can be done so that a comprehensive legal aid system is evolved by the Government in consultation with the State Governments, by means of a special rule or otherwise. That can be done to cover the larger or which falls outside the ambit of the C.P.C. and which is also very important to cover.

CHAIRMAN: Personally I doubt if we can make such a suggestion. But we will examine.

DR. L. M. SINGHVI: There is the express provision in the Lok Sabha Rules of procedure and conduct of business that a Committee is entitled

to draw the attention of the House on any matter arising out of its work. And it is under that blanket provision that this Committee would be entitled to draw the attention.

CHAIRMAN: We will examine that point of view.

We have taken your valuable time. But all the same, as far as I am concerned, there are various matters upon which I have to take your opinion and views. I do not know if it will be possible to spare your time again.

DR. L. M. SINGHVI: Certainly, It will be my duty and I consider it a privilege to contribute in whatever humble way I can to the work of a Committee of Parliament. I am very grateful to you and the Members for having been so patient and for having given me the opportunity.

CHAIRMAN: I am obliged for saying that we need your help again. Thank you very much.

*(The witness withdrew)*

*Thursday, the 15th January, 1970, (at Calcutta)*

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                         |                          |
|-------------------------|--------------------------|
| 2. Dr. B. N. Antani     | 6. Shri Syed Ahmed       |
| 3. Shri Rattan Lal Jain | 7. Shri Purnanand Chetia |
| 4. Shri B. N. Mandal    | 8. Shri T. K. Patel      |
| 5. Shri Jagat Narain    | 9. Shri P. C. Mitra      |

*Lok Sabha*

- |                            |                                      |
|----------------------------|--------------------------------------|
| 10. Shri D. Balarama Raju  | 17. Shri Bhaljibhai Ravjibhai Parmar |
| 11. Shri Ram Krishan Gupta | 18. Shri Jharkhande Rai              |
| 12. Shri Heerji Bhai       | 19. Shrimati Savitri Shyam           |
| 13. Shri Kameshwar Singh   | 20. Shri P. N. Solanki               |
| 14. Shri Mahendra Majhi    | 21. Shri K. Bhubravelu               |
| 15. Shri B. P. Mandal      | 22. Pandit D. N. Tiwary              |
| 16. Shri Viswanatha Menon  |                                      |

MINISTRY OF LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri S. P. Ganguly, *Deputy Secretary.*

WITNESSES EXAMINED

*Representatives of the Incorporated Law Society, Calcutta.*

- (i) Shri R. C. Kar.
  - (ii) Shri P. K. Sen.
-

(The witness Shri R. C. Kar and Shri P. K. Sen were called in).

CHAIRMAN: We did not receive any comments from you beforehand. Therefore, I will request you, first of all, to give your general views about the amendments of the Civil Procedure. Please also let us know about the difficulties particularly felt by the members of the Bar and how they should be remedied.

SHRI SEN: We could not send comments because we did not get all these things earlier. However, we shall make our oral submission about the general theme of the amendment. It is necessary that there should be some improvements and we shall try to make some suggestions. I will put our suggestions section-wise as in the draft Bill. Here you have sought to make clause (17) of section 2. You will find there instead of the Indian Civil Service the All-India Service only has been substituted. My suggestion is the State Government Service be also included. Members of the State Government Service may also be included. We want to add that the State Government Service should be there.

CHAIRMAN: You mean to say there will be States also?

SHRI SEN: Apart from the IAS cadre, there are Government officers in every State. They have to be included. They cannot be included unless you put like that.

CHAIRMAN: And should be inserted there.

SHRI SEN: And/or should be inserted there.

Then kindly refer to section 8 of the Civil Procedure Code. In the proviso there are High Courts of Judicature Fort William, Madras and Bombay. Their names have been changed. So similar changes may be made.

Then, Sir, my suggestion is about section 7 of the Bill. In section 7 it has been proposed for section 25 of

the principal Act, the following section shall be substituted, namely:-Here this is a very salient provision and I am very happy, because of this. Nowadays Criminal Procedure Code has been amended. We sometimes feel difficulty. For instance, there are a number of cases in the High Court, Calcutta and for some cases there is no provision where it can be transferred. So it seems this provision has been omitted. There are centrally administered areas and they should also be included.

In India we have so many States and some Centrally administered areas. The Centrally administered areas should be also included within this.

Then in sub-section (4) the penalty seems to be too heavy. We suggest that it should be reduced from Rs.2000 to Rs. 1000. Let there be some compensation but it should not be as high as that.

CHAIRMAN: Do you say that the figure of Rs. 2000 is high?

SHRI SEN: Yes, Sir. After all, costs are not treated as penalty as we find in criminal cases, there should be some sort of compensation and let it be Rs. 1000.

CHAIRMAN: But the other party will be put to expenses which might be as high as Rs. 2000 and naturally that figure has been suggested.

SHRI SEN: I am sorry, Sir. I have overlooked the wording of the clause. The expression 'not exceeding' is there and so 'not exceeding Rs. 2000, is all right. No change is necessary.

Then, Sir, in section 35A (clause 8 of the Bill) you have proposed to amend section 35A and thereby you have sought to increase the penalty from Rs. 1000 to Rs. 2000. My submission is that let it remain, there is no need for any change.

CHAIRMAN: The change has been suggested because of the fact that the value of money has gone down and so

it has been thought proper to increase the figure from Rs. 1000 to Rs. 2000.

**SHRI SEN:** Any way, that is a minor matter, I do not want to take up your valuable time over this.

Then, Sir, I come to clause 13. In sub-clause (b) it is said that all questions relating to the delivery of possession of such property, etc. etc. Our submission that the words 'sale and' be added before the word 'delivery'.

Then, Sir, regarding clause 14, it refers to section 58 which speaks for detention in civil prison. Now, Sir, today in free India our liberty is much more valuable than it used to be considered before. In the Bill the decretal amount for six months' imprisonment has been raised from Rs. 50 to Rs. 200. The amount of Rs. 200 for six months' imprisonment seems to be too heavy. In our opinion the decretal amount for six months' imprisonment should not be less than Rs. 100, and so for the words "two hundred rupees", please put in "one thousand rupees".

**SHRI B. N. ANTANI:** May I know the justification of your suggestion?

**SHRI SEN:** Here the provision is that a man will be sent to jail for a decretal amount of Rs. 200. Sir, today our liberty is much more than it was before. The amount of Rs. 200 seems to be too heavy an amount of decree for a person to be sent to jail for six months. Therefore, for six months' imprisonment, let the decree be at least for Rs. 1000.

**SHRI R. L. JAIN:** You don't want to retain imprisonment?

**SHRI SEN:** Yes we want to retain it. I do not want to object to detention because there are provisos added to it so that a man, under the existing Act, can be sent to jail. But there are cases where a man has the means to pay and yet he will not pay.

**CHAIRMAN:** In the principal Act, the provision is that a person shall be

detained, where the decree is for Rs. 50 and it relates to 6 months' imprisonment. In the Bill the amount is being raised to Rs. 200.

**SHRI SEN:** My suggestion is that instead of Rs. 200 it should be Rs. 1000. For smaller periods, that is, for six weeks' imprisonment, the amount as in the Act is all right but for six months' imprisonment the decree should be at least of Rs. 1000. In any other case, even for Rs. 5 decree there may be imprisonment for 6 weeks. That is in sub-clause (b). That is not being altered. But there must not be imprisonment for 6 months if the decree is below Rs. 1,000.

We next come to clause 15. In the proviso the expression used is "entire portion and part of such portion" I have not been able to follow this proviso. I would like to put some other expression.

**CHAIRMAN:** It is liable to attachment. Where do you want the change to be made? Do you want that the entire portion should be changed?

**SHRI SEN:** It may be "entire attachable portion".

**CHAIRMAN:** The expression used is "the entire portion or any part of such portion which is liable to attachment". The words are there.

**SHRI SEN:** Now I come to clause 26. It relates to section 145. It speaks of enforcement of security. It is proposed here that for the words "has become liable as surety" the words "has furnished security", shall be substituted. That will create confusion. It is the party who furnishes security. Surety does not furnish any security. This suggested change is not proper. The old expression should not be changed. It should be retained.

Let us take up clause 34. Here Order IX is sought to be amended. I have nothing to say about what is stated in page 22. On top of page 23, rule 5 is sought to be amended. I

would like to add something here. This rule 5 of Order IX is very good no doubt for expedition of proceedings. But from my experience in the Original Side of the High Court I have found, sometimes, it works dangerously. In the Original Side service dates are not fixed as in subordinate courts. Sometimes it appears that Sheri has returned to the Registrar and three months have expired and a valuable suit is lost. I would, therefore, suggest that the expression "within the said period" should be omitted, so that court may have power in a fit case to do justice. As the rule stands now, the court is powerless because the court has no power to extend the time. Instead of three months if the period is for two months I have no grievance but let the court have some power to grant relief in fit cases even if the application is made after the period of the time limit. So far as the Original Side of the High Court at Calcutta is concerned hundreds of suits have been lost in this way. The Court says that it is powerless. In a subordinate court at a gap of one month date is fixed. Records are kept by the lawyers and the court but it is not so in the Original Side. Here once a suit is filed a writ is issued and it is sent to the Sheriff which is another department independent of the Registrar's office and it is not possible for the clients to have day to day information. My client may be bed-ridden and I cannot have any instruction from him. By the time the summons returns unserved and unless I cannot have any instruction from my client I cannot make any application. So the court becomes powerless in such cases. What I suggest is that some power must be given to courts to grant relief in a fit case.

**SHRI P. N. SOLANKI:** How to meet the obligation?

**SHRI SEN:** Let us use the expression as given in section 5. The court may for sufficient cause entertain the application after that period..

Now, Sir, I may come to page 48 of the Bill. Before clause 52 whereby Order 38 is sought to be amended I want to make some provision regarding Order 37. You will find that Order 37, as it stands today, is applicable to High Courts and specific courts but not to all courts. Let it apply to all courts. Why should there be distinction or discrimination. Let it be amended.

**MR. CHAIRMAN:** It is for the Government to decide. The Committee will deal only with such portions and sections as are being amended under the Bill.

**SHRI SEN:** Rule 1 of order 37 should be amended so that it applies to all courts. Let all courts decide such suits in a summary way. Why should there be distinction or discrimination between "A" court and a "B" court. A sub-ordinate judge has unlimited pecuniary jurisdiction. He decides all cases. So, why should there be any restriction.

Sir, let us go back to clause 21 at page 8. Here section 102 has been sought to be amended. In addition, Sir, we have a broad question before us and that is this. In cases of 20 thousand and above an appeal lies to the Supreme Court. In those cases what happens is that there are four appeals in between the first trial and the final appeal. In those cases where appeal lies generally to the Supreme Court let there be no second appeal at all. Our suggestion is that let there be two appeals in every case and not more than that. But in cases which are not to go to the Supreme Court let there be one trial and 2 appeals, value whereof is above 20 thousand a second appeal may be prohibited. Let there be one trial and 2 appeals, and not more than that, and section 102 may be suitably amended.

**CHAIRMAN:** You want to shut off second appeal—is that your intention?

**SHRI SEN:** In cases where ordinarily appeal lies to the Supreme



Court there is no need of second appeal to the High Court. This situation was not theretofore because the District Judges had limited power of hearing appeals and now in every State power is given to District Judges upto 50 thousand and naturally there will be a large number of cases where there must be 4 appeals unless second appeal is intended by amending sec. 102. Formerly there was no occasion for this because only the other day upto 5 thousand rupees the first appeal lay to the High Court. So, second appeal naturally came upto 5 thousand which has no chance of going to Supreme Court. But today everywhere the District Judges have been given power to hear appeals of larger amount and so let there be no second appeal. I have no more suggestion, Sir.

SHRI KAR: My friend has generally covered our points in this respect but I am concentrating on one point and that is clause 5 of the bill where it is intended to introduce sec. 21 regarding finality of a decision and it is a move in the right direction, but it is very limited in its operation because the section has drafted wants only a finality only when a suit has been disposed of and no attack be made on the ground as to the wrong place where the suit was decided. I want to say that apart from the question of objection as to the place of suing or the physical jurisdiction it should be more broad-based and the amendment should cover by deleting the words 'as to the place of suing and introducing or on any grounds whatsoever except when it is attacked on the ground that it is a nullity'. Sir, my object in stressing this point is this that a crop of legislation on many occasions come up on the grounds which generally attack a decree or jurisdiction of a court apart from the question of want of territorial jurisdiction like a Judge who has decided a suit where he has jurisdiction upto 10 thousand but he has disposed of a case of 12 thousand. So,

what I say is that where there is no inherent lack of jurisdiction in a court to decide a case but because of these technicalities that an attack becomes possible why are you introducing this amendment. You are restricting to a place of suing as being the only ground which can set at rest the disputes between the parties.

CHAIRMAN: In addition to place of suing you want on the ground of valuation?

SHRI KAR: Unless it is an inherent lack of jurisdiction which makes a decision of a court a nullity, makes all other decisions binding on the parties unless they are going up by way of appeal or revision because supposing today a decision has taken place on the basis of which decree I have purchased a property from you for a lakh of rupees but somebody comes and says that no, it was not good because of this, that and other. Decisions of court have generally divided the jurisdiction of courts in two ways—one is inherent lack of jurisdiction. If that is taken place of course a decision is a nullity and nobody can by even consent or concurrence or by even legislation that inherent lack of jurisdiction which renders a decision a nullity make it a good one. But when it is not an inherent lack of jurisdiction but want of jurisdiction for technicalities like what has been attacked here, I suggest and submit that you should take into consideration for the purpose of finality of litigation that such decision, if it is not that cannot be attacked on the ground of nullity it cannot be attacked at all. I am suggesting that the words 'second place of suing' should be substituted by the word, 'on any ground whatsoever except where it is attacked on the ground that it is a nullity.'

CHAIRMAN: I find that none of you have expressed anything about the omission of section 80? What are your views about that section?

SHRI SEN: Well, that is a move in the right direction.

CHAIRMAN: Then what are your views about the changes which are sought to be introduced in Section 115 i.e. Clause 23?

SHRI SEN: That is also a good move because our experiences tell us that at least three years' delay is made in the process of collecting records. So this provision is very suitable and it will expedite disposal of cases.

CHAIRMAN: Now, about Section 102 you have already expressed your views. Do you think that the suggested changes will generally bring about the desired aim i.e., will it reduce the cost of litigation or expedite the disposal of cases?

SHRI SEN: Yes, it will expedite.

SHRI KAR: It is rather a ticklish matter which cannot be tackled piecemeal and cannot be answered straightaway unless you tackle the evidence Act, unless you tackle the ancillary rules of procedure. Little purpose will be served by merely amending the Code of Civil Procedure Bill.

CHAIRMAN: If you are dissatisfied with any of the suggestions you should state that.

SHRI KAR: Well, our Society received the copy of the Bill only 4½ days back and that is the reason why we are unable to give our comments on this Bill. Earlier on several occasions we have sent our written comments to several committees but this time we could not do so as we received the copy of the Bill only 4½ days back.

CHAIRMAN: You can send your suggestions or written notes later on because we will visit different States of India to record the evidence of different witnesses. So I think there will be at least a month's time in between our sitting here at Calcutta and that at Delhi, and by that time you may send your suggestions to us.

SHRI KAR: In that case we shall send our written notes on this Bill.

SHRI SYED AHMED: I would like to deal with your first item that is regarding the adding of the word of 'or a State Service' after the words "An All-India Service," in Clause-3 of the Bill. You see there was the Indian Civil Service before the All India Service in the country. Commissions were also paid to all officers for performance of their duties? Do you think that there will be no commissions for the State Services if Clause 3 of the Bill stands as it is i.e., without the proposed amendment?

SHRI SEN: They do not come under that clause but they come under other clauses. In a service where the persons from the State Service come, the persons from an All India Service may also come. So this clause may be deleted if deemed necessary. Besides, you see that clause(h) reads, "every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty". So that is a general clause.

SHRI SYED AHMED: But I would like to point out that the Indian Civil Service men do not come under this clause (h). They were not paid from the exchequer of the Government. They were paid from London. So I think that you are perfectly right if you say that even if the words "All India Services" are excluded their character will not be affected and that calculation may be done in terms of the interpretation of clause(h). Besides, the words, "All India Service" or the State Service" are redundant. Am I correct?

SHRI SEN: Yes.

DR. B. N. ANTANI: What are your views on the proposal to omit Section 80?

SHRI SEN: Section 80 was introduced, as we find, with the object of

giving the government an opportunity to dispose of the matter within the time allowed. But to-day our experience is that the Government in any case is not able to do that. So this extra privilege should not be given to the government. Many valuable claims have been lost on this technical ground which is not fair in practice.

**CHAIRMAN:** That we can amend that no suit shall fall because of technical grounds. But it is within the experience of some of the lawyers that by giving a notice the purpose is served sometimes and the government does move and settle it out.

**MR. SEN:** That is not so. Section 80 is a special privilege to the Government. Before the suit is filed correspondence starts and months and even years expire. So the government has got ample scope to settle it out if they so like. Sixty days' notice is no good.

**CHAIRMAN:** If it is removed the parties will at once go to the court and file the suit.

**SHRI KAR:** But my point is that why this added privilege should be given to the government? This privilege is unwarranted in view of the activities of the government at this stage to-day.

**SHRI SEN:** Besides in a welfare state this should not be the practice. Another point Sir, under section 86 (A) of this Act a suit can be filed against a foreign government without any notice. So why our home government should be treated in a better way?

**DR. B. N. ANTANI:** Sometimes there is a tendency to exploit this liberty given to the government against the members of the public. They take advantage of that period and during that period they take some actions which are unwarranted by law.

**SHRI SEN:** Yes, Sir.

**DR. B. N. ANTANI:** So I think from the sense of morality and justice it is necessary to completely repeal it.

**SHRI SEN:** I support it.

श्री बी० एन० सेंडल: मैं हिन्दी में बोलूंगा और अगर हो सके तो हिन्दी में जवाब देगे तो अच्छा होगा। अभी आपने कहा कि कलाज 5 में यह दिया हुआ है :

No party to a suit shall be allowed to question the validity of a decree passed in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing."

आपने कहा कि प्लेस आफ दी सूट जो इसमें दिया गया है, यह न देकर यह होना चाहिये कि अगर डिग्री इनवेलिड हो, नोलिटी हो, तब तो आब्जेक्शन किया जा सकता है और नहीं तो किसी हालत में नहीं किया जा सकता है। अब मैं आपसे पूछना चाहता हू कि डिग्री नालिटी कब हाती है। नोलिटी तब होती है जब किसी केस में कोर्ट (court) आउट आफ ज्यूरिसडिक्शन हो जाती है अभी जो ला है उसके मुताबिक तीन तरह के ज्यूरिडिक्शन होते हैं। एक तो पिम्पूनरी ज्यूरिसडिक्शन, दूसरा टैरिटोरियल, ज्यूरिकडिक्शन और तीसरा टाइम ज्यूरिकडिक्शन होते हैं। ये तीन हमको याद हैं। अभी जो प्रेजेन्ट ला है उस ला के मुताबिक अगर टाइम के बाहर मुकदमा दायर हो जाय या जिस कोर्ट को जितना मालियत का मुकदमा ट्राइ करने का अधिकार होता है वह ज्यादा मालियत का मुकदमा किसी कम मालियत ज्यूरिसडिक्शन वाले काल (कोर्ट) में दाखिल हो जये तो, वैसे-वैसे की ट्राइ करने की कोई बात करता है तो वह आउट आफ ज्यूरिसडिक्शन माना जाता है। जिस कोर्ट को जिस मालियत हद तक ट्राइ करने का अधिकार होता है उसको उतने ज्यूरिसडिक्शन के अन्दर तय करना होता है। अगर ज्यूरिसडिक्शन के

बाहर कोई कोर्ट केस तय करता है तो फिर वह केस आउट आफ ज्यूरिसडिक्शन हो जायेगा और जो अब ला है उसके मुताबिक नलिटी डिग्री हो जायेगी। जो प्लेस आफ सुइंग इसमें कहा गया है कि उसके बारे में आब्जेक्शन नहीं किया जा सकता है, तो मैं आप से यह जानना चाहता हू कि आपके विचार इस बारे में क्या हैं।

श्री आर० सी० कार : हम आपका बतालायगा कि कोर्ट जो बात विचार करता है उसमें ज्यूरिसडिक्शन होता है और वह कंफर्म्ड वाई इन ऐक्ट आफ दी स्टैच्युट होता है। यह जो डिग्री गलत होती है, वह गलत डिग्री की दो कैटिगरी होती है। एक डिग्री तो इर्रैगुलैरिटीज की होती है दूसरी कैटिगरी वह होती है कि जो लिमिटेशन ज्यूरिसडिक्शन केसेज के होते हैं, वे लिमिटेशन होने से भी नलिटी नहीं होते और इर्रैगुलैरिटीज में आ जाते हैं। इट इज अलरेडी नलिटी जिसको हमने कहा है। रेन्ट ऐक्ट में सब जगह ऐसा होता है और उसके बारे में हमने बोला है कि नो कोर्ट शैल पास ए डिग्री ऐक्सेप्ट एक दो, तीन मामलों में। अगर इसके ऊपर भी कोर्ट दे देता है तो दैट इज एन इर्रैगुलैरिटी एण्ड नाट गोइंग टू दी रूट आफ दी ज्यूरिसडिक्शन। इसको इन्हैरेंट लैक आफ ज्यूरिसडिक्शन बोला जाता है। इस तरह के केसेज कोर्ट को सुनने की पावर नहीं होती है और इसमें नलिटी होती है। हमने बोला कि अगर कोर्ट के ज्यूरिसडिक्शन के बाहर कोई केस होता है तो वह वैलिड नहीं होगा। नाउ दि पोजिशन इज यू कैन इवन गो एण्ड फाइल अनदर सूट। इसलिये हम बोलता है कि जो 21 ए क्लॉज आ रहा है वह बहुत अच्छा है। हम बोलता है कि जो भी केस हो वह प्लेस आफ ज्यूरिसडिक्शन के अन्दर ही हो, उसके बाहर कोई केस नहीं होना चाहिये। आप बोला कि जब इन्हैरेंट लैक आफ ज्यूरिसडिक्शन होता है तब ही नलिटी होता है। लेकिन हम बोलता है कि प्लेस आफ ज्यूरिसडिक्शन के ही अन्दर केस को रखा जाना चाहिये। अगर इस तरह की बात होती

है तो तब ही नलिटी होती है और विच कैन बी ब्राट इन्टू दी कैटिगरी आफ इर्रैगुलैरिटीज। अगर इस तरह के मामले होते हैं तो सब तरह का दिक्कत आता है।

श्री बी० एन० मंडल : आपने इर्रैगुलैरिटीज के बारे में तो कहा लेकिन नलिटी के बारे में आपके क्या विचार है।

श्री आर० सी० कार : हम आपको एक ही बात बोला कि कोर्ट में जितना विचार हो, वहां जो मामला है, उसके ऊपर ही विचार होना चाहिये और उसके बाहर नहीं जाना चाहिये। इस बारे में सबको एक ही राय है कि इन्हैरेंट लैक आफ ज्यूरिसडिक्शन नहीं होना चाहिये एण्ड दैट इज वेंस्ड आन ट्रिमेंड्स ज्युडिशियल डिसीसन्ज।

श्री बी० एन० मंडल : टैरीटोरियल ज्यूरिसडिक्शन के बारे में आपकी क्या राय है?

श्री आर० सी० कार : जैसे वर्दवान का मामला आसनसोल कोर्ट में आ गया।

श्री बी० एन० मंडल : आपका मतलब यह है कि कोर्ट का जो मामला है वह दूसरे प्रान्त के कोर्ट में न जाया करे।

श्री आर० सी० कार : हम बोलता है कि इस तरह की इर्रैगुलैरिटीज होता है हर डिसीजन में और हर मामले में। एक दिल्ली अजमेर ऐक्ट है जिसमें बोला गया है कि नो कोर्ट शैल पास ऐनी डिग्री अनलैस इट इज सैटिस्फाइड। जब तक कोर्ट सैटिस्फाइड नहीं हो जाता है तब तक उसको कोई डिग्री पास नहीं करनी चाहिये।

SHRI KAR: The Supreme Court has held in two or three cases that this is nullity and the other is inherent lack of jurisdiction.

SHRI MANDAL: It is very difficult to distinguish what is nullity and what is irregularity.

SHRI KAR: Unless it is on the ground that there was inherent lack of jurisdiction of the court to try a case.

SHRI P. C. MITRA: Your idea is to broaden it? The inherent lack of

jurisdiction may be of different types and one is that the court had no jurisdiction or authority to pass a judgment on a particular case. So, what is the harm if it is kept as it is?

SHRI KAR: This is no restriction of appeal. This is a right to fresh suit. I want to say that you are limiting this finality only in one case, namely, if there is inherent lack of judgment.

SHRI MANDAL: Then there is the lack of territorial jurisdiction—nullity on that ground is there which renders the decree null and void.

SHRI KAR: Perhaps you are mistaking. I am supporting this amendment. I want to broaden it. My only point is whether it will be null and void on the ground of inherent lack of jurisdiction of the other ground.

SHRI P. C. MITRA: I may illustrate: a party wins a case in the lower court. The second party goes to appeal in the District Judge's court and then the first party again wins. Then the second party goes to Supreme Court and the second party gets the verdict. You know the expenses in the Supreme Court is very heavy. It is Rs. 20,000 and unless one is a very big man he won't go to the Supreme Court. It is always the solvent party that goes to the Supreme Court. I know about labour case where it is asked whether a man would be able to spend Rs. 20,000. If a man is solvent then only he can think of teaching the other party a lesson. Otherwise the weaker side always loses even though it has genuine claim and he is forced to come to terms for fear of heavy expenses.

SHRI MITRA: He has not the means to fight that out. So it will give benefit to the solvent party and the weaker party will lose.

SHRI SEN: Under our present system of law, however perfect it may be, it is always advantageous for a rich man and a poor man does not get any advantage of it. Rich and the poor are relative term. It is

difficult for a poor peasant in a village to go to a District Court or to a Supreme Court. It is too costly for a man to go to Supreme Court. Rich people always get the benefit. You cannot stop the rich man from going to the Supreme Court.

SHRI MITRA: It may be that his appeal may not be admitted as the Supreme Court admits only on ground of law.

SHRI SEN: Suppose there is a case of Rs. 21,000 in the Subordinate Judge's Court. A wins. B appeals to the District Court. B wins. Then A may go to Supreme Court as a matter of right. Let us say there is a second appeal. Then again A wins in the High Court and then B, as a matter of course, can go to Supreme Court. Sometimes plaintiff may be rich and sometimes a defendant may be rich.

SHRI MITRA: It may be that the same party cannot go on appeal twice.

SHRI SEN: We must finish by a rule of thumb. We ought to stop that at some stage. After all, a human justice is not heavenly justice.

SHRI R. L. JAIN: Supposing the decree is set aside. Then again, A goes to appeal.

SHRI SEN: Why should you give him a further right to go to the High Court and delay the matter further. For anything good you are to amend the Constitution. Otherwise you cannot do that.

CHAIRMAN: Gentlemen, thank you very much for taking the trouble of coming here and giving us your valuable suggestions. I do hope that it will be possible for you to let us have your views within fifteen days. You please send it on to the Rajya Sabha Secretariat.

SHRI SEN: We also thank you, for giving us an opportunity to speak here.

*(The witness then withdrew)*

*Friday, the 16th January, 1970 (at Calcutta)*

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                         |                          |
|-------------------------|--------------------------|
| 2. Dr. B. N. Antani     | 6. Shri Syed Ahmed       |
| 3. Shri Rattan Lal Jain | 7. Shri Purnanand Chetia |
| 4. Shri B. N. Mandal    | 8. Shri T. K. Patel      |
| 5. Shri Jagat Narain    | 9. Shri P. C. Mitra      |

*Lok Sabha*

- |   |                            |
|---|----------------------------|
| 10. Shri Ram Krishan Gupta              | 15. Shri Jharkhande Rai    |
| 11. Shri Heerji Bhai                    | 16. Shrimati Savitri Shyam |
| 12. Shri Mahendra Majhi                 | 17. Shri P. N. Solanki     |
| 13. Shri Viswanatha Menon               | 18. Shri K. Subravelu      |
| 14. Shri Bhaljibhai Ravjibhai<br>Parmar |                            |

MINISTRY of LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri S. P. Ganguly, *Deputy Secretary.*

WITNESS

Shri Nirmal Chandra Chakrabarty, *President of the Bar Association,  
High Court, Calcutta.*

---

(The witness Shri Nirmal Chandra Chakravarty, was called in.)

**CHAIRMAN:** Honourable members, we now begin our proceedings. The witness before us this evening is Mr. Nirmal Chandra Chakravarty. He is the President of the Bar Association of the Calcutta High Court.

Mr. Chakravarty, I am personally obliged to you as you have taken the trouble of accepting our invitation. We thought it would be best for us, when we have come on tour to record evidences, to meet some of the leading members of the Bar here in order to get their reaction on the Bill. I am very glad that you as the Head of the Bar Association have been good enough to come. I may also apologise to you for the delay because of want of quorum so that we could not begin early. Now, since we have no memorandum of yours before us on the Bill, I would like you to kindly state your views on the general aspects of the Bill and then the members will question you on the different clauses.

**SHRI CHAKRAVARTY:** First of all, what I have felt really is this. In my personal experience I have found that in some cases under Article 226 of the Constitution, implementation of the orders are needed. So far as our High Court is concerned, it has two types of cases—cases which are within the original jurisdiction of the High Court and cases which are outside the original side jurisdiction. Sometimes orders are passed which require implementation. So far as the Original Side is concerned, they have got their machinery. But so far as the Appellate Side is concerned, there is no machinery provided and I acted for about fourteen years as the Government Pleader in the Calcutta High Court—I have found very great difficulty sometimes when

orders under Article 226 require to be implemented that are passed by the High Court dealing with applications marked as "appellate Side". What is the machinery in respect of those cases which come from mofussil marked appellate side as stated above? There is no machinery provided. I think under section 36 C.P.C., which relates to execution, requires some amendment, for implementation of the order passed on an application under Article 226. In some cases implementation is not necessary; for those cases, the matter ends there. Suppose the court holds that the rule is discharged, then there is nothing to implement. But sometimes court passes an order and I have found that even compromises are allowed. How far that is legal or valid I do not know. In case any implementation of the order is necessary when the order relates to a territory outside the original jurisdiction of the Calcutta High Court. Some provision should be made. In my experience, I have found sometimes that orders made in cases under Article 226 are very difficult to be implemented when they relate to the appellate side as indicated above. Rules of the Calcutta High Court framed under Article 226 may be seen.

I would suggest that when such implementation is necessary Civil Procedure Code may provide that on an application made to the Constitution Bench of the High Court preferably to the judge who originally tried the case. On such application being filed the honourable judge may authorise any court in mofussil to implement the order. It would be safe if principal civil court of original jurisdiction in mofussil is allowed to implement the order.

**CHAIRMAN:** But does that require a change in the Civil Procedure Code

and if so, under which particular section?

**SHRI CHAKRAVARTY:** Yes, this can be done by amending section 36 C.P.C. or by making some provision in the Execution Chapter of C.P.C. I do not know where you would put it but this is a thing which I think requires very great attention. Otherwise relief given to the mofussil people in an Article 226 case relating to Appellate side almost go without effect. The executives who under the order are to pay the amount may not pay the amount. For payment of money there cannot be any contempt application. I have known of a case where a nurse was reinstated in service. She is occupying some quarters. She has been allowed to remain in that quarter but nothing has been done so far as the payment money is concerned. The result is that as the law stands now one has to start the execution proceedings in the High Court. I do not know under what provision it can be done in respect of appellate side matters. There may be precept sent to some court in the mofussil where the act is to be done. But who is to do it. I remember one case which is still pending—though it was filed sometime in 1960 possibly—as to how to implement the orders passed on “Appellate Side” application as stated in the Rules of procedure in Calcutta High Court Article 226 cases. This is a thing which I think ought to engage very serious attention of the Government.

**CHAIRMAN:** Have you seen the change which has been suggested in clause 9?

**SHRI CHAKRAVARTY:** I have seen, but it does not refer to Article 226 cases at all.

**CHAIRMAN:** No.

**SHRI CHAKRAVARTY:** I have looked to the Bill. Generally speaking, about the amendment of orders and rules. The Committee is aware as to how this Civil Procedure Code of 1908 came to be divided in the

Sections and Orders and Rules in Schedule I, Prior to the Code of 1908 there were only sections. Why then, I asked myself the question, this departure was made in the Code of 1908 to divide it into Sections and Schedule I which contains the Orders and the Rules? I would simply refer you to the Statement of Objects and Reasons of the Code of 1908. The report of the Select Committee appointed to consider the amendment of the Civil Procedure Code, which was a Committee consisting of eminent jurists like Sir Lawrence Jenkins, Elias Ismay and Dr. Rash Behari Ghosh and others. The reason is given in paragraph 1 of the report of the Committee appointed to consider the amendment of the Civil Procedure Code. The Code of Civil Procedure, 1882 was in existence for 25 years. Experience of these years had shown that the general lines on which it proceeds are sound. The matters in which it proved defective are, for the most part, matters of detail. They arise, it seems to us, mainly from the fact that it is impossible to frame a fixed, rigid Code in such a manner as would sufficiently meet the varying needs of the area so diversified as that to which the code applies. In our opinion the Select Committee says it is essential that there should be some machinery to enable the variations to be made, introduced in the Procedure to meet the different requirements of a different localities as well as to enable the defects to be remedied as they are discovered without resort to tardy process of legislation. We propose to make provision for this purpose by re-arrangement of the code. We recommend that matters of mere machinery would be relegated to rules capable of alteration by High Court subject to certain change. And those provisions should be retained in the body of the code in which some degree of permanence or uniformity is desirable.

So, I think that in a country, vast country, ranging from Cape Comorin to Chandigarh and from Bombay to



NEFA, you cannot prescribe rigid rules to be introduced by an authority, however gifted it might be. It should be left to the High Court of State under which those rules apply. I would refer to SS. 121 to 131 C.P.C.

**CHAIRMAN:** The difficulty will be, the rule will apply within the jurisdiction of the High Court, not outside.

**MR. CHAKRAVARTY:** These are matters of detail. The code is divided into certain sections. We come to the end of the sections. Then, begins the orders and the rules. Orders and the rules are the details of procedure. These details, details of procedure—there are different kinds of people with different habits, different regions—from Bombay to NEFA and from Cape Comorin to Chandigarh—habits of men are not same, and so, these details, to my mind, should be left, as was left by the framers of the 1908 Code, to the Rules Committees of the different High Courts. I have made a little note which I placed before you in this way which I am going to read, subject to any correction that may be made by the Committee or by the House.

Naturally, the question arises, why this division was made into Sections, Orders and Rules? The genesis of the framers of the code of 1908 was the plain fact that in a vast country like India,—Burma was then included in India—every detail of the procedure cannot be so prescribed which would be applicable to a country, as I have said, from Cape Comorin to Chandigarh and from Bombay to NEFA. The framers undoubtedly took into account the varying and different facts and circumstances and the complexities of life.

It is under the circumstances that the High Court was given the power to frame or to amend the rules which might be suited to different regions, now the States. In this view of the matter it seems to me to be highly ambitious to try to frame rules or to amend the rules at the instance of the Central legislature. I think this goes against the very fundamentals of

the law relating to Civil Procedure Code as understood by the framers of the Code of 1908.

**SHRI SYED AHMED:** These rules as enumerated in Schedule I have been copied from the rules of the Supreme Court. The rules of the Supreme Court in England came into force before the amendment of the C.P.C. in 1908. They wanted to model the entire Civil Procedure Code by following the rules of the Supreme Court. What I want to know is about the practice obtaining in the High Courts in England about the modification of the rules. Are the High Courts allowed to modify the rules or they have to be done by the Parliament?

**SHRI CHAKRAVARTY:** That is a thing on which I can not possibly enlighten you off-hand because after these rules were framed the High Court would change them if and when necessary to suit the conditions of the region. What I submit is that there may be directions given to different High Courts whether these rules require any change. They would consider the local condition, the life in that part of the country. They will then do the needful instead of Central Legislature amending the rules as proposed by this Bill.

**CHAIRMAN:** Can you offer any particular suggestion as to where changes are to be made, as to which sections should be amended?

**SHRI CHAKRAVARTY:** I am not on the sections, I am on the rules (Schedule I). What I am saying is that, as the Report of the Select Committee has said, they have divided the Civil Procedure Code into sections and they have put the details in Schedule I as orders and Rules. Take for instance, in the High Court at Calcutta a question arose after the decision on Sundardas in 41 Indian Appeals page 251 which said that order 21 rule 22 is mandatory. Unless you give notice after one year

the whole thing is without jurisdiction. Calcutta High Court made the rule as "Omission to issue notice where notice is required under sub-rule 1 or to record reasons of the case where the notice is dispensed with under sub-rule 2 shall not affect the jurisdiction of the court." The first case was held in 20 Calcutta 307: *Gopal vs. Gunamani* and this was reiterated by the Privy Council in 41 Indian Appeals 251 *Raghunath Das vs. Sundardas*. If there was no notice under rule 22 then the whole thing is without jurisdiction. You may take it that notice is without a condition precedent. Recently the Supreme Court held as to what is "jurisdiction". It is not simply territorial, pecuniary but when the law prescribed certain conditions precedent before the courts act sometimes they have been taken to be the conditions giving the jurisdiction. The Privy Council has held in *Sundardas vs. Raghunath Das* that unless order 21 rule 22 is made where application for execution is made more than one year after the date of the decree or against the legal representatives of the party to it, the court executing the decree shall issue notice to the person against whom the execution is applied requiring him to show cause for a date to be fixed as to why it should not be fixed. In 41 Indian Appeals it was held that unless you give notice everything is without jurisdiction. Then the Calcutta High Court says by its rule-making power (dated 1st February, 1933)—add following as sub-rule 3: "Omission to issue notice in a case where notice is required under sub-rule 1 or to record reasons in the case where a notice is dispensed with under sub-rule 2 shall not affect the jurisdiction of the court." which was also upheld by *Sundardas's* case. That is what I say about the "details". In some cases in some regions this is possible. Some High Courts have not done this. Calcutta High Court has done because it possibly took into consideration other factors also. The report of the Select Committee says that "We recommend that the matters of mere machinery

should be relegated to the rules capable of alterations by each High Court subject to certain changes." These are mentioned in Part X C.P.C. The Select Committee also said that those provisions also should be retained in the body of the Code in which some degree of permanence or uniformity is there. However gifted a Legislature or a certain committee might be, even Section 151 is a confession of the Legislature which they have not been able to provide for all contingencies. So far as a Code goes this should be followed. These are to meet the ends of justice and the ends of justice mean the ends of justice which are aimed at by the Codes, viz., the procedure. So, I would say that where rules are found to be insufficient reminders might be issued but that should be left at the discretion of the High Court.

So, I think these rules should be left as they are subject to alteration by the High Court under Chapter X C.P.C. I leave it to the wisdom of the legislature and the members of the Committee to consider my suggestion subject to alterations.

CHAIRMAN: You say what can be done to remedy the defects.

SHRI CHAKRAVARTY: About section 115 and section 80 of the Code. Section 115 of the Code has been in the Statute Book for more than half a century with some modifications. The decision of the Supreme Court—by Mahajan CJ—(A.I.R. 195 S.C. 23) the law has been settled, to them to try to change it will lead to unsettle the settled law and will lead to further accumulation of cases in different High Courts I suggest that the law should be left as it is.

CHAIRMAN: Your suggestion is that it should not be amended in any manner?

SHRI CHAKRAVARTY: Yes. If the members of the Committee look to section 115 they will find that it has

remained the same. "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity." Mahajan CJ in A.I.R. 1953 Sec. 23 pointed out that the third clause relates to procedure. If somebody wants to adduce certain evidence he is not allowed—his prayer is rejected. But the High Court thinks that that should have been granted. That will be acting irregularly in the exercise of jurisdiction. Suppose the court has jurisdiction and it says, look at the plaint filed by a very responsible man. It cannot be said false statements have been made in the plaint? So, outright the suit should be decreed without giving the defendant an opportunity to contest it. This will be acting illegally and with material irregularity. So, I think a section which has retained its present position for the last half a century and considering that S.C. has settled the law—if any change is made it will over-burden the accumulation in different High Courts.

CHAIRMAN: You think the law will be unsettled again?

SHRI CHAKRAVARTY: Yes. Then about sec. 47. The Supreme Court and the various High Courts have considered this section and I think the proposed change would only multiply litigations. Further, the proposed amendment wants to add sub-sec. (4) by which *res judicata* is to be made applicable to the proceedings in execution. That is the idea as I find. In 11 Indian Appeals, 37 it has been held that the principles of *res judicata* will apply to execution proceedings. Then why this amendment is sought to be made, I fail to see. So, I think this sub-section (4) should not be there

regard being had to the fact that principles of *res judicata* have been made applicable to the proceedings in execution u/s 47 of the Code.

CHAIRMAN: Your attention is drawn to clause 23, page 63 of the Bill regarding the changes which are being proposed in section 115.

SHRI CHAKRAVARTY: Clause 23(i) reads, "to limit the power of revision to such interlocutory orders which, if decided in favour of the petitioner would be sufficient for the final disposal of the suit or proceeding, or in which the order is likely to cause an irreparable injury;" Here again what is irreparable? You can use these words but the lawyers pun over the words. Now-a-days one does not know what would be irreparable. To my view it is a section which is often referred to everyday in every court.

CHAIRMAN: I would like to draw your attention to the 27th report of the Law Commission at page 23 paragraph 54 and 55. There it is stated as to why the change is being made. You may kindly read it and then tell us if you agree with that or not. There is particular reference to the High Courts as well as to the difference of opinion between various High Courts which have necessitated such a change.

SHRI CHAKRAVARTY: To that my answer is that a man does not cease to be a man by becoming a Judge.

CHAIRMAN: Kindly go through the report and you will find the reasons set out there.

SHRI CHAKRAVARTY: This report is of the year 1964.

CHAIRMAN: The Bill is based on the findings of this Committee.

SHRI CHAKRAVARTY: But it does not take into account the decisions of the Supreme Court to which I referred. That judgment was deli-

vered by Mahajan, CJ and in that case he held that clause (c) relates only to procedure and procedural defects. The first thing is that when a court exercises the jurisdiction which it has not or the court refuses to exercise the jurisdiction which it has. Now, clause (B) has been interpreted in various ways. It has been held by Mahajan CJ in A.I.R. 1953 S. C. 23 that it is the only law which the Supreme Court enunciates. It is one procedure. Somebody wants to have a witness. In the circumstances a witness is not available. The High Court thinks that evidence should have been taken, or the High Court thinks that in those cases this is a dilatory practice. Or suppose a party wants to adduce expert evidence. Somebody says "Well, this is in my handwriting". Others say that it is forged. How to get rid of that? How to decide that point? A party comes with an application—let an expert be appointed to examine the recorded handwriting and the impugned writing. The Court does not allow him this opportunity. It may think that the man has not been allowed to put this case. Therefore clause (c) is very cautiously worded. It does not use the word decide but uses the word "acting". Clause (c) says—if the Committee would mindfully look to it—the Court acted in the exercise of jurisdiction. So far as Amir Hosain' case and other cases are concerned they are of an earlier time. Now the Supreme Court has clarified the point, the decision to which I referred—I am giving from my little notes that I have—A.I.R. 1954 Supreme Court page 23. Here he says quoting the judgment, if I remember aright of Vivian Bose, J., while he was a Judge of the Nagpur High Court—he says that this relates to procedure. 'Acting' does not mean 'deciding'. If a procedure has been adopted by a Court which has dicentitled or put obstructions to a particular litigant to put his case before the Court or the High Court. The case to which the

President refers—you would kindly see—this case is not referred to at all. What is referred to is Amir Hosain's case. This is an old case. I think C.J. Mahajan in delivering the judgment in the particular case has so much clarified the point under section 115 that it does not require any further clarification, and if the courts do not follow that decision the reproach is not against the legislature and Mahajan C.J.'s interpretation of it but against that Judges who have an overdose of human kindness.

SHRI SYED AHMED: In law there is no human kindness.

SHRI N. C. CHAKRAVARTY: Somebody says that it is an overdose of human kindness. Others say that it is wisdom. After reading that judgment I stick to my point. In amending a code. First of all, I would ask myself the question when amendments are necessary. There are three occasions according to me when amendments are necessary. The Court interprets a certain law. The legislature thinks that it did not mean it to be so. The legislature intervenes and says that that is not what is meant. Amendment is necessary when some other law supervenes. Now a new Constitution has come in. In one of the sections I find 'Indian Civil Service' has been replaced by 'All India Services'. ICS men are not there. When you refer to ICS men you refer to people who are not existing at present. It says names those officers who are not doing the same work as I.C.S men did in the past, Look at XXVII (A) C.P.C. The Committee is aware that section 113 references are made under Article 228 from the subordinate court to the High Court when a question arises as to whether a certain law should be struck down or not, because the High Court is the only Court which should do it. So in a case where a certain law is according to lower court is *ultra vires* the subordinate court can refer it to High Court under Section 113. The subordinate judiciary is not given the

power to decide that point. It is the High Court which has got the power to say whether this is *ultra vires* or not. If you would kindly look on XXV-A, in any suit in which it appears to the court that any such question as is referred to in clause (1) of Art. 132 read with Art. 147 of the Constitution is involved, the court shall not proceed to determine that question until after notice has been given to the Attorney General for central law and to the Advocate General so far as the State Government is concerned. You find in section 113 a new proviso is added. It is stated "Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit." "Provided that the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative" Ful has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor and refer the same for the opinion of the High Court."

The first thing is when should the amendment be made. If the Supreme Court of India which is the highest court has decided a point of law and the legislature thinks that it did not mean what the Supreme Court has interpreted then it should be amended, or in cases where a subsequent law has come into force, or a constitution has come into force, just as I have said, some amendments are necessary to amend the Code of Procedure which has stood the best of time for more than half a century.

456 RS—12.

CHAIRMAN: May I refer you to the top of page 124 of the Law Report—sec. 115 clarifies the position regarding the revision of Order there is conflict of decision in respect of revision in cases where appeal lies.

SHRI CHAKRABARTI: To my mind it has not taken into consideration Mahajan C.J's judgment at all reported in A.I.R. 1953 S.C. 23

CHAIRMAN: I understand you to say that according to you since there has been judgment of the Supreme Court no further change is necessary. Now, let us proceed to other points of the Bill.

SHRI CHAKRABARTI: I am sorry I got this brochure very late and so I could not get as much time as I would desire—I must tell you this frankly. So, I have limited my observations to these points. I remember a case under the Land Development and Planning Act some sections were interpreted by the Chief Justice Chakraverti of the Calcutta High Court saying that it did not attract the Land Acquisition Act. So, the law was changed by the Bengal Legislature. Ten or nine years after Chief Justice Gajendragadkar observed that it did attract those sections and the amendment was unnecessary. I would refer you to A.I.R.

CHAIRMAN: Now, may I draw your attention to some of the provisions of the Bill, page 5 of the Bill, clause 13, sec. 47—changes suggested to sec. 47.

SHRI CHAKRABARTI: So far as it applies in relation to the procedures this is not necessary to my mind. I may refer to Ramkripal's case Mangal Prasad Vs. Dharami Kanta reported in 8 Calcutta 51 and also in the Privy Council—Ramkripal vs Rupkumari 11 Indian Appeals 37. It has been held that the principles of *res judicate* apply to proceedings.

SHRI AHMED: But it brings money.

**SHRI CHAKRAVARTY:** You may feel very nice about it but you distrust it.

**CHAIRMAN:** May I invite your attention to page 7 of the Bill—Clause 16, omission of Section 80?

**SHRI AHMED:** That is the clause on which we want to hear the opinion of the witness.

**SHRI CHAKRAVARTY:** My view on this is that the governmental machinery works slowly, sometimes stops, and nowadays there is a tendency not to take the responsibility but to shift it. The result is that the principles underlying under section 80 is almost forgotten, but that is no reason why the law should be amended or altered. If a particular litigation, is allowed to proceed it will involve lakhs and lakhs of rupees which the Govt. may have to spend over doubtful case which on scrutiny on a notice under S. 80 should have settled. I think S. 80 CP C. it ought to remain because it was introduced for a benevolent purpose. What the State spends, citizens have to pay by way of taxes. The private finance is expenditure according to income. The public finance is income according to expenditure. Section 80 was left there. Some Government Officers might think why there should be ruinous litigation. Dr. B. C. Roy, while he was the Chief Minister, intervened in many cases and compromised the matter. Where one enters into litigation and that is his free choice, but once you get into a litigation, you do not carry the litigation so much as litigation drags you. In the case of Government, they must be given power to think over the matter whether they should enter into that litigation.

**CHAIRMAN:** It is the experience of many others that the time is wasted unnecessarily.

**SHRI CHAKRAVARTY:** There are 60 days only. I can show you a High

Court cause list if you like. We are deciding cases of 1957.

**DR. ANTANI:** Have you visualised or have you come across cases where there have been deliberate attempts on the part of bureaucracy to deceive the ends of justice by delay and by creating so many handicaps during the interval so that people suffer from innumerable injustices? I come from my district which is now notorious to have given away scrap of my land to Pakistan, namely Kutch. Now there is a Foreigner's Act. Suits were filed, regular notices were given, no action was taken but during the interval there were manipulations when so many Indians have lost their nationality and have been deported to Pakistan. What is the remedy to avoid this?

**SHRI CHAKRAVARTY:** Look at the other part of it. Fault goes to the officers because the officials manipulate. You and I both will have to pay by way of tax what the Government pays. Suppose any number of suits are brought and they are decreed against the Government, all of us pay by way of taxes.

**SHRI R. L. JAIN:** Almost in all cases there is a prior correspondence.

**SHRI CHAKRAVARTY:** It is only a period of sixty days. That is what Section 80 says, I believe.

**DR. ANTANI:** These sixty days can do wonder.

**SHRI CHAKRAVARTY:** Your reproach is not against the law but reproach is against the others. You cannot, by law, make a man honest. My experience is—unless a man is honest, by law you cannot make him honest. In answer to that reproach what I say is this that the reproach is not against the law but against the persons who are in charge of administering the law.

**CHAIRMAN:** Mr. Chakravarty, the earlier Law Commission which was

appointed for the amendment of the Civil Procedure Code had taken certain figures from various courts in India and it was found that in very negligible cases the Government took care of the notice and therefore they thought it absolutely necessary.

**SHRI CHAKRAVARTY:** That is what I have stated that almost stereotyped answer is given—await the threatened action. Notice under section 80 is given, notice is put up before the Secretary, Secretary sends it sometimes to the Government Pleader and writes—await threatened action because nobody wants to take responsibility, everyone wants to shirk responsibility or let it be done by others. There must be some people who must take the responsibility as to what will be the cost of the Government in conducting the litigation. Suppose, the case which I had the honour of laying before you, namely, a case of specific performance of contract brought against Government, who would allow such suit to Government? Nobody. Everybody will allow things to drift till the case comes to the High Court and in the High Court there is accumulation. In one case I may tell you that the Bengal Government gave a lease of certain properties to the Howrah Municipality and there were certain conditions of the leasehold and there were forfeiture clauses. The Government filed a suit that the forfeiture clause has taken effect and indeed got a decree on the suit in respect of the land. In the meantime there were acquisitions by the railway of those land and after the decree it was impossible to think that the Howrah Municipality and its lessees got Rs. 16 lakhs as compensation and when the matter came to me—I was acting there having the incumbents of the Government Pleader—they took out the execution—I asked them how is this, please stop the execution. I said where is the appeal? I said that there was no proposal for appeal and I then filed an appeal. I think the case went on for one year seven months and a few days and the judges

said, oh, you government you need another Limitation Act. I lost the case here. I wanted to have leave for appeal to the Supreme Court. I lost it there also. But now thanks to the Supreme Court it has been admitted and I believe they will see this that for an irresponsible officer who does not send the proposal for appeal to the High Court the State cannot suffer the loss of 16 lakhs. Punish Government for keeping such irresponsible officers but why so? I say that when you are referring to the fact that that in many cases..

**CHAIRMAN:** We are yet to see what the Supreme Court will decide?

**SHRI CHAKRAVARTY:** I do not know. All that is uncertain and as I have said that the result of litigation is uncertain. Otherwise litigation cannot go on. No plaintiff would file a suit if he knew that in the Supreme Court he would lose it and no defendant would contest a suit if he knew that casting to mathematical horoscope about it that the plaintiff would get a decree in the Supreme Court. But yet we find everyday claims are filed. For what?—because—I won't say, gamble but certainly the chance of litigation.

**CHAIRMAN:** Now, Mr. Chakravarty, I will ask my friends to put to you questions if they have any.

**SHRI CHARAVARTY:** I must tell the Committee. first of all that I got this brochure very late and consistent with my other works that I have here, today I took adjournments of certain cases to come before this Committee because I thought that I ought to state what I think about it because this is a public duty and I shall invite any through everything which I would question from the members but with this limitation that I have not gone like to.

**SHRI SYED AHMED:** I want to draw your attention to one thing.

If an order is passed under article 226 of the Constitution. Has not the High Court got the power to transfer the case to the district court for Execution of its order?

**SHRI CHAKRAVARTY:** No because it relates to mofussil. So far as the original side is concerned, I must make a distinction.

**SHRI SYED AHMED:** What I have got in mind is that certain decrees are passed by the High Court and they relate to mofussil. They are transferred to the district judge's court for execution or even to lower courts.

**SHRI CHAKRAVARTY:** Suppose there are cases in the original side. They are transferred on application that the judgement debtor has not sufficient property here and so transfer this to the subordinate judges court at Alipur. There are such cases.

**SHRI SYED AHMED:** There are certain decrees that are passed by the High Court but since they cannot be executed there, they are transferred to the first-class judge of the Civil Court or to the district judge, whoever he may be, for the purpose of execution. Now, in such a case why do you find any difficulty about execution of the orders because section 36 applies equally to the decrees and orders? The rules governing the execution of the decree would equally apply to the execution of the orders. Suppose an order is transferred to some subordinate judge for the purpose of execution, is there anything in the Constitution whereby it cannot be executed by the High Court?

**SHRI CHAKRAVARTY:** I do not think that the orders mean there-orders under article 226. If they mean orders made on application under that article 226, then you will have to add an explanation to it saying there orders include orders made on application under there article.

**SHRI SYED AHMED:** An application under article 226 is, in matter of evidence, governed by the Indian Evidence Act. The Constitution nowhere

says that since the Evidence Act was passed in 1872 or the Civil Procedure Code was passed in 1908 they would not apply to the applications under article 226.

**SHRI CHAKRAVARTI:** To tell you the truth, when I thought in that way I also thought if the litigants who come from the mofussils are to go through the procedure of starting execution in High Court and take precepts from the High Court and take their dates in the mofussil, the game will not be worth the gamble.

**SHRI SYED AHMED:** But it is permissible.

**SHRI CHAKRAVARTY:** It is permissible.

**SHRI SYED AHMED:** Second point is about sections 122 and 129 of the Procedure Code, i.e., the amendment of the rules under the previous law the power of the High Court except the courts of the judicial commissioners, to amend the rule, Schedule I is absolute. Why should you say, there should be a special provision to change the entire ambit? I think you argued that the rule making power ought to be given to the High Court. But they are already there. That is my point.

**SHRI CHAKRAVARTI:** What I was saying is that this Bill should provide for power to be given to the High Court. What is the use of the Central Legislature taking it up?

**DR. B. N. ANTANI:** You said something about lack of jurisdiction for execution. What are the limits of inherent jurisdiction of the High Court or Supreme Court? Does not rule 151 of the Civil Procedure Code give that jurisdiction?

**SHRI CHAKRAVARTY:** So far code goes it is final. But as I have understood rule 151, you can implement it, but you cannot supplant it.

श्री बी० एन० अंतनी : मैं आपसे हिन्दी में सवाल पूछना चाहता हूँ। आपने शुरु में सिविल प्रोसीजर कोड के सम्बन्ध में, सैकशन



और आर्डर्स का जिक्र किया है और उन दोनों के फर्क को बतलाया है। इसके साथ ही साथ आपने यह भी सजेशन दिया है कि हाईकोर्ट इन रूल्स को अमेन्ड कर सकता है अगर वह करना चाहे। हाईकोर्ट लोकल कंडीशन्स और वेरिएशन्स को देखकर आर्डर-रूल्स को अमेन्ड कर सकता है। इसलिये सैन्ट्रल गवर्नमेंट की ओर से इस विधेयक के जरिये, आर्डर को संशोधित करना, इस तरह की कोशिश नहीं की जानी चाहिये।

साक्षी : यही हम सोच रहे हैं।

श्री बी० एन० मंडल : लेकिन एक बात हम यह कहना चाहते हैं कि हाईकोर्ट या कोई भी कोर्ट हो, जो भी इस तरह के रूल्स और लॉज को अमेन्ड करता है वह जनता की सुविधा के ख्याल से नहीं, बल्कि अपना या नौकरशाही की सुविधा के ख्याल से ही करता है कि जिससे जनता को बहुत कम फायदा होता है क्योंकि उनका दिमाग जनता से अलग रखकर कारण से कंजरवेटिव हो जाता है। इसके विपरीत, एक्जीक्यूटिव सरकार के ऊपर जनता का प्रेशर पड़ता रहता है। जो मामले कोर्ट में होते हैं उनमें बहुत दिले होती है। इस कारण से शासन चलाने वाली सरकार के ऊपर दबाव रहता है कि इस तरह के कोई उपाय होने चाहिये जिससे जनता को न्याय जल्दी और सस्ता मिल सके। तो मेरा कहना यह है कि जो एक्जीक्यूटिव सरकार होती है उसके ऊपर जनता का प्रेशर पड़ता है कि वह इस तरह का लेजिस्लेशन लाये जिससे जनता को कम खर्च पर और जल्दी न्याय मिल जाए। इसी बात को ध्यान में रखकर सरकार इस तरह के अमेन्डमेंट बिल को लाई है ताकि जनता को जल्दी और कम खर्च पर न्याय मिल सके।

दूसरी बात मैं यह कहना चाहता हूँ कि अब समय बदल रहा है और संसायटी भी बदल रही है तथा नये-नये डेवलपमेंट हो रहे हैं। जब समय बदलता है, परिस्थिति बदलती है तो उसका असर जनता के ऊपर पड़ता है

और फिर इस असर से जो नये फॅक्टर्स सामने आ रहे हैं उनको ही ध्यान में रखकर सरकार उस तरह का बिल लाना चाहती है ताकि लोगों की मांग पूरी हो, जो परेशानी है, वह दूर ही जाये।

आपने जो अभी कहा कि रूल्स और आर्डर्स को बदलने की जरूरत नहीं है क्योंकि हाईकोर्ट को पावर है कि वह खुद ही अमेन्डमेंट कर सकता है और उन्हें ठीक कर सकता है। लेकिन हमारा कहना है कि कोर्ट को जो आइडिया रहता है वह कंजरवेटिव ढंग की रहती है और गवर्नमेंट के ऊपर तरह तरह के प्रेशर पड़ते हैं और यही वजह है कि सिविल प्रोसीजर कोड में नये फॅक्टर्स इनकॉरपोरेट करने की जरूरत पड़ रही है और उनको गवर्नमेंट करना चाहती है अगर दफा 80 का संशोधन हाईकोर्ट या किसी कोर्ट पर छोड़ दिया जाता, तो हाईकोर्ट्स या कोर्ट्स कंजरवेटिव होने की वजह से कहते कि सेक्शन 80 शुड नाट बी डिलीटिड, लेकिन लॉ कमिशन ने संशोधन करने की रिपोर्ट दी है और उसका ख्याल है कि अब समय बदल गया है और सिविल प्रोसीजर कोड को तरमीम किया जाना चाहिये। सिविल प्रोसीजियर कोड 1908 में बना था जब कि यहां पर अंग्रेज राज्य करते थे और उस समय यह देश गुलाम था। लेकिन अब देश गुलाम नहीं है और हर आदमी मालिक है जब कि पहले शुरू में अंग्रेज इस देश के मालिक थे और यहां की जनता उनकी नौकर थी। अब परिस्थिति बदल गई है और आज जनता मालिक है और सरकार जो है वह जनता की नौकर है।

चेयरमैन : आप सवाल पूछिये।

SHRI CHAKRAVARTY: A lawyer is conservative of the past, liberal of the present and radical of the future. Lawyer does not take care of anybody—lawyer serves only one master, viz, justice, and if there is a choice between the Judge and the justice a lawyer, true to his salt, does not take a moment's time to make the choice

that I love justice more than anything else.

श्री बी० एन० मंडल : लेकिन बात यह होती है कि वहाँ पर बराबर किसी बात की रिपोर्ट किया जाता रहता है और इस तरह से उनके दिमाग में एक ट्रेन बा जाता है।

SHRI CHAKRAVARTY: It is like this. You have got a building today. Some engineer comes and tells you that your house is badly built and so you demolish it and I am giving you a plan and it will make it perfect. But when the building is raised you find thousands of defect peeping in and cropping out. So, tinkering is better than destroying.

श्री बी० एन० मंडल : लेकिन आप यह तो चाहते हैं कि इसमें रेडिकल चेंज होना चाहिये।

SHRI CHAKRAVARTY: There are new forces rising and old values are there. The solution lies in adjusting the two than wiping out the one or the other.

SHRI B. N. MANDAL: But adjustment means amendment of law.

CHAIRMAN: Thank you very much, Mr. Chakravarty. We have taken too much of your time. I and the members of the Committee are obliged to you for having taken the trouble.

(The witness then withdrew)

*Saturday, the 17th January, 1970 (at Calcutta)*

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

2. Dr. B. N. Antani

5. Shri Purnanand Chetia

3. Shri B. N. Mandal

6. Shri T. K. Patel

4. Shri Syed Ahmed

7. Shri P. C. Mitra

*Lok Sabha*

8. Shri Heerji Bhai

14. Shri S. B. Patil

9. Shri Kameshwar Singh

15. Shri Jhankhande Rai

10. Shri Brij Bhushan Lal

11. Shri Mahendra Majhi

16. Shri P. N. Solanki

12. Shri Viswanatha Menon

13. Shri Bhaljibhai Ravjibhai  
Parmar

17. Shri K. Subravelu

MINISTRY of LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri S. P. Ganguly, *Deputy Secretary.*

WITNESS EXAMINED

Shri Rajendra Chandra Mohanty, *Member Secretary of the Bar Council  
Orissa, Cuttack.*

---

*(The witness Shri Rajendra Chandra Mohanty was called in.)*

**CHAIRMAN:** Honourable members of the Committee, the witness Shri Rajendra Chandra Mahanty, Advocate of Orissa High Court representing the Bar Council of Orissa is before us this morning. The written comments of the Orissa Bar Council were sent to us much earlier and they have already been distributed to all of you, and I hope you have been able to go through these comments. I would like to thank Shri Mahanty for having taken the trouble of coming here from Orissa. Now, Shri Mahanty, you have given a detailed memorandum to us and I would like to know if you have anything more to add to it. If you have anything to add to your memorandum please let us know and if you do not want to add anything to your memorandum then the members can put questions to you on different matters.

**SHRI SYED AHMED:** Mr. Chairman, Sir, before the questions are put I would like to say that the memorandum submitted by the witnesses consists of two parts. In one part it deals with their comments as to why they do not support the provisions of the amending Bill and in the other part they have suggested some further amendments to Code of Civil Procedure which do not figure in the amending Bill. The Committee cannot consider any amendments which have already been included in the amending Bill. We cannot take into consideration so many items suggested by their Bar Council which are not proposed in the amending Bill.

**CHAIRMAN:** I think there is no harm if you want to ask any questions to the witness on these points and from his replies the Law Ministry can consider the proposals and put forward its own amendments. So there is no harm in considering these proposals also. Now, Shri Mahanty do

you like to add anything to this memorandum of yours.

**SHRI MAHANTY:** We have already submitted this after considering it in our meeting and I have nothing more to add to it.

**CHAIRMAN:** I find that you have not given any expression of your views about Section 80 which is going to be omitted by the amending Bill.

**SHRI MAHANTY:** So far I remember that we expressed the view that it should be omitted. In any case our opinion is that this Section 80 should be omitted.

**CHAIRMAN:** Then you want that this Section should be dropped.

**SHRI MAHANTY:** Yes, except that proviso that in case the government admits the plaintiff's claim after written statement is filed the court may not grant costs to the plaintiff.

**SHRI P. C. MITRA:** That is outside the scope of the Bill.

**SHRI AHMED:** I feel that a great injustice has been done to our Drafting Department. Kindly refer to paragraph 14 of your memorandum. It is stated: "In the copy of the Bill circulated, Order XLII, Rule 1 (j) is added, but there appears to be some drafting mistake and the real import is not very clear. The council suggests that if there is a mistake in the original itself, it may suitably be corrected."

**CHAIRMAN:** It refers to Order XLIII.

**SHRI AHMED:** Yes. So many orders from (a) to (j) have been made applicable under section 104. To them one more order has been added, and that is adumbrated in new Sub-Section (i)

**CHAIRMAN:** That is right.

**SHRI AHMED:** I find that the language of the amending Bill is this.

I will read out: "After clause (j) the following clause shall be inserted, namely:—(jj) an order rejecting an application made under sub-rule (1) of rule 105 of Order XXU, provided an order of the original application, that is to say, the application referred to in sub-rule (1) of rule 104 of that Order is appealable. I want to know if there is really any confusion. We are open to correction. If you will refer to Order XXI you will find that it contains only 103 rules. The amending bill has introduced Rules 104 and 105 as new rules to Order XXI. The new rule 105 is similar to some provisions of Order IX. Rule 104 speaks of what a Court is supposed to do in case there is default in appearance of one party or the other or of both. The application will later be dismissed or tried Ex-party. In both cases the new rule 105 provides for the restoration of the dismissed application or setting aside of Ex-party Order. An appeal against orders made in Section 105 is provided to modify order (jj) after clause (j) in Order XLIII. This is all very clear. I would like to know how this remark about the drafting Department of the Ministry of Law is justified.

SHRI MAHANTI: After hearing this I think the comment was not necessary.

CHAIRMAN: So, it was not justified?

SHRI MAHANTI: No, it was not justified.

SHRI AHMED: Thank you. I have got nothing more to ask.

SHRI PATIL: Mr. Mahanti, I would like to know from you one thing. It is stated in your memorandum "Order XXA—the assertion made in Rule 2 is vehemently opposed by this Council. There is already a scale of fees fixed by the various High Courts including Orissa High Court. (contd.)

May I know why your Bar Council is opposed to this provision regarding the lawyer's fees and the reasons therefor. You have opposed this Order XXA.

SHRI MAHANTI: So far as this is concerned, it is done by the High Court by rules. It fixes the scale of fees for the lawyers. So, we think there is no necessity for this provision. It is already there.

CHAIRMAN: I do not think this refers to fees of the lawyers but it refers to other miscellaneous expenditure incurred in the course of instituting a suit. It says (1) without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of—

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(f) in the cases of appeals, charges incurred by a party for obtaining any copies of judgements and decrees which are required to be filed along with the memorandum of appeal.

(2) The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.

So, this does not refer to the fees at all.

SHRI AHMED: We only want that a lawyer should give a certificate.

SHRI MAHANTI: In our place the fees are fixed on the valuation of the suit in the lower, appellate and High Courts.

CHAIRMAN: In page 2 of your memorandum you have stated "The assertions made in Rule 2 is vehemently opposed by this Council. There is already a scale of fees fixed by the various high Courts including Orissa High Court. The maximum fees that a lawyer is allowed is determined in the Rules. In this view of the matter the provision that is sought to be made is unwarranted."

What I am trying to point out is that no change is being made in respect to lawyers' fees but it is—only about miscellaneous expenditure which the parties have to incurred and which were not so far included under the rules. Now, among the other items in Order XXA do you find any other objectionable feature?

SHRI MAHANTI: No, this is all our say in the matter.

CHAIRMAN: Your Bar Council has been under the wrong impression that by this amendment a change has been made in the fees of the lawyers.

SHRI MAHANTI: The position is this: Before the institution of the suit some fees are paid which include fees of lawyers, other costs, cost of registering a letter etc.

CHAIRMAN: That is a very small thing. Now, according to the High Court rules no High Court will tax the costs unless a memorandum is filed by the Council.

SHRI MAHANTI: No, as I have disclosed earlier lawyers fees are taxed according to the valuation of the suit.

CHAIRMAN: Suppose according to the valuation of a suit the lawyer's fee is Rs. 1000 and in spite of that the

lawyer gives certificate for Rs. 500 then Rs. 500 will be taxed and not the rest. On the other hand the lawyer instead of giving a certificate of Rs. 1000 he files Rs. 1500 then only Rs. 1000 will be taxed and not the rest.

SHRI MAHANTI: At the time of the institution of the suit, the hearing fee is charged, the lawyer's fee is ed and we never file any certificate.

CHAIRMAN: What is the objection in filing a certificate? The Government would be able to know how much a lawyer is getting from the point of view of income tax. It is very good idea.

SHRI MAHANTI: That will create difficulty. Suppose the valuation is Rs. 5 and the case takes 10 days.

MR. CHAIRMAN: For that reason the lawyer cannot charge Rs. 1000.

SHRI MAHANTI: As I have already said the court passes an order that so much for lawyer, so much for other costs and if the lawyer charges a heavy amount, there will be disputes.

CHAIRMAN: There cannot be any disputes and the heavy amount cannot be taxed if the rules are adhered to.

SHRI MAHANTI: So we have now as it seems both things that the scale of fees prescribes also the certificate to be filed and the Court will grant which ever is less.

CHAIRMAN: It is unnecessary with the courts in fact, to fix any fees in each single case when the scale of fees is fixed there.

SHRI MAHANTI: What I was suggesting is if the scale of fees of lawyers be prescribed and courts will grant according to that, what is the necessity for the lawyers to make commitment and file a certificate.

CHAIRMAN: Why lawyers should object to that? If they receive Rs. 5 they will say that they have received rupees five and if they have received Rs. 5,000 they will say that they have received Rs. 5,000.

SHRI MAHANTI: They are some difficulties.

SHRI PATEL: Please refer to page No. 2, paragraph 5, section 115. The Council opposes the amendment to Section 115. The Proviso to sub-section (1) with the Explanation and sub-section (3) should not be introduced. The powers conferred under Section 115 are very narrow and they should not be further curtailed. This is all the more so as the lower Judiciary is gradually deteriorating and it will seriously work out injustice if the power of the High Court is further curtailed. I want to know from you by what measures the Judiciary can be improved and also I want to know what harm is there by amending the section.

SHRI MAHANTI: Our view is that Section 115 has given us a very narrow power, very small power, limited power to the High Court to interfere in cases which are not appealable.

CHAIRMAN: You think powers are not sufficient.

SHRI MAHANTI: It is not sufficient.

CHAIRMAN: What is the arrear in your High Court?

SHRI MAHANTI: I cannot say off-hand. One has to see that nothing is decided illegally. Our case is that section 115 should not be further curtailed.

SHRI PATEL: So what do you suggest?

SHRI MAHANTI: There should be orders which are not in accordance with the law.

CHAIRMAN: Look up page 8 of the amending Bill—Clause 23. Proviso is there. Provided that the High Court shall not, under this sub-section, vary or reverse any order made in the course of a suit or other proceeding, including an order deciding an issue, except where—

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

(b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made. So how do you think that any part of this (a) & (b) is objectionable?

SHRI MAHANTI: According to our view, there is no necessity for putting clause (a) and (b) because it further limits the power of the High Court under Section 115. It says the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding.

CHAIRMAN: To make the position clear, they have added this explanation and that is not with a view to restrict the power.

SHRI MAHANTY: If this proviso is not added, there will be no difficulty.

CHAIRMAN: Two sub-paragraphs are there in order to avoid complication so that unnecessarily things may not before the High Court.

SHRI MAHANTI: Already the powers of the Hon'ble High Court has been limited and again it should not be further narrowed down. Those things should not be there because different courts may interpret them in different ways. Our view is that it further narrows down the powers of the High Court under section 115.

CHAIRMAN: It narrows down in a certain sense certainly and that has been done to avoid unnecessary litigation.

SHRI MAHANTI: We have given our opinion in our memorandum. The Council opposes the amendment of section 115. The proviso to sub-section (1) with the explanation and sub-section (3) should not be introduced. The powers conferred under section 115 are very narrow and they should not be further curtailed. This is all

the more so as the lower judiciary is gradually deteriorating and it will seriously work out injustice if the power of the High Court is further curtailed.

**CHAIRMAN:** You kindly see page 63 of the Amending Bill. There you will find the reasons given for the change which has been proposed. Clause 23 is modifying section 115,— (1) to limit the power of revision to such interlocutory orders which, if decided in favour of the petitioner would be sufficient for the final disposal of the suit or proceeding, or in which the order is likely to cause an irreparable injury; and, (2) to clarify that the expression “case decided” used in the section includes an interlocutory order including an order deciding an issue. So these are the basis of the point of view which has prompted them to bring forward this amendment.

**SHRI MAHANTI:** We have given our view.

**CHAIRMAN:** You don't seem to be satisfied with the comments to this section. Very well. Will any other member like to ask any question?

**SHRI MITRA:** Why do you oppose the new provision under the new section 21A. The restriction here is only that persons cannot question the place where the suit has been filed after it has been decided. Why do you think that this should be opposed also?

**SHRI MAHANTI:** This is a serious matter which should be considered by you all. In big towns merchants are filing suits and getting decrees and starting execution cases in mofussil courts . . .

**CHAIRMAN:** Are notices not served on the other parties?

**SHRI MAHANTI:** Seldom notices are served. Though law presumes service of notices, the fact remains that notices are seldom served. If a merchant sues a man of Cuttack at Delhi for Rs. 500, he will have to go to Delhi ten times and spend Rs. 10,000 to conduct the case but a poor man

of Cuttack cannot do so. And if ultimately the merchant gets a decree in the suit at Delhi, the other party will have no opportunity to say that the Delhi Court has no jurisdiction. But at the present moment such poor people can have some relief because they can say that such and such court had no jurisdiction to try this case, it should be tried by the court at Calcutta or Cuttack. That is why our suggestion is that this line should not be blocked.

**SHRI MITRA:** But even now if for any suit decree is obtained, that ground still remains and on that ground appeal can be filed.

**SHRI MAHANTI:** No, if the original case is tried by Delhi Court, the defendant will have to file the appeal at Delhi only—I mean if that section is introduced, namely, section 21A. But now, he is filing a suit at Cuttack or Balasore or at Calcutta, saying that the Delhi court has no jurisdiction and that decrees passed by that court are illegal and not binding him. Let that line not be closed. This is a serious matter which should be considered by you all. If this line is closed no decree can be challenged and no man will be able to challenge any decree passed against him at Delhi or Amritsar. We know from our practical experience that a number of decrees are being sent from Calcutta, Delhi and other places for Rs. 500 or Rs. 700 and it is not possible for clients from mofussil to come to Calcutta to prefer an appeal because it is going to cost him ten times the amount of claim in the original suit. That is why for such relief let line remain opened.

**SHRI MITRA:** Secondly you also oppose the amendment of section 102 in which the amount for second appeal has been increased from Rs. 1000 to Rs. 3000. Now, you will realise that the Code of Civil Procedure was passed in 1898 and naturally the value of Rs. 1000 has increased to twenty times, if not more in the present time. How can you reasonably oppose increase to Rs. 3000?



**OFFICER OF THE MINISTRY:** Sir, in 1956 it was raised from 500 to Rs. 1000.

**SHRI MITRA:** Any way, that means that the increase was made about 13|14 years back. Within 13 or 14 years cent per cent increase has been there and, we think, it is a good suggestion to reduce the number of appeals. Why do you oppose this?

**SHRI MAHANTI:** Our view is that we should not only look to the number of appeals but also to the present position of judiciary. We should give the litigants another chance of appeal. Now, gradually judiciary is decaying. So, what is the wrong if another appeal is provided? If the sole intention is to reduce litigation, then, we may delete many of the provisions from the C.P.C. only saying "Rs. 10,000 is appealable and nothing else". But that should not be the only criterion.

**SHRI MITRA:** If the appeal is given only to District Judges, will you agree that only one appeal should lie up to Rs. 3,000?

**SHRI MAHANTI:** Subordinate Judges and District Judges, both of them have appellate powers.

**SHRI MITRA:** If in such cases only District Judges are allowed to hear appeal, will you accept this amendment? Your point was that standard of judges are decaying and so parties should be allowed a second appeal in lower courts. So, if the case is directly filed before District Judges second will not lie.

**SHRI MAHANTI:** Subordinate Judges will also consider the case and examine it and there will be some chance of correction, but to seal the fate altogether is not desirable.

**SHRI MITRA:** They may come for revision.

**SHRI MAHANTI:** The power of revision is very limited under section 115.

**SHRI MITRA:** You do oppose deletion of section 80, but do you agree to section 82, i.e., the provision that the

decree cannot be executed against the Government three months have expired and, actually, the court can further postpone the execution exemption of the decree against the Government time to time.

**SHRI MAHANTI:** We do not object to that.

**SHRI MITRA:** But you have not given any opinion on that section 82. The period can be enhanced or enlarged. Do you agree to this?

**SHRI MAHANTI:** So far as the period is concerned, there is nothing much to object to it because, at least, Government should be given some time. There are various officers. One of the officers may be committing some mistake and, discretion should also be left to the court to consider whether really the decree should be executed or not. So far as our objection to section 80 is concerned, there are some urgent cases mostly concerning acquisition of houses and delivery of possession. We are not able to file suits because notice under section 80 is necessary. And, therefore, we want that section 80 should be deleted. Let section 82 be there.

**SHRI MITRA:** There may be certain urgent cases where irreparable damage can be done to a property and there is no remedy—if in such cases a restriction is provided that a party can institute a case and temporary injunction can be obtained, will you accept that?

**SHRI MAHANTI:** No. There may be some other cases also, not only cases of taking delivery of possession.

**SHRI MITRA:** If in those cases injunction is allowed and we amend section 80, will you accept it?

**SHRI MAHANTI:** It will be difficult to work out the law.

**CHAIRMAN:** If you reduce the period from 60 days to 30 days, do you think it will not be helpful in any manner?

**SHRI MAHANTI:** It will not be helpful at all because in urgent cases we want immediate remedy.

**CHAIRMAN:** Supposing we place certain restrictions on that rule that where an urgent matter is involved and it is necessary that party has got to go to court this will not be necessary and, further say, a plaint will not be thrown out on the grounds of the technicalities, will that satisfy you? So many suits are dismissed because of technicalities of section 80 that this is not required, that this is not filed in time and so on. Supposing we do away with all these things, will that satisfy you?

**SHRI MAHANTI:** Government gets notice after the suit is filed. Let it be provided that the Government will not be liable to be saddle with costs if the court thinks that it has admitted the plaintiff's claim. Ordinarily before we go to court in money matters we give notice to the Government. Supposing after giving two or three notices Government does not hear and we are compelled to go to court, in that case we can prove the notices and the court will refuse the prayer of the defendant against the Government. Supposing without issuing any notice we straightaway go to court, the court will refuse to grant our prayer for interest and costs. There must be some demand.

**DR. ANTANI:** In para 16 of your memorandum you have suggested that in the proviso after clause 0 to section 51 of the Code, before the word "arrest" the words "arrest" and "may" may be added. What is the background of this suggestion?

**SHRI MAHANTI:** Please go through section 51 (Read). Some High Courts interpret that for the purpose of arresting you are not hit by this proviso but you are hit by this proviso for the purpose of detention only. So you may arrest a person

without complying with proviso. That is the background why the two words have been used in clause C—"arrest and detention in prison" but conspicuously the proviso omits the word "arrest" and inserts the word "detention" only. This is in conformity with clause C that we have suggested these two words. They say that if we want to simply arrest a person we are not hit by the proviso. We may arrest him . . .

**CHAIRMAN:** . . . Can you detain him without arrest?

**SHRI MAHANTI:** Then, why the Legislature has used the two words in clause C? That is why some High Courts interpret that you may arrest him but you cannot detain him.

**DR. ANTANI:** You have suggested the word "may". Why you are so soft? Why you do not suggest the word "shall" in place of "may"?

**SHRI MAHANTI:** This is because in no civilised country for money decree a man is put under arrest. It should be deleted in toto according to me. If there are properties of the judgement debtor get the dues from those properties but if he has no property why do you put him in jail? That is why we have suggested the word "may" instead of "shall".

**SHRI B. N. MANDAL.** एक अमेंडमेंट आया है, उसमें आन देखा होगा कि एक्सीक्यूशन प्रोसीडिंग्स के जो डिपॉजिट किसी बात में हो जाते हैं, उनको फाइनली मान लेने की बात की गयी है। तो क्या आप इस चीज को ठीक समझते हैं या एक्सीक्यूशन प्रोसीडिंग्स का फैसला ट्राइब्यूनल ही होना है उनको रेसज्यूटिवेटर स्टेट्स दिया जाय, वह अच्छा होगा।

**SHRI MAHANTI:** So far as decision made in execution proceedings are concerned those are not summary decisions—they are arrived at

by giving opportunity to parties appearing before the court and they are at liberty to adduce any evidence they like and there is no bar for the parties to adduce evidence there. So, why go on multiplying litigations? There must be some end to these things.

**SHRI B. N. MANDAL:** 115 में अमेंडमेंट का प्रस्ताव हुआ है और उसमें बहुत से क्लॉजेंज दिए हुए हैं। आपका कहना है कि इन सब क्लॉजेंज की जरूरत नहीं है। आपने कहा है कि क्लॉज 3 को रखा जाना चाहिये और जो नोट दिया हुआ है उसमें आप क्लॉज 4 को हटाना चाहते हैं। तो मैं उस बारे में आप से यह जानना चाहता हूँ कि आपकी 115 के संबंध में क्या राय है।

**SHRI MAHANTI:** We don't want amendment of 115, we want to keep it as it is.

**CHAIRMAN:** May I draw your attention to page 5 of the amending Bill clause 13 in respect of section 47 of the principal Act? I would like to know whether you agree with the amendment which has been proposed to be made.

**SHRI MAHANTI:** We want this amendment. As I have already explained, if the case is decided in the execution proceedings parties are not debarred from adducing any evidence they like and if this is decided finally, why again it will be challenged? Furthermore, section 47 is appealable. So, I agree with the change suggested.

**CHAIRMAN:** Kindly look at page 3 of the Bill, regarding the change suggested in clause 7 about transfer of suits by the Supreme Court. A suggestion has been made to us by the members of the Bar of Delhi High Court that we may add some additional words, namely, 'is or conducive to the convenience of the parties to the suit or at least the defendant and his witnesses'—that the Supreme Court should take into

consideration both these factors one mentioned in the clause as well as the words 'conducive to the convenience of the parties to the suit or at least the defendant and his witnesses'.

**SHRI MAHANTI:** That is a matter which should be decided by the court whether it is in the interest of justice. There can be no objection to such amendment.

**CHAIRMAN:** Do you think if these words are not added is it likely to cause any difficulty?

**SHRI MAHANTI:** I don't think there will be any difficulty. But in order to clarify the matter these words may be added.

**SHRI SYED AHMED:** I would like to know your opinion about one matter which is particularly troubling me and specially the Chairman that is with regard to the omission of Section 80. You know that it is suggested in the amending Bill that Section 80 should be deleted. Now, if Section 80 is deleted there would be difficulty for the Government. That is my view, of course. And if Section 80 is retained there is difficulty for the litigants. Do you think that it would serve the interest of the public if no notice is required in connection with the suits falling under the purview of the Specific Relief Act i.e., if such suits are allowed to be filed without notice, and if the Government concedes the claim in the W.S. but no cost should be awarded to the plaintiff?

**SHRI MAHANTI:** There will be difficulty also in other matters.

**SHRI SYED AHMED:** My question is that would it serve the purpose of both the government and litigants?

**SHRI MAHANTI:** My reply is that Section 80 should be deleted. But if the government as litigant wants any special claim or special

concession that can be given by providing that only the costs will not be awarded to the successful party.

**SHRI SYED AHMED:** It is not a question of any special concession or to the government. It is ultimately the public interest which is concerned and in the public interest the government should be given an opportunity not to waste money over useless and unnecessary litigations.

In any other case the cash will always follow the Event.

**SHRI MAHANTI:** No always.

**SHRI SYED AHMED:** But of the cost will have to be given because the rule is that the cost will follow the events. Besides, an order of costs is an appealable order.

**SHRI MAHANTI:** It is only the cost which is concerned. So it should not be left to the discretion of the Court as to whether cost should or should not be awarded. The best thing would be to delete this.

**SHRI SYED AHMED:** Even it is left to the Court it is a dangerous proposition.

**SHRI MAHANTI:** But it will be still more dangerous if you put some limitations to Section 80—so far as your suggestion of cases falling under the Specific Relief Act are concerned there will be difficulties in future. Why the public money should be wasted in frivolous cases?

**CHAIRMAN:** Many lawyers claim that at times the cases are settled amicably outside before filing of the suit. Therefore they say that this section should be retained.

**SHRI MAHANTI:** But it is our experience that never a litigant goes to file a suit against the government without giving prior notice etc. etc.

Unless it is of an urgent nature. There may be very few cases of the type which you have mentioned, i.e., those may be amicably settled. But in urgent cases one may go to the court without notice and somehow may get an order or the case is dismissed ultimately. But that is not the only reason why Section 80 should be totally deleted. There are other reasons too. The only thing is cost and nothing else. Then why for cost, allow it to be interpreted in different ways by different courts. It should be totally deleted.

**SHRI PATIL:** I want to know whether the present judiciary system is up to the mark or not. If not, what are the reasons and whether the proposed amendments to this Bill are sufficient to lower the lower judicial system. If not, what are your suggestions?

**SHRI MAHANTI:** These amendments have nothing to do with correcting the judiciary. Whatever may be the law, the judiciary may be corrupt. To correct the judiciary there are other methods. It is not possible to change the judiciary or correct the judiciary by amending the Civil Procedure Code. The only thing will be to have some strict vigilance over their work—the Supreme Court having vigilance over the High Courts, the High Courts having vigilance over District Courts, and District Courts having vigilance over lower courts, and that should be strict. If this is done, there may be some change. Nowadays, supervision is gradually decreasing. That is one reason. The main reason is economic depression. The living index is growing. A Munsif with a pay of Rs. 200 to Rs. 300 is required to wear on suits. For a man to wear a suit and to rear his children in Calcutta or Cuttack how much does it cost? These officers are expected to decide suits up to Rs. 4,000. We must not expect these things from them. We must look to both sides.

Of course, in spite of all this, I must say that there are honest officers, but we should not expect honesty by pinning a man under these circumstances. The environment must be congenial, and the other thing is that in the present day we find political interference, sectarian view and so many things in the matter of opportunity. So, this difficulty to get justice through lower courts. To avoid delay, that should be done. Sections 58, 63, 103, 100 should be deleted and the scope of section 47 should be enlarged. Second appeal may be provided for.

**श्री बी०एन० मंडल :** एक बात विटनेस से यह भी पूछी जानी चाहिये क्योंकि कुछ विटनेसों ने यह राय दी है कि जहाँ तक आर्डर और रूल्स का सम्बन्ध है उनको अमेन्ड नहीं किया जाना चाहिये क्योंकि हाई कोर्टों को इस सम्बन्ध में पावर है कि वे आर्डर और रूल्स को परिवर्तन कर सकते हैं। तो मैं यह जानना चाहता हूँ कि विटनेस के इस सम्बन्ध में क्या विचार हैं ।

इसके साथ ही साथ मैं यह भी कहना चाहता हूँ कि उन्होंने अपने जो यहाँ पर विचार रखे हैं और जिस ढंग से अपने सजेशन दिये हैं उनसे मैं बहुत इम्प्रेस हुआ हूँ। उनके विचारों को सुनने के बाद मालूम होता है कि उन्हें गरीब जनता की परेशानी का अनुभव है और वे उनकी तकलीफ का ख्याल रखते हैं ।

**SHRI MAHANTI:** If I have understood the Hon'ble member right,

perhaps it is meant that if different High Courts are empowered to amend the schedule of the Civil Procedure Code, what is the necessity of the Central Government amending the Bill. I say that it will be a model for others to follow. Further if you want to delete a particular rule or add one, that will not be possible unless the High Court agree and the Rules Committee agrees.

**SHRI MANDAL:** Yes, that is so. Common people, and from them all the suggestions have come.

**CHAIRMAN:** Now, Mr. Mahanti you have read the object of this amendment and you have made your observation on it. Now do you think this Bill will be able to shorten the time of litigation and minimise the expenditure in the law courts?

**SHRI MAHANTI:** Yes, Sir. It will have some effect in shortening the period of litigation and shortening or decreasing the costs in courts.

**CHAIRMAN:** That is all, Mr. Mahanti. I thank you very much that you have been able to come from such a distant place and give your own opinion and the opinion of your Bar Council.

**SHRI MAHANTI:** I must apologise to you, Sir, and to the Committee for being late by 10 minutes because of the traffic jam.

**CHAIRMAN:** That is nothing. So, thanks very much.

*(The witness then withdrew.)*

*Monday, the 19th January, 1970 (at Calcutta)*

PRESENT

1. Pandit Sham Sunder Narain Tankha — *Chairman*

MEMBERS

*Rajya Sabha*

- |                         |                          |
|-------------------------|--------------------------|
| 2. Dr. B. N. Antani     | 6. Shri Syed Ahmed       |
| 3. Shri Rattan Lal Jain | 7. Shri Purnanand Chetia |
| 4. Shri B. N. Mandal    | 8. Shri T. K. Patel      |
| 5. Shri Jagat Narain    | 9. Shri P. C. Mitra      |

*Lok Sabha*

- |                            |                                      |
|----------------------------|--------------------------------------|
| 10. Shri Shri Chand Goyal  | 17. Shri Bhaljibhai Ravjibhai Parmar |
| 11. Shri Ram Krishan Gupta | 18. Shri S. B. Patil                 |
| 12. Shri Heerji Bhai       | 19. Shri Jharkhande Rai              |
| 13. Shri K. Lakkappa       | 20. Shri P. N. Solanki               |
| 14. Shri Mahendra Majhi    | 21. Shri K. Subravelu                |
| 15. Shri B. P. Mandal      | 22. Shri Brij Bhushan Lal            |
| 16. Shri Viswanatha Menon  |                                      |

MINISTRY OF LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri S. P. Ganguly, *Deputy Secretary.*

WITNESSES

1. Shri D. N. Mookerjee, *President, District Bar Association, Alipore, Calcutta.*
  2. Shri S. K. Acharya, *Advocate General, West Bengal.*
-

(The witnesses Shri D. N. Mookerjee and Shri S. K. Acharya was called in)

**CHAIRMAN:** Honourable members, our second witness for the day, namely, the District Bar Association of Alipore, is being represented by Mr. D. N. Mookerjee, who is the President of the Association. He has been very kind to come five or ten minutes earlier than the appointed time and since we have not received comments of this Association previously, I would request Mr. Mookerjee, to give the reactions of his Association briefly to the Bill and then the members may ask him any questions they like.

**SHRI MOOKERJEE:** Actually it is not correct that we have not sent our memorandum regarding the amendments previously. The Association sent their views about the proposed amendments long ago and only we have received a letter to adduce evidence today.

**CHAIRMAN:** But so far as I am aware we did not receive any comments from your Association.

**SHRI MOOKERJEE:** That is very unfortunate.

**CHAIRMAN:** It is possible that your Association might have sent some comments to the Committee—the earlier Committee on the Civil Procedure Code. That may be so. That was appointed by the Government at that time some years back—that was the Law Commission. But now, of course, this committee has been appointed as the Select Committee on the Bill after it has been presented to the Parliament upon receipt of the views of the Law Commission.

**SHRI MOOKERJEE:** I want to tell the Chairman that the Association received the Code of Civil Procedure (Amendment) Bill 1968 and on the different provision as proposed here the views of the Association went sent over and today for the first time

we have come to know that we will have to give evidence and that is why we have come.

**CHAIRMAN:** However, there seems to have been some mistake—either we did not receive it or it might be misled, I do not know. Any way, it does not matter. Now that you are here you kindly assist us by giving us your general remarks and then members will ask you questions, if they have any.

**SHRI MOOKERJEE:** I shall send to you, Sir, again a copy of the views for your consideration. We came to this conclusion that most of the provisions which you have made were acceptable excepting certain point. I may mention one. Under order 21 rule 58 the proposal is or rather was by this amendment that a separate suit has been dropped. But our view is that it is not expedient and desirable. If you will allow me, I may give my reasons.

**CHAIRMAN:** Certainly.

**SHRI MOOKERJEE:** As you know, Sir, very well and my friends also know that the scope of enquiry of order 21 rule 58 is very limited. Where the judgment debtor is in possession of the property attached and which was going to be sold but if after that enquiry is finished and the party who loses in that enquiry is precluded from bringing a title suit in a comprehensive manner, then he will be actually prejudiced. A title suit when filed will go into a detailed investigation as to whether the judgment debtor had or had no title. Supposing there is a suit between a *benamdar* and the actual owner that may arise in a possession case under order 21 rule 58. Now, in that enquiry the actual possession is determined but the source of the consideration money which is the crucial test in enabling the court to come to the

conclusion whether the property belongs to the judgment debtor or to the applicant owner cannot be gone into and that is never gone into in a limited enquiry under order 21 rule 53. Therefore I quite appreciate the motive for which this committee wanted to drop the suit, namely, to expedite the order because a case under order 21 rule 58 takes about a year and again a title suit will take three to four years. The object is to shorten the time of litigation. If that is the object, then the view of the Association is that either in that proceeding an application for enquiry would be such as would be made in a comprehensive manner as made in a title suit. In that application he is bound to make all possible allegations which are necessary for the purpose of an enquiry as to whom the property actually belongs. The petition should contain all those particulars and the petition would be taken as written statement and that matter will be deemed as an original suit and that enquiry and that petition will be completely adjudicated before the execution court. That may be done or under order 21 rule 58 a comprehensive suit may be, i.e., a party may be asked to file a title suit but I think, Sir, that would sometimes involve not only unnecessary cost but also harrassment of the judgment debtor. He may be a poor man. If he is asked to at once bring a title suit, there may be difficulty. But a summary proceeding may help him to get some relief within a short time and at a much smaller cost. But if the suit is dropped, then provision must be made that in that enquiry all the particulars should be taken into consideration by the court. That is my view about the order 21 rule 58. As regards the notice under section 50 of the Civil Procedure Code, the view of the Committee is to drop this notice. The majority view of the Association is that that is not necessary. It should be avoided.

We have given our views on other questions also. I am hurriedly going through them. Section 145, in our

views, should remain as it is, without any amendment. The proposed amendments, I think, have been looked at from the point of view of the judgment-debtor only. But we have not, by this amendment, been giving any consideration to the side of the creditor. So, I think section 145 as it stands should remain.

Under Order XXII, rule 5, one or two years' time should be retained, not extended. We have also said that the Appellate Court should itself make an enquiry instead of sending it to the lower court for the purpose.

Order XXVI, (16) (a), clause (2)—should be deleted and our opinion is that the Commissioner taking out evidence of the witnesses will make it possible to place the matter before the court next day in presence of the parties concerned through their lawyers to know whether the question and answer should remain or should be deleted.

CHAIRMAN: Commissioner should report at once to the court.

SHRI MUKHERJEE: Yes, if possible, the next day. If the Commissioner does not do it, certainly, the parties will do it.

About X, the Association is of the view, and I may tell you, Sir, and my friends here that in our mofussil courts the cases are not opened in the manner in which it is done in the Original Side of the High Court. In mofussil the plaintiff suggests certain issues and the defendants also suggests certain issues. The judge after going through the issues himself frames issues of his own accord, according to his own choice. If the parties are very careful then, of course, the issues can be framed and they can take the matter to their lawyers for consideration.

CHAIRMAN: That means the court frames the issues in the absence of the parties?



WITNESS: Yes, after going through the suggested issues framed by the parties themselves. But formal opening of the case as is required under rule 10 is not done in the moffasil court. The difficulty is that there are 50 per cent. of the cases which at the time of the opening, if scrutinised by the judge, can be understood by the judge whether there is any real substance in the written statements and accordingly the judge may take steps for the purpose of early hearing within a month or within two months. After my experience of over 50 years I feel if the judge can make himself familiar with the points and controversies at the time of opening under 10, then the judge can at once determine whether there is any substance, whether there is any necessity for the discovery of documents etc. In connection with obtaining these preliminaries one year passes and the judge sleeps, the parties sleep, the lawyers sleep. They do nothing and time is wasted unnecessarily. What I am suggesting is that it should be made compulsory that under order 10 hearing should be made; the judge should pass an order whether there are any real materials and objections in the written statements.

CHAIRMAN: When these conditions are imposed under the C.P.C. then it is for the courts to follow the procedure. They do not follow it. It is not the fault of the code. It is the fault of the judges who do not follow the procedure.

WITNESS: Observations of the Chairman are really correct but I do not know how by any provision in the civil procedure code this committee can make it compulsory on the judicial officers to follow this.

CHAIRMAN: I think it is the duty of the High Courts to draw the attention of the subordinate courts to this aspect of the matter. What is the procedure in the Original Side of the High Court?

WITNESS: This is done so far as I know.

SHRI GOEL: Provision can be made for the horse to drink water but if it does not drink? So, please make your suggestion as to how you can bind the court to do this.

WITNESS: If the horse does not drink then it may be provided that the horse should be made to die or should be killed. We can take the horse to water. Certainly we cannot make him drink. If the judicial officers can be made to feel that if they do not do their duties they will face the consequences.

CHAIRMAN: . . . The committee can hardly do anything in the matter if the judges refuse to follow the procedure.

SHRI GOEL: What is your suggestion?

WITNESS: There is no such rule in order 10 that if the judges do not pass an order after a hearing as is contemplated by order 10, the judges will not be allowed to proceed any further in this case. There may be any such provision in the order itself by which the horse will be made to drink water.

CHAIRMAN: It is the duty of the lawyers to insist upon the courts that every proceeding should be held in the presence of the parties.

WITNESS: If there is any mandatory provision in order 10 then we can certainly take steps.

CHAIRMAN: In Uttar Pradesh the parties appear before the court on the appointed dates. They have to explain their case and then suggestions are taken or the court itself frames the issues and if additional issues are to be framed they are also taken in. The Law Commission considered the question of pre-trial. Then they thought that it was unnecessary to do so as it would take much time.

WITNESS: Order 10 should then be omitted?

SHRI S. AHMED: I think there has been some misapprehension about

order 10. When I started practice the practice was that after written statements had been filed, the judges used to examine the pleaders to find out if there was any lacuna left in the proceedings . . .

**CHAIRMAN:** . . . That practice still exists in Uttar Pradesh.

**SHRI S. AHMED:** In Madhya Pradesh it does not exist. Subordinate courts never examine them. They never examine the parties orally.

Therefore, Or. 10 has been very rarely used by some courts. But there is another point. As he says that Or. 10 ought to be mandatory but no order can be made mandatory because the orders as there exist can be used by some courts but may not be used by other courts, according to the rules framed by the High Courts. If the provision is made that there ought to be oral pleadings some courts may adopt it and some may not—they may have to adopt the rules framed only by the High Court.

**SHRI GOEL:** The judge actually can tell that there is very little substance in the defence and can quickly dispose of the case. Something concrete must be done which the court should apply.

**SHRI MUKHERJEE:** As addition can be made in Or. 10 that a Judge must pass an order after hearing the parties with reference to issues in accordance with the direction given under Or. 10. Without passing such an order he will not proceed any further towards discovery of documents or interrogatories. If at the time of opening it is admitted by the defendant that the plaintiff's claim is just there is no scope for interrogatories. But what happens in such cases is time is fixed for the purpose of discovery and a date is fixed for interrogatory although ultimately at the time of final hearing it appears that no interrogatory was necessary and as a matter of fact no interrogatory was given. In this way one year

passes unnecessarily. I may tell events of about 30 years ago. One Subordinate Judge of Alipur Court took up rent suits and small cause court suits. As soon as written statement was filed he used to examine it according to provisions of Or. 10 and at once sent for the lawyears of the defendant and said that they have no case. The result was that during his incumbency of office all the suits were finished within 6½ months. But now-a-days, one year's time is given by our High Courts, during which it will not be ready for hearing and the judges will not look to the suits unless they become one year's old. This happens in subordinate courts also. I am told that after 16 years a case came up for hearing in the High Court and his Lordship said that this court had no jurisdiction and then it was returned and it was filed at the Alipur Court.

**CHAIRMAN:** Would you suggest where we should make such provision and how should it be done?

**SHRI MUKHERJEE:** In Order 10 a rule should be made to that effect.

**SHRI SYED AHMED:** But that rule is changeable—the High Court can change it under their rule making powers.

**SHRI MUKHERJEE:** If there is a section in the Code High Courts will say that they are not permitted to introduce any rule when it is a provision of the C P. Code.

**CHAIRMAN:** When cases of this type come up before the High Court do they not pass any stricture or observation as to why so much time has been wasted?

**SHRI MUKHERJEE:** Sometimes they do and sometimes they do not.

**SHRI SYED AHMED:** You have said that the amending Bill has suggested omission of sec. 30 of the C. P. Code and that is a step in the

right direction. But we have heard some people who appeared before us saying that section 80 should not be deleted. If it is retained it is to the advantage of the administration and if it is deleted then that is to the advantage of the public. That is my view. But there is some opinion that sec. 80 has not worked hardship by itself, but it has been indiscriminately applied by the courts. It has been applied to the substantive issues between parties as well as to interlocutory matters.

SHRI MUKHERJEE: It may be modified. We are feeling it now in the present day conditions of our Government. I myself had to file a suit as the present day Government was going to take possession of a land of my client. My client came to file a suit and to stay the hands of the Government and to prevent the Revenue officers from going to the land. Now if I am to give two months' notice and wait for two months the result will be that the suit would be absolutely infructuous. Before expiry of two months the patient would die and so no steps could be taken and as a matter of fact that has happened. Therefore, what my friend has suggested that so far as suits for emergent relief are concerned excepting in such cases in no other cases sec. 80 may be necessary. In this way modification may be made. Of course, there was a time when the main object of sec. 80 was to apprise the Government of the case and the Government would say yes, you can file the suit or you can settle it. But no such settlement takes place. We have hardly come across a case where Government through their lawyers said that well, we are going to settle the case, don't file the suit. Very rarely this sort of occasion arises. If such provision can be made in Section 80 that it is necessary except in cases where immediate and urgent relief is needed by the plaintiff. But the result would be that in every case there would a prayer for treating those

cases as emergent cases. So we consider that the section should be deleted altogether.

SHRI SHRI CHAND GOYAL: Don't you think that uptill now the Government is taking advantage of this Section 80 and is only raising technical pleas because you have said that in your 50 years' practice at the Bar you have hardly come across a case where the Government has come forward after the service of the notice or has promised to make the payment?

SHRI MUKHERJEE: Our view is that Section 80 should be abolished as we find that ultimately there will be no effectual remedy.

CHAIRMAN: But some lawyers are of the opinion that government does settle matters out of court before filing of the suit. Some of them suggested that the Committee should make the period 30 days instead of 60 days in ordinary cases.

SHRI MUKHERJEE: You can make it thirty days in ordinary cases. But it will not bring any benefit to either this side or that side. There was a reported case in the Calcutta High Court in which Mr. Justice D. Basu practically scolded one of the government pleaders. Usually in such cases the High Court does not grant any cost against the government. But in this particular case His Lordship said that he was constrained to impose heavy cost upon the government because it appears that there is a number of government lawyers in the High Court so far as Government of West Bengal is concerned, and in spite of these lawyers and in spite of all these notices it appears that this case has been fought so strongly by the government and therefore heavy cost should be granted. So hardly we find a case where the government has come forward and said that the law is right, do not file the case'.

**SHRI SHRI CHAND GOYAL:** Please look at page 3 of this amending Bill i.e. Section 25 Sub-clause (2). It reads, "Every application under this section shall be made by motion which shall, except when the application is made by the Attorney-General of India or the Advocate-General of a State, be supported by affidavit on affirmation." Now, I want to seek your views as to why should this exception be made in the case of Advocate-General? Why he should also not furnish the affidavit if the government or the party which he represents wants to get a case transferred from one State to another?

**SHRI MUKHERJEE:** Well, I am against it. No such discrimination should be made.

**CHAIRMAN:** I have not heard you. What is your reply?

**SHRI MUKHERJEE:** There should be no discrimination between the Attorney-General of India, Advocate-General of a State and Shri D. N. Mukherjee.

**CHAIRMAN:** That means you want that they should also furnish the affidavit.

**SHRI MUKHERJEE:** Yes.

**SHRI SHRI CHAND GOYAL:** Then with regard to the provision relating to attachment would you agree that now in free India no people should be sent to civil prison for non-payment of decretal amounts?

**WITNESS:** It is written that, "in clause (a), for the words fifty rupees, the words 'two hundred rupees' shall be substituted. I have no objection to that.

**SHRI SHRI CHAND GOYAL:** This is with regard to raising of the amount to Rs. 200/-. But my question is that whether the practice of sending peoples to civil prison for non-payment of decretal amount should be stopped altogether?

**SHRI MUKHERJEE:** I do not find any reason as to why it should be stopped.

**SHRI SHRI CHAND GOYAL:** Do you feel that people should be sent to civil prison for non-payment of decretal amount?

**SHRI MUKHERJEE:** Yes. I feel that provision should remain and that amount should be raised from Rs. 50/- to Rs. 200/- as proposed. The provision for sending peoples to jails for non-payment of decretal amount should not be deleted as I know that there are peoples who have got the means to pay but will not pay unless they are forced to pay this enforcement is possible only when they are sent to jails.

**CHAIRMAN:** Do you think that this increase from Rs. 50/- to Rs. 200/- is all right?

**SHRI MUKHERJEE:** Yes, it is all right. It may be further raised but it should not be reduced. Some political workers will find pleasure in going to jail.

**SHRI ANTANI:** For purposes of record I would like to have very clear clarification. If this sort of socialistic suggestion is made to allow defaulters to go without detention, arrest or any compulsion to pay, what are the safeguards you would suggest for the society, for those who are going to lend money or give credit or any future Government in the name of nationalisation without imposing any liability on the defaulters to pay.

**SHRI MUKHERJEE:** I do not quite follow.

**SHRI ANTANI:** For the purpose of lending money if the defaulters are just allowed as my friend suggests to go Scot free, I want to make it more emphatic.

**SHRI AHMED:** He agrees with your view.

**SHRI B. B. LAL:** I would like to draw your attention to clause 5, page

2 of this Bill. There is a proposal to add Section 21A. I would only want to add one word 'contested' as regards the validity of a decree. If the previous decree was contested between the parties then no further objection will be taken on the ground of jurisdiction. In that case will it be necessary to add this clause 21A on this ground that in the Explanation the expression "former suit" shall denote a suit decided prior to the suit in question whether or not it was instituted prior thereto. What I want to refer to is in case, suppose a case is pending between the parties and during that period one of the parties i.e. the defendant goes somewhere in another province and files a suit and sometime or other gets a decree then it so happens that in that case by adding this provision I think great injustice will be done to the person who is no party to the suit filed in another province, and he will be debarred from raising this point. I want to know your opinion. I think that under Section 21 of the Civil Procedure Code it is very clear. No objection to a suit will be allowed unless such objection was taken at the earliest possible opportunity and unless there has been considerable failure of justice. So, this remedy which is given, why should he be debarred if this amendment Clause 21A is added. Or alternatively in this Explanation as it is mentioned whether it is instituted prior to that or not. If it is instituted prior thereto and not decided, because a person can institute a suit without knowing whether another person is going to file a suit.

SHRI MUKHERJEE: I have followed you. What I suggest is that if the word 'contested' is put there, that means that if the suit was filed in another province pending the hearing of another suit in another province then there cannot be a decree if there is contest, if the other man appears and contests and in spite of contest files a suit. So, it will be safe to put it here.

CHAIRMAN: This point was raised yesterday by the representative of the Bar Council of Orissa, and according to him it is not uncommon that decrees are passed against rural people in City Courts, and if this provision was given effect to then they will be debarred from contesting and agitating about their claim later. I think that the suggestion offered to us is very clear and it will meet the difficulty.

SHRI MANDAL: हम हिन्दी में बोने, क्या आप समझ सकेंगे।

साक्षी : बोलिये।

श्री बी० एन० मंडल : 47 को अमेन्ड करता है क्लॉज 13 और रिस्यूडिकेटर का जो प्रिंसिपल है उसको अप्लीकेबल किया जाता है इस एमेन्डमेंट के जरिये

SHRI MUKHERJEE: You want all these provisions:

SHRI MANDAL: इसके बारे में आपकी क्या राय है कि यह अच्छा है या बुरा है।

The provisions of section shall, so far as may be, apply in relation to proceedings under section as they apply to suits.

What is your reaction to it.

SHRI MUKHERJEE: In my view this amendment is all right. There are cases even now that although they are not suits still if there have been decisions then these decisions will operate as *res judicata*.

श्री बी० एन० मंडल : एक सवाल इसलिये पूछ रहा हूँ कि आर्डर 21 और रूल 58 के बारे में आपने कहा था कि उसका संशोधन इस तरह का हो कि उसका स्कोप बढ़ाया जा सके और सूट करने का जो राइट है वह रहे। यही आपने कहा था। उसी तरह से सेक्शन 47 जो सी० पी० सी० का है, उसमें इन्क्वायरी होती है और उस इन्क्वायरी

में पौजीशन या टाइटिल और हर चाज का इन्वेस्टीगेशन होता है या नहीं होता है ।

साक्षी : इन्वेस्टीगेशन होता है ।

Enquiries are only made in relation to the question of the satisfaction of the decrees otherwise not.

**SHRI MANDAL:** दूसरा सवाल हम यह पूछना चाहते हैं कि 47 के अन्दर आर्डर आडर-21 और रूल 58 या 100 वगैरह, इन सब को दफा-47 के मातहत कर दिया जाय तो इसमें क्या हर्ज होगा और आपकी इस बारे में क्या राय है ?

**SHRI MUKHERJEE:** Rule 58 itself provides that there is summary proceedings under rule 63—there is a provision of the suit and the committee is proposing that rule 63 should be deleted and there would be no further suit. That is why I have said if you do this then all questions may be gone into regarding the possession and everything. Here in section 47 it is only the question regarding the execution of the decree. So there is the provision that application may be treated as a suit. This provision is in the Code. It may be treated as a suit.

**SHRI MANDAL:** हम यह कहना चाहते हैं कि सेक्शन 47 जो है वह इतना कम्प्रीहेन्सिव बना दिया जाय कि एक्सीक्यूशन के बारे में जो भी आब्जेक्शन देने की बात है, प्रापर्टी के पाजेशन या टाइटिल के बारे में जो बात है और जितनी चीजें हैं उन सब को इस सेक्शन में जोड़ दिया जाय ।

**SHRI MUKHERJEE:** It is already there.

**SHRI MANDAL:** इस एक्सीक्यूशन के दफा-47 प्रोसीडिंग में आब्जेक्शन का दायरा लिमिट कर दिया जाय सेक्शन 58

और 100 वाले आब्जेक्शन को दफा-47 के दायरे में ही रखा जाय ।

**SHRI MUKHERJEE:** Sec. 58 deals with the party affected and rule 100 is quite different.

**SHRI MANDAL:** रूल 100 जो है वह किसी आदमी के प्रापर्टी के सेल के बारे में जो आब्जेक्शन होता है, उससे सम्बन्धित है ।

**SHRI MUKHERJEE:** 58 relates to attachment before sale and 100 after it.

**SHRI MANDAL:** लेकिन दोनों चीजें एक्सीक्यूशन से सम्बन्ध रखती हैं । इसीलिए हम कहते हैं कि जहां तक एक्सीक्यूशन के बारे में आब्जेक्शन देने का सवाल है वह सब 47 के अन्दर रख दिया जाय तो क्या हर्ज है ।

If all these questions are brought within the purview of this section, what is the harm?

**SHRI MUKHERJEE:** All these questions are really brought under sec. 47 relating to execution discharge or satisfaction of the decree within the meaning of this section.

**SHRI MANDAL:** This is not relating to the delivery of possession but it is with regard to other's property.

वह तो नहीं है । वह सब 47 के अन्दर रख दीजिये तो क्या हर्ज है ।

**SHRI MUKHERJEE:** There may be cases regarding delivery of possession which may not have anything to do with the decree.

**SHRI GOEL:** Mr. Mukherjee, Mr. Mandal's idea is whether all these things cannot be incorporated in one section. He wants that in order to expedite execution, instead of giving opportunities for raising various objections why should it be confined to

the provision of sec. 47—why should be this scope for extending the opportunity.

**SHRI MUKHERJEE:** Rules 100 and 103 may not have anything to do with the question of decree.

**SHRI MANDAL:** एक्सीक्यूशन स्टेज में कोई आबजेकशन देने का जहाँ सबाल आता है वह 47 के अन्दर पेटिशन देकर किया जा सकता ।

**SHRI MUKHERJEE:** You want to delete the provision of the order rule 100 and all these things — these may be brought under one sec.

**SHRI MANDAL:** Regarding the execution that should be decided under sec. 47.

**SHRI MUKHERJEE:** My answer is that these questions relating to the execution of the decree or satisfaction of the decree— are being brought under sec. 47 but rule 63 has nothing to do with the decree of attachment. Rule 100 is a matter which follows delivery of possession after the decree. And besides sales there are ejection decrees; questions about delivery of possession may not have any reference to the executive of suits of the decree. There may be three parties. So, all these questions cannot be brought under rules 100 and 63 and these provisions cannot be deleted.

चयरमैनेवे क्या कहते हैं ।

**SHRI MANDAL:** वे कहते हैं कि यह चीज इसके अन्दर आना ठीक नहीं होगा । उनका कहना है कि इस चीज को इस स्कोप के अन्दर आना ठीक नहीं होगा । लेकिन हम ऐसा फील करते हैं कि सारा आर्डर 21 जो है और उसमें जितने आबजेकशन के आइटम हैं, वे सब आ जाने चाहिये दफा-47 आबजेकशन प्रोसीडिंग्स के अन्दर ।

**SHRI MUKHERJEE:** Your section 47 limits the restriction of enquiry only to the party. Rule 100 extends the enquiry to third party. So, how can you bring that question?

**SHRI MITRA:** You are in favour of deleting of sec. 18 on the ground that generally government does not give any reply to notice. Can you give an idea of the percentage of suits actually filed against public servant after giving the notice? Whether it is cent per cent or 50 per cent?

**SHRI MUKHERJEE:** Without notice a suit is not maintainable. It is difficult to ascertain in how many persons give notice but did not file the suits.

**SHRI MITRA:** Can you give us an idea when the government comes to a settlement with the party or asks its officers to come to a settlement with the party?

**SHRI MOOKERJEE:** How can I know that where the Government had come to a settlement?

**SHRI P. C. MITRA:** You know all the cases against the public servants are fought with the Government money. Government actually bear the expenses for any case filed by the parties against public servants. Now, will it not be easier for the public servants to go on with their high-handedness that if any one files any suit, Government will fight the case up to the Supreme Court with government money and whether it will be advantageous to the public or more advantageous to the officers who are actually indulging in high-handedness?

**SHRI MOOKERJEE:** It seems that my friend over there is in favour of retaining section 80. My views which I have already given out to the learned Chairman are there. My answers are the same, namely, it should be deleted, at least it may be so made that there should be restriction in case of emergency but will be hardly effective.

SHRI MITRA: Have you noticed clause 17 of this Bill—where the new section 82 is being inserted (page 7 of the Bill). What is your view on that?

SHRI MOOKERJEE: Of course, that depends upon the circumstances of each case. I do not mind if the court is given the discretionary powers where it should extend or should not extend the period.

SHRI SYED AHMED: Even without this provision the court has the inherent power to extend the time.

SHRI MITRA: Sub-section (3) of section 82 says that the Court may, in its discretion, from time to time, enlarge the period specified in sub-section (1), even though the period so specified may have expired. Do you allow this discretion to the court?

SHRI MOOKERJEE: Our Association is of the view that this amendment is not necessary. The court has already got that power as has been pointed out by my learned friend over there.

SHRI MITRA: Now, have you noticed that some distinction also has been made about the liability of arrest of legislators and parliamentarians for civil law which at present...

CHAIRMAN: It does not seem necessary for him to say which provision should be there for the legislators.

SHRI MITRA: I was asking him whether he agrees to this provision?

SHRI MOOKERJEE: I do not object.

CHAIRMAN: I will just ask you one or two questions Mr. Mookerjee. You have not told us anything about your opinion regarding the curtailment of the powers of the High Court under section 115. Do you think it is being rightly done?

SHRI MOOKERJEE: Sir, I may submit that I hardly come to the High

Court and practise and so I am not so much concerned and interested but the powers of the High Court should not be curtailed. That is my view.

CHAIRMAN: If you kindly see page 8, paragraph 23, you will see that here it is mentioned—The High Court may call for the record of any case which has been decided by any court subordinate to such High Court, and if such subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. Now, so far, the provisions are the same as those in the existing Civil Procedure Code but further this paragraph has been added—The High Court may make such order in the case as it thinks fit: provided that the High Court shall not, under this sub-section, vary or reverse any order made in the course of a suit or other proceeding, including an order deciding an issue, except where—(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or (b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made. So this restricts the powers of the High Court.

SHRI MOOKERJEE: I think the powers of the High Court should remain as they are.

SHRI SYED AHMED: After reading this particular section, do you think it restricts the powers of the High Court?

SHRI MOOKERJEE: Yes, if this is added, then the powers of the High Court are to some extent curtailed.

CHAIRMAN: This new provision is being made with a view to prevent people from going to the High Court unnecessarily, that is to say, special powers are given to the High Court to vary and reverse the order only where this happens.



SHRI MOOKERJEE: It is very difficult, Sir, to determine which order finally disposed of a suit. Similarly, if the order is allowed to stand that would irreparable damage to the party. Is it found, Sir, that a summary order by the High Court on application under Sec. 115 is always a correct order? When the case comes in appeal before the two judges—division bench—the position is entirely different. But if that matter is finally cut at the root by a summary order of His Lordship, I do not think, that will benefit much. There are more dangers also.

CHAIRMAN: This is not the order of the High Court. High Court will interfere only if it finds that conditions in (a) and (b) have been fulfilled. And to that extent the powers are curtailed. Do you think that the litigants will suffer by his condition?

SHRI MUKHERJEE: Yes. I do not think the parties against whom the order is passed should be prejudiced by giving such powers to the High Court.

SHRI AHMED: May I draw your attention to the amendment of section 58? What is the difference between a separate suit and the proceedings adumbrated by the amendment.

SHRI MUKHERJEE: If you convert that application into a suit, then, it should be drafted in a manner as is required under the Order VII of the Civil Procedure Code. I may tell you very briefly. The property stood in the name of the wife. The Central Bank Of India attached it and the judgment-debtor was the husband. Wife came and said, it is my property, the property stands in my name and

the documents were filed. The judge also says, yes, the municipal record is in the name of the wife and the document has been filed. Therefore, I find that the attachment is bad, and only upon the production of the document and the municipal bill the court came to the conclusion. But if a title suit is filed, the bank will say, the money belongs to the husband and, then, the court will be in a position to say to whom the title applies.

SHRI AHMED: It will be registered and tried as a suit.

SHRI MUKHERJEE: There are provisions and all particulars will have to be given. If you want to do that, you will have to make provision for that. You will have to provide that the party losing the application should file a 'plaint in a manner as is required under the rules and the other party will be given an opportunity to file a written statement and then there will be a hearing,

CHAIRMAN: Thank you so much, Mr. Mookerjee. Please send us your written views as early as possible.

WITNESS: On behalf of the Association I convey our thanks to the Chairman and the members of the Committee. By our mutual discussion if we have been able to do any help to the committee we are grateful for that. We have come here only for the purpose of seeing as to how the litigants can be relieved of the present troubles and as to how the life of the litigation can be shortened.

CHAIRMAN: We will certainly be guided by your views.

*(The witness then withdrew)*

(The witness Shri S. K. Acharya was at this stage called in.)

CHAIRMAN: The witness before is the advocate-General, West Bengal. I am grateful to him for his having taken the trouble of coming and assisting the committee. I am sure his views will be valuable and we shall give every consideration to what he says.

WITNESS: I am very grateful for the kindness that has been shown to me. I would like to make a few comments. Frankly speaking, I have not been able to go through all the sections. I will now make my submissions.

There are three sections in the civil procedure code which need amendment so that the differences of opinion of different High Courts may be set at rest. One is section 11 which relates to the question of *Res Judicata*. There are violent differences of opinion of different High Courts as to what is *Res. Judicata*. etc. Then, there is another section—sec. 47 which relates to execution. There are differences of opinion and the points need to be clarified. Then, there is section 144 also. We lawyers take a lot of advantage of the different opinion of different courts and prolong the litigation. The second point is about the simplification of procedure. It remains as it was. If I may be permitted to say, it is almost like the criminal procedure code which Dr. Katju had done. It has remained the same cumbersome procedure as it was before. Take for instance the question of summons—serving of summons. I hope I am not talking out of turn. If money is paid summons are returned unserved. This delay is there. I do not know whether you can recommend serving of summons by registered post.

CHAIRMAN: This has been done.

WITNESS: I would then make my humble submission about the time taken for filing the written statements. In the original side what happens is that the date is there. Otherwise you take time for filling the written statement and then again you extend the time. I do not know whether you could limit the time for filing the written statement.

CHAIRMAN: Is it your suggestion that when the first notice is served on the parties it should mention the date of filing of written statement?

SHRI ACHARYA: Yes. After written statement is filed other procedure should follow. Certain time should be fixed otherwise this becomes lengthy. Sir, my suggestion is that a certain short period for disposal of the matter should be there. Of course, you cannot lay down an absolute rule but something should be evolved. Otherwise, lawyers and judges always get the blame and the litigants suffer.

Then regarding Order 20, the judgment should be delivered immediately or at some other time. I know many instances that judgments are not delivered for 2½ years. You know, due to delay memory becomes rusty and imagination becomes agitated. I know, some judges have retired without delivering judgment. If the judges cannot deliver judgment they should give the reasons for that as to why they could not deliver. Judgements. I can understand there may be heavy cases. But there should be some time limit.

Then regarding Order 21, rule 91— you can bring it under fraud and reopen execution of decree. There should also be limitation. If the fraud is not discovered within 3-5 years most of the laches should be discovered otherwise it help a powerful

litigant. You know, the real trouble starts after the decree-holder obtains the decree. They create real trouble when the execution proceedings starts. These are the preliminary points I would like you should consider. I can tell you frankly that I don't think I can improve upon whatever has been said just before me by Mr. Deben Mukherjee. He has put in double the years of practice then I have put in, and he is a doyen of the Bengal Bar. I know, he knows this Code almost in and out and he must have told you everything.

CHAIRMAN: Will you kindly see sec. 21 clause 5 of the Bill at page 2—a new clause 21A is being added. What is your opinion about this.

SHRI ACHARYA: Well it can go in.

CHAIRMAN: An objection has been raised by some people that it will be hardship on the rural litigants against whom decrees are very often obtained from courts without their knowledge or information.

SHRI ACHARYA: That happens also in Or. 21 or Section 47 but there should be an end to litigation. But some protection is to be given—I cannot obviously give any full-proof formula—it is not possible for any human being. But there should be some more or less full-proof formula to serve the parties. I think the registered post would be best in such cases. Of course that can also go wrong—it can be tampered with—So if the new clause is added it will not do any harm.

CHAIRMAN: But others fear that it will shut out the claim of a person who is not really a party to that decree.

SHRI ACHARYA: I don't think so, but I have no objection on that score.

CHAIRMAN: A member of the Bar Council of Orissa said that it was not unknown that decrees are obtained against rural people from city

courts and then at the time when the man knows for the first time that there has been a decree against him and it has been *res judicata* then the man cannot do anything.

SHRI S. K. ACHARYA: He can go and challenge the decree. How anybody can stop him from doing that?

CHAIRMAN: Section 21A reads thus, "No party to a suit shall be allowed to question the validity of a decree passed in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing." So far as the question of litigants from rural areas are concerned they say that they should be given the liberty to question that decree. But according to Section 21A it might shut off that right.

SHRI S. K. ACHARYA: Generally the principle of law is that a court cannot assume jurisdiction which it does not have. Of course this a matter which is looked at from different angles.

CHAIRMAN: Will you please come to clause 7 at page 8 of the amending Bill, i.e., section 25 with regard to transfer of suits from one State to another or from one High Court to another High Court? What are your view on that?

SHRI S. K. ACHARYA: It has become necessary. It should be there.

CHAIRMAN: The power is given to the Supreme Court from the State Government.

SHRI S. K. ACHARYA: It is better Sir.

CHAIRMAN: One of the witnesses has suggested that the words "or is conducive to the convenience of the parties of the suit or at least to the defendants and his witnesses" be added before the word "direct".?

SHRI S. K. ACHARYA: How can that be done on the ground of transfer.

CHAIRMAN: Their view is that when the matter goes before the Supreme Court they will have the right to say that this is not conducive to the convenience of the parties.

SHRI S. K. ACHARYA: It is upto the Supreme Court to say as to what is correct or not.

CHAIRMAN: Then what are your views on the omission of Section 80 as proposed in the amending Bill?

SHRI S. K. ACHARYA: The sooner it is done the better. Why the State should get some special privileges. In a court everybody should get the same privileges. There are also Sections 80, 82 and Order 25 where the State does not give any security for filing an appeal for a decree. Section 80 will unnecessarily delay matters. Although this only gives the State a chance to come to its senses and do justice as far as possible but in my experience—previous to my being the Advocate General—the State never comes to its senses.

CHAIRMAN: It is within the experiences of some of lawyers, not all, that government does settle out the matter before filing a suit. At times it is done and not always.

SHRI S. K. ACHARYA: My experience is that settlements are always done by the State after the suit has been filed because the State wants to take the money—the stamp revenue. When they find that their case is very weak then they approach the other side.

CHAIRMAN: Now, will you please come to clause 21 at page 8 of the amending Bill i.e., with regard to amendment of section 102. What are your views about this limit of Rs. 3000|—.

SHRI S. K. ACHARYA: I think there has been an amendment in West Bengal. Probably the limit has been made Rs. 5000|— I am not sure I will have to check it up. The limit here in the Bill is all right. Let it be there.

CHAIRMAN: May I draw your attention to Section 115 regarding the powers of High Court. Kindly read the proviso and then (a) and (b). Do you think that the curtailment of power will be resented by the High Courts or do you think that it is fair.

SHRI S. K. ACHARYA: Sir, it will, if I may say so, go both ways. To some extent it will curtail the powers of the High Courts. I think that at this stage of our country's progress you should not at this moment, try to curtail the powers of the High Court. I think you had better not keep it.

CHAIRMAN: So Section 115 will remain without any further amendment.

SHRI AHMED: You have referred to section 47 and section 144.

SHRI ACHARYA: We have not proposed any amendment to section 47 and section 144.

SHRI AHMED: Probably, the Chairman will tell you that the Committee cannot consider any amendments which are not in the amending Bill. If the proposal comes from you that sections 47 and 144 should be amended in a particular way we can consider. In order that Government may be able to consider any new amendments there should be some concrete suggestion. You experience difficulty in the application of these sections, but you have not put in any suggestion in order to meet that difficulty. If there had been any concrete suggestion we would have been able to consider it. There is a lot of litigation in the country. It will be helpful if you can give any concrete suggestion.

SHRI ACHARYA: I did not anticipate that we can give any suggestion. If you permit it I can write out my suggestion and send it to your office.

SHRI AHMED: We will welcome it.

SHRI ACHARYA : These sections were not in the amending Bill. Very well, I will send it to your office within a fortnight or so.

SHRI AHMED : Will you refer to page 8 of the amending Bill—I mean section 115? There is a proviso to which the Chairman has referred. The proviso appears to restrict the power of the High Court in certain matters, and the High Court will not, interfere unless the particular point raised in the revision is such that had it been decided in favour of the party applying for revision. It would have disposed of the case. Do you think this diminishes the power of the High Court?

SHRI ACHARYA : It was redundant. The High Courts do not generally interfere in such cases. If this provision is there, it will restrict the power of the High Court.

SHRI AHMED : So far as (a) is concerned you agree. As far as (b) is concerned what is your opinion?

SHRI ACHARYA : That section 115 itself allows it. I think both are redundant, because the power is there.

SHRI S. C. GOYAL : Would you kindly refer to page 3—sub-section (7), section 25 about transfer of suits, (Reads) "Every application under this section shall be made by motion which shall, except when the application is made by the Attorney-General of India or the Advocate General of a State, be supported by affidavit or affirmation." Do you think there should be no exception even in the case of the Advocate General and the Attorney General?

SHRI ACHARYA : There are rules for instance in criminal matters and we have a certain different procedure, but this is not necessary. If the Advocate General supports the case, then the certificate of the Advocate General itself should be good enough. If you want that an affidavit should be filed, there is no objection to it.

456 RS—14.

The State is presumed to be a neutral body. But sometimes it is not neutral. I can say that from my own experience. I think that these two lines may be deleted.

SHRI GOYAL : Then section 14. "In section 58 of the principal Act, in sub-section (1), in clause (a), for the words 'fifty rupees', the words 'two hundred rupees' shall be substituted." Now this amendment raises the extent from Rs. 50 to Rs. 250. The provision is for sending people to civil prison. Do you think that we should also take away this power and no body should be sent to civil prison for non-payment of the decretal amount.

SHRI ACHARYA : Normally, a court will never send unless it is proved to the satisfaction of the court that he had the money and had not paid. That will depend on evidence. There are very big business people but they do not pay. But sometimes it is misused.

SHRI ANTANI : Why should not the creditor have some satisfaction to recover. Here the suggestion seems to be for failure to pay.

SHRI ACHARYA : Usually the courts do not do it. Sometimes it is missed. There is no other way to get the money. We have this trial every day in courts.

SHRI GOEL : Regarding notice under sec. 80, don't you think government upto now is abusing this section by raising technical pleas and this has always worked to the disadvantage of the litigants?

SHRI ACHARYA : I always agree. We can catch hold the other parties when they do wrong but if the Railways do it, they go away merrily. I fought against this discrimination?

SHRI GOEL : Did you win?

SHRI ACHARYA : No, I lost completely.

**SHRI SYED:** Sir, I have asked the witness to send the suggestions and I would request him to also send suggestion for amendment of ecs. 47 and 14.

**श्री बी० एन० मंडल :** पहले किसी केस को ट्रांसफर करने के लिए उसे स्टेट गवर्नमेंट को रैफर किया जाता था और जब स्टेट गवर्नमेंट उसको ट्रांसफर करने की इजाजत दे देती थी तब वह केस एक प्रान्त से दूसरे प्रान्त में ट्रांसफर हो जाता था। लेकिन अब अमेंडमेंट आ रहा है कि सुप्रीम कोर्ट के आर्डर से कोई केस एक प्रान्त से दूसरे प्रान्त में ट्रांसफर हो सकेगा। तो मैं आपसे यह जानना चाहता हूँ कि इस चीज को आप कैसा समझते हैं।

**साक्षी :** पहले यह था कि एक प्रदेश से जब कोई केस दूसरे प्रदेश को ट्रांसफर किया जाता था तो हाईकोर्ट उसको ट्रांसफर करने के लिए स्टेट गवर्नमेंट से सिफारिश करती थी और जब स्टेट गवर्नमेंट आर्डर देती थी तब वह केस दूसरे प्रान्त में ट्रांसफर हो जाता था। लेकिन जो अमेंडमेंट आ रहा है उसके जरिये अब सुप्रीम कोर्ट इस तरह के केसेज को एक प्रान्त से दूसरे प्रान्त में ट्रांसफर कर सकता है और यह एक अच्छी चीज है।

**श्री बी० एन० मंडल :** उसी प्रान्त के अन्दर केस ट्रांसफर होता था।

**साक्षी :** अब यह तय हुआ है कि हम सुप्रीम कोर्ट की इजाजत से एक प्रदेश से दूसरे प्रदेश में किसी केस को ले जा सकते हैं। आगे यह था कि स्टेट गवर्नमेंट्स की जो सरकारें थीं वे खुद इस काम को करती थीं, हाई कोर्ट कर सकते थे कि वे किसी केस को अपने प्रान्त से दूसरे प्रान्त में भेज सकते थे। आप जानते हैं और आपने अखबारों में हरवंश कीर का केस पढ़ा होगा कि यहां से वह केस बनारस ट्रांसफर हो गया और इसको सुप्रीम कोर्ट ने किया क्योंकि कलकत्ता हाई कोर्ट को इस बारे में अख्तियार नहीं था। अब जो अमेंडमेंट

आ रहा है उसके जरिये कोई भी आदमी मीट्रो सुप्रीम कोर्ट में अपना केस दूसरे प्रान्त में ट्रांसफर करने के लिए अर्जी दे सकता है और सुप्रीम कोर्ट सीधे यह आर्डर कर सकता है कि कोई केस एक प्रदेश से दूसरे प्रदेश की कोर्ट में ट्राइ हो सकता है।

**श्री बी० एन० मंडल :** पहले यह ट्रांसफर का मामला स्टेट गवर्नमेंट्स के हाथों में था, तो मैं आपसे यह जानना चाहता हूँ कि यह चीज अच्छी थी या जो अब यह मामला सुप्रीम कोर्ट के हाथ में जा रहा है कि वह किसी केस को एक प्रान्त से दूसरे प्रान्त में ट्रांसफर कर सकता है, यह अच्छा है ?

**साक्षी :** सुप्रीम कोर्ट के हाथ में जा रहा है, यह चीज अच्छी है।

**श्री बी० एन० मंडल :** मैं इसलिए आपसे यह पूछ रहा हूँ कि पहले इस तरह के मामलों के बारे में स्टेट गवर्नमेंट्स को रैफर किया जाता था और उसमें पैसा कम खर्च होता था। लेकिन अब जब यह मामला सुप्रीम कोर्ट के हाथ में जा रहा है तो इसमें ज्यादा खर्चा आयेगा।

**साक्षी :** सुप्रीम कोर्ट में जाने से खर्चा तो जरूर पैसा होगा लेकिन पहले स्टेट सरकारें इस तरह के मामलों में इजाजत कम देती थी क्योंकि यह उनके प्रेस्टीज का सवाल है और उनके यहां के जजों के खिलाफ बात पड़ती थी। यह बात सही है कि इसमें पैसा खर्चा होगा मगर यह चीज अच्छी है और वहां पर जज जरूर इस तरह के मामलों में विचार करेंगे।

**श्री बी० एन० मंडल :** मेरी राय में यह जो सिद्धान्त है वह डिफेक्टिव है क्योंकि जो बड़े मीन्स के आदमी होंगे, जिनके पास ज्यादा पैसा होगा वे ही सुप्रीम कोर्ट में ट्रांसफर के लिए जा सकेंगे और जो छोटे मीन्स के आदमी होंगे, जिनके पास पैसा कम होगा वे वहां पर नहीं जा सकेंगे।

साक्षी : इस तरह के केसेज 10 या 20 हजार में एक आते हैं और इस तरह के केसेज ज्यादा नहीं होते हैं । हमको प्रिन्टिस करते हुए 30 साल हो गये हैं और इन 30 सालों में सिर्फ हरवंश कौर का मामला ही हमारे सामने आया है और इस तरह का मामला हमने कोई दूसरा नहीं देखा है जो कि बंगाल में हुआ हो ।

CHAIRMAN: Thank you very much Mr. Acharyya for your assistance. We expect your suggestions in writing which you may kindly send

to the Rajya Sabha Secretariat within a fortnight. After that we will be finalising our report and then take up the Bill clause by clause. Before that we want your suggestions.

SHRI ACHARYYA: I am most grateful to you, Sir, and to the other honourable members of the Committee for giving me this opportunity to give my suggestions. I shall send my suggestions very soon.

CHAIRMAN: Our session in Calcutta ends here.

*(The witness then withdrew..)*

*Tuesday, the 27th January, 1970*

**PRESENT**

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

**MEMBERS**

*Rajya Sabha*

- |                         |                            |
|-------------------------|----------------------------|
| 2. Dr. B. N. Antani     | 7. Shri Purnanand Chetia   |
| 3. Shri Rattan Lal Jain | 8. Shri Rizaq Ram          |
| 4. Shri B. N. Mandal    | 9. Shri V. T. Nagpure      |
| 5. Shri Jagat Narain    | 10. Shrimati Seeta Yudhvir |
| 6. Shri Syed Ahmed      | 11. Shri T. K. Patel       |
|                         | 12. Shri P. C. Mitra       |

*Lok Sabha*

- |                               |                                       |
|-------------------------------|---------------------------------------|
| 13. Shri D. Balarama Raju     | 25. Shri B. P. Mandal                 |
| 14. Shri Shri Chand Goyal     | 26. Shri M. Meghachandra              |
| 15. Shri Ram Krishan Gupta    | 27. Shri Bhaḷjibhai Ravjibhai Par-mar |
| 16. Shri Heerji Bhai          | 28. Shri S. B. Patil                  |
| 17. Shri J. M. Imam           | 29. Shri Jharkhande Rai               |
| 18. Shri Kameshwar Singh      | 30. Chaudhuri Randhir Singh           |
| 19. Shri Mushir Ahamad Khan   | 31. Shrimati Savitri Shyam            |
| 20. Shri Thandavan Kiruttinan | 32. Shri K. Subravelu                 |
| 21. Shri K. Lakkappa          | 33. Pandit D. N. Tiwary               |
| 22. Shri Brij Bhushan Lal     | 34. Shri Tenneti Viswanatham          |
| 23. Shrimati Sangam Laxmi Bai |                                       |
| 24. Shri Mahendra Majhi       |                                       |

**MINISTRY OF LAW**

Shri P. L. Gupta, Additional Legislative Counsel.

**SECRETARIAT**

Shri S. P. Ganguly, Deputy Secretary.

Shri Kishan Singh, Under Secretary.

**WITNESS**

Shri Hargovind Dayal Srivastava, Chairman, Bar Council of India and Senior Vice-President of Oudh Bar Association, Lucknow.



(The witness Shri Hargovind Dayal Srivastava was called in.)

CHAIRMAN: Well, hon. Members, we are commencing the proceedings of the day. The witness before us today is Mr. Hargovind Dayal Srivastava, an eminent advocate of the Allahabad High Court and Chairman of the Bar Council of India. He has sent us comments on the Bill and these have been circulated to all of you much earlier. I hope you have had time to go through it. Now, I would request Mr. Srivastava to let us have any further comments, if he has any, on this Bill.

WITNESS: A copy of the comments has already been sent to you. Apart from these at the present moment I have not got any other suggestions to make. If, in the course of the discussions, any further suggestions occur to me, I will place them before you. I may also inform you, Mr. Chairman, that our Bar Association, of which I am a member and also the Vice-President, have asked me to convey their comments to you.

CHAIRMAN: They wanted me to examine you. We shall do that also. Now, will you kindly refer to clause 12? On the first page of your comments you have said this:—

“A further clause (d) in the proposed sub-section (2) may be added as follows:

‘(d) power to execute a decree at the instance of a legal representative or assignee of a decree holder.’

*Correspondingly* Order 21 Rule 16 should be amended suitably and the proposed clause (a) of sub-section (4) should be deleted.”

I do not understand to which portion you are referring here.

WITNESS: Now, if you will please see Order 91. . .

CHAIRMAN: . . . of the existing Civil Procedure?

WITNESS: Yes. May I have a copy of the Civil Procedure Code?

CHAIRMAN: In this I do not find any sub-section (4) to which you have referred.

WITNESS: It appears there is some mistake somewhere. I will have to check up.

CHAIRMAN: You may refer to the amending Bill. Kindly see that also.

WITNESS: I am referring to amending Bill No. 34 of 1968 as published in the Gazette of India Extraordinary, Part II.

CHAIRMAN: I have not been able to understand this. You say that correspondingly Order 21 Rule 16 should be amended suitably and the proposed clause (a) of sub-section (4) should be deleted.

WITNESS: You have in your amending Bill amended Rule 16 of Order 21. The reference evidently is to that.

CHAIRMAN: Order XXI on page 29, clause 44 of the Bill.

WITNESS: Your page is not the same as mine because the copy I have is the copy of the gazette.

SHRI P. C. MITRA: The Chairman is referring to clause 44.

CHAIRMAN: You will kindly see on page 29 clause 44 which refers to Order XXI. Which portion of it is referred to in your comments I am not able to find out. Take the Bill. Clause 44, Order XXI. Where is that sub-section which you are referring to? I have not been able to find it out.

WITNESS: There appears to be some mistake somewhere because, you are right, there is no proposed subsection (2) to section 16 in your amending Bill. You are quite right.

CHAIRMAN: Let us pass on to your earlier comments on clause 5. In this you want a proviso to be added to section 21A:

“Provided that the provisions of this section shall not apply to a party objecting to the proceedings in a former suit who or whose predecessor in interest did not appear in those proceedings.”

If we add these words, do you not think that it will create some confusion?

WITNESS: “21A. No party to a suit shall be allowed to question the validity of a decree passed in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing”.

CHAIRMAN: You object to 21A being added?

WITNESS: We have suggested the addition of a proviso.

CHAIRMAN: “. . . who or whose predecessor in interest did not appear in those proceedings”—will it not make for some confusion?

WITNESS: Because this is to safeguard fraudulent . . .

CHAIRMAN: If I have understood your comments rightly, in this clause I find it has been objected to by various Bar Councils. The Bar Council of Orissa has also objected to the inclusion of this.

WITNESS: If you provide the safeguard, then there should be no objection to retaining section 21A.

CHAIRMAN: What I have not been able to understand is, I put the same matter to others also. They say that

there is danger of decrees being passed against persons living in the rural areas without their knowledge. That is what they fear. But I cannot conceive of cases where decrees are passed without any notice to the party.

WITNESS: But notices are not always served. That is to safeguard against fraudulent service.

CHAIRMAN: The idea of adding it is to expedite.

WITNESS: But at the same time innocent parties may not be made to suffer, illiterate parties. These process servers sometimes play havoc.

CHAIRMAN: If we use the word “illiterate”?

WITNESS: Then it will be very difficult to define . . .

CHAIRMAN: . . . who is literate and who is not literate. That will be very difficult.

WITNESS: If it is said in the proviso that the provisions of this section shall not apply to ex-parte proceedings, that will serve the purpose.

CHAIRMAN: Kindly turn to clause 26, page 2 of your comments. Kindly see your comments.

WITNESS: We have said: “the words ‘has become liable as surety’ need not be deleted. Instead the words ‘or has furnished’ be added thereafter”.

CHAIRMAN: Thereafter means where?

WITNESS: After these words “has become liable as surety”.

CHAIRMAN: What is the use of adding these words?

CHAIRMAN: You say that these words can be substituted. The addition of these words do not seem to carry much weight.

WITNESS: These words in our view should be retained—‘has become liable as surety’. In the proviso to

Section 145 you have said. The words "or to the person who has furnished security" should be added at the end.

CHAIRMAN: Since you have said that it should be added at the end, I do not understand.

WITNESS: "Or furnish . . . any part thereof." That is what we have suggested.

CHAIRMAN: How does it improve the matters?

WITNESS: It will cover the case of a person who has furnished security.

CHAIRMAN: What I am saying is this. If you substitute these words in the place of those suggested in the clause, will that be all right?

WITNESS: These words may be allowed to remain—has become liable as surety'. Thereafter "or has furnished" may be added.

CHAIRMAN: By adding these words, you do not make it very clear. It is already clear.

WITNESS: It does not cover the case of a person who has furnished security. In order to make Section 145 comprehensive it should be so.

CHAIRMAN: Why not?

WITNESS: He executes a bond as surety. Instead of executing a bond for security, he furnishes security. How will you cover the case of a person who has furnished security?

CHAIRMAN: Personally I do not see much improvement on account of that. If he becomes liable for surety, either he must sign a bond or must stand as surety.

WITNESS: Security is of a property.

SHRI SYED AHMED: A man becomes surety after he has furnished security.

WITNESS: Even without furnishing security, he may become a surety. By the term 'surety' is understood to be a person who just executes a bond.

CHAIRMAN: How can a person become liable to surety unless he executes a bond or furnishes cash security?

WITNESS: He executes a bond or undertakes to indemnify.

CHAIRMAN: When he undertakes to file a security, where is the necessity of adding these words?

WITNESS: For the sake of clarification. Executing a surety bond is undertaking to indemnify it in the case of a certain eventuality. But if it is security of a property, will it be covered?

CHAIRMAN: According to me, it will be covered.

WITNESS: That is the idea, so that no doubt may be left that a person who has furnished security of his immovable property is not to be taken out of the application (of this provision). Please take the case of a person standing surety. All that he does is that he executes a bond, gives an undertaking.

SHRI SYED AHMED: He does not become a surety unless he furnishes security.

WITNESS: If these words are allowed to remain there, the scope for argument may be there. It does not cover the case of a person who has furnished security. It is by way of precaution. We have taken the precaution that this should cover the case of a person who has furnished security.

CHAIRMAN: Suppose these words are not added? Will some people escape?

WITNESS: There will be scope for contending that this does not cover the case of a person who has furnished security. Then objection may be raised, may be adjudicated upon, it will be subject to appeal, one appeal, two appeals. That will delay matters.

SHRI RIZAQ RAM: Is there any authority holding the view that the surety does not include a person who has furnished security? If 'surety' is interpreted to mean that it should include also a person who furnishes security by cash or by property, then this may be redundant.

WITNESS: If you allow Section 145 to remain as it is without the addition of these words, then the court cannot insist that the person should furnish security also, security of property. When only a surety bond has been executed and no property has been hypothecated, then you cannot proceed against the property all at once. Property has to be found out and it may very well be that a person who has furnished surety may make his property secure. In the first place, the section as it at present stands does not authorise the court to insist upon a person to furnish security. He can just execute a bond.

WITNESS: By the addition of these words "or has furnished security in suitable cases" the court may know that the mere execution of surety bond will not be enough.

CHAIRMAN: Kindly section 145. Now you want the words "or has furnished security" to be added to this section. How does it improve the matter? Is it not more or less a repetition of the same thing?

WITNESS: The section, as it stands, leaves no option but to court to accept a surety bond. But if you add these words, the court may insist upon a person to furnish security as merely executing a surety bond will not be satisfactory.

CHAIRMAN: You think the bond is sufficient and, therefore, a security must be furnished.

WITNESS: It will all depend upon the court to exercise the option to require a person to furnish security instead of merely executing a surety bond.

CHAIRMAN: It is very difficult to have cash security.

WITNESS: It may be cash security or it may be security hypothecating property.

CHAIRMAN: According to me, it does not add much force to it.

WITNESS: Under the present section, it is not possible for a court to insist on a person to furnish security, either cash or security of property.

CHAIRMAN: Do you have the experience of any judgment with regard to section 145 which have not covered those cases or the court has not taken those person sufficient for furnishing security?

WITNESS: I will not be able to tell you of judgments at the moment. Please read the whole section which says:

"The decree or order may be executed against him . . . within the meaning of section 47:"

For this shall be substituted, namely:—

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

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

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

So that by becoming a surety he is personally liable and his property may not be proceeded against.

CHAIRMAN: In any case he will be liable whether these words are there or not. To your knowledge are there any cases to the effect where they have excluded a person from the operation of this clause?

WITNESS: Under the present section they will only execute a surety

bond making themselves personally liable.

**CHAIRMAN:** This section has been in existence for so many years. Have there been any case which have excluded such persons from the scope of this law on the ground that the words were vague or not sufficient to cover such cases?

**WITNESS:** Case law I will not be able to cite at the moment. But during the course of the proceedings of the sub-committee which was considering this amendment Bill of the Civil Procedure Code, some of the persons coming from all over the country suggested that they felt difficulty and, they recommended a clarification of section 45 by adding the words "or has furnished security". Reading the whole section 145, you feel that it contemplates a personal liability as a surety. He makes himself personally liable. The idea of furnishing security is absent from section 145. Hence the addition of (c):

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

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

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

and such person shall, for the purposes of the appeal, be deemed to be party within the meaning of section 47."

**SHRI RIZAQ RAM:** In my view the surety includes all types of persons whether he executes a personal bond or furnishes surety or security or cast. Anyhow, the witness feels an element of doubt.

**SHRI T. VISWANATHAN:** Instead of deleting the words, "has become

liable as surety", you want to add "or also has furnished security". Is it because the original section refers only to his personal liability and there is no liability to proceed against the security or property? The main clause also refers to proceeding against the security. But at the same time it has retained the words, "in clause (a)". Therefore, your contention is that as the main operative portion of the clause relates to both personal liability and to the property that the word "or" will be preferred.

**WITNESS:** Therefore, the words "have become liable as surety" be substituted by words "has furnished security". This gives an option to the court.

**SHRI T. VISWANATHAN:** Therefore, your contention is that the words in sub-clause (i) "if he has rendered himself personally liable" will be out of place because reference to main portion is removed. Therefore, you say that you should have both.

**WITNESS:** Yes, Sir.

**CHAIRMAN:** At page 1 of your comments on Clause 7 you have said, "The Committee is of the opinion that this is a salutary addition." You have admitted this.

**WITNESS:** Yes.

**CHAIRMAN:** Now it has been suggested to us by a member of the Delhi High Court Bar Association that some words may be added. I will read out those words and I want you to express your opinion. He has suggested adding "or is conducive to the convenience of the parties to the suit or at least the defendants and the witnesses" after the words ". . . the Supreme Court may, at any stage, if satisfied that an order under this section is expedient".

**WITNESS:** That will be the satisfaction of the court directing the transfer. The addition of these words is redundant. After all, the Supreme

Court or the High Court will consider the convenience of the parties also.

CHAIRMAN: Perhaps he thought that it was not clear enough.

WITNESS: No, I do not think the addition is necessary.

CHAIRMAN: So, you think that without the addition also the court will consider all these aspects of the matter.

WITNESS: Yes, certainly.

CHAIRMAN: According to your memorandum do you think that the omission of Section 80 is a proper step?

WITNESS: Yes.

CHAIRMAN: Do you not think that by the retention of the existing words in the Civil Procedure Code the chances of many cases which are decided between the parties—the Government and the outside parties—out of the court, may go? Some of the lawyers were insistent that these words should remain because otherwise . . .

WITNESS: If this section is not retained . . .

CHAIRMAN: . . . the litigants will have to rush to the court.

WITNESS: . . . the State will have no opportunity of making amends in suitable cases.

CHAIRMAN: But from the point of view of the litigants he thinks that there are cases where the litigants have compromised matters and the Government acceded to them. Therefore, it should be taken away. Then there will be no question of giving a notice and the people will rush to the court at once.

WITNESS: I agree some sort of a notice should be necessary. But there are cases in which a great hardship

is done because of the obligation to send a notice and wait on for two months and during this time an irreparable injury has been done.

CHAIRMAN: Would you be satisfied if the period of notice is reduced from two months to one month and at the same time mention that "where a suit is necessary because of the immediate orders of the court, such a notice may not be necessary" and further that no suit will be dismissed on the ground of illegality of the notice or non-compliance of the notice"?

WITNESS: Yes, that will be a better solution.

CHAIRMAN: Do you think so?

WITNESS: Yes, though some sort of notice to the State should be given.

SHRI TENNETI VISWANATHAM: You said some sort of notice is necessary. The notice under section 80 comes generally after a number of ordinary notices, letters, requests, prayers and petitions have been ignored. Therefore, it is not as if the Government had not got previous notices in these matters. Notice under section 80 is practically a plaint. Therefore, it is coming to the last stage. The Government must have had previously a great deal of time if they wanted to entertain a compromise. And without these notices if a suit is filed, even then, before the first hearing or immediately after the first hearing or before the issues are framed or even after the issues are framed, the Government will have an opportunity to compromise. Therefore, the presence of section 80A is not necessary to help the Government. Will you agree?

WITNESS: If a notice is given with a draft plaint accompanying it or in the form of a draft plaint, then the Government realises the seriousness of the matter and it feels that there is a real threat of a suit being filed.

Then they become more alert and they move their law officers to come out with their opinion and the stage for arriving at a compromise is reached. Earlier letters, etc., are exchanged, but the seriousness which ought to be attached, is not attached to mere correspondence. Therefore, . . .

**SHRI TENNETI VISWANATHAM :**  
Section 80 will have the same effect as a plaint.

**WITNESS :** No, not that of a plaint. What happens in practice is that when notice under section 80 is served then the officers of the Government become alert and they proceed to seek legal opinion of their law officers and if they find that a compromise can be arrived at, then an amicable settlement takes place. So, on the scope for that amicable settlement the door should not be closed altogether. That is the idea.

**SHRI TENNETI VISWANATHAM :**  
Yes, The idea is even after a plaint is filed, the door is not closed. What is your experience? In our part of the country in 99 cases out of 100 the reply from the Government is, "The threatened suit is awaited." In fact if you look into the administrative files of the departments you will find that there may be cases where they say, " . . . However, we can consider it after the suit is filed. Therefore, if the threatened suit is filed is it not your experience that you have got such replies ?

**WITNESS :** Yes. They follow as a mater of course like this. But when a notice is given, then, as I said, a real threat of suit is considered with all the seriousness that it deserves by the State concerned. There is a greater awareness of a suit being filed on the part of the State Government, and therefore, they consult their law officers and if so advised they try to enter into an amicable settlement. I mean the door should not be closed completely. But the period of notice may be reduced and an exception may

be made that no notice would be necessary in cases of emergency, as, for instance, where a person wants to file a suit for injunction. Exception may be made and then, as the Chairman pointed out, no suit shall fail for want of a notice under section 80. The hardship of section 80 will be mitigated considerably, and yet, the purpose of giving the Government notice to compromise if it is so admitted will also be served.

**SHRI TENNETI VISWANATHAM :**  
If the words are added no suit shall fail for want of notice. How do you reconcile with the wording of the section itself?

**WITNESS :** After the suggestions made by the Chairman, those words have to be modified.

**CHAIRMAN :** Yes, of course.

**WITNESS :** The section will not be allowed to stand as it is. The wording of section 80 will have to be changed.

**SHRI P. C. MITRA :** You are in favour of the modification of the wording of section 80, not altogether its deletion.

**WITNESS :** No, if you do away with it, there will be no harm done. As suggested by the Chairman, if some sort of notice is provided in order to enable the Government to arrive at an amicable settlement, equally there will be no harm done.

**SHRI P. C. MITRA :** There is a suggestion that if there be a provision that instead of this a notice only should be sent to the Government along with the filing of the suit, not necessarily they should wait for 60 days, so that the Government will have knowledge of the filing of the suit and they can take immediate steps, will that be sufficient?

**WITNESS :** The wording of Sec. 80 shall have to be modified considerably. It may be like this: 'Before the filing of a suit, a notice shall be sent

to the State Government and after waiting for a certain period, if there is no response then a suit may be filed.'

**SHRI P. C. MITRA:** But instead of that, if it is modified that along with the filing of the suit, a copy of the petition could be forwarded to the Chief Secretary of the Government, then the Government will have an opportunity to settle the matter. One of the suggestions made by the Chairman was that the case may be settled before the issues are framed.

**WITNESS:** My position is, if you completely do away with Section 80, no harm will be done but in order to provide an opportunity to Government, a notice may be provided for.

**CHAIRMAN:** And for the benefit of the client.

**WITNESS:** The hon. Member to my right suggested that along with the filing of the suit, a copy of the plaint should be sent to the Government but then the person filing the suit may have paid the court fee and incurred other expenses. That can be avoided.

**SHRI SYED AHMED:** You know that we have to restrict to the terms of notice. For instance you have a case in which a suit has to be filed and an injunction has to be taken or a receiver has to be appointed. There are some High Courts that have said that a notice ought to be given. Could you suggest how to circumvent this? Can you say that it will be helpful to the litigant if the High Courts were to give circumlocutory orders?

**WITNESS:** I agree with you that the rigour of Section 80 has to be considerably taken away and an exception should be made in the case of some matters.

**SHRI SYED AHMED:** It works hardships because the procedure comes in the way.

**WITNESS:** So far as our recommendation is concerned, we have said

that we agree that section 80 should be bodily removed from the C.P.C. but these suggestions have been made by the Chairman that the rigour of this section should be considerably modified and an exception should be made that no notice shall be necessary in cases where immediate remedy is needed and further that a suit shall not fail for want of such a notice, and that a mere provision be made in section 80 that before filing a suit a person should give notice to the State and the period of notice should be reduced from 2 months to one month—that way, the points of view both of the litigant and of the State shall be met.

**SHRI SYED AHMED:** I want your considered opinion. The intention of the framers of the CPC should be retained with a proviso which should consist of exception in those cases where remedy is sought under specific circumstances. It is meant for urgent cases.

**WITNESS:** In several other Acts also there is a provision for 2 months' notice but there they have made an exception that if it is a suit for a permanent injunction as in the UP Municipal Act, a notice need not be sent.

**SHRI SYED AHMED:** That is what I have been suggesting. Whenever section 80 was put to the witnesses, whenever such a remedy was sought, it was said that there is no necessity to make exceptions.

I refer you to Clause 5, and to the amendment that you have suggested to the proposed Section 21A by way of a proviso. Now I put it to you: What you have suggested in the proviso, is it not the present law? Even today this is the law.

**WITNESS:** No. Please see the proposed Section 21A which reads—

"No party to a suit shall be allowed to question the validity of a



decree passed in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing. \* \* \*”.

SHRI SYED AHMED: Your proposal is that objection can be raised.

WITNESS: Yes, it is just an objection.

SHRI SYED AHMED: Your amendment appears to me to be redundant because it is unnecessary. I say redundant and unnecessary because, if you take out your amendment to the proposed Section 21A, then the law is what obtains today, and under the law as at present objection can be taken to the jurisdiction of the court; that is the law.

WITNESS: The proviso is necessary—the amendment we have suggested—because you are adding Section 21A in order to debar a party “from challenging the decree so passed on any objection as to place of suing.”

SHRI SYED AHMED: If there was no jurisdiction, then the question of jurisdiction can be raised, that is the present law. The question of territorial jurisdiction can be raised.

WITNESS: And if a court passing the decree had no jurisdiction, then that decree is a nullity; it is not binding on him.

SHRI SYED AHMED: That is the law that exists today and so to me your proviso is redundant; it is unnecessary.

WITNESS: If you do not add the proposed Section 21A, then of course it is redundant, and if you want to add Section 21A, then it is necessary.

CHAIRMAN (PANDIT S. S. N. TANKHA): He says that if Section 21A is added, then the wording of it should be modified.

WITNESS: If the Section is not added, then the question of adding a proviso does not arise.

SHRI SYED AHMED: Your proviso will be tantamount to what the present law is.

WITNESS: No, because, under the present law, a decree, which has been passed by a court having no territorial jurisdiction, can be challenged by a person affected on the ground that that decree is a nullity, but by providing Section 21A now you are taking away that right. That a previous decree was a nullity cannot be challenged now.

CHAIRMAN: By adding Section 21A you think that the question of a decree being a nullity cannot be agitated. That is your view.

WITNESS: Yes.

SHRI SYED AHMED: Please turn to Clause 11. I find that you are proposing an amendment to sub-section (2) of Section 39. We have not proposed any amendment to sub-section (2); the Bill contemplates only the addition of sub-section (3) to Section 39.

WITNESS: It is because Clause 11, sub-clause (a) thereof reads thus—

“in sub-section (1), after the words “to another court”, the words “of competent jurisdiction” shall be inserted;”

SHRI SYED AHMED: No, no. The words “a Court of competent jurisdiction” appear in the proposed sub-section (3). But in subsection (2) they don't exist.

WITNESS: The court should pass a decree made on the application of a decree-holder and send it for execution to another court. You have said to another court of competent jurisdiction.

CHAIRMAN: Now, you want to add the word ‘pecuniary’.

**SHRI SYED AHMED:** I have no objection. Instead of subsection (2), it should read sub-section (3).

**WITNESS:** Please read your notes on clauses. It reads here:—

“Clause 11—Section 39 of the Code provides for transfer for execution of a decree by the Court which passed the decree to another Court. There is a conflict of decisions with regard to this section....”

**SHRI SYED AHMED:** Sub-section (2) does not speak anything about “such courts would have”.

**WITNESS:** These words become necessary after the amendment proposed, so that the proposed sub-section 2 of section 39 may be in conformity with the earlier provisions.

**SHRI SYED AHMED:** Where you have said sub-section (2) it should read amending sub-section (3).

**WITNESS:** We have proposed it in the earlier clauses. Please introduce these very words here in order to bring them in conformity with the earlier clauses.

**SHRI SYED AHMED:** Please read sub-clause (3) instead of sub-clause (2).

**DR. B. N. ANTANI:** May I put a very short question? Do you not think, when all is said and done, no material harm will be caused either to the Government or to the litigant if section 80 is removed?

**WITNESS:** I agree with you. I stand for the complete revocation of section 80.

**SHRI P. C. MITRA:** In clause 5 you have suggested the addition of a certain provision....

**CHAIRMAN:** While we are discussing one clause, hon. Members are requested to put their questions on that clause and not take the witness to the other clauses.

**SHRI P. C. MITRA:** Regarding clause 11, I would like to know whether ‘competent’ does not include ‘pecuniary jurisdiction’ also. Why should the word ‘pecuniary’ be added, as you have suggested? ‘Competent jurisdiction’ includes pecuniary as well as territorial and other jurisdiction. Otherwise, it would only circumvent the object and only the pecuniary aspect will be taken into account and not the other aspects. Therefore, I think the present Bill is better than it would be with the addition of the word ‘pecuniary’.

**WITNESS:** It says here ‘another court of competent jurisdiction’.

**SHRI P. C. MITRA:** It includes pecuniary, territorial, everything. Instead of adding the word ‘pecuniary’, it is better that competent jurisdiction should be allowed to remain as it is.

**CHAIRMAN:** He says that if you add the word ‘pecuniary’, then the other aspects may be lost sight of. He thinks that the word ‘pecuniary’ should not be there.

**WITNESS:** “Competent jurisdiction” will also include the court of the District Judge to which the decrees are transferred. Therefore, in order to enable a court passing a decree to get that decree executed by a court of competent pecuniary jurisdiction, it should have the power to transmit that decree for execution straightway to a competent court.

**CHAIRMAN:** His fear is that by adding the word ‘pecuniary’ at that place the other aspects of the decree may be lost sight of or become inapplicable. Only the pecuniary aspect will remain. Therefore, without adding the word ‘pecuniary’, it would be better.

**WITNESS:** Why then add the word ‘competent’ at all?

**CHAIRMAN:** According to him the word ‘competent’ covers all aspects, pecuniary or otherwise.

WITNESS: I would refer you to the explanatory note on clause 11.

CHAIRMAN: Where is it?

WITNESS: Explanatory note on page 60 . . .

CHAIRMAN: They are notes on clauses. They begin at page 58.

WITNESS: "Section 39 of the Code provides for transfer for execution of a decree by the Court which passed the decree to another Court. There is a conflict of decisions with regard to this section as to whether (i) the transferee Court must be a Court of competent pecuniary jurisdiction; and (ii) if so, whether the competence should be judged with reference to the decree or suit". Because of this difference of opinion in the High Courts and the use of "competent pecuniary jurisdiction" we have suggested that it should be competent pecuniary jurisdiction. We have taken this from your notes. 4.

CHAIRMAN: I understand. Will you kindly come to clause 21 at page 8 of the Bill?

WITNESS: We have said that the proposed amendment is not necessary.

CHAIRMAN: As you must have seen from the comments on the Bill this has been done because, since the value of the money has come down, therefore it was considered that this limit should be raised to Rs. 3000 instead of Rs. 1000. This is being made because of the fact that the value of the rupee has come down, therefore this limit is being raised. Why do you not agree with it?

WITNESS: Rs. 1000 is quite enough. Otherwise to a person who goes to a court of law, the right of appeal...

CHAIRMAN: Do you mean to say that the right of appeal between the amounts of Rs. 1000 and Rs. 3000—those persons will be left out if the change is made, therefore you do not approve?

WITNESS: Yes. It used to be Rs. 500. Then it was raised to Rs. 1000. A further rise is not justified.

CHAIRMAN: Second appeal in small cause courts, not ordinary cases.

WITNESS: Section 102 refers to suits of the nature of small causes.

CHAIRMAN: Will you kindly come to section 115, clause 23, on page 8 of the Bill? It has been modified. The change that has been made in the amending Bill is that in the proviso (a) and (b) are being added. What are your views? Do you think that these words restrict the powers of the High Court, the addition of these words?

WITNESS: What we have said in our recommendations is that in the opinion of this Committee the proposed proviso in section 115 and sub-section (3) are not necessary as this amounts to unjustifiable interference with the exercise of judicial discretion. High Court, the addition of these constitute a denial of justice.

CHAIRMAN: What I enquire from you is whether you think that this proviso restricts the powers of the court in any manner and therefore you oppose it.

WITNESS: Yes, it does.

CHAIRMAN: Therefore, you would like the present section to remain as it is.

WITNESS: Yes. As it is, it is very restrictive in its application.

SHRI B. N. MANDAL: I want to know from the witness how it restricts. He should explain this.

WITNESS: Please read your proposed additions (a) and (b) at page 8. This proviso is an exception to the exercise of the powers of a High Court. "Provided that the High Court shall not, under this sub-section, vary or reverse any order made in the course of a suit or other proceeding,

including an order deciding an issue, except where (a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or (b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made".

**CHAIRMAN:** The object of the Government in making this change is to reduce litigation, to reduce unnecessary reversal applications being filed in the High Court. The litigant rushes to it in order to stop other consequences.

**WITNESS:** You will please appreciate that already the application of section 115 by the High Court is in a very restricted manner.

**CHAIRMAN:** In spite of that hundreds of applications are being put forward every day in the High Court.

**WITNESS:** I am afraid that object will not be achieved by the addition of these.

**CHAIRMAN:** Why?

**WITNESS:** "the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding"....

**CHAIRMAN:** Where it has been finally decided then only the High Court will interfere, not otherwise.

**WITNESS:** You will come in conflict with the decision of the Supreme Court which says that even in interlocutory matters if the orders are passed which come within the mischief of any of these three clauses, then the High Court in suitable cases may interfere.

**CHAIRMAN:** The Legislature has the right to change the law and the Supreme Court will modify in the light of the changes made.

**WITNESS:** The reasons which persuaded the Supreme Court to hold like that were to safeguard against very hard cases. They said if irre-

parable injury has been done, if the mischief has been caused beyond repair by an interlocutory order it should be interfered with in revision under 115. There will be scope for argument whether a certain decision is governed by the proposed clauses (a) and (b). There will always be a contention raised that the order passed is not one which can be governed by clauses (a) and (b), so that really the door for the filing of revisions will not be barred.

**CHAIRMAN:** Kindly see page 63. There are comments on clause 23. Why this change has been made is mentioned here. You see on page 63. Section 115 is being modified for the reasons mentioned in sub-paragraphs (i) and (ii).

**WITNESS:** What has been said here is—

"(i) to limit the power of revision to such interlocutory orders which, if decided in favour of the petitioner would be sufficient for the final disposal of the suit or proceeding, or in which the order is likely to cause an irreparable injury;

(ii) to clarify that the expression "case decided" used in the section includes an interlocutory order including an order deciding an issue."

**CHAIRMAN:** Because, there was a conflict.

**WITNESS:** That conflict has been set at rest by the Supreme Court. So, you need not clarify what is meant by a case. The Supreme Court has done it and so far as (i) is concerned . . . .

**CHAIRMAN:** Will it not be better that instead of an opinion being expressed, the matter is settled by a statute?

**WITNESS:** The law has been laid down by the Supreme Court Under the Constitution the Supreme Court also lays down the law of the land. Its decision is the law of the land.

**CHAIRMAN:** But no harm will be done by the change.

**WITNESS:** But by introducing clause (i) evidently "case decided" is being defined.

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

It does not particularly refer to any interlocutory order because it is not merely the decision of an issue which may constitute an interlocutory order. There will be other matters also which may be decided by interlocutory orders and yet they may be open to revision under the definition of a "case decided" by the Supreme Court. Therefore, by this means you are not defining the term "case decided" . . .

**CHAIRMAN:** No that is another aspect. That is a separate thing.

**WITNESS:** And by providing (a) and (b) the powers of the High Court are being restricted. As it is under section 115 they are restrictive in their application. Even with the provision of (a) and (b) there will be scope for argument whether these two new provisions apply to a particular order or not.

**CHAIRMAN:** Some of the eminent lawyers who appeared before us and gave evidence objected to this because they thought that it will unsettle the law again. Under section 115 the matter has been sufficiently understood in the legal phraseology and therefore, any change at this stage will unsettle the law, and therefore, it should not be done. That is what they said.

**WITNESS:** I agree It did not occur to me. But I agree with this point of view also.

श्री बी० एन० मंडल : अभी सेक्शन 115 के बारे में आप बोल रहे थे और आपका कहना है कि इसमें जो कुछ रेस्ट्रिक्शन्स लाने की कोशिश की है वह रेस्ट्रिक्शन्स नहीं रहे तो अच्छा होगा और अनफेटर्ड राइट कोर्ट

456 RS—15.

का होना चाहिये और इसलिये आपने इसको अपोज किया है लेकिन मेरा यह कहना है कि जो आप कहते हैं कि रेस्ट्रिक्शन लाया गया है वैसी बात नहीं है, मेरा कहना है कि रेस्ट्रिक्शन कुछ नहीं लाया गया है। ओरिजिनल सेक्शन जो था वही सारी बातों को इसमें इंकलूड करते हैं, इस अमेंडमेंट में वह सारी बातें इंकलूड हैं।

चेयरमैन : इसके मायने यह है कि आप अमेंडमेंट को अपोज करते हैं।

श्री बी० एन० मंडल : हम भी अपोज करते हैं और यह भी अपोज करते हैं।

चेयरमैन : तो वह भी आपसे एग्री करते हैं।

श्री बी० एन० मंडल : लेकिन इनका ग्राउण्ड यह है कि इसमें रेस्ट्रिक्शन्स आते हैं और मेरा यह कहना है कि रेस्ट्रिक्शन्स नहीं आते, क्योंकि प्राविजो का जो ए और बी है उसमें वह सब जो कि ओरिजिनल सेक्शन में था वह इंकलूडेड है इसलिये कोई रेस्ट्रिक्शन नहीं आता है। सिर्फ यही बात है कि जो अमेंडमेंट है वह इतना डिटेन्ड है कि उससे काफी स्कोप लिटीगेशन का हो गया है। जो ओरिजिनल सेक्शन है वह उसी तरह ज्यों का त्यों रहता तो ठीक है, वह बहुत सिम्पलीफाइड है और उसमें सब इंकलूड है।

चेयरमैन : फिर वही बात हुई कि ला अनसर्टेन हो जायगा लिहाजा कोई चेंज न करें।

साक्षी : ठीक है।

चेयरमैन : अब आपसे पूछने की बात यह है कि क्या आप कल अवेलेबिल रहेंगे।

साक्षी : जी हां, मैं यही हूँ।

चेयरमैन : बात यह है कि कुछ माननीय सदस्य आपसे सवाल पूछना चाहेंगे और इस वास्ते मैंने कहा कि आप कल आ सकेंगे।

साक्षी : ठीक है, अभी खत्म कीजिये। कल आ जायेंगे।

**CHAIRMAN:** Do the honourable Members approve of this procedure that Mr. Shrivastav will continue his evidence tomorrow at 2.30 with reference to the suggestions made by the Lucknow Bar Association?

**SHRI P. C. MITRA:** Mr. Chairman, regarding one point I also want to put certain questions. Shall I be permitted to put my questions on that point also tomorrow?

**CHAIRMAN:** If you can finish your questions in five or ten minutes you can put them now itself.

**SHRI P. C. MITRA:** All right, Mr. Shrivastav, this is regarding clause 7. Don't you think that by this provision this will give a special right to the monied party to go to the supreme Court for transfer and the weaker party cannot do so and may suffer on that account? The weaker party may find it difficult to go to the Supreme Court to contest its claim for transfer. Therefore, in very exceptional cases on the sanction of the local Government cases can be transferred to certain other High Courts. But after this provision becomes an Act, do you not think many parties will come up for transference of the case to the Supreme Court and harass the weaker parties?

**WITNESS:** I do not think your apprehension is going to be a general rule; it is an exception. The proposed section 25(1) is made on the basis of a general rule. Sub-clause (1) says that if it is a case of transfer from one High Court to another, then an approach may be made to the Supreme Court, and if it is a case of transfer from one civil court to another civil court in the very same State, then the High Court of that particular State may be moved to do the needful. Therefore, in every case it is not the Supreme Court to whom a rich litigant can come up.

**SHRI P. C. MITRA:** An application may be sent for any type of cases and

the Supreme Court will issue a notice to either parties. Even to appoint a lawyer of the Supreme Court, a fee of Rs. 500 is required. The weaker parties have to come to Delhi from all over India. It is very seldom that any case has been transferred to a court of any other State. Only one case, Harbanslal was allowed. But after we make this Act many parties may move the Supreme Court for a transfer.

**WITNESS:** I do not subscribe to this apprehension. This may be an exception rather than a general rule.

**SHRI P. C. MITRA:** There is a provision of allowing cost up to Rs. 2,000. If cash security is demanded from the litigant, in addition to this cost, will it not be a deterrent?

**WITNESS:** Furnishing of security and the payment of court fee is covered by the rules of the Supreme Court and the High Court themselves. The High Court may be asked to make their own rules for the furnishing of security.

**SHRI P. C. MITRA:** There was a suggestion here by some witness that there should be no limitation of amount regarding the cost. And cash security also may be demanded from the party to move the Supreme Court for transfer. Why are you not in favour of that proviso?

**WITNESS:** There is no objection to you, indicating that the High Court or the Supreme Court, as the case may be, may make suitable rules for demanding cash security from persons making applications for transfer. We may do that, and provide a further safeguard against applications indiscriminately being filed for the transfer of cases before the High Court or the Supreme Court. I should have thought that so far as the Supreme Court is concerned, they have made their own rules for demanding cash security for the payment of the cost of the opportunity. An indication may be made that the High Courts may also make their rules for the

payment of cash security. But the power proposed to be given by section 25(1) (a) is a salutary provision as we have recommended. This power does not exist. There are genuine cases where a transfer should take place. But the Supreme Court and the High Court are powerless; they cannot make a transfer. I do not apprehend that this proposed section 25(1) will be abused in any manner.

---

8  
CHAIRMAN: Mr. Srivastava, thank you very much for coming and appearing before the Committee. Since we have not yet finished with you, may kindly again come tomorrow at 2 P. M. Hon'ble Members are requested to be here in time so that the witness is not kept waiting.

WITNESS: Thank you Sir. Yes, I shall come tomorrow.

*(The witness then withdrew.)*

Wednesday, the 28th January, 1970

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                         |                          |
|-------------------------|--------------------------|
| 2. Dr. B. N. Antani     | 6. Shri Purnanand Chetia |
| 3. Shri Rattan Lal Jain | 7. Shri V. T. Nagpure    |
| 4. Shri B. N. Mandal    | 8. Shri T. K. Patel      |
| 5. Shri Syed Ahmed      | 9. Shri P. C. Mitra      |

*Lok Sabha*

- |                                |                             |
|--------------------------------|-----------------------------|
| 10. Shri D. Balrama Raju       | 19. Shri B. P. Mandal       |
| 11. Shri R. D. Bhandare        | 20. Shri M. Meghachandra    |
| 12. Shri Shri Chand Goyal      | 21. Shri S. B. Patil        |
| 13. Shri Ram Kishan Gupta      | 22. Shri Jhadkhande Rai     |
| 14. Shri Heerji Bhai           | 23. Chaudhuri Randhir Singh |
| 15. Shri J. M. Imam            | 24. Shri P. N. Solanki      |
| 16. Shri Thandavan Kiruttinan  | 25. Shri K. Subravelu       |
| 17. Shrimati Sangam Laxmi Bhai | 26. Pandit D. N. Tiwary     |
| 18. Shri Mahendra Majhi        |                             |

MINISTRY OF LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri Kishan Singh, *Under Secretary.*

WITNESS

1. Shri Hargovind Dayal Srivastava, Chairman, Bar Council of India and Senior Vice-President of Oudh Bar Association, Lucknow.
2. Shri Syed Ali Zaheer.
3. Shri N. S. Das Bahl, Advocate, Supreme Court, New Delhi.



(The witness Shri Hargovind Dayal Srivastava was called in)

CHAIRMAN: Mr. Srivastava is here to continue his evidence of yesterday.

Before you proceed to the note received from the Bar Association I would like you to continue your comments on the Bill.

WITNESS: Yesterday I had referred to clause 12 and the suggestion was that a further clause (d) in the proposed sub-section (2) may be added as follows:

“(d) power to execute a decree at the instance of a legal representative or assignee of a decree holder.”

And the difficulty pointed out was that there were no preceding clauses for this to be put in as (d). I have since checked up and if you will kindly see clause 12 of the Bill you will find in the proposed sub-section (2) there are three clauses (a), (b) and (c) and it is after this that we have suggested that another clause (d) may be added. Yesterday difficulty was expressed because it was not noticed that this proposed sub-section (2) already has three clauses giving the various powers of the court. When the other powers have been specified this power should also be specified. These are the powers of the transferee court. The power that is sought to be added is the power to execute a decree at the instance of a legal representative or assignee of a decree holder. If an application for execution is made the transferee court shall be competent to execute the decree at his instance.

SHRI P. C. MITRA: I will draw your attention to sub-section (4) where it is stated that nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely power to order execution at the instance of the transfere

of a decree and the proposal is to give power to execute a decree at the instance of the assignee also.

WITNESS: No, legal representative.

SHRI P. C. MITRA: Legal representative or assignee. When the assignee is not allowed . . .

CHAIRMAN: To which clause are you referring?

SHRI P. C. MITRA: Clause 12 (4). His suggestion is that a further clause be added giving power to execute a decree at the instance of a legal representative or assignee whereas in 12(4) the power to order execution at the instance of the transferee of a decree is prohibited. When the transferee is prohibited, how can the execution of the order at the instance of the assignee be allowed?

WITNESS: Please read clause 12:

“Section 42 of the principal Act shall be re-numbered as sub-section (1) of that section and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted . . .”

If you go back to the original section 42, which is now numbered as sub-section (1), it says:

“The Court executing the decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.”

This is sub-rule (1) now. After that it is proposed to add sub-rule (2):

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

We want to add sub-clause (d) :—

"power to execute a decree at the instance of a legal representative or assignee of a decree holder."

SHRI P. C. MITRA: My point is that sub-clause (4) says:—

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

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

When you say 'assignee' at the instance of an assignee of a decree-holder execute a decree or a court order in execution of a decree it is practically contradicting. Instead of 'transferee' you are transferring the decree to the assignee. Thus it can be circumvented. Then, you should oppose this also.

CHAIRMAN: I suppose you are for the deletion of (a), if it runs counter to sub-section (a).

WITNESS: That is so. Sub-section (a) ought to be deleted.

CHAIRMAN: Would you kindly come to clause 31 at page 2 of your comments?

You have said?

"In (5) (a) the word "Stay" should be deleted, and the word "strike" should be substituted.

WITNESS: You have given power to court to strike out the defence.

CHAIRMAN: Evidently the Law Ministry does not want to inflict such a heavy penalty as to strike off the suit altogether.

WITNESS: For the same fault, if the defendant has given a wrong registered address, he is penalised. Equally a similar liability should attach to the plaintiff who has given a wrong address. Why make a differentiation between the plaintiff and the defendant? A similar penalty should be imposed on both.

SHRI P. C. MITRA: Your point is both should have the same penalty. Both of them should be struck down.

CHAIRMAN: I agree with your point. Both the plaintiff and the defendant should be placed in the same position.

WITNESS: If you read the word 'stayed', one does not know stayed for what length of time. Indefinitely. It would be more appropriate, I submit, that the defence or the suit as the case may be struck out. Staying the suit leads us nowhere.

CHAIRMAN: Will you turn to page 3 of your memorandum, clause 39(a): "In proposed Rule 1(2) after the words "through Court or otherwise" the words "or producing" may be added. There is a danger that the proposed rule may be interpreted to mean that the production of a witness by a party otherwise than by calling him as provided for is excluded".

WITNESS: "A party desirous of calling, whether by summoning through Court or otherwise, any witness other than those whose names appear in the said list, may be permitted" . . .

CHAIRMAN: Original Act section 39.

WITNESS: It is Order XVI. Rule 1 of Order XVI is sought to be substituted to curtail the right of a party to produce witnesses indiscriminately at any stage of the proceedings. Therefore it has been enjoined upon him by the introduction of sub-rule (1) that he must confine himself to the list of witnesses which he is required to give at a specified time. But a Court may in suitable cases permit a departure from that list if

it is satisfied that the production of a witness outside that list will advance the interests of justice. "A party desirous of calling whether by summoning through Court or otherwise, any witness other than those whose names appear in the said list, may be permitted to do so by the Court, if he shows good cause for the omission of the said witness from the list". The idea is that a person may be permitted to produce a witness outside the list of witnesses.

SHRI P. C. MITRA: The word "otherwise" is mentioned. It covers that. "Otherwise" is also producing witnesses. So I do not think it is necessary to mention the word "producing".

WITNESS: I agree. While I was examining this it is not very necessary to introduce the word "producing", but if it is added, it may help towards a little more clarification.

SHRI P. C. MITRA: "Otherwise" covers producing of witnesses also.

WITNESS: I agree.

CHAIRMAN: I do not see any danger of misunderstanding being created without the addition of these words.

WITNESS: It is not very necessary to add the word "producing" after the word "otherwise".

CHAIRMAN: That is what I was saying. I do not see much force in adding these words.

WITNESS: The language is wide enough as it is of sub-rule (2) of new rule 1,

CHAIRMAN: On page 4 of your memorandum you have made suggestions regarding such clauses as are not amended. This Committee is not competent to go beyond the Bill as it has been introduced. The suggestions can be considered by the Law Ministry.

WITNESS: With the change in the circumstances and the conditions obtaining in the country these amendments have been suggested.

CHAIRMAN: Does any hon. Member wish to question the witness on any of the matters which he has put forward?

WITNESS: Just one moment. Reverting back to page 1, clause 11, you were pleased to put to me the question as to why it is necessary to add the word "pecuniary" before the word "jurisdiction". This addition of the word "pecuniary" before the word "jurisdiction" in clause 11 as suggested by us is traceable to your explanatory note on clause 11. You have said in the note that there is a conflict of decisions with regard to this section as to whether the transferee Court must be a Court of competent pecuniary jurisdiction. Because you have used the word "pecuniary" therefore we have said that.

CHAIRMAN: We have noticed that yesterday.

WITNESS: Otherwise we may proceed on to Avadh Bar Association.

CHAIRMAN: Section 10. This too is not being amended.

WITNESS: Then it is outside the purview.

CHAIRMAN: It is not being amended under the Bill.

WITNESS: It is a suggestion made by the Avadh Bar Association, because difficulty has been felt in interpreting section 10 whether it excludes the power to consolidate cases, and recourse has been had by some courts under their inherent powers under section 151; in the exercise of those powers they have consolidated cases. We wanted that there may be no scope for difference of opinion about the power of the Court to consolidate two suits for simultaneous trial. Anyway because section 10 is not being amended, we may not ask you to consider it.

CHAIRMAN: Come to the second paragraph, section 21A. I would say that when the clause mentioned about the decree, whether the decree is based on compromise is included in it.

WITNESS: Yes, it is included.

CHAIRMAN: The words are clear.

WITNESS: They are comprehensive enough.

CHAIRMAN: I think it is not necessary to add this. The Act mentions 'decree passed earlier'. It includes decree of compromise also.

CHAIRMAN: Then, about clause 60, you say "It may be clarified that salary shall not be deemed to include dearness allowance, house allowance or any other allowance.". The Act mentions the words 'salary only'. It will be deemed that it does not include allowances at all.

WITNESS: No, it does not. Salary has not been defined anywhere in the Civil Procedure Code nor in section 60.

CHAIRMAN: But you merely want that salary should not include dearness allowance or the house allowance.

WITNESS: Otherwise, you will have to go into the meaning of the word in the dictionary, the meaning of 'salary'—it may be all emoluments of which a person is in receipt per month.

CHAIRMAN: You can say 'salary exclusive of other things'.

WITNESS: The idea underlying is that it will lead to a little stretching of the languages, that salary includes other type of emoluments which an employee is getting at the end of the month.

CHAIRMAN: Section 60—Explanation A. According to the definition as contained here, it excludes allowances. 'Salary means total monthly emoluments excluding any allowance.'

WITNESS: Then you have to refer back to (1). "... which the appropriate Government may by official notification declare....while under suspension."

All that is left to the Government, the appropriate Government to make a notification.

CHAIRMAN: To include those things within salary.

WITNESS: Instead of adding all those, why not have a clarification put here?

CHAIRMAN: All right. Kindly turn to Section 80.

WITNESS: They refer to municipal laws. If section 80 is to be retained then a proviso as suggested may be added on.

CHAIRMAN: What I wanted to know is whether you consider that the change made in the Municipal Act—if you incorporate this—will be a better method or do you think that the section may be withdrawn.

WITNESS: The better of the two things would be to completely do away with section 80. But if you want to retain it....

CHAIRMAN: Retaining this with this proviso, would serve the purpose all right.

WITNESS: The other suggestion made by you yesterday that the period of notice may be reduced to one month and the failure or want of such a notice will not entail the dismissal of suit—how it can be incorporated is more than what I can envisage.

CHAIRMAN: That is for the Law Ministry to do. We just want your reply on that.

WITNESS: These riders in Section 80 may be retained.

SHRI SHRI CHAND GOYAL: What useful purpose will it serve, he wants to know. But has the Government

has ever taken advantage of it except to raise the technical plea? May I have the reasons that you have in mind?

WITNESS: I think instances are not wanting where after receipt of notice under Section 80 the authorities have been alerted and some responsible officers have arrived at a settlement. Why bang the door? I agree, invariably such a notice has not effect. Therefore, I am in favour of its deletion completely. But if you want to retain it, then its vigour should be considerably modified on the lines suggested by Chairman yesterday.

THE CHAIRMAN: Will you kindly read the proviso which has been given in the Bill? It says:—

“Provided that nothing in this section shall be construed to apply to a suit where in only relief claimed an injunction of which the object would be defeated by the giving of notice or postponement or the commencement of the suit.”

WITNESS: Perhaps the cyclostyled copy has not given it properly. Kindly refer to the original document sent to you. Both with regard to sections 80 and 144 something is wanting.

THE CHAIRMAN: Coming to section 144, it says:—

“There was controversy about limitation in respect of an application under section 144. The Supreme Court decided that application under section 144 for execution for purposes of limitation...”

This is also incomplete. I cannot follow.

WITNESS: It means that in view of the law laid down by the Supreme Court with regard to section 144 a statutory provision giving effect to that law may be added.

THE CHAIRMAN: Now on page 63 of the Bill, it is laid down:—

“Section 144 of the Code empowers the court to order restitution

when a decree is set aside or modified. There is a conflict of judicial decisions as to whether the section applies in cases where a decree is set aside or modified otherwise than on an appeal, e.g., in a separate suit. The Madras, Allahabad and Patna High Courts have taken the view that the section applies in such cases also. A contrary view has been taken by the Calcutta, Allahabad and Punjab High Courts. The section is being amended to give effect to the first mentioned view.”

WITNESS: It is this difference of opinion which perhaps has been settled by the Supreme Court.

THE CHAIRMAN: According to the comments contained on page 63 this does not explore any transfer about limitation. But it merely says that there is controversy as to whether this section applies to cases where a decree is set aside or modified.

WITNESS: I did not see this. But I had a discussion with the author of this note, Mr. Nasir Uddin whom perhaps you know. If I had this before me at that time I would have asked him as to what is the case of the Supreme Court to which he referred. If you like I may send it to you after reaching Lucknow.

THE CHAIRMAN: Now come to the next paragraph, clause 25, as suggested in the comments.

WITNESS: These are the two views of the various High Courts.

THE CHAIRMAN: I have not been able to follow this paragraph.

WITNESS: As I said, I am not able to throw any further light.

CHAIRMAN: Clause 57 is not being amended.

WITNESS: All that may be done is that a note may be made to the effect that an amendment is proposed to section 57 and it will be for the Law Ministry to consider it.

**CHAIRMAN:** About order XXI on sections 58 to 63, perhaps the objection of the Association is to the filing of separate suits. Instead of filing separate suits in courts, the matter will be dealt with by the executing court. Is it being objected to by the Association? According to this, the decision of the question of title will take a long time and then there will be appeals and further appeals. On the other hand, the Government has brought forward this to minimise time because separate suits take much longer time.

**WITNESS:** With reference to this I do not find myself quite in agreement with the suggestion. My personal view is that it will be a very salutary amendment of the Civil Procedure Code to do away with double proceedings, proceedings under Rules 58 to 63 and proceedings under Rules 96 to 100 of Order XXI followed by a regular suit.

**CHAIRMAN:** The whole idea behind this is that regular suits take a very long time, and appeals also take separate time. Now lesser time will be consumed.

**WITNESS:** This is what I told the author of this note that, personally speaking, I was not in favour of this recommendation.

**CHAIRMAN:** That is to say, you approve of the principle in the Bill?

**WITNESS:** Yes.

**SHRI SHRI CHAND GOYAL:** We are dealing with Order 21, Rule 58 as to whether it should be disposed of by the objection petition. One view given to us by a senior advocate Mr. Mukherjee at Calcutta was that it would be desirable that the objection petition itself is treated as a suit, so that the remedy of a separate suit can be done away with. Do you agree with clause 5?

**WITNESS:** Yes, I agree.

**SHRI SHRI CHAND GOYAL:** And everything should be decided on the petition itself?

**WITNESS:** I agree, in the execution proceedings.

**CHAIRMAN:** The witness agrees that this would be a better method.

**WITNESS:** In this connection what I would suggest is to put it on a par with section 47(2) which says that the court may subject to any objection as to limitation or jurisdiction treat a proceeding under this section as a suit or as a proceeding and may if necessary order payment of an additional court fee. A similar provision may be incorporated in this section also that just as in the case of petitions under section 47 the same may apply to petitions under Rule 58, Order 21 and Rule 96. That will meet to a certain extent the point of view of the Bar Association also.

**CHAIRMAN:** Yes; we follow.

**SHRI SHRI CHAND GOYAL:** want to ask one general question. The object of this piece of legislation was to avoid delay and make the administration of justice less expensive. How far do you think this amending measure is likely to achieve that objective?

**WITNESS:** This amending measure will to a very great extent achieve the underlying object of minimising the duration of the proceedings in civil courts and it is from this aspect that we considered the proposed amendments and we found that to a very great extent this could achieve the objective we have in view.

**SHRI SHRI CHAND GOYAL:** One more question and that is with regard to section 25. Now one has to file an affidavit in support of the contentions in the applications but the same treatment is not being given to the Advocate-General. So we want an addition in this that it should be necessary even for the Advocate-General to support the application by means of an affidavit. What have you to say on this?

**WITNESS:** The position of an Advocate-General as the highest Law

Officer of a State is very different. He may not be in a position to get hold of any person who can swear to an affidavit from personal knowledge.

**SHRI SHRI CHAND GOYAL:** The departmental Head.

**WITNESS:** All that a departmental Head may be able to do is to verify an affidavit. It will not advance the case any further.

**SHRI SYED AHMED:** Is it not possible to say that neither the Advocate-General nor the parties should be required to file affidavits?

**WITNESS:** An exception may be made.

**SHRI SYED AHMED:** What is an affidavit? I give an application and I am required to file an affidavit in support of the application. That affidavit means that I simply assert that whatever is stated in the application is correct. Suppose the requirement of affidavit is done away with altogether?

**WITNESS:** So far as the application of a private party is concerned, it must be accompanied by an affidavit. He must take the consequences; he must be prepared to substantiate the allegations by means of an affidavit. The filing of an affidavit casts a certain responsibility on a person of which he is doubtless aware.

**SHRI SYED AHMED:** In your long experience—and I think you have a very long experience in courts—has anybody been prosecuted for filing a false affidavit?

**WITNESS:** Yes; there have been cases and people have been hauled up.

**SHRI SYED AHMED:** They have been?

**WITNESS:** Yes.

**SHRI SYED AHMED:** Not to my knowledge at least.

**WITNESS:** It is like this. If a false affidavit is filed at the time of disposing of the case in the judgement itself according to the provisions of the Criminal Procedure Code the Judge comes to the conclusion that the affidavit is false and the person who has sworn to that affidavit should be proceeded against for perjury. He has to make that observation in the judgment itself. It is only then that the person may be prosecuted. There are a few cases but it is not a fact that there are no cases where persons have been prosecuted for filing a fake application. At all events the person who files an affidavit is also aware of the consequences of filing a false affidavit.

**SHRI SYED AHMED:** My question was so far as the merits are concerned would it make any difference if these affidavits are not required to be filed?

**WITNESS:** In the case of a private individual asking for the transfer of a case the filing of an affidavit should be made obligatory because that gives a sense of responsibility to the person who moves for the transfer of a case.

**SHRI P. C. MITRA:** May I draw your attention to page 3 of the comments? Proposed Rule 32, sub-rule (3) & (4)—The Committee is not in favour of reducing the period from one year to six months as well as from six months to three months, because the suggested reduction may have the effect of helping dishonest judgment debtor. If no application is made within the period, then also the reduction is proposed. Our proposal is to reduce the period from six months to three months and from one year to six months. Your point is that it helps the judgment-debtor. I find it goes against him. Where it could not be sold within one year, now it is proposed to be sold after six months. At the same time, if no application is made within one year for sale then it should be reduced to six months.

**WITNESS:** Please read Rule 31 first. Where any attachment under

sub-rule (1) has remained in force for six months, you want to make it three months. If the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the court may award the decree-holder, in case where an amount has been fixed by the court to be paid as an alternative to delivery of property.

SHRI P. C. MITRA: It goes against the judgment-debtor.

WITNESS: I agree with you.

SHRI P. C. MITRA: Similarly, instead of one year the period is six months.

WITNESS: Now, so far as Rule 31 is concerned, I am inclined to agree with you that the reduction of the period from six months to three months will not be in favour of or for the benefit of the judgment-debtor. But in sub-rule (3) of Rule 32 it will give an advantage to the judgment-debtor. Where any attachment under sub-rule (1) or sub-rule (2) as remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached-property sold, such property may be sold.

SHRI P. C. MITRA: When the attachment has remained for one year, instead of six months, if the judgment-debtor has not obeyed the decree, then also it goes against the judgment-debtor. How is it in favour of the judgment-debtor? Now it can be sold after one year. It is proposed that it should be reduced from one year to six months. If you can prove that it goes against the judgment-debtor, I may accept it, but when you say that it is in favour of the judgment-debtor, it actually goes against the judgment-debtor.

WITNESS: On examining it more closely, I think that due to some misunderstanding the revision of the original period has been recommended. Otherwise, reducing the period

from six months to three months and from one year to six months will shorten the duration of the period of execution of the decree and accelerate the proceedings in a court of law. I agree. It will undoubtedly help in the expeditious disposal of execution cases.

SHRI P. C. MITRA: That is the object of the Bill.

WITNESS: Yes, I agree with you. Due to some misunderstanding this recommendation was made.

SHRI SHRI CHAND GOYAL: The hon. witness was not very audible and it was not clear as to what he said in reply to Mr. Mitra's question.

SHRI P. C. MITRA: He accepts it and concedes that some misunderstanding has been there.

SHRI SHRI CHAND GOYAL: The period has been reduced from six months to three months and from one year to six months. To that extent the amendment is desirable.

WITNESS: The question put to me was that the retention of the original period of one year and six months was not conducive to expeditious disposal of execution proceedings. That is why the period is being reduced. On a closer examination of Rules 31 and 32 of Order 21, Civil Procedure Code, I find that the reduction from one year to six months and from six months to three months will help a speedier disposal of execution cases.

SHRI SHRI CHAND GOYAL: Is the amendment in order?

WITNESS: Yes.

CHAIRMAN: The Committee and I are grateful to you for giving evidence. We hope your comments and elucidation will help us.

WITNESS: I thank you very much for giving me an opportunity to come before you. I owed it as a duty to come and make my submissions before the Committee. After all we have



a common object in view, namely, to avoid laws delays, and to do everything possible to avoid laws delays. Thank you.

(The witness then withdrew)

(The witness Syed Ali Zaheer was called in).

CHAIRMAN: Gentlemen, I have great pleasure in introducing to you Syed Ali Zaheer, an eminent advocate of the Lucknow Bar, and ex-Law Minister of the U.P. Government. He has come to appear before us at my special request, and I am grateful to him for it. I hope he will give us his opinion on the various clauses of the Bill. Since we have received no memorandum from him previous to his appearance here, I would like him to express his views on the various clauses, which he considers proper.

WITNESS: I am thankful to you for asking me to come. I am sorry, although I got the letter quite a long time ago asking me to submit a memorandum, unfortunately I did not have time, and there were no arrangements for making a study of the Code, which should be done. My position is, although I had received your note and the amending Bill, it was a kind of matter which required the study of the Civil Procedure Code and then going through each amendment which is being proposed and give opinion on that. Unfortunately, I did not have time for all that elaborate work which I could devote to this and that is why I had no intention of appearing before you as witness. But your Chairman who happens to be a very old friend of mine and who also comes from Lucknow, he said that I should come and express my views on any questions which hon. Members would like to put to me. It is true that I am by and large a civil court practitioner and I have been in touch with the CPC professionally as well as—for about 13 or 14 years—when I have been in the UP Cabinet as Minister of

Law. You know all these things and they are matters which come up before us either as lawyer or as Minister on particular occasions. The particular questions which are before us, we deal with them according to situation and the general circumstances. So, I cannot make any very wide observations about the details of all the amendments proposed. I have gone through the sections part, but not the rules part because that is the larger portion, and any questions which the Members may like to ask me, I am ready here to answer.

श्री बी० एन० मण्डल : सेक्शन 80 के बारे में आपका क्या रिएक्शन है ?

स.क्षी : मेरे खयाल में इसके माने यह हैं कि गवर्नमेंट की भी वही पोजीशन होगी जैसी कि एक लिटिगेंट की है। प्लन्टिफ को अगर किसी पर दावा करना है तो वह उसको नोटिस देता है लेकिन गवर्नमेंट के लिए स्पेशल ट्रीटमेंट है कि दो महीने का खास तौर पर उसको नोटिस दिया जाय। अगर कोई मामला कमिश्नर के बजाय डिप्टी कमिश्नर के यहां चला जाय या सेक्रेटरी के बजाय डिप्टी सेक्रेटरी के यहां चला जाय और इस वजह से उसके कंसीडरेशन में देर हो जाय उसके लिए मैं समझता हूं कि यह होलसम है। इसके न होने पर गवर्नमेंट को ज्यादा एलर्ट रहना पड़ेगा। अब तक जो नोटिस आता था तो उसमें वह कोई काम तो नहीं करते थे लेकिन गवर्नमेंट को स्टडी करने का वक्त मिल जाता था, लेकिन अननसेसरीली लिटिगेशन एवायड हो इस परपज की पूर्ति नहीं होती थी। तो बाई एण्ड लार्ज में इस फेवर का हूं कि इसको रहना चाहिए।

श्री बी० एन० मण्डल : सेक्शन 115 म जो अमेडमेंट हो रहा है उसके बारे में आपका क्या खयाल है ?

स.क्षी : मैंने यह पढ़ा है लेकिन अच्छी तरह से ग्रैस्प नहीं कर सका कि इसके पीछे क्या है।

पहले से जो बातें थीं वह तो हैं लेकिन इसके अलावा और आप क्या कर रहे हैं ?

श्री बी० एन० म डल : : वही मैं पूछना चाहता हूँ कि जो अमेंडमेंट हो रहा है उससे कोई नयी बात आयी है या नहीं ? अगर नहीं आयी है तो जिस ढंग से यह वर्ड है उससे क्या और कंप्यूजन नहीं फ़ैल सकता है ?

CHAIRMAN: A proviso has been added to the existing law whereby it is feared that there may be some restriction put on the part of the High Court.

सक्षी : यह तो मेरे ख्याल में आपने इस लिए लेजिस्लेट किया है कि ला यह था कि इंटर लिक्व्यूटरी आर्डर्स जो होते थे कोर्ट्स के उनके खिलाफ रिवीजन लाई नहीं करता था । हाईकोर्ट के डिस्मिशन थे कि ऐसे इंटर लिक्व्यूटरी आर्डर्स जिनसे केस फाइनली तय हो जाय केवल उन्हीं के खिलाफ रिवीजन लाई किया करता था । उसको आपने अब शायद चेंज किया है । मैं इसे कुछ ज्यादा समझा नहीं हूँ ।  
It is not very explicit as to what is the main purpose of this amendment.

चेयरमैन : इसका मतलब यह है कि जो अननेसेसरी अप्लीकेशन्स होती हैं दाखिल हाईकोर्ट्स में उनको रिस्ट्रिक्ट किया जाय, और वह रिस्ट्रिक्ट इस तरह से किया जाय कि जो केसेज प्राविजो ए और बी में आ जाय उनको ही लिया जाय और सिर्फ हाईकोर्ट ही उन केसेज में इंटरफियर कर सकेगा तो इस बारे में आप का क्या ख्याल है ?

सक्षी : बहरहाल रिवीजन में तो वैसे ही कोर्ट्स स्पेयरिंगली पावर्स यूज करते थे ।

चेयरमैन : उसके अलावा यह और ऐड कर रहे हैं प्राविजो में ।

सक्षी : मेरे ख्याल में कोई अमेंडमेंट की ज्यादा जरूरत नहीं है । एक्जिस्टिंग पावर्स काफी हैं ।

चेयरमैन : बाज विटनेसेज में यह कहा कि अगर आप सेक्शन को आल्टर करेंगे तो चेंज सरकंस्टेंसेज आ जायेंगे और ला में अनसर्टेनिटी हो जायगी लिहाजा इसको नहीं होना चाहिए ।

WITNESS: I agree with that view.

श्री सैयद अहमद : अगर आपने 115 के अमेंडमेंट को पढ़ा है तो क्या यह कहना सच नहीं होगा कि यह इसलिए लाया गया है कि वह फैमले जिनके खिलाफ अपील के सूट लाये जा सकते हैं, ऐसे छोटे छोटे फैमले जो हैं वह रिवीजन के लिए हाईकोर्ट में न जाने पायें । प्राविजो के फर्स्ट पार्ट में यह प्रोवाइड किया गया है कि सिर्फ वहीं फैमले जायेंगे रिवीजन में अदालतें आलिया में जिनका फैसला अगर नीचे की अदालत दरखास्त देने वाले के हक में करती तो मुकदमा फ़ैसल हो जाता । मसलन मियाद का एक मुकदमा है और अदालत ने यह फैसला किया कि वह बेहू मियाद नहीं है तो अगर उसमें रिवीजन किया जाता है और अदालत होल्ड करती है कि हि बेहू मियाद है तो दरखास्त कुनिन्दा के हक में मुकदमा डिस्पोज आफ हो जाता है । तो ऐसे लोगों के हक में यह प्राविजो प्रोवाइड किया गया है । मुकदमे डिने न होने पायें और जरा-जरा सी चीज में हाईकोर्ट में लोग न पहुंच जायें इस लिहाज से क्या आप ख्याल करते हैं कि यह एक मुक़ीद प्राविजन है ?

साक्षी : मेरा यह ख्याल है कि अब तक इरटैबलि-डल आम तौर पर हाईकोर्टस में वही है कि इंटरलोक्यूटरी आर्डर्स के खिलाफ रिवीज्जुन मेनटेन नहीं होगा। अब इंटरलोक्यूटरी आर्डर्स को हाईकोर्टस डिफरेंट फार्मस में इंटरप्रेट कर सकते हैं। हर सरकारस्टांस को हम नहीं सोच सकते और न उसके लिये ला बना सकते हैं। आम तौर से यह होता है कि जब देखा जाता है कि मुकदमे का फंसला एक तरफ या दूसरी तरफ हो जायगा या फर्ज कीजिये कि कोई गलत आर्डर लोअर कोर्ट का पास हो गया है तो इंटरफियर नहीं करेंगे और अभी यह कहते हैं कि जब यह मामला अपील में आयेगा तो विटवीन दि पार्टीज ओपेन रहेगा और उस वक्त देखा जायगा लेकिन आम तौर पर जब तक कि कोई ग्रेव इनजस्टिस न होती हो, यानी कि केस डिसमिस हो सकता है, खारिज हो सकता है तो फिर इंटरफियर कर लेंगे क्योंकि उसको फाइनल आर्डर समझेंगे। बहुत सारे कोर्टम इंटरलोक्यूटरी आर्डर्स पास किया करते हैं और मुतवल्ली आम तौर पर कोशिश करते हैं कि मुकदमा डिले हो तो उसमें इंटरवीन नहीं करते। और जैसा कि आपने लिखा है कि इररेपेरेबिल लास हो या कोई इररेपेरेबिल डैमेज हो जायगा अगर मामला फौरन डिसाइड नहीं होता है और एक फ्रीक को बहुत नुकसान हो जायगा तो फिर उसको कोर्ट डिसाइड कर लेती है। यह जो मैटर है वह डिसक्रिशन का है और मैं समझता हूँ कि इसको उनके डिसक्रिशन पर ही छोड़ना चाहिये और इनको बाउण्ड करने पर और काम्प्ली-केशन्स पैदा होंगे और फिर इसके ऊपर केस ला बनने लगेंगे।

श्री संद अहमद : जो कुछ आपने फर्माया उससे मैंने यह समझा कि इंटरलोक्यूटरी आर्डर्स जो हैं उनकी तकसीम दो हिस्सों में की जा सकती है, एक तो वह इंटरलोक्यूटरी आर्डर्स हैं जिनकी बहुत बड़ी अहमियत मुकदमे के लिये है और एक वह है जिनकी अहमियत

कम है और जिनका फंसला मुकदमे पर ज्यादा असर नहीं डालता है। तो जो ऐसे आर्डर्स हैं जिनका मुकदमे के फंसले पर असर पड़ता है तो उसमें हाईकोर्ट को दखल देने का डिसक्रिशन होना चाहिये और जिनमें असर नहीं पड़ता है उनमें डिसक्रिशन नहीं होना चाहिये। इसीलिये मैं कह रहा हूँ कि प्राविजो का जो फर्स्ट पार्ट है उसको पढ़िये . . .

साक्षी : वही तो मैं कह रहा था। प्राविजो को जो आपने रखा तो जैसा कि मैंने पहले कहा कि गालिबन उसको ज्यादा एक्सप्लिसिट करने की कोशिश की गई है लेकिन मुझे अंदेशा है—यों कोर्टस इसी लाइन पर वर्क कर रही हैं लेकिन अगर आप एक्सप्लिसिट करेंगे तो मुमकिन है कि जो केस ला बनते हैं उससे खामख्वाह इंटरफियरेंस हो जाय और मामला और काम्प्लीकेटेड हो जाय। मेरा यह इम्प्रेशन है बाकी आप लोग तो अपना डिसीशन लेंगे ही।

चेदरमैन : यह आपका खयाल है कि इस क्लॉज में जो प्राविजो लगा हुआ है वह फिर इंटरप्रेट होने लगेगा कि क्या चीज आती है या नहीं आती है।

श्री संद अहमद : यह तो हमारे और आप पर मुनहसिर है कि किस तरह इंटरप्रेट होता है। एक बात और है। मैं एक जनरल क्वेश्चन पूछना चाहता हूँ। देखिये रूल्स जो शेड्यूल (1) में हैं, Before they were incorporated in this Act of 1908 they had existed as a rule from the Supreme Court in England. They are known as the rules of the Supreme Court in England.

अब आप देखेंगे कि इस बात के लिये आज हिन्दुस्तान में जो कानून है वह यह है कि रूल मैकिंग पावर पार्लियामेंट और हाईकोर्टस को कांकरेंट है . . .

साक्षी : दैट इज राइट और शायद, गालिबन, स्टेट लेजिस्लेचर्स को भी है, उनके लिये भी कांकरेंट है।

श्री सैयद अहमद : लेट भी फिनिश । हाईकोर्ट और पार्लियामेंट को रूल मेकिंग पावर कांकरेंट है । तो कांकरेंट होते हुये रूल मेकिंग पावर जो है उसमें जायेंगे जो कि सेक्शन 121 से 130 में सिविल प्रोसीजर कोड में दिया हुआ है तो उससे आपको मालूम होगा कि किसी किस्म के रूलस को हमने टच नहीं किया है । जो अमेंडमेंट आपके सामने है उसमें हाई कोर्ट्स की जो रूल मेकिंग पावर है या जो रूल मेकिंग कमेटी बनती है या जो रूलस हाईकोर्ट्स बनाते हैं उस पावर को हमने बिल्कुल टच नहीं किया है, वह वैसे का वैसे इंटैक्ट है, उनके अख्तियारात वहीं के वहीं रहेंगे । तो मैं आपसे पूछना चाहता हूँ ...

चैरमैन : उन डिफरेंसेज को रिंकांसाइल करने की इसमें कोशिश की है ।

श्री सैयद अहमद : जरा मेरी बात सुनिये । देखिये उनको टच नहीं किया है । जो रूलस एग्जिस्ट करते थे उनमें मुख्तलिफ हाई कोर्ट्स जो थे उन्होंने मुख्तलिफ फैसले दिये, एक हाईकोर्ट ने कहा कि रूल 21, आर्डर 56 में ऐसा हो सकता है या आर्डर 58 में ऐसा हो सकता है और दूसरे हाईकोर्ट ने कहा कि ऐसा हो सकता है और तीसरे हाईकोर्ट ने एक और ब्यु लिया ।

साक्षी : अब जो रूलस लाये गये हैं उसमें इन इख्तिलाफात को रिंकांसाइल करने की कोशिश की गई है ।

SHRI SYED AHMED: Not in the Act, in the rules. With all this time to reconcile the rules remained model in spite of interpretation from the High Courts. Now these have got no value whatsoever. The High Court rules are model rules. Even our High Courts have power to make rules which they want to change.

WITNESS: Though there were certain model rules which were embodied in the Civil Procedure Code, the

High Courts, according to exigencies of situation kept on changing. Now you want to place before the country another set of model rules, modified, which will reflect the line of thought of Parliament, and yet they will have the power to modify these rules according to their own situation.

SHRI SYED AHMED: At least you have uniformity in all the High Courts. I will draw your attention to section 122. This change is unnecessary till the High Court has the power to change the rules.

WITNESS: That has always been there.

CHAIRMAN: What is your question to the witness?

SHRI SYED AHMED: I was saying that this amendment of the first Schedule was unnecessary in view of the powers of the High Courts.

WITNESS: That may be so but, as I told you,

यह तो आज आप पैदा कर रहे हैं । ये जो रूलस थे वह पहले से बने हुए हैं और जैसा आपने खुद कहा कि एज अ माडल रूल कन्ट्री में हर हाईकोर्ट को बता दिया है कि ...

This is the line on which we would like the procedure to go on. This is the line on which we would like the procedure to remain in the courts subordinate to the High Courts as well as in the High Courts themselves in civil matters. Now it is perfectly open to you to change those model rules if you think that some of them need certain changes at this stage. That is all. But that power will remain; there is no question of affecting or taking away that power of the High Courts. In some cases, probably because of what you have done, the model rules have been modified by certain High Courts. You have seen that modification and you think that it is a better improvement on the old rules and you have embodied them in your own amendment so that the

other courts also, where those rules may not be in force to day, may also follow. There is nothing wrong in your attempt to modify the Schedule and to introduce rules which you think are according to modern conditions and which they should do.

**CHAIRMAN:** There is a fear in the minds of some people that if this rule-making power is allowed to the High Courts, the changes which are being made in the Act with a view to do away with certain things will again crop up, that because the High Courts have got the power to make rules, they will make the rules again. That is the fear of some.

**WITNESS:** Of course they will. The whole purpose of your retaining Section 122 is because you cannot foresee or anticipate all possible conditions which may arise in different High Courts. For example, the situation in Bengal may be one and there the High Court may like to make certain modifications. The situation in Bombay may be different.

**CHAIRMAN:** That is true.

**WITNESS:** So these are things which have to be kept elastic because they are rules of procedure, they are not substantive law. These rules of procedure therefore should remain elastic to make room for possible changes as and when found necessary. But at the same time it is perfectly open to Parliament as the highest legislative body to make certain model laws. In most of the High Courts you will find that there have been certain modifications made but not a complete overhaul. No High Court has undertaken that complete overhaul though taken that complete overhaul though will remain the basis on which most of the High Courts will be working in future.

**SHRI SYED AHMED:** I want to know from you what has been your experience of the law's delays in courts.

**WITNESS:** Delays in the High Court or subordinate courts?

**SHRI SYED AHMED:** All courts. Presently I am myself concerned with a pending case since 1930 and a decree has not been passed. The case has gone to the High Court several times, but it is the court of the Additional District Judge which has got jurisdiction in this case. There are several other cases which have been pending for more than twenty years to my knowledge. As Minister in charge of the administration of law your concern I take it, was to see as to what devices can be provided in order to eliminate delay. How do you think this can be done?

**WITNESS:** Well, you know I had been very closely connected with this question because Allahabad High Court is one of those High Courts which has got the largest number of arrears in the country. It has got the largest number; there is no doubt. Of course our State is the most populous State too but it is also a fact that we have gone on increasing the number of Judges. In spite of that the arrears have been almost constantly increasing. Instead of going down by reason of the increase in the number of judges, the arrears have increased almost equally as the number of judges has grown there. My difficulty has been that the High Court, being the highest court of justice, they want no interference from anybody else, however much you may like to make any rules or anything. Once a High Court judge has been appointed, he works according to his own fancy and just as he likes, and he feels that he is above everything else. He does not want even advice from us. For example, occasionally we try to cut down some holidays—they have got more holidays than the other sections of the people. But they refuse to cut them down. So is the amount of work which they do. They always say that it is not their business to work at home, the work of writing judgments

or doing some other work. They say that they will do all the work during only the court hours. They do not work on Saturday, and so on. So, all these reasons combine to make the justice delayed as far as the High Courts are concerned, and there perhaps the quality of the judges or something like that may also have gone down.

**SHRI SYED AHMED:** You are safe here; it has gone down.

**WITNESS:** Partly that may be responsible because I have known periods in my own court. I have been practising for a pretty long span in the High Court at Lucknow since 1922 and I have seen many changes there. There have been periods when the cases have been disposed of quickly, practically brought up to date. And then because of changes in the person of the judges arrears again started accumulating, and after a few years the same position has come back—that sort of thing. So it is a very very complicated question. There is not one reason or two reasons or a few reasons which can be given, and I wish you can say that you will be able to clear all the arrears. As an example I will tell you that in Allahabad there are no less than about 65,000 cases in arrears, and when I say arrears, it means they are more than three years old. In the categories of more than three years but up to ten years, twelve years and fifteen years there may be one or two cases. There may be cases even longer than that. So this is the whole position. Now we tried this method that let there be classified cases. For example, in one thousand appeals they have got the same question of law. There may be a number of appeals where the parties are very large and some of them have died. There are a number of cases where the parties no longer exist, zamindari title cases, the property has disappeared, only a few bonds remain. If the cases

come up for hearing, the parties may make compromises. So we tried to persuade the High Court: let one officer whom we are ready to give from our Government go through and examine all the cases and at least do this. Let him take out all the cases in which the question of law involved is the same. There must be at least about 100 or 200 cases of the same type; let him collect them together and put them up for hearing so that when you dispose of one case you dispose of a whole batch of similar cases. But everything we tried to do somehow did not produce any impression.

**CHAIRMAN:** That method did not work at all?

**WITNESS:** No; it did not work because the officer whom we sent instead of doing the job he was intended to do was given some other job entirely different. He was making the court list and attending to just day to day work as suggested by the Judges or the Registrar. He just became one of the Assistants of the Registrar there and started doing that work.

**SHRI SYED AHMED:** What Syed Ali Zaheer means is the speed of the disposal of the cases is a matter of personal convenience of the Judges.

**WITNESS:** That is right. Much depends upon the personality of the Judges.

**DR. B. N. ANTANI:** With regard to the proposed repeal of section 80, this section which requires 60 days' notice to be allowed to Government servants prior to filing of the suit has been a controversial section. The Law Commission has eventually recommended its repeal. There are two schools of thought, one which says that the section should be retained subject to certain restrictions while the other says that it should be done away with. Would you not in the interests of justice advocate complete repeal of the section?

WITNESS: I have already answered that question; it was asked in the very beginning and I said that I quite agree that it is a kind of anachronism and it should go.

DR. B. N. ANTANI: Without any reservation?

WITNESS: No reservation at all.

SHRI SHRI CHAND GOYAL: Two points of view have been placed before the Committee regarding the object of the Bill being achieved. One point of view was that this only touched the fringe of the problem and our objective, namely, curtailing the legal expenses as well as the delay, can be achieved only partially, there will be only a limited success. The other point of view is we would be able to do it to a considerable extent. Are you in a position to say how far this Bill has been successful in achieving this objective of curtailing expenses and delays?

WITNESS: It is a very difficult question to answer. It all depends. No doubt, an attempt has been made. In my State we have made several attempts so that the cases may be disposed of quickly and expenses may be reduced but somehow or other the problem has continued. It has got so many different facets and implications that it cannot be solved. Let us go on making attempts like this. This is a good attempt and I see your object is to make it simpler, more expeditious and less expensive but how far this will achieve that object, it is difficult to foretell. If you refer to any specific amendment perhaps I can answer otherwise I think it is difficult to say offhand what the general effect of the amendments will be.

SHRI SHRI CHAND GOYAL: There is another problem. Sometimes the Judges after hearing the arguments do not dictate the judgments. Some Judges have been retired without dictating the judgments. Some Judges

hear arguments twice or thrice because they forget. So do you think it would be desirable to incorporate some provision that after the conclusion of the arguments the Judges are made to write the judgment so that the lawyers have not to argue the cases over and over again and so that the Judges do not retire without writing the judgments?

WITNESS: I may tell you that that is one way. You can provide that the judgments should be given within so many days after the arguments or something like that. What I was trying to initiate was to introduce written arguments just as they have in the Supreme Court. In the Supreme Court the case is presented in writing before the Court and then it is replied by the other side in writing. After this exchange between the two lawyers the case is put up for hearing and there it is confined to the points which they have raised in their note or memorandum. In so many ways it is a useful system and I can tell you that in the Allahabad High Court where I wanted to introduce this system there was unanimous opposition by the Judges as well as by the lawyers. Nobody liked this kind of thing there because you know in argument the time taken is unlimited but under this system the Judge could say this point has been raised and this point has been replied to. The Judge would come prepared with the case after reading both sides of the case, and he could deal with it quickly. This system is prevalent in America and other countries but unfortunately here we cannot introduce this system unless the lawyers and the Judges agree to that but they have not taken to it.

SHRI SHRI CHAND GOYAL: In Supreme Court this is not the general practice; maybe in exceptional cases they are doing this. They do not generally entertain written arguments in the Supreme Court as far as I know.

WITNESS: Almost in all the appeals there are written arguments submitted. But it is not called arguments; it is called statement of facts which is submitted by the appellant, then replied to by the respondent and then there is rejoinder by the appellant again. This sort of thing will solve the difficulty of judgments not being written immediately after the arguments are over.

SHRI SHRI CHAND GOYAL: I do not think this happens in the Supreme Court.

WITNESS: Yes, yes. What I am suggesting is, if this is done, probably there will not be so much delay.

SHRI SHRI CHAND GOYAL: My last question. Supposing a judgment debtor does not discharge his liability, does not make payment of the decree amount. Then according to you should there be a provision to send him to civil prison or should there not be such a provision but it should only be confined to attachment of property and so on?

WITNESS: In practice there are not many judgment debtors who are sent to prison because the appellant has to support him. Apart from every other reason, he just does not want to throw away good money after bad money. But you can keep it as a deterrent; there is no harm in that. In practice hardly any creditor does it, unless he is a very determined type of creditor who wants to send him to jail. Otherwise they do not worry themselves to send him to jail.

CHAIRMAN: Do you not think that the fear of jail makes the man pay up his dues?

WITNESS: Possibly 'Yes'. It is better to keep that provision, although it does not operate in actual practice.

SHRI J. M. IMAM: It has been admitted that the arrears of cases pending in High Courts are very large. Particularly in the Allahabad High Court, I think thousands of cases are pending for years together.

WITNESS: I have not been able to follow the question.

SHRI J. M. IMAM: It goes on unsupervised and unchecked. Can you suggest some provision, some method by which the Judges should be answerable at least to the President of India. They may send their statistics regarding the disposal of cases to the President.

WITNESS: I believe an attempt has been made, but through the Chief Justice, mind you, not directly. Neither the President of India, nor the Governor, nor the Government have the right to ask a Judge about his work. It can only be done through the Chief Justices of the various High Courts.

SHRI J. M. IMAM: They are appointed by the President of India and they are answerable to him, though not to the Government. The President may take such action as he deems fit against any Judge, if he is not functioning properly.

WITNESS: I doubt very much whether they will accept this.

SHRI J. M. IMAM: It is not a question of their accepting it. At least we must make some provision in this regard.

WITNESS: This is no part of your Bill. It is quite a separate matter. It is a matter of administration. If you can do it, so far so good.

SHRI J. M. IMAM: Another question is this. During the year the Judges enjoy a number of holidays. I think every year they have a three-months' holiday at a stretch.

WITNESS: I think it has been reduced now to two months in the Supreme Court and probably six months in the High Courts. They are not ready to reduce it any further.

SHRI J. M. IMAM: I think when all the Government's offices work throughout the year there must be some provision by which the Judges



also work and do not have the privilege of enjoying more holidays than the Government officers. That is also one way of reducing the arrears of work.

WITNESS: You can try it. There are so many possible methods which can be tried. How far you succeed is a different matter.

SHRI J. M. IMAM: The Law Commission has reported that in the Allahabad High Court there are fifty thousand cases pending.

WITNESS: Over 65,000 when I was in the Ministry. It must have gone up now.

SHRI J. M. IMAM: When the cases are not disposed of quickly, there is denial of justice. Justice delayed is justice denied. That means so much of cost to the litigants, so much of expense to them. When compared to other countries, the delay in our country is enormous.

WITNESS: We have to find some solution and I agree with you, but I am afraid it cannot be within the four corners of the Civil Procedure Code.

SHRI J. M. IMAM: Again, one more question. Delay may occur in three stages. There is pre-trial delay, i. e., delay before the issues are framed. Then, there is delay during the trial of cases. The third stage of delay is after the trial. These three contribute enormously to the delay in disposing of cases. How to minimise the delay in this regard? Can you kindly favour us with some suggestions? For example, in the lower courts before a case is taken up years and years are wasted and cases are not taken up. Even during the trial a good deal of time is taken up before the case is disposed of. After the judgment is given, of course, the High Courts take their own time. So, all these cases accumulate. I think delay will defeat the purpose of justice. At each stage how can we minimise the delay? Have you any suggestions to make? The Committee will be benefited.

WITNESS: So far as the stage before the framing of issues is concerned, the delay occurs because of the service of summons. They try to evade the service of summons. Then, after the issues have been framed, of course, sometimes both the parties are interested, because they are not ready with their evidence. They want postponement and their lawyers want postponement and things like that. Later on it happens that one party is determined to go ahead with the case and the other party tries to invent some excuses for delay. It depends on various things and various cases. Different kinds of excuses are given under different conditions. No, one general rule can be laid down, nor is there any common cause which you can point out saying that this is the reason why these cases have been delayed. If you look into each case, you will find different reasons.

SHRI J. M. IMAM: I think you must have followed the procedure in other countries, for example the practice in the UK. How does our procedure compare with the procedure in other countries?

WITNESS: I do not know, but there may be something in the nature of our people. We are much more fond of litigation than people in other countries. That is my impression, after so many years of experience. In other countries, if the court comes to a decision and it is a fair decision, it is accepted by them. They do not go in appeal from one court to another. They are satisfied. Here somehow or other our people are not satisfied. They take it as a point of honour. In other countries if some impartial person has disposed of the case, they go by it. Here it is a question of honour, whether the person has won or lost. Unfortunately it leads to a spirit of prolonged litigation.

There is one other matter which I would like to mention and it relates to substituted service. You have said it, probably I do not know what is the intention. If a postman returns a

registered letter marked 'refused' then the service should be presumed.

CHAIRMAN: It is simultaneous service, both by post as well as in person.

WITNESS: Suppose there is no personal service. Then, the postman has returned it after writing the word 'refused'. It is with the Amin. Is it to be presumed that the summons have been served? Is it the idea that it should be presumed to be enough and it is deemed to have been served?

CHAIRMAN: Whichever service is given will be accepted by the court and the case will proceed accordingly. Instead of the summons coming back and then issuing the substituted service, all that process has been minimised. It will be done simultaneously. The summons will be sent both by post and sent by the ordinary process.

WITNESS: I am asking quite a different question. There is a conflict of decisions by different High Courts. There are certain recent cases where it has been held that if the postman writes 'refused' on the envelope and if it goes back to the court, then in that case that entry would be deemed to be an official act and it would be presumed that the summons were served. It was refused by the defendant and, therefore, it was sufficient service. Another set of rulings given say that the postman must be produced before the court to prove him writing on the envelope and that the man concerned has actually refused to accept it. It is not because of some other extraneous reason or somehow he got annoyed or anything else like that. The second thing they say is that by writing "refused" it does not mean that the defendant is attributed with the knowledge as to what is contained in the envelope. It may contain a notice of that case or a third case or any other matter or just a demand for money. But the mere fact of writing refusal on a registered letter, according to your present amendment it should be deemed to be sufficient service. I think it is rather

taking the law too far. It should not be like that. But there should be some safeguard that refusal must be proved, that it was actually refused knowing that this was the notice in such and such case and the defendant refused to take it. It was not there before. You have introduced it for the first time. You have just accepted one set of law which lays down that this refusal is enough. It is an official act. You know the calibre of our postmen, how they may be made to write "refused". This I think needs reconsideration.

CHAIRMAN: What would you suggest?

WITNESS: I suggest on this point that it may remain just as it was before. Subject to the proof it will depend on each particular case on the Court . . .

CHAIRMAN: Courts have examined it.

WITNESS: Where it is challenged, the man denies that he received, that he refused the letter, in that case it should be proved knowing that this is a notice for such and such a case. That is the present law. It must be proved for each particular case as to whether the refusal was because of the defendant having actually refused or because of some other extraneous reason or the postman was made to write "refused" without actually taking the trouble of serving it.

CHAIRMAN: Your fear is that the postman may make the remark without actually having served on him, and therefore that should be safeguarded.

WITNESS: That is right.

CHAIRMAN: On a perusal of the amendments which have been made in the Bill and realising the fact that the Law Commission has suggested these amendments with the idea that the delay of litigation should be reduced as also the cost which is more or less consequent upon the length of time for which it goes on, do you

think that the amendments suggested will achieve the object of the Bill, that is, reducing the time and cost of litigation?

WITNESS: I am afraid I am not very optimistic.

CHAIRMAN: You are not sure. I ask this particularly because one of the Judges of the Allahabad High Court in his comments on the Bill has remarked that the amendments would not serve the purpose of securing expeditious disposal. He has not offered any ideas of his own as to what should be done to achieve that object. What is your general view?

WITNESS: Personally I do not think it will have much effect on the expeditious disposal of cases or reduction of cost.

CHAIRMAN: Then the labour of the Committee will go wasted if the object is not achieved. Thank you very much.

*(The witness then withdrew.)*

*(The witness SHRI N. S. DAS BAHL was called in)*

CHAIRMAN: Gentlemen, the witness before us now is Mr. N. S. Das Bahl, Advocate, Supreme Court. He has already sent in his comments which had been circulated to you. He is now before us. May I ask you, Mr. Bahl, if you would like to add anything more to your comments?

WITNESS: I have already submitted a written memorandum . . .

CHAIRMAN: It will be better if you let us know what further additions you want to make to your comments now.

WITNESS: I have dealt with the provisions of the proposed amending Bill, and I have given my comments against each provision. If you like, I can read that.

CHAIRMAN: Kindly deal with those points so that all the Members may know as to what you have to say; for the benefit of all the Members you can kindly read it. Read out your points.

WITNESS: May I read out the entire memorandum or only the relevant points?

SHRI SHRI CHAND GOYAL: You just give the gist, instead of reading the whole thing.

CHAIRMAN: Instead of reading the whole thing, you can explain your points.

WITNESS: In clause 3, what you have proposed is to omit 'the Indian Civil Service' and replace it by 'an All-India Service'. I am afraid, in the absence of any definition of 'an All-India Service' in the General Clauses Act, difficulty will arise so long as the Service continues. So, in my humble opinion, 'the Indian Civil Service' should also continue along with 'an All-India Service' because so long as these personnel continue, the difficulty will arise whenever there is any chance of interpreting it.

In clause 8, you have said, "for the words 'excluding an appeal', the words 'excluding an appeal or a revision' shall be substituted." My submission is this—in these proceedings, why not revision proceedings? Why not this compensatory clause in respect of revision and appeal? Previously the compensation was not allowed in the case of appeals, in this compensatory clause in respect of false or vexatious claims.

You have said 'excluding an appeal or a revision'. It should also be in the case of appeal and revision. Revision has also been excluded. It should be uniform in the proceedings whenever the question of compensation regarding false and vexatious claims comes up. Previously, the compensatory clause was allowed in the execution proceedings excluding

an appeal. Now, the words 'revision' also has been added, excluded from this purview. This should also be allowed in appeal and revision proceedings.

SHRI P. C. MITRA: It is provided there—"excluding an appeal"—in 8(a).

WITNESS: I mean to say that 'excluding an appeal' should be omitted. That will be a salutary check on false and vexatious claims.

SHRI P. C. MITRA: What is the argument given out by you?

WITNESS: The argument is, firstly, sometimes parties are added at the stage of appeal and there may be false and vexatious claims or amendment of the plaints are sometimes allowed at the appeal stage. In order to check that and to avoid that situation, if there is any false or vexatious claim detected or added in the appeal by way of amendments, it may be discouraged.

SHRI P. C. MITRA: Do you mean to say that all these false and vexatious claims will be prohibited in appeal also, that no false or vexatious claims will be put?

WITNESS: Yes.

SHRI P. C. MITRA: In an appeal, a person can put a false or vexatious claim. You want that to be prevented?

WITNESS: The claim will remain the same. But it is also possible that false or vexatious claim may be detected in appeal or revision.

SHRI P. C. MITRA: 'Excluding an appeal'—you mean to say that it should be omitted so that no person whether in appeal or other proceedings can make any false or vexatious claim of defence? That is your point?

WITNESS: Yes, Sir.

SHRI P. C. MITRA: Is it not possible to incorporate in a revision any

false claim? That is why this has been made?

WITNESS: I have to submit that there is a chance of parties being added at the appeal stage and even the false on vexatious claim may be detected during appeal or revision.

In sub-clause (iv) of clause 12 you have taken away certain powers:—

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

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

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

What I have to submit is that this sub-clause (iv) takes away general powers vested in section 42 to the transferee court. It will delay execution. These powers which have been vested to the transferee court are being taken away i.e., all the questions arising between the period shall be decided by the court which is executing the decree.

THE CHAIRMAN: Am I to understand that you are opposed to sub-clauses (a) and (b) of clause 4?

WITNESS: Yes, Sir. This will curtail the powers of the executing court.

THE CHAIRMAN: What will be the effect if sub-clauses (a) and (b) are allowed to stand?

WITNESS: Then, the matter will have to be referred to the original court which transfers the decree. It means prolonging the litigation.

THE CHAIRMAN: What is your reaction to clause 13, section 47 which

relates to the application of section 11 to further proceedings in the execution proceedings also?

WITNESS: It is a good provision, but please see section 141 of the C.P.C. The explanation are already covered by explanation to section 47. 1, Order XXI, Rule 58. And, therefore, it is redundant. Like section 80, it is discriminatory when it is proposed that three months time must elapse before the decree is executed against the Government. This will happen only when an application is put in by the counsel that time may be extended in the case of the Government. Then it will be extended.

SHRI P. C. MITRA: You should not grudge three months.

WITNESS: The Government should not discriminate between a citizen and a citizen. When the two-month period of section 80 C.P.C. has been retained, there is no justification in retaining these three months. The time of three months coming under sub-section (iii) of section 82 should be omitted. Then the question of extension of time would not arise.

CHAIRMAN: In your earlier comments which are before me, you have attacked the system of the courts. But you have made no positive suggestions as to what should be done to do away with those difficulties. According to the Law Commission the changes which are suggested are with a view to minimising delays and cut costs.

WITNESS: According to the Fourteenth Report of the Law Commission the period which they have prescribed for the trial court is one year. For the district court below it is six months and for the High Court it is one year. I am afraid the period will go beyond 2½ years which the Law Commission thought would be sufficient for achieving the target. I may submit respectfully that civil litigation is a sort of disease which one cannot get rid of.

The citation is CA No. 703 of 65 decided on 25th March, 69 in which the case was remanded after 33 years by the Hon'ble Supreme Court. The case was Sujan Chand V. Prakash Chand. What I submit is that during the first stage of the trial everything is possible if there is a will to do. When the plaint is filed the assets of the defendant may be disclosed in the plaint because the trouble starts only when the question of assets comes in. If these are disclosed during the trial stage, then the assets can be ascertained.

CHAIRMAN: At the initial stage when the case has been filed and has been fought in the court, it is not necessary to know the assets of the man.

WITNESS: This is according to the existing provision. If it is so provided in the CPC that the plaintiff will disclose the known assets of the deceased so that it can be ascertained during the trial...

CHAIRMAN: That is to say a pauper should not be allowed to file a suit.

WITNESS: No, a pauper will still be able to file a suit. There is only one case in thousand where there will be no assets of the defendant.

CHAIRMAN: After all, the plaintiffs claim must be established. When it has been established, then alone the question of realisation of money from the defendant will arise and not before that.

WITNESS: Meanwhile the entire assets will evaporate that way. What I mean to submit is the entire proceedings should be conducted in one trial. I have cited one case. I have come across so many cases like this. If there are provisions in the CPC that the plaintiff should disclose certain assets to cover his amount, then those assets can be ascertained during the trial stage.

CHAIRMAN: Supposing he has not got those means then, what are you going to do? Will the court give justice to that man or not? Will the court refuse to give a decision in that case?

WITNESS: No, it has got to give a decision, whether there are any known assets or not. I have dealt with one case. After the sale deed was executed by the court, somebody jumped in and said, "I was in possession of the property." Then the case continued again. In civil litigation there is only a beginning and there is no end. It is for you, sir as a representative of the people to see how far you can mitigate the hardship of the millions of people.

CHAIRMAN: The hardship will be placed on the other man whose assets you want to know for the suit being decided. You want to know the assets and if those are not sufficient . . .

WITNESS: Then the decree may not be passed. The assets may be disclosed. It is for him to say in reply.

CHAIRMAN: What is the advantage of knowing the assets at that stage? You do not know whether the plaintiff's case will succeed or not.

WITNESS: The advantage will be that sometimes the psychological effect is there. When the man comes and his assets are gone into during the trial, he will come round and settle the matter. My only submission is that.

CHAIRMAN: The question of realising any money from the defendant arises only when the suit is established and if it is found that a decree has been given in favour of the plaintiff. Before that time you want to know what the position of the defendant is. At that time you do not know what will be the outcome of the case. Then, what is the point in asking him to establish what his assets are?

WITNESS: It is not a question of establishing his assets. Similar proceedings which start in execution, should start at the trial stage.

CHAIRMAN: If it is at the stage of execution, I can understand. But at the point when the case starts, there is no point in asking for the assets of the defendant.

WITNESS: My basis is how to avoid delay. Will not this procedure minimise the delay?

CHAIRMAN: Supposing the man does not disclose his assets. What effect does it have?

WITNESS: Supposing I have disclosed the assets of such and such a man to be such and such. Will he deny it? If he admits, the matter is clinched immediately; otherwise, he will be telling a lie.

CHAIRMAN: All those points will have to be decided before the suit is decided, whether he has got assets, whose assets they are, etc.

WITNESS: If any false statement is made there is also a penalty for filing false statements/plaint.

CHAIRMAN: In your previous note you have mentioned, "There is an eminent need to amend or wipe out the chapter on execution." How will the assets be realised?

WITNESS: If only there is a relevant provision for that in the CPC, and not otherwise.

CHAIRMAN: I do not know, that is what you have written. If the chapter on execution is wiped out . . .

WITNESS: I have clarified the question of wiping out that chapter. This question will arise if you are willing to provide alternative provisions enjoining on the plaintiff to show all the details of defendant's property. I may submit that even in the best of the democratic countries that there are pre-trial settlements. Before the parties come to the court, the parties

approach one another through their advocates. If the matter is thus settled, well and good; otherwise, the matter goes to the Settlement Commissioner. And if the Settlement Commissioner fails, then the parties come to the court.

**CHAIRMAN:** I am afraid you have not considered the implications of what you had written. You have said, "In the alternative it should be provided that in the initial trial proceedings itself all matters connected with the case, such as ascertaining of assets of defendants, may be thrashed out . . ." Even when the case has not been decided and the decree has not been passed, you want to charge...

**WITNESS:** No, no, after the adjudication of the matter . . .

**CHAIRMAN:** You said at the initial stage ascertain his assets and place a charge on the man.

**WITNESS:** Initial stage means the entire trial from the beginning to the end.

**CHAIRMAN:** How does it reduce litigation?

**WITNESS:** Only the practical problem will answer the question.

**CHAIRMAN:** I have not been able to understand it. I do not know how it can be.

**WITNESS:** The question is, to realise the decretal amount.

**CHAIRMAN:** Provided it is passed in his favour. Then only.

**WITNESS:** I do not mean to say that the assets should be attached without determining the claim of the plaintiff. The claim has to be determined in all respects.

**CHAIRMAN:** You have changed the order. You are wanting to change the order. Instead of the decretal amount being known and the assets of the man being known at this stage, you want this process to be done at the initial stage. Whose property is this?

Is this your property? Is it the property of a third party? What is the value of that property? All those points have to be gone into at the initial stage. Supposing it is found that this claim was false and falls through, no decree is passed in his favour. Then, all the work which you have done so far will go a waste.

**WITNESS:** I have explained the interpretation of the words "initial stage".

**SHRI P. C. MITRA:** Mr. Chairman, it is already 5 O'clock. The witness may be requested to come tomorrow.

**WITNESS:** I have submitted about the initial stages. After all the first claim has to be determined whether I have any claim on the defendant or not. There may be some confusion about interpretation. I do not mean at the very outset you should determine the assets. What I mean to say is that there should be only one process. If there is a will there is a way and it can be done.

**CHAIRMAN:** You kindly give us your own views about quick and cheap justice which you have referred to in your comments.

**WITNESS:** In the USA and Japan there are oral hearings in cases. I would suggest in small cause matters the parties should be heard in person and this way matters can be decided easily. For small causes you have fixed the amount Rs. 3000. The parties should be heard in person. Of course, lawyers are not debarred from appearing before the courts. But efforts should be made to settle the matters amicably as far as possible. This is being done in Japan and USA.

**CHAIRMAN:** You want a pre-trial conference?

**WITNESS:** The court itself can do so.

**CHAIRMAN:** Do you mean to say that in the court itself the defendant

and the plaintiff should be brought together and they should be asked to explain their cases?

WITNESS: I mean to say so. In the USA pre-trials are held. If they are not able to settle by correspondence, then they are referred to the Settlement Commissioner. If the Settlement Commissioner also fails, then they go to the courts.

CHAIRMAN: The Law Commission has made some observations on pre-trial conference; they have found that it will not be helpful and therefore they have not provided for it.

WITNESS: They may not have the practical experience of the working of the courts.

CHAIRMAN: What is the procedure in your courts? In our courts in U.P. the plaintiff and the defendant are brought before the court on the day of issues and then they . . .

WITNESS: In Punjab it is not so.

CHAIRMAN: Then they are asked to produce evidence.

WITNESS: That is not so in Delhi and Punjab.

CHAIRMAN: Any further suggestions?

WITNESS: As I have already mentioned here, some positive steps are required to be taken. Mr. Setalvad is feeling that way. I have met him twice or thrice and there has been correspondence between him and me. Now one positive suggestion that I would like to make is this that all the proceedings have to be taken in one process. Even Mr. Setalvad was feeling that whatever we recommend, it is not sometimes implemented. If you really want to minimise the delay in disposal of cases in the civil courts, this is the only positive solution. Efforts should be made to finish the matter in one proceeding instead of prolonging it in so many hearings.

CHAIRMAN: Are the lawyers not responsible for it?

WITNESS: Certainly. I include myself also. Lawyers should not appear in small cause matters.

CHAIRMAN: But the man has already paid to the plaintiff and the plaintiff is still claiming because he did not take any receipt from him. Will it be right on our part to say that he should not be allowed to defend? After all lawyers are helpful in deciding the cases too.

WITNESS: They are also responsible for prolonging the cases.

CHAIRMAN: The only thing is that they should be more conscious.

WITNESS: Sometimes even the Judges are responsible. The proceedings are not taken on the dates fixed; sometimes they are fixed for proper orders when the judges are on leave. Cases are often adjourned and some other dates are given for the day when the hon. Judge is in the chair.

CHAIRMAN: After all there are certain rules to be observed.

WITNESS: I am saying that even those rules can be changed. Had the system been so rigid and strict, there would not have been so much delay in the courts.

CHAIRMAN: The system does not say that the case should be brought on the record at one time, then after three months it should be taken up, like that. There are different stages for evidence and arguments. Sometimes the arguments are heard in continuation of the evidence. Sometimes it so happens that a few days are left to intervene.

WITNESS: But in Delhi and Punjab the position is different. A party told me that the case was hanging fire for the last about three years at argument stage and even the arguments had not been completed.

SHRI P. C. MITRA: Now you are against the proposed amendment to section 82. Now in section 82 you will find that some protection is given for Government servants. I would like to



know whether you are in favour of retaining the section, section 82, as it is in the original C.P.C.

WITNESS: I am not in favour of it.

SHRI P. C. MITRA: That means you do not want the amendment?

WITNESS: The amendment and also section 82 may be omitted so far as the period is concerned.

SHRI P. C. MITRA: His point is that only does he not support the amendment but he says that even the original section 82 should be deleted.

WITNESS: Only with regard to provision against execution of decree against Government.

SHRI P. C. MITRA: Any decree passed against a Government servant affects the exchequer. So the Government must be given some time to consider whether the Government should bear it or the party against whom the decree is passed, namely, the officer. For that 3 months' time is not much.

WITNESS: It is a discrimination between a citizen and a citizen.

SHRI P. C. MITRA: You have not put forward any suggestion except that you have agreed with the Chairman's suggestion that there should be some conference before actual trial but how could that be done statutorily?

CHAIRMAN: Let us understand the position and then we can think. The Law Commission has discussed that and thought it is not successful and so have not made any suggestions about it.

SHRI P. C. MITRA: What is your experience of Panchayat courts? Our experience is this kind of oral evidence is not of much avail. You say there is an officer in Russia or USA called Settlement Officer but they are for matrimonial cases only, not for civil cases. They decide cases out of court.

CHAIRMAN: The witness has a right to suggest it for civil cases also.

WITNESS: Hon'ble Mr. Justice Gopal Singh said how it is taking place in U.S.A.

CHAIRMAN: The Law Commission said there is a procedure in America but no good results are following and it will not work out well in India. It means having another period of time for finishing each case. So they have not encouraged it. What is your reaction re. omission of section 80?

WITNESS: It is good that it is omitted.

CHAIRMAN: You do not think that matters are decided because of giving notice?

WITNESS: I have some experience. Sometimes even the notices are not acknowledged by the Government. Even reply to notice is rarely given.

CHAIRMAN: What about change in sec. 115?

WITNESS: I have an additional suggestion re. remand. There should be no provision for remand in first appeals because it only delays matters.

CHAIRMAN: If the District Court feels that the trial court has not properly conducted the case, has it no right to remand?

WITNESS: The first appellate court can take evidence. I know even the Supreme Court takes evidence in election matters in first appeal. I do not see the High Court should be made the court of evidence but I say that in first appeals it can be restricted upto the district level.

CHAIRMAN: A case is remanded to trial court because it has heard the evidence. So it is in a better position to hear on remand again. The time it is likely to be taken up for remand evidence will be taken up either by the trial court or the appellate court.

WITNESS: That will minimise one stage of the litigation.

**SHRI MANDAL:** You have made a very good suggestion.

**CHAIRMAN:** I thought you were of the view that the power of remand should be done away with.

**WITNESS:** I have made my suggestions.

**WITNESS:** In small cause matters the amount should be raised from three thousand rupees to five thousand rupees. It was 500 in 1908; the value of money has decreased to ten times. So it will be immaterial if it is raised to five thousand rupees.

**CHAIRMAN:** Instead of three thousand rupees it should be raised to five thousand rupees. This will mean that there will be equal powers for the Munsiffs as well as for the Small Causes Court Judges, if you raise it to five thousand rupees. Usually the pecuniary powers of the Munsiffs is raised to five thousand rupees that they can try all suits up to five thousand rupees. But to raise the level of the other courts also to five thousand rupees would mean that there will be equality of jurisdiction between the two.

**WITNESS:** Yes. The judges of the Small Cause Courts are very senior judges; they are not junior persons. They are elevated sometimes to the position of even Assistant Sessions Judge.

**CHAIRMAN:** I take it that the Small Cause Court cases are different from the regular civil cases.

**WITNESS:** Definitely.

**CHAIRMAN:** Therefore, in order to expedite the trial of cases, which do not require much evidence and all that, they are sent to the senior judge, to the Senior Small Cause Court judge. But by raising that amount to five thousand rupees the jurisdiction . . .

**WITNESS:** It is your discretion; I am just submitting taking into consideration the value of money.

**CHAIRMAN:** Very well. Please turn to page 8 of the Bill, to the proposed section 115 to be substituted for section 115 of the principal Act. Do you favour the addition of the proviso which has been mentioned on page 8 of the Bill?

**WITNESS:** "Provided that the High Court shall not, under this sub-section, vary or reverse any order made in the course of a suit or other proceeding," . . . Again, the Explanation may create trouble because even "an issue" has been included in the proviso to sub-section (1) of section 115. In the proviso, "including an order deciding an issue" appears, and the same appears in the Explanation also. The Explanation reads: "In this sub-section, the expression 'any case which has been decided' includes any order made in the course of a suit or other proceeding, including an order deciding an issue." Now this would enlarge the scope "of any case which has been decided" which has been a matter of different opinions and so many complications, and all that, and this power of revision is frequently resorted to by the parties sometimes?

**CHAIRMAN:** I want to know whether you favour that this proviso should be included in the section or not.

**WITNESS:** The proviso should be there but the actual words should be those which the Supreme Court have used in SCR 1960 (3) 590. Those will better clarify the position. I have given the citation in my memorandum. "Any interlocutory order which did not terminate a proceeding and which has not been appealed from either because no appeal lay or, even though an appeal lay, the appeal was not taken, can be challenged in appeal from the final decree or order." What I mean to submit is that this Explanation, which has been given about the cases decided, might create trouble. Similarly "including an order deciding an issue." Now "an issue" may be a very insignificant issue and yet the parties may go up to the High Court. That is, one can agitate the matter in appeal when there is no

idea of rushing the parties up to the High Court level. The proviso is all right but the wording can be changed in conformity with the language of the Supreme Court, namely "terminate a proceeding".

SHRI SHRI CHAND GOYAL: This proviso curtails the powers of the High Court and can you say whether it would be desirable in the present circumstances to curtail the powers of the High Court, because it is a salutary provision that where the lower courts go wrong the parties can approach the High Court and can get things set right?

WITNESS: The Explanation which has been given; it may create trouble because therein appears "including an order deciding an issue". Now "issues" are so many. Now, if the parties rush to the High Court for setting aside orders deciding, say, immaterial or insignificant issues, it means prolonging the matter. So far as the proviso is concerned, it is all right but it can be changed to the language of the Supreme Court in SCR 1960 (3) 590. You may or may not change; it is your discretion, but I submit that the Explanation may create trouble.

SHRI SHRI CHAND GOYAL: I have understood you.

CHAIRMAN: After the addition of this Explanation in section 115 the effect will be that the difference of opinion on the point of "any case decided" will disappear . . .

WITNESS: Definitely, but when the word 'issue' has been added in "including an order deciding an issue" I have submitted that some issues are very material issues which can be agitated in appeal also in view of the Supreme Court decision. I quite agree that this is a very salutary provision but the word 'issue' which has been added in "including an order deciding an issue" may create trouble.

CHAIRMAN: This should not be made final?

WITNESS: Let him go up only when it is a 'material issue' or a 'substantial issue'.

SHRI P. C. MITRA: Who will decide whether it is a 'substantial issue'?

WITNESS: The High Court.

SHRI P. C. MITRA: Adding any adjective like 'material' or 'substantial' before 'issue', I do not think will cause any difference.

WITNESS: I have added "which would dispose of the suit or the proceeding" after the word "issue".

CHAIRMAN: This Explanation is part of clauses (a) and (b), and (a) is "the order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding".

CHAIRMAN (contd.): This Explanation makes it clear as to what is intended in (a). So what difficulty would it create? You think that the words 'deciding an issue' should be deleted?

WITNESS: I have added the words 'which should dispose of the suit or the proceeding' as you have in the proviso.

SHRI SHRI CHAND GOYAL: You would prefer the omission of the words 'including an order deciding an issue'?

WITNESS: Yes.

CHAIRMAN: At the same time he says that it may be mentioned that it is a material issue. Am I right? You say that it should not be all issues but material issues?

WITNESS: I have suggested in conformity with the proviso that we should say which should dispose of the suit or the proceeding.

CHAIRMAN: That is all. Thank you Mr. Bahl. You let us have your comments; we will go through that.

WITNESS: Thank you for the patient hearing.

*The witness then withdrew.*

Thursday, the 29th January, 1970.

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

2. Dr. B. N. Antani
3. Shri B. N. Mandal
4. Shri Syed Ahmed
5. Shri Purnanand Chetia
6. Shri V. T. Nagpure
7. Shri T. K. Patel
8. Shri P. C. Mitra

*Lok Sabha*

9. Shri D. Balarama Raju
10. Shri Shri Chand Goyal
11. Shri Ram Krishan Gupta
12. Shri Heerji Bhai
13. Shri J. M. Imam
14. Shri Thandavan Kiruttinan
15. Shrimati Sangam Laxmi Bai
16. Shri Mahendra Majhi
17. Shri B. P. Mandal
18. Shri M. Meghachandra
19. Shri Bhaljibhai Ravjibhai Parmar
20. Chaudhuri Randhir Singh
21. Shrimati Savitri Shyam
22. Shri P. N. Solanki
23. Pandit D. N. Tiwary
24. Shri Tenneti Viswanatham.

MINISTRY OF LAW

Shri P. L. Gupta, *Additional Legislative Council.*

SECRETARIAT

Shri S. S. Bhaleroa, *Joint Secretary.*  
Shri S. P. Ganguly, *Deputy Secretary.*  
Shri Kishan Singh, *Under Secretary.*

WITNESS

Dr. D. C. Pande, *representative of the Indian Law Institute, New Delhi.*

(The witness Prof. D. C. Pande was called in)

**CHAIRMAN:** I am sorry, Gentlemen, that I was a little late. The witness who is before us today is Prof. Pande, representative of the Indian Law Institute. Would you kindly introduce yourself, Mr. Pande, and your colleague?

**PROF. D. C. PANDE:** I am D. C. Pande, Associate Research Professor of the Indian Law Institute. This is Mr. S. K. Singh, Research Associate of the Institute.

**CHAIRMAN:** I can tell you before you start, that the proceedings of this Committee are confidential and shall not be disclosed to anybody until the Report of the Committee is presented to both the Houses of Parliament. Gentlemen, the comments of the Indian Law Institute have been circulated to you already. I hope you have had time to go through them. I would like the witness to add anything to his comments if he so desires.

**PROF. D. C. PANDE:** Mr. Chairman I would like to tell this Committee that apart from what was circulated to the Committee earlier, I have to add something further on the other provisions of the amending Bill.

**CHAIRMAN:** All right.

**WITNESS:** I would like to deal firstly with certain minor suggestions on the provisions of the amending Bill. I would like to draw the attention of the hon. members to clause 30 of the amending Bill....

**CHAIRMAN:** You consider the word 'declare' to be not proper?

**WITNESS:** Yes, if it is substituted with 'presume' it will be in tune with

the principles of the Law of Evidence.

**CHAIRMAN:** What I thought was if you put the word 'presume', perhaps the meaning might not be clear.

**WITNESS:** In fact, the words used are "may declare". The word 'may' has been subjected to so many interpretations from time to time. 'May' in some cases is interpreted to mean 'shall'. Unnecessarily it will take the matter to the superior courts. If it is substituted with 'presume', it will be in tune with the principles of the Law of Evidence and would serve the purpose better.

Then in Clause 44, in addition to the words 'sufficient cause' should be added the words 'and reasonable'. It widens the scope for reviewing the matter judicially.

**SHRI SHRI CHAND GOYAL:** But it will not be considered to be sufficient cause unless it is reasonable.

**WITNESS:** Reasonableness may be determined by other factors as well.

**SHRI SHRI CHAND GOYAL:** For instance?

**WITNESS:** The evidence may be considerable in a case then the word 'sufficient' would indicate the quantitative aspect of the evidence whereas 'reasonable' would indicate the qualitative aspect of the evidence.

We do not insist on the comments that we have offered here about Section 16A(2) and we would like to pass on.

I have certain comments to offer on certain policy matters which the amending provisions contain. First of all, I may be permitted to point out certain deficiencies, rather anomalies, that are being created by

clause 5. Clause 5 purports to add new section 21A to the Code. The proposed amendment seeks to validate something which cannot be validated on sound principles of jurisprudence. In fact, it is validating a jurisdiction which ordinarily would not be jurisdiction at all. The issue of jurisdiction is always at the root of justice, civil or criminal and want of jurisdiction is inherently illegal and by validating the want of jurisdiction, the law would be perpetuating the illegality all through. What would happen if it was permitted that a decree would be issued by two courts at two different places although the court may not have jurisdiction. This will lead to many malpractices. It is likely that a litigant may just choose two forums. He may file a suit at place A and may go to a distant place B and file another suit there. Now by certain manipulations it is likely that he can get *ex parte* judgment in an *ex parte* manner. He may cause to cut down the processes. He can see that the processes issued by the court are not served on the other party. He can also see that other provisions of the code are fulfilled and he can get an *ex parte* decree. Now once an *ex parte* decree is passed by a court which has not got jurisdiction, that would not be challenged. It is likely to create certain malpractices which would rather undermine the faith of the public in general in the judicial system.

Secondly, it would be wrong even on the principle of jurisprudence because if a court which has not got jurisdiction issues a decree it amounts to a private man's writ *mens rea*. Public credulity, as it is, tends to go for the mischief of law, and section 21A would be a fertile ground for such persons to defeat the purpose of the entire civil procedure and civil justice as well. Therefore, the addition of this clause 21A would not be in conformity with the principles of justice or in order to make administration of civil justice better.

SHRI SHRI CHAND GOYAL: Will it be all right if the word "contested" is added before the word "decree", "validity of the contested decree".

WITNESS: Basically it will not cure the very defect of jurisdiction. It is rather against the principles of justice that a jurisdiction which is based on certain requirements, like pecuniary or territorial is not going to cure that defect. If you put "contested decree" it is likely to create a certain harassment to the other party he will have to go there and contest, the competence of the court regarding its jurisdiction.

SHRI SHRI CHAND GOYAL: After the proceedings are over the party should not be allowed a second opportunity to challenge. This is why we think the defect would be cured if you qualify the word "decree" by adding the word "contested".

WITNESS: This contesting party must be afforded adequate opportunity in the initial stages to contest the jurisdiction of that court also.

THE CHAIRMAN: If a party has contested a suit in the original court and then wishes to contest in the executing court, he will not be allowed to do it. But if the court gives *ex parte* decree to which he was never a party, then, of course, he may be allowed to challenge the validity of that decree.

SHRI SHRI CHAND GOYAL: He has also the right to raise the question of jurisdiction there if he has contested.

SHRI T. VISWANATHAN: You say that in a contested decree the so-called contest may be a collusive contest. Even if he consents to the jurisdiction, consent cannot give jurisdiction.

WITNESS: That is very correctly put. In fact, the defect in jurisdiction cannot be cured basically.

SHRI SYED AHMAD: One clarification to section 85. I am told the

exemption has been extended to the Princes of India under section 87D. Now we have this Parliament, and for the reason of that this Select Committee has not suggested and change or amendment to section 87D. You have pointed out that in your memorandum. At the time of the merger of the Princely States, there were certain treaties entered with them and we conceded to them the privileges that they enjoyed then, for instance, the privilege of salute or some other privileges. Now if this privilege is part of the, in that case Parliament is not competent to modify this proviso because it is part of the treaty. That provision has led to amend the Constitution. The Constitution would have to be amended in order to take away that privilege from the Princes. An order under section 85 may not apply to them. Would you suggest amendment to the Constitution?

WITNESS: I doubt whether the law of treaties can be so much extended so as to protect the privileges of the Princes. At the same time the Princes who are citizens of India and are subordinated to the provisions of the Constitutions, if any privilege that has been conceded to them is an antithesis of the fundamental rights, as has already been pointed out by the Supreme Court, then why such a privilege cannot be abrogated by a legislative amendment?

SHRI SYED AHMAD: The question of the abolition of the privileges of the Princes and the Privy purses has been the subject of the treaty between the Princes and the Government of India. There is political pressure that they should be abolished. Now the Law Department have come to the conclusion that they cannot be abolished unless the Constitution is amended.

SHRI SYED AHMAD: So, unless the Constitution is amended, we cannot take away the privileges that have been given to them under the treaty.

SHRI PANDE: What I want to submit is that under section 87(b) a certain procedure has to be followed in case a suit has been filed against the Princes.

SHRI SYED AHMED: It is a procedure that creates an exception and a privilege in the case of the Princes.

SHRI PANDE: A suit can be instituted against the Princes if the Government permission is sought and the permission is given by the Government; or when the permission to file a suit can be obtained by an executive decree, why cannot a legislative decree annulling all those privileges for all times to come can be enacted?

SHRI SYED AHMAD: But how would section 85 apply? Suppose this is a part of the treaty. It cannot be taken away by an amendment of the Civil Procedure Code.

SHRI PANDE: Our suggestion is based on what the law is as it is today, and we cannot just answer a hypothetical question.

CHAIRMAN: It is not a hypothetical question at all.

SHRI PANDE: What we submit is section 87(b) exalts the Princes into some higher pedestal than an ordinary citizen.

SHRI SYED AHMAD: It is an academic discussion. Suppose a certain situation has arisen where a Prince comes and tells me, you have given me a privilege adumbrated under section 85 and it cannot be curtailed by another section or by an amendment to the CPC.

SHRI PANDE: May I just point out that a private Member's Bill was introduced in the Parliament, and the Member was the late Mr. Jogesh Chatterjee. He introduced a Bill some years back for the repeal of section 87(b). After going through the debates of the House, I did not come across any such point where section 87(b)

came in direct conflict with any treaty. Therefore, I would say that it does not come into conflict with treaties entered into between the Government and the Princes.

CHAIRMAN: You cannot rightfully draw that conclusion from the debates.

SHRI PANDE: May be or may not be so. I just remember that thing. Mr. Hathi was the Minister who replied to the debate at that time and he assured that the Government itself was contemplating about it. All these questions lead me to infer that had the question of treaties been there, that must have been raised at that point.

SHRI SYED AHMAD: I cannot agree with you, Mr. Pande. Please don't mind that. You are a jurist whereas I am not. My question is this. Suppose I bring an amendment to this section, 87(b) or 85, just as it has been suggested by you, and it is passed here. And the Prince will go to the Supreme Court or the High Court saying that it is *ultra vires* of the power of Parliament to have amended the CPC. Only first by amending the treaty by an Act of Parliament or by an amendment to the Constitution can that be done.

SHRI SHRI CHAND GOYAL: Mr. Pande, you were quoting Mr. Chatterjee's Bill. It is quite possible that that point might not have occurred to anybody at that time to be raised as a constitutional point. But that does not lead us to an inference that a constitutional hurdle is no more.

SHRI PANDE: It is quite possible it might have escaped the attention at that time. As regards the legality we can rely on the observation of the Supreme Court. The Supreme Court in *Narotham Kishore vs. Union of India*—expressly said that the Supreme Court has also urged the Government to consider seriously whether it is necessary to allow section 87(b) to operate prospectively for all times to come particularly because in the light of the basic principle of equality before law it seems somewhat odd

that section 87(b) should continue to operate for all times. And it further said, "With the passage of time this section may be open to serious challenge."

SHRI SHRI CHAND GOYAL: No, No. It is informative all right. But the question is first we have to amend the Constitution. This only means that a different procedure has been followed. They have indicated the desirability of amending the section, but they have not indicated the procedure to be followed.

SHRI PANDE: I would rather not like to comment upon this aspect whether it is in conflict with the treaty or not unless I have gone through it.

CHAIRMAN: Moreover, Mr. Pande, section 87(b) is not being amended by the amending Bill. And therefore, this Committee has no jurisdiction to touch that section.

SHRI PANDE: All right. Then I come to my comments on clause 7 of the amending Bill. It purports to substitute the old section 25 by a new one. In fact, this is a substantial reproduction of the draft prepared by the 27th report of the Law Commission except that the words "Attorney-General of India" have been omitted from this. If we look through the Statement of Objects and Reasons of the amending Bill, it says—the changes which have as a matter of course been included—

"The power to transfer proceedings in a High Court in a State to any other High Court, which now vests in the State Government, is being passed on to the Supreme Court. Section 25 is being suitably modified.

In fact, this statement is based on an erroneous assumption. Under section 25 it would not be very appropriate to say that it is the State which has been empowered to transfer the cases which power is now being vested in the Supreme Court. The rationale of Section 25 is that where any party to a suit or appeal or other proceedings



pending in a High Court presided over by a single judge, objects to its being heard by him, and the judge is satisfied that there are reasonable grounds for the objection, he usually makes a report to the State Government which may be notification in the Official Gazette transfers such suit or appeal or proceedings to another High Court.

Then there is a proviso with which we are not concerned. Section 25 simply permitted that if an averment was made before a single judge, then that averment was firstly examined by the single judge and if he is of the opinion for transferring the case he will or ask the State Government to transfer it. The State Government comes into the picture at a later stage. It is likely that any person who would like to denigrate a judge may just file a petition and move the Supreme Court for the transfer of the case from his State to some other State. Then even if that petition is dismissed, the image of the judiciary would be tarnished to some extent and the purpose of that particular party may perhaps be fulfilled.

**CHAIRMAN:** But it will not automatically be transferred.

**SHRI PANDE:** It may not be automatically transferred; it is likely that the petition may be dismissed but at least the mischief will have been done. Therefore it would not be a very wholesome practice to permit a litigant to go to the Supreme Court for such matters and to see that petitions are dismissed there. In fact the Supreme Court has already got powers to transfer a case if it is expedient to do so. By removing the inbuilt safeguards we are perhaps exposing the judiciary, particularly the High Courts, to certain scandalous acts of certain mischievous parties and it would affect the reputation of the judiciary adversely. Moreover, I would like to submit that the Supreme Court is already a super court with almost all kinds of powers vested in it; it is having jurisdiction in all

matters, civil and criminal and it is already having constitutional jurisdiction; it has already got powers to adjudicate upon inter-State disputes. Besides that, the Judges of the Supreme Court are required to sit on several Commissions from time to time. While we are increasing the jurisdiction of the Supreme Court or its burden, the constitutional limitation is that we cannot increase the number of judges.

**SHRI SYED AHMAD:** Are you of the opinion that there should be 52 Judges as in the Allahabad Court?

**SHRI PANDE:** That is a question of policy, whether there should be 52 or less. But considering the situation as it is, the judges are limited in number and they are supposed to engage themselves in certain questions which are of vital importance for the administration of justice. Therefore minor matters could be taken care of by other agencies which are already operating at lower levels.

**SHRI TENNETI VISWANATHAM:** I may agree with the witness that the number of Judges in the Supreme Court requires to be strengthened but the main thing which you said was that the reputation of the Judge against whom this petition is filed will be tarnished. Don't you think that a party will think twice before going to the Supreme Court because if his petition before the Supreme Court fails, then all the prospects of his case will disappear altogether? On the other hand the balance of convenience will be in giving this jurisdiction to the Supreme Court.

**SHRI PANDE:** But it will create a psychology or bad impression among other litigants that simply because a particular person had moved against a judge, the entire judiciary became hostile to him. This is likely to create some bad effect.

**SHRI TENNETI VISWANATHAM:** But don't you see that in certain subordinate courts the deciding judge is

only one and if that gentleman, for some reason or the other—it cannot always be stated in affidavits also—becomes hostile to this man due to extraneous considerations, some help must be rendered to such a litigant? What do you propose for doing that?

SHRI PANDE: First of all such instances will not be too many; they may be very rare, a very low percentage. Secondly, in the lower courts transfers can be had by applying to the District Judge. Why to go all the way to the Supreme Court?

SHRI TENNETI VISWANATHAM: I think that provision exists.

SHRI PANDE: If that exists, then the amendment becomes redundant. Is it so necessary that a case should be transferred from a civil court of one State to a civil court of another State?

CHAIRMAN: If justice to the party demands it.

SHRI PANDE: If justice demands it, then I am of the opinion that the Supreme Court has got the inherent power to intervene in such cases.

CHAIRMAN: How will it exercise its inherent powers unless the party concerned applies to it?

SHRI PANDE: The party concerned would move it, if it finds it necessary.

CHAIRMAN: The Supreme Court will say "We have no power; this power lies with the State Government and they alone can do it. Therefore go to them, not to us."

SHRI PANDE: I think the Supreme Court is a super court and the Supreme Court has not hesitated on many occasions to intervene where the interests of justice have demanded it.

SHRI TENNETI VISWANATHAM: The plaintiff and the defendant may happen to be at different places in service, one in military service and

another in some Government service, Would it be convenient to both the parties if it is transferred to some other court? What have you got to say about such a contingency?

SHRI PANDE: Such a contingency would be covered by the wording 'ends of justice'.

SHRI TENNETI VISWANATHAM: It would be terribly costly for him to go all the way there.

SHRI PANDE: It all depends on expediency—the transfer of a case.

SHRI GOYAL: I think this is a salutary provision because our experience is the State Governments never permitted the transfer of cases outside its own States. So the necessity arose for this. There are two questions—one, the condition of furnishing an affidavit in support of the claim in the application. An exception has been made in the case of Advocate General and if the application is by the Advocate General he may not file the affidavit. Don't you think this is discriminatory between a citizen and the State and it will be desirable that even the Advocate General should be required to furnish an affidavit?

WITNESS: I very much agree that it discriminates the citizen from the Government. Particularly the Bill is repealing Section 80 on the one hand and if it creates discrimination in other provisions, that would be against the spirit of the amendment.

SHRI GOYAL: If somebody has to move an application in the Supreme Court, that will be costly rather than with the State Government. What do you say to that?

WITNESS: I rather adhere to the original position. I have already taken. Particularly I am not inclined to support this provision that the power of transfer should be given to the Supreme Court. I may concede it may not be given to the State

Government as well. Why can't you rely on the High Courts for this?

SHRI GOYAL: Those High Courts cannot do?

WITNESS: The State Government has no power to transfer it unless the permission of that State had been obtained. The power which was hitherto vested in the State Government could now be vested in the High Court and the same proviso can operate provided the State where the case is to be transferred permits it.

SHRI GOYAL: Where a party wants to transfer from that High Court?

WITNESS: A Full Bench can very well decide whether it is expedient for ends of justice or not. We cannot rely on one or two Judges but can we not rely on all judges?

CHAIRMAN: How can a High Court transfer to a High Court outside its jurisdiction?

WITNESS: A suitable provision can be substituted.

SHRI GOYAL: Suppose that High Court does not agree?

WITNESS: If we are going to suppose everything, it will become difficult. In fact the State Government could also refuse earlier.

SYED AHMED: We have given the power to the Supreme Court.

SHRI P. C. MITRA: You think there might be harassment?

WITNESS: The question of harassment is there.

SHRI MITRA: Till now there was provision for transferring the case out of the State but now there may be difficulty particularly when the Supreme Court is burdened with arrears of cases.

WITNESS: I agree.

SYED AHMED: I refer to Section 80. Every witness has expressed his opinion about the deletion of Section

80. May I know whether it is not a fact that Section 80 is an administrative section and not an undemocratic one?

WITNESS: I would not comment on the democratic character of Section 80. I would not be agreeing with you that it is an administrative section. Perhaps it was so at some point of history. Because the idea was to give an opportunity to the administration to settle the disputes outside the court but now two factors are responsible for its abuse; firstly Section 80 was not treated seriously by Government in recent years. Secondly the Court also started interpreting it very conservatively. In fact they would apply it in certain cases of injunctions as well and that creates hardships on poor litigants.

SYED AHMED: Suppose this section was there and the order 39 which deals with injunctions also, would you agree that the section should be there but not for injunctions?

WITNESS: In fact, I would now stand for its repeal completely because the activities of the State have increased in multifarious ways. The State is no more a paternal State. It engages itself in so many activities, in State-trading activities and other activities, which were exclusively meant for the citizens. So, when the State wants to be a trader, why not it be exposed to the hazards of law, which affects the citizens also? If they want to be traders, then let them come to the court without being given any notice, etc., and let the court decide as to what are the issues and all the relevant matters. So, if it wants to be a trader, it must just be a litigant in the ordinary way also.

SHRI SYED AHMED: Section 80 was to prevent the State from becoming involved in litigation unnecessarily. Therefore my suggestion was this. First of all the section has been abused in the sense that it has not been always the State which has gone to file the suit; it is more often the legal advisers of the State who want that

the State should go on with litigation or contest a suit. For example, it is the Government pleader. He sees that the valuation is Rs. ten lakhs and he advises the Government to fight it so that he could get Rs. ten thousand as his fee. Now I know that the Government has been very very chary of settling a case out of court. This is one approach, with which I agree. The other approach is to emergent cases. Apart from the first abuse, suppose the interests of the litigant or would be plaintiff are safeguarded in so far as a provision is made for remedy in emergent and interlocutory cases then, in that case, is there any harm in retaining section 80?

WITNESS: Why not experiment by repealing it altogether? I would still be of the opinion . . .

SHRI SYED AHMED: Section 80 has to do with administration also. Therefore, in a society like ours, if a suit has to be filed by the State, about twenty Departments have to be consulted in order to find out what is the real position, and it needs some time. In a society like ours with a plethora of laws it is just possible that the Government might require some time in order to think over it.

WITNESS: By repealing this section the Government is not going to be a loser.

SHRI SYED AHMED: Would the plaintiff be the loser?

WITNESS: Otherwise he will have to wait for two months under section 80.

CHAIRMAN: That is right.

WITNESS: So, the suggestion is that, if the Government wants to settle a case, the plaintiff shall invariably give enough opportunity to the Government to come to terms and settle the matter. He will file the case only when he is compelled to do so and, after filing the case even, if the Government is desirous of compromising it, there will be every chance for the Government to do so.

SHRI SYED AHMED: The question of costs arises sometimes, and the cost may be Rs. ten thousand and if a suit is compromised, the Government may have to pay heavy costs. If you suggest that the costs should be disallowed if they are prepared to compromise at the first hearing, then it could be something.

WITNESS: If the plaintiff and the defendant can come to terms, they can settle the matter about costs also among themselves.

SHRI SYED AHMED: It is not in the discretion of the plaintiff and the defendant; it has something to do with the discretion of the court also.

SHRI TENNETI VISWANATHAM: Your point with regard to section 80 is that the advantage, if it is there, is for the Government, and if it is not there, the disadvantage would be for the Government, and when the Government introduces the Bill agreeing or proposing to delete the section, your opinion is that you will welcome it.

WITNESS: On this point particularly. It is a happy augury in more than one way, namely, that it is being done to perpetuate equality between citizens and the Government and it is going to remove all sorts of inconvenience to the litigants.

To proceed further, I would now like to comment upon clause 17 of the amending Bill.

CHAIRMAN: You have objected to the three-month period, but don't you think that it is very necessary for the Government to find out the exact position under which the decree was passed. Suppose it is passed against an officer of a State Government, before the Government pays the decretal amount, the court must come to its finding whether the decree was justified against the officer personally, or the liability of it attached to the State. So the State must know that position and you must give

some time to the State to consider these matters before making the payment.

**WITNESS:** It includes not only a public officer; it includes the Union or the State Government also.

**CHAIRMAN:** It has to be seen whether the State is liable, or the officer . . .

**WITNESS:** Individually or in his public capacity. That is quite true but, when we were just talking about section 80, we were trying to see that the entire trend now is to perpetuate in some way or the other the spirit of equality.

**CHAIRMAN:** We must not be unfair to any party. We must be fair to the Government also. Whatever the trend of change may be, all the same it has to be considered whether it would be right for us to say that the State must pay immediately a decree is passed.

**WITNESS:** In fact, a decree is passed or execution proceedings for a decree are proceeded with by contesting a case and the position gradually becomes evident as to whether a public servant is liable in his private capacity or in his public capacity.

**CHAIRMAN:** Where the Government is not made a party to the suit at all. If the State is made a party to the suit, then of course I can understand it. It may be the Secretary of a particular Department. Now he may say, "I in my capacity as Secretary did it and therefore this decree should be paid by the State."

**WITNESS:** In fact, in every tort litigation against the Government the Government would invariably be made a party when the tort has been committed by a servant. It will be the same in contractual matters also.

**DR. B. N. ANTANI:** You have very politely answered the first questioner that section 80 is not an administrative section but was once. One can

understand that it was an administrative section during the time of the British but don't you think that within the last twenty years there has been very little distinction because, this section is not only applicable to civil matters but there are so many other matters in which this section is used more for exploitation rather than for giving justice and don't you think that the recommendation of the Law Commission for its complete repeal should be welcomed?

**CHAIRMAN:** He has already said that.

**DR. B. N. ANTANI:** No, Sir. He qualified it.

**WITNESS:** Presently I insist upon the position that has been put in this amending Bill and I am very happy that it is now completely being buried.

On the question of three months period for the extension of decree I would say that the Government would ordinarily be included as a party and there is no question of giving additional time to the Government which is denied to other litigants. Additional time should not be given to the Government but assuming that there are certain difficulties and the Government has to be accommodated to some extent for that reason I would submit that this entire section 80 could be restructured somewhat on these lines that no application for the execution of a decree against the Union of India or a State or a public officer in respect of any act purporting to be done by him in his official capacity shall be moved unless its copy has first been served upon the Government counsel who conducted the case at least 15 days before the presentation of the application in the court.

**CHAIRMAN:** It amounts to a reduction of the period of time; that is all.

WITNESS: Not after the decree has been passed but before the execution starts and that should be sufficient.

CHAIRMAN: After all, three months' time is not a very long time.

WITNESS: In fact the ordinary citizen is already facing so many difficulties and the Government . . .

CHAIRMAN: You know Government machinery is more slow than the individual.

WITNESS: Government machinery may be slow but by giving three more months you will be putting a premium on their slowness.

CHAIRMAN: You can take it that way also.

WITNESS: We want that there should be more speed on their part.

CHAIRMAN: Any other point?

WITNESS: Finally I come to clause 43 about costs where Order XXA is sought to be inserted. Different kinds of expenditure have been itemised in clauses (a) to (e) and it is said these should be awarded. In practice invariably the costs are awarded by the courts and whatever is proposed here is already added to the costs by the courts. I do not think it is necessary to mention all these here. It is already being done by the courts. It is likely that if a court wants to exercise its discretion and add any other item which has not been included here it will find itself helpless because the court can give only the items which are specified here.

CHAIRMAN: The items mentioned here are at present not taxable items. For instance typing expenses, inspection expenses and so on.

WITNESS: I do not get the idea; what do you mean by 'not taxable'?

CHAIRMAN: They are not included as costs.

WITNESS: The courts are already exercising their discretion and awarding them.

CHAIRMAN: No; they are not.

WITNESS: They are giving the expenditure on typing; they are giving the expenditure on pleader's fee.

CHAIRMAN: I do not know about the Delhi courts but in U.P., such items as typing expenses, etc., are not there.

WITNESS: Assuming that it is necessary to mention them, then an alternative would be this that . . .

CHAIRMAN: Expenditure incurred on obtaining copies is not included.

WITNESS: Section 35 of the CPC is so comprehensive that it would allow the court to exercise its discretion to permit all such expenditure.

CHAIRMAN: But the courts do not do it. It is not customary to include these items. These items of expenditure are considered as out of court expenses. That is why they have been specially brought in so that all these expenses incurred by the litigant can be included as costs. What is the objection to it?

WITNESS: Then the better thing would have been to amend section 35 and this provision in order XXA could have been inserted in section 35 as clause (2). It could be said that the costs under this section shall be in accordance with such rules as the High Court may make in this behalf. I would submit that these powers should ordinarily be with the courts.

CHAIRMAN: That makes no difference, if the power is put in the statute itself.

WITNESS: If the High Court is vested with this power then the High Court in each State will be able to meet the situation that might prevail in the area under its jurisdiction.

CHAIRMAN: Whether you put it in the rule or whether you put it in

the statute should make no difference at all. Do you consider any of these items objectionable and therefore should not be included?

WITNESS: I do not consider any of these items objectionable. What I am saying is putting it this way limits the discretion of the courts to these few items only. I submit that the provision should be of such a nature that it can be made use of to cover all situations, even situations which are not provided for here.

CHAIRMAN: That may be giving too wide powers to the court.

WITNESS: There cannot be any harm in giving such powers to the courts in respect of such matters.

CHAIRMAN: After all leaving it to their discretion to include certain items and exclude certain items would be a very arbitrary power.

What is your opinion about section 115?

WITNESS: About the revisionary powers of High Courts. In fact, I also do not find any utility of that provision, because the High Courts are already exercising the jurisdiction which has been mentioned in the amending Bill.

CHAIRMAN: Kindly see section 115. In the proposed amending Bill there is a proviso attached to it which does not exist at present.

WITNESS: At what page?

CHAIRMAN: At page 8.

WITNESS: It reads:—

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court. and if such subordinate Court appears . . .”

CHAIRMAN: This is exactly as the Act stands at present. Now, they have included a proviso (a) and (b). Then, there is the Explanation.

WITNESS: It perhaps deals with interlocutory orders.

CHAIRMAN: Yes.

WITNESS: In a casual manner I am not able to catch the import of this section. But cursorily what I feel is that what has been given here is in addition to what is already in the CPC.

CHAIRMAN: It is being curtailed. The powers of the High Court are being curtailed in respect of interlocutory orders.

WITNESS: Would it not be inconsistent with what has been already provided under articles 226 and 227 of the Constitution?

CHAIRMAN: That is a separate provision of the Constitution altogether.

WITNESS: The High Court has already got the powers of supervisory jurisdiction over the lower courts and they exercise that power. The changes contemplated here would not be of use, because article 227 gives them the supervisory jurisdiction.

CHAIRMAN: Here some part of the jurisdiction is being taken away from them. You cannot take up every application for revision. You can do it only in certain cases, as specified in (a) and (b).

WITNESS: For that we do not have any objection.

CHAIRMAN: What is your opinion about section 60?

WITNESS: I would rather refrain from commenting on the provisions which I have not studied earlier. I thought only some of these provisions would be of some significance and it would not be proper on my part to give any cursory opinion.

CHAIRMAN: What is your opinion on clause 14 at page 6?

WITNESS: It says here:—

"In section 58 of the principal Act, in sub-section (1), in clause (a), for the words "fifty rupees", the words "two hundred rupees" shall be substituted.

That seems to be quite alright. The value of the money has gone down.

We do not have any objection to the amendment.

CHAIRMAN: Thank you very much for your valuable evidence which would be of assistance to us. We shall consider whether we can accept your amendments.

*(The witnesses then withdrew)*

---



*Tuesday, the 3rd February, 1970 (at Bombay)*

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

*Rajya Sabha*

- |                         |                           |
|-------------------------|---------------------------|
| 2. Dr. B. N. Antani     | 6. Shri Syed Ahmed        |
| 3. Shri Rattan Lal Jain | 7. Shri Purnanand Chetia  |
| 4. Shri B. N. Mandal    | 8. Shrimati Seeta Yudhvir |
| 5. Shri Jagat Narain    | 9. Shri T. K. Patel       |
|                         | 10. Shri P. C. Mitra      |

*Lok Sabha*

- |                               |                                      |
|-------------------------------|--------------------------------------|
| 11. Shri R. D. Bhandare       | 19. Shri Bhaljibhai Ravjibhai Parmar |
| 12. Shri Shri Chand Goyal     | 20. Shri S. B. Patil                 |
| 13. Shri Ram Krishan Gupta    | 21. Shri Jharkhande Rai              |
| 14. Shri Heerji Bhai          | 22. Chaudhuri Randhir Sing           |
| 15. Shri J. M. Imam           | 23. Shrimati Savitri Shyam           |
| 16. Shri Thandavan Kiruttinan | 24. Shri P. N. Solanki               |
| 17. Shri Mahendra Majhi       | 25. Pandit D. N. Tiwary              |
| 18. Shri B. P. Mandal         |                                      |

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.

SECRETARIAT

Shri Kishan Singh, Under Secretary.

WITNESS

Shri B. S. Wankhede, District and Sessions Judge, Chandrapur.

---

*(The witness, Shri B. S. Wankhede, was called in)*

CHAIRMAN: It is now 3 P.M. and we have the quorum. The witness before us is Mr. Wankhede, District and Sessions Judge, Chandrapur. I am thankful to you, Mr. Wankhede, for sparing your valuable time to appear before us. He has already submitted a memorandum and it has been circulated to hon. Members. I am sure the Members must have gone through it. I have to tell you, Mr. Wankhede, that the proceedings of this Committee are secret and they are not to be disclosed till the report of this Committee is submitted to Parliament. Now, if you have anything to add to the comments you have sent to us, you may kindly mention them.

WITNESS: Sir, I do not think it is necessary for me to add to what I have already stated in my memorandum because I have confined my suggestions to clauses 16, 25, 35 and 40.

CHAIRMAN: Besides them, if you have anything to add by way of additional remarks, you may do so.

WITNESS: As regards section 80 of the Act I have given my view that it should not be omitted.

CHAIRMAN: You do not welcome its deletion?

WITNESS: I do not, because it serves as a check to vexatious and frivolous litigation. If section 80 is deleted from the Statute Book, probably, the courts, especially the courts at the lower level, would be flooded with frivolous litigation. Of course, as a party the State is no doubt on par with a citizen, but yet, if section 80 is allowed to remain on the Statute Book, it will give opportunity to the State to settle claims, to compromise claims, before a litigant actually goes to court, and that would save much of time,

trouble and money. So I think the provisions of section 80 should not be removed. Indeed, the object of the notice provided for in section 80 is to give the Government an opportunity to reconsider their legal position and, if possible, to compromise the matter.

CHAIRMAN: This is already given in your written comments. If you have anything to add besides what you have mentioned in your written comments to other parts of the Bill, you may please come out with them.

WITNESS: Then as regards section 144, I have mentioned that sub-section (2) would become redundant by reason of the amendment that has been proposed in the Bill.

As regards clause 35 dealing with Order X, Rule 2, I would add that in the former M. P. High Court this provision was considered as almost unnecessary in the Civil Procedure Code because it was rarely used. In one case the case related to a Muslim Purdahnasin lady. The counsel, who appeared for her, gave a statement admitting a document, and the court acted upon the admission so made. Subsequently, the matter went before the High Court and Chief Justice stone looked at the case with suspicion because a Purdahnasin lady was involved in that case. So, he naturally said that the statement made by the counsel on behalf of the Purdahnasin lady should not have been acted upon. He remanded the case to the lower court and the lady ultimately won the case. The correct way is the notice under Order XII, Rule 1.

The admission on examination under Order X saves trouble and does no harm, but the salutary point should be borne in mind that they do not act

as a substitute for pleading, because the pleading can only be amended in a proper way and not by substituting it.

Then, as regards clause 40, I have already said that the Bombay amendment may be added. If the Bombay amendment is put into operation, probably the speed of disposal of cases would increase. There would be an expeditious disposal of cases. The amendment contemplates that no time should be lost at all between calling one witness's statement and the next, one party's witness and the next counsel's statement and evidence and judgment. These are the points which I have mentioned.

CHAIRMAN: May I seek some clarification before I proceed with your statement? I would refer you to paragraph one of your statement on clause 16. You have mentioned that this provision serves as a check to vexatious and frivolous litigation. I have not been able to understand how it does so. How does section 80 help in checking vexatious and frivolous litigation?

-WITNESS: The party before coming to court would consider its position properly. He would also have an opportunity to settle the matter with the Government. The Government would also be posted with the facts relating to the nature of relief, which is permissible under law. In that case, the cases which linger on in a court of law would be minimised.

SHRI SHRI CHAND GOYAL: The question is a suit having been filed, unfortunately it depends on the Government as to what action it would take, whether it is frivolous or whether it is substantial. Having served a notice, he will be tempted to file a suit if the Government does not respond and our experience is the Government seldom responds. As a District and Sessions Judge you must know that the Government seldom

replies to the notices which are served on them.

WITNESS: They do take time.

SHRI SHRI CHAND GOYAL: How will it serve as a check on the plaintiff who wants to file a suit, unless the Government responds. Your suit is there. How is it to know whether there is some substance in the suit or it is frivolous? This is what our Chairman wants to know.

WITNESS: In one case a clerk had filed a suit. He said that the character roll warning administered to him was illegal. For that he brought a suit in a court of law. It was more or less an administrative matter,

SHRI SHRI CHAND GOYAL: Unless the Government tells him that it is an administrative matter, how is he to know it? The Government never tells him about it. That is his experience.

DR. B. N. ANTANI: On the contrary it will not be frivolous on the part of those who want to file a suit against the Government. These notices are used more often to harass the people who want to file a suit against the Government and it ends in colossal injustice to the citizen. That is my experience. Do you not think that this provision which serves as a check to vexatious and frivolous litigation would work otherwise?

WITNESS: It does.

SHRI RATTAN LAL JAIN: How do you reconcile it with your earlier remark that there should be no discrimination between the citizen and the State?

WITNESS: That is the observation of the Law Commission.

DR. B. N. ANTANI: We are concerned with your opinion. Why should the Government be placed on a preferential footing?

SHRI RATTAN LAL JAIN: This section has been acting as a great hardship on the citizen. In matters requiring urgent relief it acts as a great hardship to the citizen.

WITNESS: Section 80 may be amended accordingly.

SHRI RATTAN LAL JAIN: What is your suggestion?

WITNESS: It can be amended.

SHRI RATTAN LAL JAIN: How?

SHRI P. C. MITRA: Is it your contention that section 80....

CHAIRMAN: Let the witness's reply go on record before you put a further question.

SHRI RATTAN LAL JAIN: Mr. Chairman, he just said that section 80 may be amended. I want to know how he wants to be amended.

SHRI SHRI CHAND GOYAL: He wants to know what sort of amendment is in your mind.

WITNESS: The party coming to court may be in some real plight. It may be incorporated in section 80.

SHRI SHRI CHAND GOYAL: Do you mean to suggest that it should apply only to cases like injunction and other cases seeking immediate relief? Is that your contention?

WITNESS: Yes.

SHRI SHRI CHAND GOYAL: It should apply only to such cases where the party comes to court demanding or claiming immediate relief.

SHRI K. D. BHANDARE: Mr. Wankhede, do you agree to the basic principle of the rule of law that there should be no discrimination between the Government and the ordinary citizen? That is the basic principle. It has been accepted by our country.

WITNESS: Yes, of course.

SHRI R. D. BHANDARE: To what extent should it be modified?

WITNESS: I have already said that the State and the citizen should be placed on a par. I agree with that principle.

I would only put in this provision as a practical person who has to do the work. We have to deal with these cases in a court of law.

SHRI R. D. BHANDARE: Are you not satisfied with section 82 as a practical man who has to deal with matters everyday in the court? Are you not satisfied with section 82? I am sorry, section 81, exemption from arrest and personal appearance, original section 81.

CHAIRMAN: Section 81 does not help. The question is about section 80.

SHRI R. D. BHANDARE: I quite follow. He would like to modify the principle under the rule of law. Therefore, I say, is not section 81 sufficient modification to give guarantee or protection to officials?

WITNESS: I would not give because here section 81 deals with exemption from arrest and personal appearance only.

SHRI R. D. BHANDARE: To that extent is it not a modification to the rule of law that all must be treated alike?

SHRI SHRI CHAND GOYAL: This section has been existing on the Statute Book for the last eighty years. So far as I know the Government has made use of it by raising just technical pleas that the notice is defective, and many a suit has failed because of defects in the notice. So we want to know as to what is the justification for retaining this section in future, which has hardly been made use of by the Government during the last seventy or eighty years. We do not find an answer to that unless you suggest some

justification for retaining it on the Statute Book.

**SHRI R. D. BHANDARE:** Let him apply his mind whether section 81 is not a sufficient guarantee instead of retaining section 80. He would like section 80 to be retained. We want that it should be deleted. He wants to suggest that protection should be given to the officials. My question is under section 81, is it not sufficient protection to the officials without modifying the principle that all must be treated alike?

**WITNESS:** It is not as much a question of protection to Government servants. But it is a question of the notice received by the Government regarding the claim. Notice is meant for giving knowledge regarding the claim as a whole to the Government. Government might compromise in the matter. Government may not be faced with a challenge in a case which is strong.

**SHRI R. D. BHANDARE:** Kindly do not treat the case of the Government. You have come here as a witness.

**WITNESS:** Of course, as for the rule that the Government and the citizen are on equal footing, it is sacrosanct. There is no doubt about it.

**CHAIRMAN:** The question is whether it has been within your experience that a large number of cases or sufficient number of cases are compromised by the Government because of giving of notice under section 80.

**WITNESS:** Yes, yes.

**CHAIRMAN:** Has it been your experience that cases are compromised on the giving of such notice?

**WITNESS:** My experience is that several cases are compromised. It is also my experience that the Government takes recourse to the technical objection that the notice is not correct

and the case should fail. That is also the case.

**SHRI SHRI CHAND GOYAL:** I would like to know what would be the number of notices that are served and in what percentage of cases the Government is willing to compromise or willing to respond. Could you give us some idea?

**WITNESS:** I will not be able to give that, but I think....

**SHRI SHRI CHAND GOYAL:** One in a thousand?

**WITNESS:** The Government does make strenuous efforts to compromise the cases as far as possible.

**SHRI SHRI CHAND GOYAL:** What is the percentage?

**WITNESS:** I would not be able to give the correct percentage.

**SHRI RATTAN LAL JAIN:** Nowadays there is a good deal of correspondence prior to the institution of a suit because no one institutes a suit without any notice, without any sort of correspondence with the Government. There is a lot of correspondence prior to the institution of a suit. This giving of notice, if it is dispensed with, will it not do disservice to the Government, will it not harm the interests of the Government?

**SHRI SHRI CHAND GOYAL:** Is your answer in the affirmative to the question of Mr. Jain? We have not been able to gather whether you are giving an affirmative reply or in the negative.

**WITNESS:** I have not followed the precise question.

**SHRI SHRI CHAND GOYAL:** His question is, before the service of a notice there is considerable correspondence between the person who wants to bring a suit against the Government and the Government in order to get the matter settled. But

in that case he suggests that the service of a notice will be just redundant and useless because any person who wants to approach a law court must correspond with the Government, and that correspondence will give the Government an opportunity to settle the case if it has a mind.

WITNESS: Yes. I agree that that would give an opportunity to the Government to settle the matter.

SHRI P. C. MITRA: Do you think that this amendment regarding section 80 is good and there is no need of giving notice to the Government? You now after hearing here have a change of view and you are now agreeable to the view expounded here that there is no necessity of giving any notice under section 80 to the Government?

WITNESS: It is our experience that frivolous litigation from citizens would increase.

SHRI P. C. MITRA: Your point is that many persons out of excitement file a suit against the Government or anybody, but after mature thought he changes his mind and these sixty days give him an opportunity to think of whether he should institute the case or not, and that is beneficial to the litigant. Is this your view?

WITNESS: The basic principle of section 80 is that the Government must be posted with the facts of the case. If due notice is not given the Government is not posted with facts. Mere giving of notice is not sufficient because the papers pass through different hands. The papers must be received by a proper authority. Our experience is that it takes a lot of time for them to file a statement.

SHRI P. C. MITRA: Therefore, you feel that instead of two months the Government should be given more time to allow the whole thing to pass through proper channel.

WITNESS: I cannot give my opinion about the time limit. The object of

the notice is to enable the Government to examine the position with regard to the case and satisfy itself as far as possible or settle the case. It is not the intention of section 80 to defeat the case. Of course, if the notice is not proper the Government is bound to take the stand that the notice is not proper.

SHRI RATTAN LAL JAIN: Supposing the notice is dispensed with, no cost will be awarded. Will it suffice?

WITNESS: That is what the amendment suggests.

CHAIRMAN: It seems to be the firm view of the witness, based upon his experience, that notice under section 80 is necessary.

In the second paragraph of your comment, on clause 25, with regard to section 144, you have said that "the proposed amendment to sub-section (1) of section 144 renders existing sub-section (2) redundant. In view of the proposed amendment which provides institution of suit for the purpose, it will necessitate omission of the existing sub-section (2) which bars a suit".

WITNESS: Because subsection (1) now provides:—

"where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose.."

These were not in the original provision. Sub-section (2) of section 144 lays down:

"No suit shall be instituted for the purpose obtaining in restitution or other relief which could be obtained by application under sub-section (1)."

CHAIRMAN: In view of the change proposed, how does it become redundant?

WITNESS: The section bars a suit and the same thing is incorporated here. Therefore, it is redundant.

CHAIRMAN: The change proposed is that instead of the suit being filed, the executing court will decree or the original court will vary or reverse the decree according to the change made, by an application.

WITNESS: The power to file a suit is there. The sub-section (1) itself contemplates that if a decree or an order is varied or reversed, the Court which passed the decree or order shall cause such restitution to be made....

CHAIRMAN: That will be done by an application and, therefore, you cannot say that clause (2) is unnecessary.

Therefore, I think that even if this change is made in accordance with the proposed amendment, sub-clause (2) of the original Act is necessary. That is my view. It is really not redundant.

WITNESS: Yes, I agree with your view.

श्री बी० एन० मंडल: एक बात में आपसे पूछना चाहता हूँ। आप ने जो मेमोरेंडम दिया है उस में पैराग्राफ 2, क्लॉज 25, सेक्शन 144 के बारे में कुछ कहा है। आप ने उस सिलबिले में रिमार्क दिया है और कहा है:

"In view of the proposed amendment which provides institution of suit for the purpose, it will necessitate omission of the existing sub-section (2) which bars a suit."

यह आप का रिमार्क है।

चेयरमैन: मगर अब वह एप्री करते हैं कि जो अमेंडमेंट किया जा रहा है अगर वह किया जायेगा तो उसके बाद भी सब-सेक्शन 2 रहना चाहिए और उसे खारिज नहीं किया जाना चाहिए। मैं ने जो सवाल पूछा उस के जवाब में उन्होंने यह बात मानी है।

श्री बी० एन० मंडल: उनके मेमोरेंडम में जो बर्दिग है उस से यह मालूम पड़ता है कि एक सूट अलग से लाने की जरूरत है। तो मंडमेंट की किस बर्दिग से उन्होंने यह कंजूलन निकाला है यह मैं जानना चाहता हूँ?

चेयरमैन: आपने देखा होगा कि अभी मैं ने ओरिजिनल सेक्शन पढ़ कर सुनाया और उसके बाद यह अमेंडमेंट भी पढ़ कर सुनाया। उसके बाद यह कहते हैं कि यह होने के बाद भी सब-सेक्शन 2 कायम रहना चाहिए। इस बात से बह एप्री कर रहे हैं।

CHAIRMAN: Now I will take you to para 3 of your comments regarding clause 35. You have stated,—

"Therefore, I am of opinion that neither the proposed amendment to rule 2 nor the existing rule 2 is necessary to be retained. In practice, even the provisions of rule 1 of Order X are rarely observed by the court particularly to avoid complications of such statements made for women or minors."

I want to know: if both the provisions are dropped, then, under which provision of law will the court have the power to examine orally the persons specified in the proposed amendment?

WITNESS: I have already said that these provisions are rarely used in the court of law. Judges rarely use them. The Privy Council had observed that the statements should be used in such a way that they do not affect the pleadings of the parties.

CHAIRMAN: That may be so.

WITNESS: In several cases, the statements are used as pleadings.

CHAIRMAN: I follow what you said. If the court does not avail itself of the sub-section, it does not mean that it is unnecessary. Therefore, I want to know from you under which

provision of law the court will have the power, the right, to examine a person.

**WITNESS:** The court can make use of the provisions of Orders XI and XII of the Civil Procedure Code directing the parties to exchange notices for admission producing facts and documents.

**CHAIRMAN:** You said in your note, "...neither the proposed amendment to rule 2 nor the existing rule 2 is necessary to be retained." If both these provisions are to be dropped, I am asking you as to under which provision of law the court will have the right to examine the persons.

**WITNESS:** The court can take recourse to Orders XI and XII.

**CHAIRMAN:** The powers under the Orders are not the same as this power.

**WITNESS:** Maybe, but...

**CHAIRMAN:** Mr. Wankhede, the existing sub-section (2) gives a right to the court to examine while the other provision gives the party a right to give notice. Supposing the parties do not avail of that chance, then the court will be deprived of that right to examine these persons under the existing rules.

**WITNESS:** Those admissions should not be used as pleadings.

**CHAIRMAN:** That is another matter: they may not be taken as pleadings but they are for understanding the problems between the parties. Therefore it cannot be said that these rules are redundant.

**WITNESS:** It has been observed that these admissions should not be used as pleadings.

**CHAIRMAN:** That is another matter but the rule is not redundant and therefore it should not be deleted. That is the only thing that I want to say.

Anyway, Mr. Wankhede, what are your views about section 102, clause 21, page 8 of the Bill? At the present moment the limit is only one thousand rupees; it is proposed to raise this figure to Rs. 3000. What are your views about this particular provision? You have not made any comments about it. (After a pause) You may please take your tea before replying to it.

**WITNESS:** Section 102 provides for second appeals in the case of suits of the nature cognizable by Courts of Small Causes only....

**CHAIRMAN:** I had asked for your opinion on raising the limit from one thousand rupees to three thousand rupees. What are your views? You approve of the change or not?

**WITNESS:** I am inclined to approve of the change.

**CHAIRMAN:** You are not opposed to it. For what reasons?

**WITNESS:** Because that would go to limit the number of second appeals. The more the valuation, the lesser would be the number of second appeal.

**CHAIRMAN:** But the value of money has gone down since the limit was fixed and Government thought that the figure of one thousand rupees would be too low a figure and therefore it should be raised to three thousand rupees. Do you think it should not be so raised?

**WITNESS:** That is what ought to be done. Some changes have been effected now in the provisions of Order XXXIII regarding pauperism and so on and so forth.

**SHRI R. D. BHANDARE:** Our request is that you kindly speak louder so that, apart from facilitating the taking down of your observations, we can hear and appreciate your views and then formulate our own views.

**CHAIRMAN:** What is your opinion about it? If this change is made, a



large number of appeals between the figure of one thousand rupees and three thousand rupees would be shut out. So, from the litigant's point of view is it right to raise the limit from one thousand rupees to three thousand rupees?

WITNESS: I would not be able to give my opinion regarding this because I am not concerned with such cases.

SHRI R. D. BHANDARE: He is not acquainted with these Small Cause suits.

SHRI SHRI CHAND GOYAL: Mr. Chairman, may I ask him questions from the materials that he has given?

CHAIRMAN: You can certainly ask questions.

SHRI SHRI CHAND GOYAL: Mr. Wankhede, you have suggested in your last paragraph that Order XVII, rule I should be amended in the light of the amendment which has been made by the Bombay High Court. Is that right?

WITNESS: Yes.

SHRI SHRI CHAND GOYAL: What is the substantial change which the Bombay High Court has made departing from the original provisions of the Bill? In what way is this an improvement and it will shorten the time of the civil proceedings?

WITNESS: I have given the reasons in paragraph 4. The intention is to get a case on and over with no time lost at all between calling one witness's statement and the next, one party's witness and the next counsel's statement and evidence and judgement, judgement being delivered by the Judge immediately.

SHRI SHRI CHAND GOYAL: Do you not know that even now the practice is and the position is the court has been given the power to adjourn a case from time to time. The practice is once the evidence starts all the witness are examined and the parties

are not given adjournment. If the court is to record in writing the reason, how does it act as a deterrent to adjournment? Even according to the Bombay amendment the court has the discretion to adjourn a case and not necessarily finish all the witness of one party or the other.

WITNESS: In practice, Judges are required to record the evidence of witness at one stretch and finish it, and then give their judgement. That is the spirit of the rule. If sufficient reasons are given, the case will have to be adjourned.

CHAIRMAN: You think that if the court has to give reasons for adjournment, it will usually not be prepared to adjourn the case and the object will be achieved.

WITNESS: When we were working, our inspecting Judges used to say that cases could be adjourned only under three condition. One is on the death of the party, the second is on the death of the lawyer and the third is on the death of the Judge. The rules regarding adjournment were very stringent in the old days. You could not adjourn cases so easily.

SHRI SHRI CHAND GOYAL: You say that the reasons must be recorded. Even now the practice is for the courts to record the reason. The court says: The court's time is over. Similar reasons are also given. They may not be genuine reasons. But would that be a sufficient safeguard or guarantee to check the delaying the disposal of cases? Will this provision of writing the reasons for adjournment be a sufficient guarantee? My experience is that court or the Judge just writes some valid reason.

WITNESS: Actually in the State from which I come, namely, Madhya Pradesh, if an application for adjournment was allowed, the inspecting authority used to say that it was invited by the court. The provisions regarding adjournment were very stringent. The

courts rarely allowed applications for adjournment, with the result that the cases proceeded. The evidence was recorded and the judgement was delivered. The cases were disposed of quickly.

**SHRI SHRI CHAND GOYAL:** Would you suggest that there should be more stringent provisions than those suggested in the Bombay amendment?

**WITNESS:** Yes. That alone can guarantee quicker disposal of cases.

**CHAIRMAN:** What is your experience? Are the adjournments more due to lawyers or judges?

**WITNESS:** Both.

**CHAIRMAN:** Please let us know your experience.

**WITNESS:** It all depends on the Judges and lawyers. Some Judges are firm enough not to give adjournments. They are very sincere in dealing with cases. They would not allow adjournments. Some lawyers are very sincere.

**CHAIRMAN:** Is it a fact that sometimes difficult and important civil cases are brought before courts and they want to shirk their responsibility? Therefore, they adjourn the case under one pretext or another.

**WITNESS:** Of course, some judges do shirk their responsibility in dealing with cases which are complicated in nature or in which they are not able to make up their mind in a forthright manner.

**SHRI SHRI CHAND GOYAL:** Shall I quote one instance? Whenever I felt like asking for an adjournment, I went with two boxes. I would spread my books on the table and the Judge would ask me whether it was a prolonged case. I would say 'Yes'. The case would be adjourned.

**WITNESS:** A little firmness on the part of the Judges would curtail the number of adjournments.

**CHAIRMAN:** I would like to know if you think that with the changes proposed to be brought about in the proposed Bill, litigation will be substantially reduced, the length of time will be reduced and the costs will be reduced? Do you think so? Or, do you think some more drastic steps are necessary to cut down the length of time?

**WITNESS:** I have already referred to Order XVII, Rule 1, which will curtail much of the time and bring down the cost of litigation.

**CHAIRMAN:** After all you are a Judge and I would like to know this from you. A Judge of a High Court has expressed the view that neither the length of time will be reduced nor money saved by this proposed amendment and that more drastic steps are necessary to cut down the length of litigation in the courts. That is the view of a Judge of a High Court. Therefore, I wanted to know it from you.

**WITNESS:** Yes, they have such views.

**CHAIRMAN:** What steps would you suggest? Do you not think that our efforts and labour would be wasted if we do not bring about a reform in the Civil Procedure Code?

**SHRI R. D. BHANDARE:** May I answer on his behalf? More Judges are required. No adjournment should be given and the work will be completed in time.

**CHAIRMAN:** Please answer my question.

**WITNESS:** I would be slow to contradict the highest dignitaries.

**CHAIRMAN:** What reform would you suggest? If the amending Bill does not go far enough, do you think some more drastic steps are necessary? What would you suggest?

**WITNESS:** It would be a general question.

**CHAIRMAN:** But it is within your experience.

**WITNESS:** So far as my opinion is concerned, the present amendment would meet the object in view.

**CHAIRMAN:** It may succeed to a certain extent, but not to the full extent. What steps would you suggest?

**WITNESS:** After all the main object with which this amending Bill has been brought forward is to reduce the length of time, so that the arrears may not mount and that cases in courts could be finished much earlier.

**CHAIRMAN:** Then litigation will also be minimised. Therefore, I am asking what positive steps we can take.

**WITNESS:** If the Code is properly worked, the object can be achieved. For example, in the old days, we rarely adjourned a case for more than five or six hearings. The first day was for filing the statement. The second day was for settling the date on which parties must file the list of witnesses; must pay the process fees, must file the application for commission. The case was fixed for the evidence of the witnesses, on which day the witnesses were examined, and then the case was closed. These were the only stages of a case in the old days. Now the times have changed. Parties do not file written statements for days together. Cases are adjourned.

**SHRI SHRI CHAND GOYAL:** Have you heard an election petition? Election petitions are usually finished within six months. They regulate their procedure in such a manner that the case must finish within six months.

**WITNESS:** Not necessarily. Again the petitioner is always in a mood to get the case adjourned. If he has not a good case, then he would see that his opponent is put to trouble.

**SHRI SHRI CHAND GOYAL:** But the question is everything rests with the court. If the court is determined

to finish it within six months, then it will tie the hands of the petitioner. It will not permit him to take more time than is actually necessary.

**CHAUDHURI RANDHIR SINGH:** If the stages of recording evidence and hearing of arguments are day after day, whatever evidence is available if it is heard day after day and not adjourned for two or three months, when you hear arguments everyday, don't you think this will cut down the length of time which is consumed by litigation?

**WITNESS:** Yes. Then the case would continue at one stretch and would be closed soon.

**CHAUDHURI RANDHIR SINGH:** What is the hindrance that keeps you from adopting a procedure for quick disposal? Is it because of the number of cases being so enormous?

**WITNESS:** We used to follow the block system in which system the cases fixed for evidence were to be finished in that sitting just like the sessions cases. Once they start they must end.

**CHAUDHURI RANDHIR SINGH:** You want it adopted at the lower level. At the District Judge's level this is done.

**WITNESS:** We try the sessions cases. We do not adjourn the sessions cases because the witnesses appear before us, we record the evidence and we dispose of the case in the same sitting. That does not happen in civil cases. The witnesses are invariably absent. The lawyer is pressing for adjournment. Something occurs which blocks the progress of the suit.

**CHAIRMAN:** May I ask your views on the changes being made in section 115? You will notice that under the proposed amendment restriction has been placed on the powers of the court, on page 8 of the Bill, clause 23. You will notice that after (1)(c) there is a proviso: "Provided that the High Court shall not, under this

sub-section, vary or reverse any order made in the course of a suit or other proceeding, including an order deciding an issue, except where"—there are (a) and (b). This clause restricts the powers of the court in regard to revision to an extent. What are your views on this point. Do you think this change is necessary or not? Sub-clause (a) is more or less the same as the law stands at present. To that a proviso is being added, (a) and (b) are mentioned, and explanation is given on the next page; on page 9 you will find an explanation. Do you think that this circumscribes the powers of the High Court or you would want the section 115 to stand as it is under the present Act?

WITNESS: Section 115 as it stands should be allowed to stand.

CHAIRMAN: Do you think that under section 115 of the Act the reversionary powers of the High Court are properly provided for under the existing Act? Is that your view?

WITNESS: Yes.

SHRI J. M. IMAM: As a District Judge you must have been receiving appeals from the decisions of the lower courts. May I know from your experience what are the various factors that contribute to delay in disposal? Do you think that your disposal of cases is quite expeditious?

WITNESS: Yes.

SHRI J. M. IMAM: I am not speaking of your court alone. The complaint is that the appeals filed from the judgment of the lower court to the district court take a long time, there is a lot of delay in disposal. Can you suggest any measure by which the disposal of cases may be expedited?

WITNESS: I have already said that the Civil Procedure Code contains provisions for that. If the proper number of Judges are appointed. . .

SHRI J. M. IMAM: If there are cases, they will appoint an extra

Judge. But do you think that under the present circumstances you can suggest more concrete measures by which there will be less delay in litigation?

SHRI J. M. IMAM: Can you suggest measures by which disposal will be quicker?

WITNESS: Limitation on days when the defendant must file his written statement, not allowing adjournments, framing of issues on a particular date and on the following day filing of list of witnesses by the party, filing of application for the issuance of commission for the witnesses and so on. In other words, the court must stick to the dates when the things are to be done. But now the tendency is to adjourn for each and every thing.

CHAIRMAN: These are time-consuming factors? What remedy do you suggest to reduce this delay?

WITNESS: There are some bar associations which strictly observe the rules framed by the High Court with the result that delays are narrowed down. While there are others which do not observe these rules and delays are there. So far as our system in the Nagpur High Court is concerned, the cases are never adjourned no matter what happens. I gave you the instance of a District Judge who would grant adjournment only in case of death of a party.

SHRI J. IMAM: Some lawyers feel that adjournments are to their advantage because the more the number of adjournments the more will be their income. So it is for the judge himself to see that adjournments are not given and the cases are taken up in time and expeditiously. Are the Judges observing the rules?

WITNESS: So far as the Judge is concerned he is not concerned whether a lawyer has received his fees or not. The Judge is concerned with the procedure. The Judge can firmly say that in cases fixed for filing written

statement or for evidence no adjournment will be granted and the cases would be disposed of speedily.

SHRI B. P. MANDAL: It is not proper for a Judge to annoy a lawyer.

WITNESS: The procedure is there.

SHRI R. D. BHANDARE: I will draw your attention to section 115, with reference to the proviso. Do you like to incorporate the proviso so that the parties may not be put to any disadvantage? That is the reason and rationale behind the proviso. And you want to delete that proviso. Section 115 speaks of the power of the High Court. Clause 23 wants to amend it.

WITNESS: Actually, the provision, as it stands, already limits the exercise of powers by the High Court.

SHRI R. D. BHANDARE: The power by the High Court may be exercised with advantages to the party. The High Court will take into consideration certain factors. The proviso says that it should not be so deterrent against the interest of the parties. That is the meaning. Therefore, this proviso has been added in the interest of the parties. For example, take clause (b) of the proviso which says:

"The order, if allowed to stand, would cause irreparable injury to the party against whom it was made."

Therefore, it is in the interest of the parties themselves. It is not for the purpose of delaying the matter. What have you to say?

WITNESS: The provision may be incorporated.

SHRI SHRI CHAND GOYAL: The provision considerably curtails the powers of the High Court to exercise the revisional jurisdiction in the number of irregularities and the number of illegalities. So the attempt is advisedly to cut down the revisional powers of the High Court. I do not agree with my learned colleague that

this proviso has been incorporated in the interest of the party.

DR. B. N. ANTANI: The learned colleague while asking the question know it very well.

CHAIRMAN: I put to you that this proviso, according to me, restricts the powers of the High Court to a certain extent from what the powers are at present. Therefore, I wanted to know your views. You were of the view that this proviso should not be allowed to be incorporated in the Bill. Now my friend has put to you and you have said you think that it should be provided. I would like you to reconsider this point again and let us know your views.

SHRI SHRI CHAND GOYAL: Do you not think you are blowing hot and cold in the same breath?

WITNESS: These are points on which I cannot give my opinion.

CHAIRMAN: Well, if you cannot express any firm view, that is another matter.

SHRI R. D. BHANDARE: Mr. Goyal's question is more misleading, whether we should curtail the powers of the High Court.

SHRI SHRI CHAND GOYAL: Up till now you have been examining witness. I do not think you ever got the opportunity of coming to a witness box and give your opinion.

WITNESS: This is a pleasant job.

SHRI R. D. BHANDARE: Apart from curtailing the powers of the High Court to do away with certain anomalies and irregularities this proviso speaks of giving more safeguards to parties to the suit. That is the simple language of the proviso. In view of your experience, do you like that latitude should be given in certain cases? If the orders are reversed they are likely to go against the interest of the party. The provision says that if such power is there that power

should not be exercised. Wide discretion is given to the High Court in the interest of the party. More discretion is given to the Judges. Since the order is already passed and the results are likely to be advantageous to the party, such an order should not caution a change. That is the meaning of the proviso. Therefore, should the proviso not be retained, as it is?

(No reply)

CHAIRMAN: He is not able to make up his mind.

WITNESS: The proviso awaits final interpretation.

SHRI S. B. PATIL: Mr. Wankhede, in your memorandum, para 3 on Clause 35, you said, "If irrelevant and scandalous allegations are made in the pleadings they may be struck out by the court, but normally pleadings should only be amended on applications." "Irrelevant and scandalous statements" made against whom? Do you mean to say against "women and minors"? You also said, "In practice, even the provisions of rule 1 of Order X are rarely observed by the court particularly to avoid complications of such statements made for women or minors."

WITNESS: If there are irrelevant and scandalous allegations made in the pleadings, they should be ordered to be struck off. With regard to women and minors I have already given the instance of one case. Why I say that this sub-section (2) should not remain on the Statute Book is this. There was a case of one Pardanashin lady. It was alleged in the court of law that she had executed a gift deed. The counsel admitted the execution of the gift deed, and the matter went before the High Court. The Chief Justice thought that since Pardanashin woman was involved, there was something shady about the transaction. He set aside that order and remanded the case. It was subsequently found that

that woman had not executed that deed at all. And she ultimately won the case. So, had the admission not been made, the court would not have acted upon and would not have admitted the claim. The statement made on behalf of Pardanashin woman or minors should be viewed with suspicion. That is the point.

CHAIRMAN: Now, Mr. Wankhede, will you kindly express your view on the question of holding a pre-trial conference between the court, the parties and the lawyers? Do you think that this method will minimise the length of time that is being taken at the moment?

WITNESS: Yes. Such a practice exists in England. But so far as the mofussil courts are concerned, this practice might not help the judges so much, or the parties even, because litigation in the mofussil courts is of a simple nature.

CHAIRMAN: But in a way if such a pre-trial conference is held at the time the court strikes the view, the parties can explain their case to the court and the court can arrive at the disputed point. And this apart, if such a conference is held, the entire base of the parties could be understood by the court so that it could better appreciate all the issues which are relevant and those which should be struck. Do you think that such a pre-trial conference will serve any purpose or will it be another futile attempt adding to the waste of time?

WITNESS: The existing provisions of the Code do provide for a complete understanding of the cases and for completing the preliminaries. By pre-trial conference you probably mean that there should be some discussion. Judges must understand the case right from its inception.

CHAIRMAN: Yes, yes. My question is whether the judges will benefit by

pre-trial consultations any more than what they do at the moment. The difficulty is the CPC has made all possible rules which should be helpful to the court, but they are not strictly followed. The courts while striking issues accept the issues framed by the parties themselves. That means the purpose of the Act is not served. So, I am putting this question to you.

WITNESS: In complicated cases it will be helpful while in simple cases it will be a waste of time.

CHAIRMAN: The Law Commission after considering the entire aspect has come to the conclusion that pre-trial conference is not necessary. Therefore, I want to know what your view is.

WITNESS: The responsibility of framing the issues is of the court itself. It is not the responsibility of the parties.

SHRI SHRI CHAND GOYAL: But if such a conference is held, the judge will be in a better position to appreciate the position of the case, whether it will be a forced defence or vexatious defence or it is just a hopeless case. And if the court can benefit by this method, then, it can expedite its disposal.

SHRI R. D. BHANDARE: In that event, Mr. Goyal, the Evidence Act will have to be deleted. . .

CHAIRMAN: Not necessarily. It only means complete understanding of the case for the judge.

WITNESS: The judge must understand the case from stage to stage.

CHAIRMAN: In foreign countries, mostly in America, this method of pre-trial conference exists and according to the figures there, the length of time is reduced by the adoption of this method. How it will work in India, I do not know. The view of the Law Commission is that it will

not add very much to the knowledge of the judge and that the provisions made in the CPC are sufficient guarantee that the judge can understand the case.

WITNESS: In America most of the cases are decided in the lawyers' chambers; they do not come to the court at all. In America there is that procedure regarding pre-trial conference but most of the cases are compromised in the lawyers' chambers; they do not file the cases even; one lawyer approaches the other lawyer and the case is compromised.

CHAIRMAN: Then the re-trial conference can be held to bring about such compromises.

WITNESS: Of course so far as the complicated litigation is concerned, such a conference might help but in the case of simple litigation such a conference would not serve any purpose.

CHAIRMAN: The understanding of the Law Commission is that sufficient regard is not paid by the courts to the existing provisions of the CPC and therefore the trial is lengthened because irrelevant issues are framed; one party frames certain issues and another certain other issues and the evidence unnecessarily proceeds on that basis. Ultimately the court finds that these issues were quite unnecessary and the mass of evidence collected was not necessary for the determination of the point in question. Therefore the question was whether re-trial conference would add to the wisdom of the Judges for a proper understanding of the case. That would also reduce the length of time, reducing the expenses of the litigants. It will be a sort of experiment only.

WITNESS: Yes, it will enlighten the courts.

CHAIRMAN: Then any more questions?

*(After a pause)*

Mr. Wankhede, thank you very much for the trouble you have taken in coming here and giving us your helpful views.

WITNESS: Mr. Chairman, I have to thank you for giving me this opportunity.

CHAIRMAN: I hope we shall benefit by your advice. Thank you.

*(At this stage the witness left)*

---



Wednesday, the 4th February, 1970

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

*Rajya Sabha*

- |                          |                       |
|--------------------------|-----------------------|
| 2. Dr. B. N. Antani      | 5. Shri V. T. Nagpure |
| 3. Shri B. N. Mandal     | 6. Shri T. K. Patel   |
| 4. Shri Purnanand Chetia | 7. Shri P. C. Mitra   |

*Lok Sabha*

- |                               |                                      |
|-------------------------------|--------------------------------------|
| 8. Shri D. Balarama Raju      | 16. Shri Bhaljibhai Ravjibhai Parmar |
| 9. Shri R. D. Bhandare        | 17. Shri Jharkhande Rai              |
| 10. Shri Shri Chand Goyal     | 18. Chaudhuri Randhir Singh          |
| 11. Shri Heerji Bhai          | 19. Shrimati Savitri Shyam           |
| 12. Shri J. M. Imam           | 20. Shri P. N. Solanki               |
| 13. Shri Thandavan Kiruttinan | 21. Shri K. Subravelu                |
| 14. Shri Mahendra Majhi       |                                      |
| 15. Shri B. P. Mandal         |                                      |

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.

SECRETARIAT

Shri Kishan Singh, Under Secretary.

WITNESSES

- (1) Representatives of the Bar Association of Bombay High Court, (original side):
- (i) Shri P. K. Thakore
  - (ii) Shrimati Sujata Manohar
  - (iii) Shri Ashok N. Vyas
  - (iv) Shri Hemendra Shah
- (2) Representatives of the Advocates Association of Western India, High Court, Bombay:
- (i) Shri M. A. Rane
  - (ii) Shri M. V. Paranjape
  - (iii) Shri Sharad Manohar
  - (iv) Shri S. C. Pratap
  - (v) Shri K. J. Abhyankar
  - (vi) Shri C. R. Dalvi

*(The Witnesses Shri Hemendra Shah, Shri Ashok N. Vyas, Shrimati Sujata Manohar and Shri P. K. Thakore, were called in)*

**SHRI P. K. THAKORE:** Mr. Chairman, when we received a copy of this Bill we formed a committee, the Bills Committee. The Advocate-General is also a member but he has not been able to come. One more member has been elevated to the Bench. So he is also not here. Here we four constitute our Bills Committee. We have held our deliberations. Of the views and suggestions, which we are giving presently, some of them are on the basis of the consensus of all of us, and some of them may be individual. So what we propose to do is that first we will say what is the unanimous opinion of our committee, and then, if any individual member of the committee has to say anything, he will say that.

**CHAIRMAN:** If we would have had copies of your comments earlier, we could have gone through them. As we have no written comments or suggestions from you, you will have to tell us what are your main suggestions.

**SHRI P. K. THAKORE:** Our attention was drawn to the Statement of Objects and Reasons which is on page 57 of the proposed Bill, and we thought that perhaps we could take up the main points there first and then go clause-wise to the points which we have considered. Now we find in the Statement of Objects and Reasons that the objects and reasons are threefold, for reducing costs, eliminating or minimising delay and certain matters, which are policy matters, and the policy matters discussed there are the four appearing in clauses (a), (b), (c) and (d). On the first one, namely, with regard to transfer of the proceedings from a

High Court in a State to any other High Court, the power should be given to the Supreme Court. We are all agreed that this is a very wholesome suggestion and it should be done. Similarly with regard to the second suggestion in (b); the freedom from attachment should be extended to persons employed in private service as well. Well, the majority are of the view that it should be so extended though there is still doubt in the mind of one of the members, and she would say later on whether the facility, which is there for freedom from attachment, is not more than it should have been. Subject to that we are all agreed that the same consideration which is shown to Government servants should also be shown to persons employed in private service. Then the third one (c) is regarding section 80, and once again we are unanimous that it should be omitted. And the further suggestion of the members was that any such procedure, which might be there, not necessarily in the Civil Procedure Code but in other Central Acts or Municipal Acts, should be done away with. If it is within the purview of this Joint Committee to recommend the deletion of this procedure from the other Acts, it may so recommend its deletion because, in actual working, it does involve much hardship. Perhaps it may not be permissible for this Joint Committee to urge that the notice under section 80 prescribed in the other enactments should also be deleted. In this connection, allied to section 80 there is a provision in Section 87B which is with regard to the princes. Now we find from the Code that sections 85 and 86 are the immunities which are granted to foreign dignitaries, etc. and in section 87B the former rulers of Indian States have been granted the same exemptions for immunity. Unless Government's prior permission has been

taken they also cannot be prosecuted or a suit cannot be filed against them. That sort of treatment is discriminatory and 87B may also be deleted so that no superior rights will be given to them. But this of course is subject to one reservation, the reservation being that if such superior right is incorporated in the Constitution or in any of the Instruments of Accession, then it is a different thing. Otherwise, it should be further recommended that the special treatment to the ex-rulers should also go. On the last one, on (d), freedom from arrest and detention, again we are of the view that that should not be extended from 14 days to 40 days; it should not be extended. For the first three, for (a), (b) and (c), we are in favour. As regards (d) we are now in favour of this, whatever might be the position in England and other countries, whom we are trying to emulate. In this country the 14 days' privilege is there and is sufficient, and in our opinion it should not be extended from 14 days to 40 days. It may be also nugatory if it is extended further. We feel that it should not be extended from 14 days to 40 days. So this is with regard to the main clauses.

**SHRI R. D. BHANDARE:** The last suggestion is regarding M.L.As?

**SHRI P. K. THAKORE:** Yes.

**CHAIRMAN:** And the suggestion is that it should not be extended up to 40 days.

**SHRI SHRI CHAND GOYAL:** You have made comments on matters of general policy but you have said nothing regarding the first two objectives, namely, reducing costs and minimising delays.

**SHRI P. K. THAKORE:** We are coming to them. We dealt with the

policy matters because they are specifically mentioned there in the Statement of Objects and Reasons. Now what we propose to do, if it is convenient to others, is that we will take up section-wise treatment. Not necessarily we have dealt with all sections, but those sections or those clauses, which we considered important, we have dealt with. There may be new suggestions which are not here also. In this connection we will take up only those clauses or sections which are either unanimous or near-unanimous opinion amongst us. Thereafter each member would take up a particular section or clause. The first would be regarding section 34 of the Civil Procedure Code. I am referring to the original Act. That is a provision regarding payment of interest in the case of a decree, etc. No provision is made in respect of the Court for increasing the rate. The interest rate which is fixed originally is very low. It has been revised once again to six per cent. We are of opinion that this is too low. Those persons know that whatever be the decree the interest would be only six per cent and it is best for them to encourage delay. It does not matter to them if the suit takes much longer to decide. We are of opinion that the present rate of interest should be increased so far as unsecured payments are concerned from six per cent to twelve percent. That is the first suggestion which we have to make.

**SHRI R. D. BHANDARE:** May I suggest a procedure? Kindly comment on the clauses which seek to amend the Civil Procedure Code and then you can submit a document. Of course, you can make your suggestions orally. Kindly submit a document incorporating your suggestions dealing with each of the sections. Then, we will be able to follow them properly. Otherwise, if you are to exhaust the whole Civil Procedure Code, there will be difficulty.

**SHRI SHRI CHAND GOYAL:** Our hands are also tied down to the scope of the Bill. We can only consider the amendments which have been proposed, but certainly we can make recommendations with regard to other provisions. It would be advisable if you first deal with the amendments which have been proposed to be introduced in the amending Bill.

**SHRI THAKORE:** I can assure you that our total suggestions do not number more than a dozen.

**CHAIRMAN:** The difficulty of the Committee is that it can make recommendations only in respect of such sections or clauses as are in the amending Bill, and not in respect of others. We might hear what you have to say on the subject, but it may not be possible for us to accept your suggestions, but all the same any remarks which you may make will be noted by the Government Counsel. If the Law Ministry can find it possible to accept any of your proposed amendments, it would be done.

**SHRI THAKORE:** We would like to proceed in this fashion. We are in favour of the amendments which have been incorporated in the clauses. These are the positive suggestions both with regard to something with which we do not agree and those which are very minor. Out of the four points relating to policy matters, with three we agree. Only in respect of one we differ. The points on which we differ are not many. With your permission, Mr. Chairman, we will proceed in this fashion. You can deal with it in whichever fashion you like. If it is not within the purview of this Committee, they can be incorporated by way of suggestions.

**SHRI SHRI CHAND GOYAL:** Have you anything to say with regard to secured debts? For unsecured debts you say that the rate of interest should be increased from six to twelve per cent. Have you any suggestion in respect of secured debts?

**SHRIMATI SUJATA MANOHAR:** There must be a kind of formula by which you can empower the court to give a higher rate of interest which is comparable with the current market rate of interest. For example, in Bombay we have the Bombay Money-lenders Act under which they put down the permissible rate of interest at 15 per cent. For unsecured debt. For secured debts it is 12 per cent. Similarly other States may have some such Acts. Some States may have and some States may not have it. You can correlate it. A certain higher percentage should be fixed. What happens is even if the matter is taken up in the Supreme Court and it takes eight years to decide the case, the interest rate is only six per cent. The Party who ultimately pays feels that it is not the loser. The difference between the market rate of interest and the court's interest is more than sufficient to pay the debt plus six per cent plus the cost of the counsel if the amount involved is sufficiently large.

**SHRI ASHOK VYAS:** In respect of secured debts, if these are secured under the instruments, the same would be providing the rate of interest. If the parties agree to it, we are not interested in increasing such a rate. The rate which is agreed to between the parties is entered in the deed. Where no such rate is specified we would like the court to be empowered to give the current or the market rate of interest which is permissible under the law.

**SHRI HEMENDRA SHAH:** We held two or three meetings of the Standing Committee appointed by the Bar Association on the original side of the Bombay High Court. We have gone through the Bill and the proposed amendments and we are in general agreement with it. After a long time the necessary Bill has been brought forward with the object of removing delays and of speeding up the course of justice. In respect of certain amendments which you have suggested in the Bill, we would like further

amendments to be made. For example, I would refer to clause 29 at page 14 of the Bill. I am referring to sub-clause (b). It says:—

“in rule 5, for the words “Any process served on the pleader of any party”, the words “Any process served on the pleader who has been duly appointed to act in Court for any party” shall be substituted;”

Now, our opinion is that this amendment should not be made. In the City of Bombay very often we anticipate litigation and the parties through their advocates or attorneys give notice to the other side. In case they file a suit the clients of the other side are willing to accept service directly through the advocate. In that event an unnecessary delay is avoided. It may seek an emergent relief or an *ex-parte* order. Without filing a “Vakalatnama”, no suit can be filed. It may be a limited company or a partnership firm. Their advocate or attorney is willing to accept the service in advance. If you amend it as at present, it may not be possible for the advocate or attorney of the opposite side to accept or intimate it in advance, even though he is willing to accept it.

CHAIRMAN: This practice may be followed or existing in your court. Unless of course the party puts in an appearance in the court, usually no lawyer intimates either to the court or to the other side that “I am going to represent and service of summons should be made to me”. If that is the practice in your court we can keep it in our mind. The amendment is necessary for other purposes.

SHRI HEMENDRA SHAH: We appreciate it, but when a good thing exists, why take it away?

SHRI SHRI CHAND GOYAL: This amendment is necessitated because the practice does not exist all over the country. This amendment is not

going to cause you any harm. That is the point. So far as the other parts of the country are concerned, this will do definite good, but the question is whether it will damage your interests to some extent.

SHRI HEMENDRA SHAH: Then will an advocate be able to accept service before accepting vakalatnama?

SHRIMATI SUJATA MANOHAR: If you delete the words “in court”, it might serve all purposes. Any process which has been served on the pleader—he will act for any party, so that if a lawyer is appointed. . .

SHRI SHRI CHAND GOYAL: Which words?

SHRIMATI SUJATA MANOHAR: “in court”, they may be deleted. That is the current amendment of the Bombay High Court to the Civil Procedure Code, so that the appointment must be proper.

SHRI P. K. THAKORE: We find in the original Code “any process served on the pleader of any party” as against the Bombay amendment as it stands “process served on a pleader who has been appointed to act for any party”, but there are no words “in court.” “In court” would be restrictive.

CHAIRMAN: You object to these words “in court”.

SHRI P. K. THAKORE: Yes. It would read “appointed to act for any party”.

CHAIRMAN: I understand. What is the difficulty in the addition of the words?

SHRI ASHOK N. VYAS: Before a suit is filed in any court it is usual for the parties to enter into correspondence with one another. In Bombay it is of course the practice for attorneys of one side to write to the

attorneys of the other side before any suit is filed. In the High Court rules the words "in court" are omitted. May I explain the practical reason behind what we are trying to suggest? It is this that often the attorneys of the other side might even write that "in case you file a suit we will accept service on the behalf of our client". The attorneys or advocate on one side can say "you are entering into correspondence with us on behalf of your client, please let us know whether you will accept service on behalf of your client". The lawyer representing the other side who knows his party can easily write a letter and obtain that party's authority for acceptance of service on his behalf, in which case the litigant would be saving a lot of time, energy and cost. In the law as it stood formerly we had difficulties because these words were not there "who was duly appointed to act". The words were merely "duly appointed".

CHAIRMAN: It is for the particular purpose of making the position clear, for what purpose the appointment has been made. The pleader who has been duly appointed to act may be directed by the client to appear for him outside the court. Therefore the words "in court" have been used to signify that he must hold the power to plead for him and act for him inside the court.

SHRI R. D. BHANDARE: His suggestion is quite rational because in any event the words "in court" is by implication understood or by connotation, but once we put in the words "in court" then the practice followed in the High Court will have its own difficulty. Unless the vakalatnama is filed in the court, they shall have no right to accept either the summons or any other letter. Much of the work is done outside the court before the suit. Therefore they are making a practical suggestion. The suggestion is that no damage will be done if we delete the words "in court".

CHAIRMAN: So long as we understand that the omission of the words "in court" implies that the vakalatnama has been given for doing the work in the court. Suppose a client has appointed two lawyers for two different purposes. Then if you do not specify the words "in court", it would be vague. One does not know to whom to serve the summons.

SHRIMATI SUJATA MANOHAR: Because he is duly appointed to act in that matter.

CHAIRMAN: He is authorised to act in one court.

SHRIMATI SUJATA MANOHAR: The other person will not be duly authorised because his authority is confined to one matter. Then he will not come under the words "duly appointed to act".

CHAIRMAN: My fear is that it may not be certain to which lawyer or which pleader the service of summons should be done, because it is possible that there may be two or three lawyers in different court.

SHRI HEMENDRA SHAH: Advocates will write in advance to the other parties "in case you file a suit, I am authorised to accept service on behalf of my client".

CHAIRMAN: Please bear in mind that your High Court rules do not exist in the same way in all places.

SHRI HEMENDRA SHAH: The advocate says "in case you file a suit I am authorised to accept service". Generally they do this. "There is a dispute between us. In case you go to a court of law or file a suit and take injunction or move for an ex parte order, please take note I am authorised to act for my client". It will eliminate delay. You take ex parte orders in partnership disputes, it takes time to serve the orders. Therefore, in advance the advocate says, "please take note I am authorised by my client to accept service", and the advocate is a member of a professional body. If he falsely

accepts, he will be liable to the professional body.

**CHAUDHURI RANDHIR SINGH:** I can appreciate the anxiety of the Committee that if the words "in court" are there, it will eliminate delay and the service will be efficient. But do you rule out malpractice if the lawyer does it without the signatures or the thumb impression of the client? There can be cases of collusion with the other side, and the client will not know what is happening. There may be ex parte decree and the client does not know and when he knows the time, limitation period, is gone and the client cannot go to a proper court for revision or appeal. Therefore, if this sort of provision is made in the proposed bill do you not think some sort of malpractice could be there?

**SHRI HEMENDRA SHAH:** We understand your anxiety, Sir. Here the moment an advocate appears in the court the vakalatnama has got to be put. No sooner the advocate appears before a Judge, the Judge will ask for the vakalatnama.

**CHAUDHURI RANDHIR SINGH:** No vakalatnama is needed for the first hearing. A memo, with the signature of the client, is enough.

**SHRI HEMENDRA SHAH:** In Bombay this memo is not permissible.

**CHAIRMAN:** With memo he cannot act; he can plead.

**SHRIMATI SUJATA MANOHAR:** In Bombay he cannot plead also.

**SHRI SHRI CHAND GOYAL:** Even in our High Court at Chandigarh, for a certain period he just authorises you to put in a memo which is known as memorandum. That only means we can only argue and not give anything on his behalf.

**CHAUDHURI RANDHIR SINGH:** We cannot put any affidavit. You cannot file a document.

**SHRI SHRI CHAND GOYAL:** You can only argue.

**SHRIMATI SUJATA MANOHAR:** Vakalatnama does become necessary.

**CHAIRMAN:** Please come to clause 29 dealing with Order III, Rule 4.

**SHRI P. K. THAKORE:** We are thankful to you for drawing our attention to that. We have a further suggestion to make with regard to that. The power of attorney of a party appearing in person or in signing the vakalatnama also must be lodged along with the appearance. That would further eliminate the problem as is envisaged.

**CHAUDHURI RANDHIR SINGH:** That is right.

**SHRI P. K. THAKORE:** We have to weigh the possibility that there may be so many litigants who would make conscious efforts to dodge the service of summons etc. We have got cases here where the summons is not served for six months. As against that, the service on an advocate is much more easier. It facilitates; it eliminates delay. So let us consider where scrupulously an advocate or a pleader would act in an interest detrimental to his own client. Taking these two together, I personally feel that if we were to eliminate the words "in court" it would be a good *via medie*, balancing the two aspects.

**SHRI P. C. MITRA:** If vakalatnama is filed in the court in which the party comes, duly appointed by the party, it will be foolproof. As the Chairman said, a pleader may be engaged in a number of cases and, therefore, service of a summons to the pleader may not be service in that particular case. What is the harm if the words "in court" remain?

**SHRI HEMENDRA SHAH:** The only answer I can suggest is it would not serve the needs of a commercial city like Bombay where litigation is very often unexpected.

**CHAIRMAN:** There are a number of cases in which ex parte orders are taken.

**SHRI HEMENDRA SHAH:** Ex-parte orders are passed even without the service of summons.

**CHAIRMAN:** How does the court permit it? Suppose there is a suit on a promisory note. Can an ex-parte order be given by a court without serving the summons?

**SHRI HEMENDRA SHAH:** No, no. Interim orders like injunction are given. In such cases this provision is helpful because if an advocate obtains an ex-parte order without receiving summons from the court . . .

**SHRI ASHOK N. VYAS:** In case a party appoints one advocate for accepting summons and then proceeds to appoint another advocate for acting in the suit, then, what happens is this. The advocate duly authorised accepts the summons. If that advocate is aware that already that party has taken away the papers from him and appointed another advocate to act for that particular party, that advocate could very rightly say, "I am no longer duly authorised in view of these facts and the party has already engaged another lawyer and has taken away the papers from me.

**SHRI R. D. BHANDARE:** But without his consent no other person can appear.

**SHRI ASHOK N. VYAS:** Ultimately we have to manage the interests of the community at large and there is nothing to protect the public against the malpractices of a few. The interests of the general community far outweigh the interests of a few.

**CHAUDHURI RANDHIR SINGH:** I think it is too much of a lawyer to depend upon the client.

**SHRI P. K. THAKORE:** Mr. Chairman, with reference to the point of Mr. Mitra as to the necessity of amending it if they do not use it in the court I would like to point out

that in the original Act it is stated "...on the pleader of any party..." It does not say "pleader" in what connection. You may have various pleaders for various matters. It is for your consideration that have suggested an amendment "...a pleader who has been appointed to act". That is a more specific power that he is no merely appointed as such, but is appointed to act, and therefore, he will have certain further powers, that he has been authorised to act, to accept the services, etc. from the client though at that stage it need not be filed in the court itself.

**CHAIRMAN:** Do you think that the interests of the lawyers would suffer in any way if these words are not omitted?

**SHRI ASHOK N. VYAS:** No, no, far from it. It is in the interests of the client. In a number of important suits the need for an interim order arises in order to maintain the status quo. The idea is that the status quo should be maintained pending determination of the rights of the parties. And it is this need that we are trying to safeguard by suggesting the deletion of the words "in court".

**CHAIRMAN:** What I thought was that the interests of the lawyers may suffer in this because the people are accustomed to rushing to the lawyers much before it is necessary, and therefore, they engage lawyers and keep them engaged throughout . . .

**SHRI ASHOK N. VYAS:** No, no.

**CHAIRMAN:** So, we will keep your suggestion in mind.

**SHRI P. K. THAKORE:** Then the next would be under section 79 of the Act where no suggestion has been made so far. There it has been specifically provided as to whom the summons should be addressed in the case of the Central Government and the State Government. In the case of the Central Government it is the Union of India and in the case of the State Government it is the State. Our suggestion is that where officers



of the Government or local authorities are sued in their official capacities they may be made parties in the suits and other legal proceedings by describing their official capacities. This point arises from this point of view. Suppose there are the Land Acquisition Officers or the Collectors. By the time the suit is ripe for hearing, the particular officers would have been transferred to somewhere else. And that officer who has been sued, has to be summoned for an action which he had done in his official capacity. So, our amendment to this is if he is acting in his official capacity, it should be sufficient if he writes "Land Acquisition Officer" or "Collector" whoever it is.

CHAIRMAN: But section 79(2) is not being amended.

SHRI P. K. THAKORE: We would like that such a provision be made in that section.

SHRI HEMENDRA SHAH: We are suggesting this for your consideration. In writ petitions particularly when we challenge the orders passed by Sales-Tax Officers or Income-Tax Officers or any particular officer of the Government or any tribunal, then, you find that at the time of hearing the particular person has been transferred to some other place and there is a new officer there. The officer may be there in that place for a period of, say, three years. So, every-time there is a change in the officer, you have to amend the writ petition or the plaint, and sometimes the Government Counsel wants to take time or wants to be nasty—He will ask you to serve a notice on the officer. Therefore, our suggestion is that where an officer of the Government is made a party or where a tribunal is made a party, the designation of the officer should be sufficient instead of describing him by his personal name. Instead of putting his personal name we will say "Collector" or "Land Acquisition Officer", whoever he may be because he acts in his official capacity.

CHAIRMAN: That is the usual practice.

SHRI SHRI CHAND GOYAL: No, no. It is not so. It is done by name also. That is the difficulty.

CHAIRMAN: Then that is wrong.

SHRI HEMENDRA SHAH: This is happening in the Supreme Court and everywhere else.

SHRI P. K. THAKORE: The provision is there for the Central Government and the State Government, but there is no provision for officers of the Government.

SHRI R. D. BHANDARE: Arising out of your own suggestion, in matters of writ petitions, it is a question of application of the mind of the person. Even then would you like that the successor of that particular officer should deal with the case because he happens to be the officer working at that moment in that place? Would you like to suggest this even then? What is the solution that you would like to suggest?

SHRI HEMENDRA SHAH: We appreciate your point where a *mala fide* is alleged. But the difficulty arises where there is no question of any *mala fide*. Suppose in the exercise of a particular duty . . .

SHRI R. D. BHANDARE: The exercise of every function or duty by an officer is always done by the application of his mind. That is amply clear. How are we to get over this difficulty? We can appreciate your viewpoint provided you can suggest a remedy in spite of the fact that the application of mind is there in his official capacity.

SHRIMATI SUJATA MANOHAR: It can remain as an enabling provision.

SHRI SHAH: What we suggest is that where a particular duty is to be carried out, then the official designation is sufficient.

SHRI R. D. BHANDARE: Make your suggestion foot proof.

SHRI VYAS: In case any *mala fides* are alleged against any particular official, even if we describe the party by its official name and so on, it is always open to the person concerned or to the officer concerned to make an application to be added as a party, because we are considering cases where a person is already in office and passes an order and that order is challenged.

SHRI SHRI CHAND GOYAL: The courts will say "If you allege any *mala fides* against some officer, first implead the party so that we can consider it." Then an opportunity is given to amend the writ petition so that that officer himself is also made a party.

CHAUDHURY RANDHIR SINGH: It has its merits as also its demerits in the sense that you charge somebody for something and you do not give him the right of defence. So many allegations of irregularities are made; there are scores of allegations. Instead of mentioning the name, if you say "Director" or something like that, what does he know about it? Then almost all the cases will be dismissed without the parties being given a chance to be heard. So would you kindly keep this thing in mind when you make this suggestion? Sometimes there are so many strictures, Sir, by the judiciary or by the judges against certain officers who have no opportunity to explain their position. Kindly don't judge everything from the lawyers' point of view. Knowing fully well how the police acts, if there is one charge, 20 charges are made out of that one charge and the man concerned has no chance to reply. (*interruption*).

SHRI THAKORE: In this connection I agree with Mrs. Sujata Manohar that it should be an enabling provision and it should be left to one's discretion. The orders are of two types. Suppose I am challenging a particular order that it is not legal, it is void, it is *ultra vires*, that it may not be necessary for me to allege that

this particular officer passed that order. But here the hon. Member has suggested something about the application of the mind, if he has applied his mind or not. My learned friend is quite right when he says that you will be condemning the man without giving him any opportunity to be heard. Therefore in practice when we are alleging that the order is passed *mala fide*, that person must be made a party. If it is an enabling section, then we know that in so many cases we have to refer to certain documents. (*Interruption*) Sir, our suggestion is that it should be an enabling section.

SHRI SHRI CHAND GOYAL: Even at present the enabling provision in practice exists; you can refer to him either by his official designation or by his name.

SHRI SHAH: The practice is that unless it is a corporate body, we must describe the person by name.

SHRI R. D. BHANDARE: Anyway, kindly make your suggestions which will be quite comprehensive.

SHRI SHAH: Yes, that is one suggestion.

CHAIRMAN: Is this the usual experience?

SHRI THAKORE: This is our usual difficulty in Bombay.

SHRI SHAH: For example the Commissioner of Bombay has been changing every year and you know that a writ petition takes three or four years. It gives time to the Corporation pleader.

SHRI THAKORE: The next suggestion is regarding clause 17 at page 7, section 82. We approve of the entire thing that has been provided for here but we would like to add something here. It does not make any specific provision regarding *ex parte* decrees. So our suggestion is that in the case of *ex parte* decree passed against the Government 30 days' notice should be provided for. This is an addi-

tional suggestion, apart from what has been contained in this section. (*Interruption*).

**CHAIRMAN:** One view is that no differentiation should be made between an individual and the State in the conditions which prevail in India. The principle of equality requires that the same process should apply and the same rules should apply to an individual and the State. I do not know what are your views but you must bear in mind that the State is different from the individual. You may say that three months' period may be reduced to one month; that is a different matter but all the same I do think that some period of time must elapse between the passing of the decree and the making of payment.

**SHRI SHAH:** We appreciate that three months is too long a period. Moreover they will get another three months in that process; generally it happens.

**CHAIRMAN:** The law prescribes that payment must be made within three months; there won't be any further three months' period.

**SHRI P. K. THAKORE:** I do not know whether my colleagues share that opinion that a reasonable period must be kept. In this connection in today's morning papers we see that a railway station was attacked and all that. The Government was very slowly moving. If we can move to three months, it would be a utopian period where the execution would be only for three months. Looking to the present difficulties I think that three months' period is a reasonable one in my opinion.

**SHRI P. C. MITRA:** In this case more than a year has passed; it has been reported.

**CHAIRMAN:** I would like to know whether there is any difference of opinion among yourselves.

**SHRI ASHOK N. VYAS:** Reasonable time should be given and three

months is a reasonable period of time to comply with the decree.

**SHRI SHRI CHAND GOYAL:** A private person may find it difficult to make the payment, but so far as Government is concerned, it is always in a position to make the payment. Why allow more time to a person . . .

**SHRIMATI SUJATA MANOHAR:** To make allowance for this slow movement.

**SHRI P. K. THAKORE:** The next suggestion, Mr. Chairman, is the one which we have already made and it is that, so far as section 80 is concerned, we approve of it, that deletion of section 80. About section 87(B) also we have already said.

**CHAIRMAN:** About section 80 I would like to know whether it is within your experience or not that certain cases are compromised out of court. When a client serves a notice on the Government, it does sometimes happen that the Government wakes up to the situation and it is settled between the party and itself.

**SHRIMATI SUJATA MANOHAR:** It has never happened as far as we know. Government are reluctant to exercise their discretion for the fear that afterwards allegations may be made.

**CHAIRMAN:** They do not want to compromise for the fear that some other things may be taken for granted, that there have been some internal dealings.

**SHRI P. K. THAKORE:** I also corroborate the same view and I would narrate a very small incident regarding the railways. A friend of mine was compelled to travel in a lower class in spite of the reservation of the upper class and all that. The difference in the fares—it was endorsed by the ticket checker—was Rs. 65. Now they did not pay. I gave the notice to them for Rs. 65 adding the notice cost, etc. Even then they would not settle the whole thing. A suit was filed and ultimately it was settled for Rs. 150 and Rs. 150 were paid to my lawyer friend. This has

been the result. The period mentioned in section 80 does not help in compromise. On the other hand, in certain cases, where immediate action has to be taken, we are compelled to file suits twice over. Once we file the suit for injunction, etc. and once again we do it to withdraw the case; it is duality. I feel that no discrimination should be made—I am referring to section 80.

**SHRI SHRI CHAND GOYAL:** We want further clarification on this point. You have suggested that section 87B should be deleted. Have you examined it from the constitutional point of view.

**SHRI P. K. THAKORE:** No.

**SHRI SHRI CHAND GOYAL:** This is one point of view that since there have been the Instruments of Accession, and treaties with them, Government is bound by those treaties. It may not constitute a violation of the Constitutional provisions if we decide to abolish it. If you have examined it from that point of view, then we would like to have your views.

**SHRI HEMENDRA SHAH:** Under Article 363 the court will not have jurisdiction to consider the privileges of the princes. They are not justiciable.

**SHRI P. K. THAKORE:** Mr. Chairman, as I prefaced my remarks, which I made earlier, when we are setting out to amend the Civil Procedure Code, this is a desirable thing, but it is always subject, as I prefaced my remarks in this respect, to two things, whether the Constitution or the Instrument of Accession permits it. If the Constitution or the Instrument of Accession allows it, then we would certainly suggest something in contravention thereof. We were not certain whether it was within the competence of this Joint Committee to go into the Constitutional aspect or the other aspect, nor have we gone into those aspects, but our suggestion would be, if it is permissible, it should be done.

**CHAIRMAN:** The Committee is not competent in that matter.

**SHRI R. D. BHANDARE:** The Maharashtra Bar seems to be radical in that they want to do away with the privileges and purses of ex-rulers.

**SHRI HEMENDRA SHAH:** The next suggestion is this; there is no Order in the Code of Civil Procedure whereunder interim orders can be passed in matters like partnership, administration or partition. For example, in case of a partnership, until the final decree is passed the assets cannot be distributed. Now it may be that in some cases there are no debts or a few debts or the assets exceed the liabilities. In such cases a poor partner, say, a partner who needs money, will be denied money until the final decree is passed. The same is the case with administration and joint family partition suits also. It should be open to the court in reasonable cases, if the assets so allow it, to make an interim order for distribution among the concerned partners.

**CHAIRMAN:** That has to be a new provision.

**SHRI HEMENDRA SHAH:** New Order.

**SHRI SHRI CHAND GOYAL:** In partnership and administration?

**SHRI HEMENDRA SHAH:** In partition suits also. Where the court will see that there are no liabilities or only a few liabilities, it need not wait until the final order is passed. It may pass an interim order for distribution.

**CHAIRMAN:** We shall examine the point but, as I said earlier, the Committee has no power to make any recommendation in respect of sections whose amendments are not dealt with in this Bill.

**SHRI HEMENDRA SHAH:** We appreciate your point of view. Our only anxiety is to make efforts to amend

the Code with a view to minising delay. Therefore, if it is not possible in this Bill, in your individual capacity as a member you can also move amendments. The other amendment is that where there is no question of property, as in a suit for maintenance the widow or wife must be entitled to an interim order. But today, except under the Hindu Marriage Act there is no provision for an interim order under the Hindu (Adoption and Maintenance) Act. The wife files a suit that "my husband has treated me cruelly" and the court pass an interim order and the suit sometimes takes three years and four years, may be because of lack of judges when there is too much litigation, and so many other factors. So, in suits for maintenance it should be open to the court to pass an interim order for maintenance. After all, a wife has got to be maintained, right or wrong. Therefore, my submission is that in cases of maintenance suits there should be an enabling power given to the court to pass an interim order for maintenance.

SHRI R. D. BHANDARE: Under the Criminal Procedure Code the order is passed.

SHRI HEMENDRA SHAH: There is no inherent power. Because it is specifically laid down in the Hindu Marriage Act interim alimony is given, but there is no such thing in the Hindu Adoption and Maintenance Act; until the final decree is passed the court will not be able to pass any interim order for maintenance.

SHRI J. M. IMAM: How to recover it in case she is not entitled to it?

SHRI HEMENDRA SHAH: How is she not entitled? You are not paying a stranger. It is your wife, your minor son, your daughter . . .

SHRI J. M. IMAM: She may not be entitled.

SHRI HEMENDRA SHAH: Till the suit is disposed of will she not be

starving for three years? It is a question of public morality also. She should not be forced to lead a life of immorality.

SHRI J. M. IMAM: He may form an opinion before the judgment.

SHRI HEMENDRA SHAH: May I answer you? Under the Hindu Marriage Act the wife is entitled to maintenance even if she loses. Even if ultimately the petition is dismissed, she is entitled to interim relief.

SHRI SHRI CHAND GOYAL: Looking to the moral side of it, you want this provision to be incorporated.

SHRI HEMENDRA SHAH: I think that it is proper that they should get a maintenance allowance, whether they are Hindus, Christians or Mahommedans.

CHAIRMAN: This will involve change in various Acts other than the Civil Procedure Code.

SHRI HEMENDRA SHAH: The power to give interim relief will come in the Civil Procedure Code.

SHRI THAKORE: We find in the present Code there are three orders, viz., 38, 39 and 40. Order 38 is regarding arrest and attachment before judgment. Similarly, Order 39 deals with injunctions in interlocutory orders. In the Chapter on interlocutory orders power to order interim sale is there and for the deposit of some amount of money. Such powers are specifically given to the court, whether they are provided elsewhere or not. Similarly in the case of maintenance if the Court is authorised to give it in the Civil Procedure Code, to pass interim orders, justice would be done. The third is in respect of rent or compensation. Very often the party says that this is the rent. The other man says that this is not rent. The court has no power to give interim relief till the appeal is disposed

of. These three provisions regarding administrative suits, maintenance and rent and compensation should be looked into.

**SHRI R. D. BHANDARE:** Do not espouse the cause of the property owners here.

**SHRI THAKORE:** If provision is made, then power must be given under the Civil Procedure Code. A suitable amendment should be made to provide for these powers. Today the Court is not competent to sanction it. I know of a case where the hotel premises were under dispute. They said there was a compromise. First of all it had to be decided whether there was a compromise or not. They went to the Supreme Court. Eight years passed and the party did not deposit a single pie. The maximum penalty was that if he did not pay the rent, he would be evicted. The more the delay the better it was for the other party. So, we suggest that the power should be given to the court to give interim relief. In respect of property the owner has to pay the taxes and other liabilities. Suppose he is a licensee. He says that he is a tenant. Till the suit is decided the court will not give an interim order. The Court should have the power to make an interim order. That is our suggestion.

**SHRI ASHOK VYAS:** There are two ways of tackling it. One is to examine each and every Act to find out whether interim orders are necessary. The other is to amend the Code, and give power to the court. Leave it to the Court to decide whether it should grant any interim relief or not.

**CHAIRMAN:** We understand it. Again the same difficulty arises. The Act is not being amended on those lines. Therefore, we shall see what we can do.

**SHRI HEMENDRA SHAH:** Apart from this interim order, another suggestion is this. A suitable provision should be made so that when a suit is

filed the partnership firm should disclose the names of the partners, the addresses, etc. in the plaint. They should say where their registered office is, where their place of business is, so that further enquiries or intermediary delays could be avoided. Under Order 30, it should be obligatory for the plaintiff and to give the names of the partners, etc.

**SHRI P. C. MITRA:** I think the Companies Act provides for it.

**CHAIRMAN:** You want some changes to be made either here or in the company law so that it is necessary to disclose all the details, if they can do it.

**SHRI THAKORE:** This is Order 30. In clause 48 certain amendments are suggested. Kindly see page 44. The present rule 8 adopts the Bombay practice. You file a suit against a partner. He says that he is not a partner. If he is held to be a partner, it does not preclude him from denying the liability of the firm. If he is held not to be a partner, the plaintiff can serve summons on the defendant firm in an appropriate manner. We wholly approve of it as in the Bombay amendment. In the original order 30, rule (2) provides for the disclosure of the partners' names. The names of persons constituting the firm should be disclosed. Our suggestion is that the parties to the suit should disclose the names and addresses of all the partners at the relevant time in their pleading itself. They should be compelled to write in their pleading itself their names, who the partners are, their addresses, etc. Similarly, so far as the defendants are concerned, we do not know whether he is an individual or a partner. Our suggestion is that the defendant should disclose in the pleading whether he is a sole proprietor, or he is a partner in a partnership firm or whether he is in a Hindu undivided family carrying on business under any name. In the case of a Joint Hindu undivided family, he should further disclose the names and addresses of the other person and the

address of the firm. The other loop-hole has been plugged already in clause 44. There was a dispute and different High Courts gave different decisions as to whether the word "person" in rule 10 would include an undivided Hindu family. In sub-clause (4) it is covered.

CHAIRMAN: Has your High Court made any rules on this?

SHRI THAKORE: No. They should disclose the names and addresses of the Karta" and the address of the firm.

SHRI HEMENDRA SHAH: Another suggestion of mine is this. My friends may not agree with me. Clause 12 or the letters patent deals with the cause of action. Now, this has resulted in numerous litigations and has resulted in various interpretations one way or the other, what is a suit for land, and what is not; etc. It is better to have section 20 of C.P.C. applied to the original side of the Calcutta, Madras and Bombay High Courts. My brothers are not very much with me on this. It is better to avoid that sort of interpretation which results in wasting a lot of money to the litigants. You can apply section 20 to the original side of Bombay, Madras and Calcutta High Courts, so that unnecessary litigation will be avoided. Section 20 deals with the cause of action. It should be made applicable on the Original Side of the Calcutta, Bombay and Madras High Courts.

SHRI R. D. BHANDARE: If the Original Side agrees, we have no power.

SHRI HEMENDRA SHAH: You are not concerned with their liking or not liking. Public matters first.

SHRI R. D. BHANDARE: I am taking it at its face value.

CHAIRMAN: Perhaps we will not be able to convince your friends to fall in line with the matter. What is their point of view we do not know.

SHRI R. D. BHANDRE: He is putting his own point of view.

SHRI P. K. THAKORE: This may be taken as his personal suggestion. My feeling or my opinion is that clause 12 has been working satisfactorily and there is no necessity of bringing it in line with section 20. For one thing it might be beyond the purview of this particular Committee to go and suggest. Secondly, as it is in the working I do not feel that there is that much difficulty, and therefore it should be retained in its present position.

CHAUDHURI RANDHIR SINGH: What is the consensus?

SHRI P. K. THAKORE: That is why I say these are the suggestions, some of them are unanimous, some of them are individual.

CHAIRMAN: You are very frank in that respect. I wanted to know what is the general view.

SHRIMATI SUJATA MANOHAR: I support him. Clause 12 has led to a lot of litigation.

Regarding amendment 33, page 33, we are very happy to note that provision for counter claim has been added in the Civil Procedure Code. In Order VIII, rule 6 it provides for only a legal set-off, it does not provide for an equitable set-off. Perhaps it should be clarified at this point of time by deleting the word "ascertained" from the order. Particulars of the set-off would be given in a written statement. The claim can be made under this rule only in respect of a sum which is an ascertained sum. But a claim for damage for example cannot be pleaded. But courts have held that apart from this section under the general provisions of the law it is possible to set off even other sums which may not be ascertained. The word "ascertained" should be now deleted.

CHAIRMAN: What is your suggestion?

**SHRIMATI SUJATA MANOHAR:** The word "ascertained" may be deleted. It can be done. This is not something which is now. This is by way of a clarification. The idea originally meant that only a legal set-off was permitted under the Code. The courts apart from legal set-offs do permit an equitable set-off.

**SHRI SHRI CHAND GOYAL:** It would not be confined to legal set-off but will extend to other set-off also.

**SHRIMATI SUJATA MANOHAR:** Yes. It will eliminate other causes of litigation for which the litigant will have to file other suits.

The other suggestion is regarding what we call the third party procedure which also leads to elimination of separate suits being filed. If a suit is filed against a defendant, the defendant says "No, apart from me another person is also liable". He in turn says that certain other amounts are due from a third party. Under the provisions of the Bombay High Court Rules (original side) Rules 151 to 158 he can give a notice for the third party to be added. If that party is added to the suit....

**CHAIRMAN:** Suit or proceeding?

**SHRIMATI SUJATA MANOHAR:** For example, A sells goods to B, B sells to C, and C sells to D...

**CHAIRMAN:** The question can be decided in one case. Would you kindly read out the rule made by the High Court?

**SHRIMATI SUJATA MANOHAR:** Unfortunately we do not have the rules. It is Chapter 9 of the Bombay High Court Rules, Original Side, Rules 151 to 158. The Rules relating to Third Party Procedure are sent along with this.

**SHRI SHRI CHAND GOYAL:** You want that to be incorporated?

**SHRIMATI SUJATA MANOHAR:** Yes.

**CHAUDHURI RANDHIR SINGH:** Can you submit a small note on this?

**SHRIMATI SUJATA MANOHAR:** Yes.

**SHRI P. K. THAKORE:** With regard to Order 34 in respect of immoveable property, we find, that there is no time limit fixed within which the property is to be sold. There is inordinate delay in selling the property. Therefore, our suggestion is that some time limit should be incorporated within which the court should sell the property from the date of the final decree. The suggestion is that the court should sell the mortgage property within two years of the final decree. If it finds it is not sufficient, it may however extend the period for not more than six months at a time for reasons to be recorded in writing. Six months' extension may be given but for reasons to be recorded in writing.

**CHAIRMAN:** Don't you think that two years' period is too long a period?

**SHRI P. K. THAKORE:** We were faced with the same problem but looking to the present exigencies in Bombay...

**CHAIRMAN:** If you are giving an extension of six months, the original period of two years may be too long.

**SHRI P. K. THAKORE:** Here it takes six or eight years.

**CHAIRMAN:** Since you want incorporation of that period, why give this extension?

**SHRI P. K. THAKORE:** Our idea is only to put some reasonable period. We are not confining it only to two years.

**CHAIRMAN:** You have expressed yourself on very many sections which are not being amended apart from



those which are being amended. I am glad you have given so much thought to the Bill. But you have omitted making any mention about section 115, namely about the revisional powers of the High Court. Do you agree or not with the change that is being made? The first part of the section remains, more or less, as it is. But the latter part, the proviso with its sub-clauses, has been added. What is your view about these new provisions?

**SHRIMATI SUJATA MANOHAR:** I do not think the revisional powers should be restricted too much; otherwise it will become difficult to challenge the orders of the district courts.

**CHAIRMAN:** One view is that there should be no interference with the powers of the district court; otherwise the High Court will begin interpreting in their own way. All the same, there is another aspect of it, that because of the present powers of the High Court, there are frivolous applications which makes it necessary to restrict the powers of the High Court in order to bring down litigation. And, therefore, if the proviso and the Explanation are added the powers of the High Court will be exercised more judiciously where it is found that the case would be finally disposed of.

**SHRI HEMENDRA SHAH:** May I say that the High Court is given the power on the ground that the District Courts have a right to commit mistakes. Revision applications are not entertained easily.

**CHAIRMAN:** The point is that since the power is there the applications are entertained though they are ultimately rejected. This means so much time is taken. You file an application today and it is put up for preliminary hearing after a month or two. Then another six months are taken. All this period is wasted unnecessarily. Therefore, section 115

should be curtailed to a certain extent.

**SHRI HEMENDRA SHAH :** Our feeling is that the right of revision should not be limited as the standard of the lower judiciary not being the same as that of the High Court in all cases. The High Court should have power to go into revision.

**SHRIMATI SUJATA MANOHAR:** The power of the High Court should not be very much restricted.

**CHAIRMAN :** Restricting means that the power is not being taken away from the High Court. It will exist for review. But all the same it will be circumscribed. The High Court will take into account other circumstances before allowing the application to be filed.

**CHAUDHURI RANDHIR SINGH :** It is a fact that unnecessary litigation is going on these days. Therefore, it should be restricted to an extent where right of appeal is not taken away. Do not take away but curb it. The work may also be curtailed and the right of the citizen may also be fully protected.

**SHRI HEMENDRA SHAH :** Our apprehension is that some of the Judges in order to show that there are no arrears will easily reject revisions.

**CHAIRMAN :** A conscientious Judge will not do it.

**SHRI SHRI CHAND GOYAL :** Addition of this proviso will go against the interest of the litigant. It is, at the moment, serving and has a salutary effect, as some witnesses have said.

**SHRI R. D. BHANDARE :** Our view is totally different from your. We consider that the incorporation of the proviso leads to healthy practice. You say that they are conservative by temperament and the Judge may interpret it against the interest of the party. In fact, we are incorporating

this proviso for the purpose of helping the party except in a few cases. It is not restricting the interest of the party. In any case, we would like to widen the discretion of the court so that the interest of the parties could be safeguarded except in sub-clauses (a) and (b).

**SHRI ASHOK N. VYAS:** The words—

“Provided that the High Court shall not, under this sub-section, vary or reverse any order made in the course of a suit or other proceeding”

are likely to create a lot of difficulty; otherwise we accept the interpretation that it widens or clarifies the jurisdiction of the High Court. While exercising the revisional powers the High Court is very reluctant and ordinarily it does not interfere.

**CHAIRMAN:** It may not interfere but as I told you time is lost and arrears mount during that period. You object to sub-sections (a) and (b) of the Proviso but sub-clause (2) to (4) under the Explanation are not objectionable since they do not restrict the powers of the High Court either.

**SHRI HEMENDRA SHAH:** Litigation has become a gamble. There is no uniform standard. They are already using this power to show that there are no arrears. But this is our experience in our High Court that arrears are accumulating. There are ways of avoiding accumulation for them: one is—don't admit any revision petitions; By this method the High Court tries to get a good name.

**CHAIRMAN:** The Law Commission earlier to this went into this matter—about the arrears, on account of the powers of the High Court—and it found that in most of the cases the High Court did not interfere. All the same a lot of time was wasted from the time of application until a decision is given. Therefore, it came to the conclusion that certain restrictions should be placed.

**SHRI HEMENDRA SHAH:** Why are there pending cases? There will be no pending cases if the High Court has got enough number of judges. The feeling of waste of time is there because arrears are not finished in sufficient time. In England after the Second World War when they found that an appeal took more than a year, they promptly appointed additional judges to dispose of all such pending cases.

**CHAIRMAN:** How many judges do you have in your High Court?

**SHRI HEMENDRA SHAH:** We have 27.

**CHAIRMAN:** Then I can understand if they cannot cope because you see in the State of Uttar Pradesh the number of judges of the High Court has been raised to about 50 and still there are arrears.

**SHRI R. D. BHANDARE:** You kindly submit all your comments in writing to the Committee.

**SHRI HEMENDRA SHAH:** Yes.

**SHRI ASHOK N. VYAS:** There is one very minor point. On page 6, by clause 15, section 60 is being amended. Please see the last three lines in the proviso in (ii)—that is, lines 22—24 on page 6—

“...where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.”

I merely wanted to know whether there is any rationale, any rational basis, for distinguishing between two types of creditors. A Judgment debtors salary is attached, say for a period of two years by one Judgment creditor. Now you can further attach his salary to another judgment creditor, but not by the same judgment creditor. I want to know whether there is any rational basis in drawing this kind of a distinction between two types of judgment creditors.

SHRI R. D. BHANDARE: I think you are mixing up the issues. Kindly read the proviso. It is very clear that in all the cases relief should be given. It seeks to give relief.

SHRI ASHOK N. VYAS: Yes. I agree with you in that. What we are trying to say is with regard to the last three lines. Why should there be a distinction between the judgement-creditor who has attached the salary for a period of two years or another judgment creditor.

SHRI R. D. BHANDARE: Because the person not drawing any salary will be a pauper.

SHRI ASHOK N. VYAS: I want to know why a distinction should be made. There should be no exemption and both should be treated alike, on the same footing.

CHAUDHURI RANDHIR SINGH: As Members of Parliament we are interested in knowing some very important things. So I would like to have some one or two questions put to the witness. I appreciate that you have referred to so many things, that there should be good judges, there is multiplicity of cases, then you have said something about the rights of citizens and the litigant public and also the workload is increasing. Do you have some panacea or concrete solutions for all these problems? Have you thought about this matter so that we can pursue this national question in Parliament? Please be very brief.

SHRI SHAH: The trouble is that many members of the Bar do not wish to go on the Bench because the conditions are not favourable and moreover they are selfish. But there is a system in France whereby people of the first rank from University law degrees are drafted into judicial service from the beginning and the terms are quite attractive and highly trained and efficient people are selected for the judicial service; there is a judicial cadre which will be able to man the judicial administration very effectively and competently.

CHAUDHURI RANDHIR SINGH: What about the workload? The number of cases is increasing every day.

SHRI SHAH: The solution for that is to appoint 100 more judges, retired people to dispose of the arrears. Then the arrears may not be there. You may even appoint 200 judges to dispose of the cases within a reasonable time.

CHAUDHURI RANDHIR SINGH: The next point is with regard to the rights of citizens; petitions are dismissed within two minutes; thousands of rupees are wasted and the disposal of these writ petitions is only dismissal. What have you got to say about that?

SHRI SHAH: From the litigants' point of view the only solution is that you must appoint only those people who are not acting or would not act in that manner and for that purpose the only guarantee is that the Chief Justice should, as far as possible, should select such people who will act in a proper manner; it is a human and personal factor for which no law can provide a remedy. This is the Bar's feeling.

SHRI THAKORE: In this connection I would like to mention that the Advocate-General in his public lectures had once suggested that the Judges' salaries are not adequate; I do not know what the salaries should be looking to the present mood of the people with regard to the socialistic pattern but the fact remains that their salaries are not sufficiently attractive for the first-rate people. Since the Members of Parliament are here, I take this opportunity to mention what he had said. He had also suggested that in England the Judges' salaries were raised almost twice or three times within less than ten years, taking into consideration the rising costs, etc. So it may be that there is a disparity of income between the lowest-paid man and that of the Judges. You can even compare them with those in New Zealand and see

the income bracket for the best-talented people. Of course I am not suggesting that for our country but definitely there is a case for revision of their salaries.

**CHAUDHURI RANDHIR SINGH:** What should be the salary of a Judge?

**CHRI R. D. BHANDARE:** When the Advocates Bill comes up, we shall consider that aspect.

**SHRI SHRI CHAND GOYAL:** The Judges say "If our salaries are increased, we will have to pay more by way of income-tax and ultimately we will not gain much." On the other hand, they would like to have more amenities like housing and other facilities; that will do them some good.

**CHAIRMAN:** I think we must not take more of their time; the other witnesses are already there.

So gentlemen, on behalf of the Joint ommittee I thank you all for coming here and giving us the benefit of your views which will be very helpful to us.

**SHRI THAKORE:** Mr. Chairman, on behalf of the Bar Association I have to thank the Members of the Select Committee for the patient hearing that they have given to us. Thank you very much.

*(The witnesses then left)*

---

*(The Witnesses—Shri K. J. Abhyankar, Shri C. R. Dalvi, Shri M. A. Rane, Shri M. V. Paranjpye, Shri Sharad Manohar, Shri S. C. Pratap, Shri V. N. Ganpule, Shri D. M. Rane and Shri R. S. Bhonsle, were at this stage called in)*

**CHAIRMAN:** Since we have no comments for the present from you before us we would like you to kindly make your preliminary remarks so that we might know what subjects you wish to take up and what are your suggestions. Thereafter we shall put you questions as and when necessary.

**SHRI M. A. RANE:** Our first difficulty is that of course we have been informed that you are meeting here in Bombay but we do not know what kind of discussion is going to take place. It is only the day before yesterday that we came to know of this and this Bill was in our hands only the day before yesterday evening, and we had practically no time to prepare any memorandum for submission to this Committee. For future we would like to make the suggestion that, if the Committee is meeting here, they should let us know in advance of the same so that we have time to go through this Bill thoroughly because this is not just one subject. The Civil Procedure Code is more complicated and we would like to have our considered views made known to you. Now therefore what we have done is that we have chosen only certain sections on which we could express our views. Otherwise, we had no time to go through it in detail and to give our considered views before this Committee.

**CHAIRMAN:** Under these circumstances the best thing would be that you give us an idea of what you have to say on the various sections that you sorted out, and then you may send us a detailed note to Delhi, and we shall consider it.

**SHRI M. A. RANE:** We cannot say that the Association has one view because we are all members thereof. Each one may be having his own views, but as far as possible I will give my personal views; some of them may be endorsed by my colleagues.

**SHRI R. D. BHANDARE:** We may do like this. Where among you unanimity has been arrived at on some, it will be far better to have them from you and to place them on record, and then you may give your individual views where you differ among yourselves.

**SHRI M. A. RANE:** The difficulty with us has been want of time. Whenever such Bills are received, we circulate them among our members.

Then we sit together, hold discussions and exchange views. But we had no such time in this case.

CHAIRMAN: Which provisions of the Bill are you taking up now?

SHRI M. A. RANE: From the objects it seems that only three topics are mentioned, and I would submit that these are welcome provisions, particularly the power given to the Supreme Court to transfer suits from the High Court. We wholeheartedly agree with this. Also we welcome the provision granting freedom from attachment of portion of salary to persons employed in private service as well. Then comes deletion of section 80. That also we welcome, and I think most of my colleagues are agreeable to that. Now there are similar sections in local Acts, for example in Municipal Acts, where the local authorities are concerned. In fact we would expect that it would be extended to the local Acts also although that is not the subject-matter at issue.

SHRI SHRI CHAND GOYAL : As soon as this goes out of the C.P.C., it will automatically go out of the other Acts also.

SHRI M. A. RANE: Not automatically. We do expect that this would be a salutary provision so that the State Legislatures will follow for deleting similar provisions contained in other Acts, in other local Acts. With the deletion of this section 80 similar sections in the local Acts should also be deleted.

SHRI M. A. RANE: Then I would welcome the freedom from arrest and detention to members of legislative bodies. I do not know what are the views of my colleagues, but as far as the first three items are concerned, I do think my colleagues agree with them.

CHAIRMAN: You agree that a certain time should be given to the Members of Legislatures?

SHRI M. A. RANE: Yes.

CHAIRMAN: They have already got 14 days.

SHRI M. A. RANE: And this is only to extend the period.

CHAIRMAN: You think it might be extended as proposed in the Bill.

SHRI M. A. RANE: Yes.

CHAIRMAN: The effect of it will be that perhaps they will never be taken into custody because the legislature continues more or less for the whole year round except for three months and so the Members would be immune from any attachment or any other proceeding for such a long time, and the litigant would suffer on that account.

SHRI M. A. RANE: If you push it to logical conclusion, every member of the society who is usefully engaged in any walk of life, is required to stick his work-just as a Member of a Legislature. So therefore, really speaking, there should be no distinction between the two; there is no reason why a Member of a Legislature alone should be exempted.

CHAIRMAN: The distinction is that State work suffers if the Members are kept in prison, or attachment proceedings are taken against them during the Sessions. Therefore the work of the State suffers. Therefore this distinction has been made which, I think, is a very salutary rule. The only question is as to the period of time, whether we should extend the period further. Now so far we have received the opinion that they do not favour any further extension of time. But you are of the opinion that it may be further extended.

SHRI M. A. RANE: The extension suggested is 40 days instead of 14 days.

CHAIRMAN: This suggestion has been made because of the provision contained in the Act of England on these lines. Therefore the time of 40 days is suggested.

**SHRI M. A. RANE:** To this aspect I would not like to advert much because I have not given much thought to it. We are concerned with some of the provisions. All of us are practising in the Appellate side of the High Court. We are not concerned with all the provisions. We are only concerned with some of the provisions. We will choose those provisions and we would express our views on them. I would first choose section 115. It deals with revision. We are concerned day to day with the revisionary powers of the High Court. We welcome the provision. We welcome the definition as to what is meant by a case decided. It includes interlocutory orders. That sets at rest the controversy.

**CHAIRMAN:** This has been proposed in order to do away with the different views of the various High Courts on the subject.

**SHRI RANE:** I would have to make my comments on sub-section (3) which has been introduced. I would make my submission. It says:

“The High Court shall not, for the purpose of exercising the powers conferred under this section, call for the records of the subordinate court in original except where an order of stay has been made under sub-section (2).”

We do not know what is the object of this provision. Possibly if the record is called for, then the other proceedings will be stayed automatically. I may suggest to the hon. Members of the Committee that ordinarily the practice that we follow in our High Court is that in interlocutory matters, the record is never called for. It is only when the case is finally disposed of that the record is called for as a matter of course. Provision may be made that the record need not be called for in revision unless expressly so directed by the High Court. Unless so directed by the Court in a given case it need not be done. Otherwise, here it appears to be so mandatory

that it shall not call for any record. Where stay is not granted, the record shall not be called for....

**CHAIRMAN:** In original. It does not bar calling of the record of all. It only means 'in original', so that the proceedings may not be stayed in the lower Court.

**SHRI RANE:** There may be no record apart from the original. The litigants concerned are poor ones. We are concerned with mofussil litigants. They cannot produce certain copies of records. Sometimes the case has been dismissed and there is no question of further proceedings. The entire record may not be necessary. In such cases I would suggest personally, let there be an order so that the Court can direct the parties concerned to take direction from the Court.

**CHAIRMAN:** It says here 'except in a case where an order of stay has been made under sub-section (2)'.

**SHRI RANE:** If the High Court thinks it necessary, then it may do so. In fact, where the stay is granted, it need not be taken for granted that the record is necessary. Where stay is granted the record may not be necessary. If the record is called for, practically it takes two or three months for the record to go back.

**CHAIRMAN:** It must be more than that.

**SHRI RANE:** Till the record is received in the High Court, nothing can be done. Therefore, you may restrict the calling for of record and permit it only in certain cases. Article 227 relates to Tribunals and record is not called as a matter of course. It is left to the discretion of the court.

**SHRI SHRI CHAND GOYAL:** This restriction on the calling for of record is only in cases where the stay order has been granted.

**SHRI RANE:** In the rest of the cases the original record cannot be called for. It is here so worded that it looks as if it is mandatory that it

shall not call for the record. That means that the High Court is powerless to call for the record.

SHRI SHRI CHAND GOYAL: You want it to be substituted saying that it should be only at the discretion of the Court.

SHRI RANE: You may put a restriction that the record shall not be called for.

CHAIRMAN: That is what is intended here.

SHRI RANE: We appreciate the necessity, but it is so worded that the Court is rendered powerless, the way in which it is worded.

SHRI P. C. MITRA: Unless the Court finds it necessary, record will not be called for. Earlier in section 115(1) it is said:

"The High Court may call for the record of any case.."

That means 'may' is not mandatory. It may mean 'may not' also. You are in favour of retaining the present provision. Are you not in favour of the proviso?

SHRI RANE: I am in favour of retaining the provision because our experience is that the record is not called for as a matter of course. It is called for under certain rules. Most of the revisions are interlocutory matters. In respect of interlocutory matters our rule is that the record is not called for. The High Court rules provide for that.

SHRI J. M. IMAM: What about the other High Courts?

SHRI RANE: We have made rules.

CHAIRMAN: The rules are not uniform throughout. It may be that your High Court has rules to that effect. Therefore, it is certainly desirable to have a change in the CPC itself, but you consider that the form in which it has been put will be interpreted by the Courts as barring them from calling for records, unless there is a stay order. Do you think the purpose will

be served if we say "the High Court may not."

SHRI DALVI: Now, if you read sub-clause (1), it says the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court. Sub-clause (3) says "the High Court shall not". Sub-clause (3) may be deleted.

CHAIRMAN: Do not forget the words "in original".

SHRI RANE: It is not possible for poor litigants to come out with the necessary records. Private copies may have to be called for, but they are not authenticated. Certified copies mean time.

SHRI P. C. MITRA: The Court may direct. The Court itself should send for the record.

SHRI RANE: Who will pay for the copy?

SHRI DALVI: The other aspect is the lower court may not have adequate staff. Every time you ask for a certified copy, it takes six months. Even judgment copies we find it difficult to get.

CHAIRMAN: The main object of putting this restriction is to avoid delay.

SHRI RANE: The object can be achieved if you say that the High Court may not call for the record.

SHRI ABHYANKAR: I would say that sub-clause (3) may be deleted altogether.

SHRI PRANJAPE: May I suggest this? Some High Courts have not made rules. In place of the existing sub-rule (3), the following may be substituted:—

"In matters in which a proceeding is pending in the trial court, the record shall not be called by the High Court unless specifically directed by the Court at the time of the preliminary hearing under Order 41 Rule 11."

When a revisionary application comes in the High Court for preliminary hearing under Order 41 (11), at that time the Court applies its mind. It should then find out whether the record is required or not. Sometimes original records may be required. In such cases the Court is seized of the matter. At this stage the Court would be in a position to say whether the record in a given case is necessary or not.

The whole object of sub-clause (3) seems to be that in matters where the suit is pending in the trial court, record should not be called for as it extends delay. This purpose is achieved without sacrificing the cause of justice by giving discretion to the court and putting the rule this way that record shall not be called unless the High Court in a given case gives a specific direction.

CHAIRMAN: I understand.

SHRI P. C. MITRA: Without direction how the paper comes?

SHRI M. V. PRANJAPE: High Courts have a rule that in matters which are admitted records of proceedings should be sent to the High Court. Our High Court has made an exception in the case of interlocutory matters. That exception should be incorporated in sub-clause (3) giving discretion to the court.

SHRI C. S. C. PRATAP: Every time the High Court cannot call for records by giving a stay order . . .

SHRI M. V. PRANJAPE: Sometimes only one document may be required.

SHRI M. A. RANE: Sometimes they call for only one document.

SHRI P. C. MITRA: Direction should be issued by the High Court and the reasons should be stated if the rule as proposed is adopted.

SHRI M. V. PRANJAPE: It will be impossible for them to do that.

SHRI C. S. C. PRATAP: It is not possible to record the reasons.

CHAIRMAN: Supposing in the end of (3) we add the words "except where the court so specifically directs".

SHRI M. V. PRANJAPE: Yes.

SHRI C. R. DALVI: If that is not necessary because sub-section (1) says the High Court may call. It means it is not in every case.

SHRI K. J. ABHYANKAR: Supposing sub-clause (3) is deleted. What is the difficulty?

SHRI P. C. MITRA: In one sentence there cannot be two exceptions. Originally it says "except in a case where an order of stay has been made under sub-section (2)".

CHAIRMAN: Do not go into the wording. The Law Ministry will put in the idea properly.

SHRI M. V. PRANJAPE: With regard to the same section first proviso, I am talking about the first proviso, that is going to open the floodgates for further litigation. Instead of attaining finality we will be making every order susceptible to revisional jurisdiction.

CHAIRMAN: That is not the intention. The intention is to put a curb on it. That is the intention.

SHRI M. V. PRANJAPE: I will explain. The proviso reads thus. "Provided that the High Court shall not, under this sub-section vary or reverse any order made in the course of a suit or other proceedings, including an order deciding an issue, except where the order, if allowed to stand would cause irreparable injury to the party against whom it was made". Now this clause read with the earlier clauses would mean that in matters of an interlocutory nature also the High Court will have jurisdiction to entertain revisional application. So far as the Bombay High Court is concerned it has interpreted the earlier sub-clause (1) which says "may call for the record of any case which has been decided by any Court". It has been interpreted as meaning case or part of the case finally decided....



CHAIRMAN: For that purpose the explanation is there.

SHRI M. V. PRANJAPE: "Includes any order made in the course of a suit or other proceeding, including an order deciding an issue". This explanation will undo the decision given by our High Court.

CHAIRMAN: There are various interpretations by various High Courts.

SHRI M. V. PRANJAPE: I am pointing out that the interpretation put by our High Court was a salutary one and it was proper for this reason that if in a given suit a wrong order is passed by the trial Judge, then that order is capable of being corrected in appeal. It is not necessary that at that stage the litigant should approach the High Court. But in cases where a part of the case is decided, that would be treated as a case decided. In such cases the High Court would intervene by interpreting the expression "case decided". Now by your explanation the interpretation which is put by our High Court will be destroyed. In every interlocutory case the High Court will be bound to intervene provided these two things are satisfied. It will retard the progress of the suit.

CHAIRMAN: Have you seen the notes at page 63 on this?

SHRI M. V. PRANJAPE: The object I understand. The contrary has been said in the explanation. The draft as framed will defeat the object which is stated in the Statement of Objects and Reasons. I would like to put it this way that "case decided" means a part of the case which concludes; I want the existing explanation to be replaced by the explanation that "case decided" means where the learned trial Judge has prevented a party from putting forth his case before the trial Judge—for instance, an amendment to the written statement or amendment to the part, and the learned Judge rejects an amendment. Rejection of an amendment means excluding that part of the case from enquiry. Such cases may be included within the expression "case decided". In other cases the appellate court will correct

it. No damage is done.

SHRI C. P. DALVI: I am unable to agree with my friends because in a majority of cases the High Court is called upon to exercise revisional powers in matters which are interlocutory. Where a case is disposed off, ordinarily a first appeal and a second appeal also lies. Where second appeal is not there, parties can come up under article 227. In a majority of cases the power to interfere at the interlocutory stage should not be taken away absolutely. It is already restricted by the first part of the section. The second provision as suggested in proviso (a) is a salutary provision where the High Court shall not reverse except where:

"the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding..."

The second proviso, of course, makes the field a little wider. My friend says that there might not be more revision because the High Court can always say that there would be irreparable injury to the party against whom the order is made. Even when there is restriction in the first part of section 115, litigation has not stopped. Under article 227 against the final order the parties can come. For example, the Supreme Court has recently held that the powers under section 115, are very much restricted. Under the Rent Act, where second appeal is not provided, litigants are filing petitions under article 227 where the scope is wider than under sec. 115. Therefore, for practical purposes section 115 is found mostly applicable to interlocutory orders. And there is no reason why that power should be taken away. If the power is taken away, then there will be no occasion for the High Court to exercise power under section 115.

CHAIRMAN: Powers are not being taken away but they are being restricted.

SHRI M. A. RANE: In the interest of litigation it should be restricted. My friend says that instead of restric-

ting them they should be widened. Unless it comes under the first part of section 115 no power can be exercised. And on that the rider of this proviso is added. Further rider is added by sub-clause (a).

**SHRI R. D. BHANDARE:** In fact sub-clause (b) becomes (d) here and, therefore, it gives lot of latitude to the court. Even if the final order is there, if the court comes to the conclusion that there would be irreparable loss the court has a right to make such order in the case as it thinks fit; it has a right to interfere. That is the meaning of it.

**SHRI M. A. RANE:** We know the calibre of the lower courts now. Sometimes injustice is done at the interlocutory stage. Therefore, the litigant should have the right to approach the High Court.

**SHRI ABHAYANKAR:** Already there is restriction in clause (4).

**SHRI C. P. DALVI:** We are of the view that sub-clause (b) should be retained.

**SHRI M. V. PARANJPYE:** We are of the view that it might increase the scope and give wider latitude to the High Court to interfere.

**SHRI R. D. BHANDARE:** Your view is that sub-clause (b) must be retained as it is.

**SHRI M. V. PARANJPYE:** Yes.

**CHAIRMAN:** There is already power with the High Court, where the order would cause irreparable injury to the party, to interfere.

**SHRI M. V. PARANJPYE:** There is a provision for interference by the High Court even at the interlocutory stage.

**SHRI S. C. PRATAP:** Even if it is felt that there is some mistake, still the High Court may not call for the record. That is given in the additional proviso. By virtue of the words "case decided" the final order is capable of revision and jurisdiction.

Even in interlocutory orders because of the words "case decided" it would not be an interlocutory order excepting in certain cases. The High Court view is upheld. We submit that the jurisdiction of the High Court should be widened.

**SHRI R. D. BHANDARE:** Mr. Pratap, as a matter of fact, what Mr. Paranjpe has explained is the correct position as it is found today. But since we would like to do justice in cases where irreparable loss is caused to the party and the court comes to the conclusion that even leaving out a small portion or an issue could also be injurious, no portion should be left because we are entering into a socialistic pattern.

**SHRI S. C. PRATAP:** We agree that this provision is a salutary one. While we are now on the question of amending section 115 should we address ourselves to the wider question whether it is necessary that only the jurisdiction should be considered by the High Court. That question came up by virtue of a recent decision of the Supreme Court.

From that time the word "jurisdiction" has been construed extremely strict with the result even the grossest of errors are beyond the scope of High Court jurisdiction. If there is an error of law and the High Court cannot interfere under section 115 there is a remedy under article 227 under which the High Court can rectify the error.

**SHRI R. D. BHANDARE:** Mr. Pratap, instead of arguing at length, simply come to sub-clause (i), clause (e). Don't you think that apart from the question of jurisdiction the other points of view are also taken into consideration? I would urge you to make a specific suggestion.

**SHRI C. R. DALVI:** On this issue except perhaps our friend on my right we are unanimous that so far as section 115 is concerned, it should provide that certain illegalities or irregularities

because of an error of law are corrected.

SHRI M. A. RANE: The remedy under Section 115 has become somewhat academic. I may give you the example of the Rent Act which affects a large number of litigants very vitally. They cannot go to the High Court under section 115. It is not as if the Supreme Court has held this view for the first time. Before it, the Privy Council also had considered it. So, for the litigant to go to the higher court under article 227 is a more expensive remedy than under section 115. Therefore, in order to remove this difficulty we can amend section 115 and make its scope the same as that of article 227; that is, correcting errors of law. If we cannot do it, the litigants continue to go under article 227. So, why not allow them to go under section 115 itself?

SHRI C. R. DALVI: One clause should be added and correct the errors of law.

CHAIRMAN: The stage for section 115 or article 227 arises only after all these proceedings are finished.

SHRI M. A. RANE: No, no. The scope of section 115 is much narrower.

SHRI R. D. BHANDARE: I shall explain the Chairman's point a little further. If there is no question of jurisdiction, then you can go to article 226 or 227. If there is a question of jurisdiction, then, you are tied down within the framework of the Civil Procedure Code. Let our friend say something on this point.

SHRI PARANJPE: It is not in the interests of the society to have too many forums of litigation. Litigation should be curtailed as far as possible. There should be a finality to the litigation and the sooner it is attempted the better it would be. First of all my objection to this wording was that revision matters should not be permitted to be admitted under section 115 barring the exception that I mentioned. Secondly, by introducing this

error of law, you will be widening the scope of section 115 because you will have an additional forum for litigation. We know the mentality of the litigants in this country. Even if a man is poor, he gambles to succeed. He will always say, "If not in this court, let me try in the higher court." Like that he goes on. This is not in the interests of the society. I am, of course, in favour of the suggestion that in very exceptional cases revisional jurisdiction should be given.

SHRI C. R. DALVI: But the problem cannot be solved as long as article 227 is there.

CHAIRMAN: Your opinion is that revisional powers should be curbed to an extent so that if there is any error, they can go up.

SHRI C. R. DALVI: Why should it not be included in section 115? The remedy under article 227 is costly for a litigant who is normally poor. Under that article the court fee is more and the rules of the High Court require certain things to be done, whereas under section 115 the court fee is less and the rest requirements are limited. Therefore, if you add one clause and say you can correct the errors of law also, then, that would solve the problem.

SHRI R. D. BHANDARE: That will widen the scope. Let us take it with small doses and be satisfied with jurisdiction only.

SHRI PARANJPE: Mr. Chairman, will you kindly permit me to leave?

*(With the permission of the Chairman  
Shri Paranjpe left the Hall.)*

SHRI R. D. BHANDARE: Mr. Chairman, why not we meet again? How long do we continue now?

CHAIRMAN: I think we will continue till 7 p.m.

SHRI DALVI: So far as 115 is concerned, I suggest that one clause may be added.

**SHRI PRATAP:** With regard to revisional jurisdiction, I have to make certain suggestions. The revisional jurisdiction is quite inadequate. At least in those cases where the decisions of the lower courts have become final there should be revisional jurisdiction provided for the High Courts and in such cases at least this exception should be made that the jurisdiction of the High Courts would not be limited. The present position is that the High Courts have no such power, although the cases can go up to the Supreme Court. For important questions of law the High Courts should not be made powerless to act. To that extent at least section 115 should be amended.

**SHRI RANE:** There is another topic on which I would like to speak, i.e., Order XXA about costs, page 23. I am referring to clause 2 which says:

"In calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader, or a certificate in writing signed by him and stating the amount received, has been filed in Court."

I feel there may be certain practical difficulties. Of course this will apply to all courts, not only to High Courts. I would like to point out that the tax costs are always lower than what we actually charge as counsels or as pleaders. The minimum cost or tax in the High Courts is Rs. 60; in the mofussils it may be Rs. 15 but no pleader will work for Rs. 15 because even Rs. 60 is nothing. Secondly there may be an application the appeal Court and it may also happen that the costs will be charged separately but it may also happen that the lawyer may not agree to fees according to each proceeding; he might charge a consolidated fee and it might be difficult to have a break-up of it; so this will create complications.

**CHAIRMAN:** That is the present law also.

**SHRI RANE:** There is a dual system in the High Court.

**CHAIRMAN:** The standard of fees is different.

**SHRI RANE:** This will apply to all uniformly but it may be impossible for a pleader to break up his fees and to pass a receipt every time and put it on record. I do not know how it is actually going to work. We do not know, Sir, what is the object of this particular provision. It is not being filed everywhere.

**CHAIRMAN:** In certain High Courts that is the rule.

**SHRI RANE:** In this State it is not the rule; this is only the schedule of costs.

**CHAIRMAN:** That should be according to the scale fixed. You can file a memo; then the whole thing will not be shown.

**SHRI RANE:** Costs in excess of the taxed fees are not allowed. Then what is the propriety of it?

**CHAIRMAN:** The counsel must file such a memo to show that he has received so much. Supposing the taxable fee is Rs. 1000 but the counsel has received only Rs. 100. Then he can file a certificate for Rs. 1000 only. The rule is that you must file a receipt or certificate for the amount received as pleader's fee.

**SHRI K. J. ABHYANKAR:** According to the schedule of costs one may get only Rs. 100, but actually it may be that a counsel gets Rs. 1,000. Now even if he files a receipt for Rs. 1,000 the litigant is going to get only Rs. 100.

**CHAIRMAN:** All the same the counsel is expected to file a receipt for Rs. 1,000, and the taxable fee will be according to the scale fixed.

**SHRI C. R. DALVI:** It may be that a counsel accepts a fee which is less than the scheduled fee.

**CHAIRMAN:** Supposing one is a friend of yours and you are doing his work without any fee, you are not going to be taxed because you are doing the work for him free of cost.

**SHRI K. J. ABHYANKAR:** In any case the litigant does not suffer.

**SHRI R. D. BHANDARE:** But this will give more latitude for being dishonest. Anyhow we appreciate the difficulties of the Bar representatives. Perhaps they may not make any suggestion; otherwise I would immediately welcome any workable solution or suggestion to be incorporated in this Bill.

**SHRI K. J. ABHYANKAR:** We suggest that it should be deleted.

**CHAIRMAN:** Even where a lawyer is not paid any fees?

**SHRI C. R. DALVI:** In the illustration given by you, suppose I do the work free for my friend and so I do not give a certificate then he will not get the costs, but my client will give me a certificate that he has....

**CHAIRMAN:** The client certainly will not do so.

**SHRI C. R. DALVI:** For purposes of....

**SHRI M. A. RANE:** Are you going to provide for a few cases? From the practical point of view there are very few cases where a lawyer will receive less than the prescribed scheduled fee. They are only exceptional cases where a friend works for another friend free of cost, or they are only exceptional cases where there is a very high rate involved. Only in such cases it may be that a lawyer takes much more or a lawyer receives much less than the taxable fee.

**CHAIRMAN:** Supposing your fee was settled at Rs. 500 and your client

actually pays you only Rs. 250, than in that case you will file a certificate for Rs. 250 only not Rs. 500 and you will be taxed only on the basis of such a certificate. Now in that event sometimes the lawyers are the sufferers in this matter because they have filed the certificate for Rs 250 and the clients do not pay the balance. I can understand such a situation.

**SHRI R. D. BHANDARE:** That is the practical difficulty.

**CHAIRMAN:** There is no practical difficulty; I have been a lawyer in a High Court for so many years.

**SHRI K. J. ABHYANKAR:** In that case is the litigant going to get the costs as per the certificate?

**DR. B. N. ANTANI:** These points may be noted down.

**CHAIRMAN:** Let us see what is the difficulty. I do not see there is any difficulty at all.

**DR. B. N. ANTANI:** Even if they make some minor points let us note them down and see.

**CHAIRMAN:** We have to file the certificate for that portion which we have received. That certainly happens.

**SHRI M. A. RANE:** That object is quite laudable, but such cases are very few and that is what I am pointing out. For such a small number of cases if you make a change in the Civil Procedure Code, it will affect litigants all over.

**CHAIRMAN:** Unless the certificate is given no part of the fee will be taxed.

**SHRI M. A. RANE:** If he files a certificate for Rs. 200, he will get only Rs. 200.

**CHAIRMAN:** I do not find any difficulty in this. If he has received more, let him show that he has received more. Why should he evade the tax like this?

SHRI K. J. ABHYANKAR: That will lead to complications. There will be incentive to....

CHAIRMAN: The litigant will get only that part of the fee as has been prescribed as the scheduled fee.

SHRI M. A. RANE: We are of the view that this should be deleted because this will not work.

CHAIRMAN: This is working in so many High Courts. How can you say that this will not work?

SHRI K. J. ABHYANKAR: So far as clause 2 is concerned, it should be deleted.

SHRI M. A. RANE: We would like to proceed further with this again tomorrow, may be at 3 o' clock. My friends have not yet been able to express their views, two or three of them, and they have to express their views, and I have been talking all the time.

CHAIRMAN: If you are prepared to come again I have no objection. Please come at 2.30 instead of at 3 so that we have more time for discussion.

SHRI M. A. RANE: All right.

SHRI C. R. DALVI: Just one suggestion; we are concerned with certain provisions of this which affect us.

CHAIRMAN: Regarding those sections, which are not being amended, we are not competent to make any recommendations, but the representative of the Law Ministry here is taking down notes regarding them and the Law Ministry may, on its own initiative bring forward any changes.

So you please make it convenient to come at 2.30 tomorrow.

SHRI M. A. RANE: Yes.

*(The witnesses then withdrew)*

Thursday, the 5th February, 1970 (at Bombay)

PRESENT

1. Pandit Sham Sunder Narain Tankha—*Chairman*.

MEMBERS

*Rajya Sabha*

- |                         |                          |
|-------------------------|--------------------------|
| 2. Dr. B. N. Anani      | 5. Shri Purnanand Chetia |
| 3. Shri Rattan Lal Jain | 6. Shri V. T. Nagpure    |
| 4. Shri B. N. Mandal    | 7. Shri P. C. Mitra      |

*Lok Sabha*

- |                               |                                      |
|-------------------------------|--------------------------------------|
| 8. Shri D. Balarama Raju      | 15. Shri B. P. Mandal                |
| 9. Shri R. D. Bhandare        | 16. Shri Bhaljibhai Ravjibhai Parmar |
| 10. Shri Ram Krishan Gupta    | 17. Shri Jharkhande Rai              |
| 11. Shri Heerji Bhai          | 18. Chaudhuri Randhir Singh          |
| 12. Shri J. M. Imam           | 19. Shrimati Savitri Shyam           |
| 13. Shri Thandavan Kiruttinan | 20. Shri P. N. Solanki               |
| 14. Shri Mahendra Majhi       | 21. Shri K. Subravelu                |

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.

SECRETARIAT

Shri Kishan Singh, Under Secretary.

WITNESSES

- (1) Shri D. R. Dhanuka, representative of the Bar Council of Maharashtra.
  - (2) Shri B. R. Satarkar, Collector, Chandrapur.
  - (3) Representatives of the Advocates Association of Western India, High Court, Bombay:
    - (i) Shri M. A. Rane
    - (ii) Shri Sharad Manohar
    - (iii) Shri C. R. Dalvi
    - (iv) Shri D. M. Rane
-

(The witness—Shri D. R. Dhanuka was called in)

CHAIRMAN: Hon. Members, we now commence our proceedings. The witness before us today is Mr. Dhanuka, an advocate of the Maharashtra High Court. He represents the Bar Council of Maharashtra, of which he is a member. His comments were received yesterday and they have been circulated to you. All of you have had time to go through them. He has submitted some more suggestions today as additional items and we shall go through them later. I went through the entire comments last evening rather hurriedly. I find that many of the points are outside the scope of the Bill. He has referred to sections of the CPC which are not being amended. Our difficulty is that this Committee is only competent to take into consideration such sections as are being amended by the Bill. Since you have submitted your suggestions, the Law Ministry will go through them carefully and see if some or any of them could be accepted and incorporated as amendments by the Law Ministry itself. As far as this Committee is concerned, we are not competent to go into those matters. Your suggestions are welcome.

Now, the first thing I have to say is that the proceedings of this Committee are confidential and they are not to be disclosed to anybody until the report of the Committee is submitted to Parliament. Now, we may take up your suggestions. Your first suggestion relates to section 10. This is not being amended. Your second suggestion relates to section 20. This too is not being amended. Your suggestion three is an alternative to your suggestion No. 2. This also does not come in. Your suggestion 4 relates to clause 12 and sections 15 to 20. This is not being amended. Your sugges-

tion No. 5 relates to section 21 of the Code. If you want to say anything in particular about the omitted portions, you may do so briefly.

WITNESS: Mr. Chairman and Members of the Committee, I am thankful to you for giving me an opportunity to give evidence before you. I am practising almost exclusively on the civil side for the last thirteen years. I have been a member of the Bar Council for the last six or seven years. I was also a part-time professor of Law in the Government Law College for about four years. The Civil Procedure Code has been one of my pet subjects. If I correctly remember it, I got the highest number of marks in the subject in the Bar Council Examination. I also got first class first in the Bar Council Examination 1956 and I was the recipient of the Chimanlal Setalvad Prize.

I quite appreciate that some of my suggestions may be outside the scope of the Bill but I have worked on the problem under the belief that all necessary amendments to the provisions of the Code should be discussed and pointed out.

We have experienced considerable hardship while practising. These difficulties must be brought to your notice, even if they do not form the subject matter of the amending Bill. I am content with your ruling that in respect of whatever sections are not being amended, the suggestions will be conveyed to the Law Ministry. Perhaps nothing more can be done about them.

CHAIRMAN: The representative of the Law Ministry is here and he will take note of them.

WITNESS: Very briefly I would just say something about my suggestion No. 1. It was held by the High



Court of Bombay in a judgment reported in A.I.R. 1954 Bom. 176 Rai Bahadur Thakur and Co. v/s Devidayal (sales) Ltd., that if a previously instituted suit was filed in a court in breach of a lawful agreement to select two courts of concurrent jurisdiction and if the earlier suit was an abuse of the process of court, or if the earlier suit was filed to forestall the subsequent suit, then the court should not grant stay of subsequent suit under section 10 of the Code. That would amount to encouraging the abuse of the process of law. If the parties have validly agreed that the suit will be decided say by the Calcutta High Court and one of the parties files first suit in some different court in breach of such agreement; second suit validly filed in Calcutta High Court should not be stayed till disposal of first suit filed in a court in breach of such agreement. Such agreements to select two courts of concurrent jurisdiction are valid under sec. 28 of Indian Contract Act. This view is in consonance with justice, equality and good conscience. The contrary view was taken by the hon. Supreme Court in AIR 1962, S.C. page 527. In that case the Supreme Court held that section 10 is mandatory. Even if the earlier suit is false and vexatious it could not be helped. If section 10 applies it applies. At the end the court may allow compensatory cost of an amount to the extent of Rs. 1,000—as provided by section 35A of the Code but the second suit has to be stayed even if first suit is vexatious or in breach of agreement. This situation should be remedied.

Mr. Justice Shah of the Hon'ble Supreme Court has given a dissenting judgment in the case reported in A.I.R., 1962 S.C. 257.

CHAIRMAN: Was it a Full Bench?

WITNESS: It was a Division Bench judgment. I have brought that judgment— 53 Bombay Law Reporter page 911. I will just take one minute with your kind permission. It was a Bench judgment. I am sorry. The

correct reference is AIR Bombay 54| 176. The Supreme Court judgment as a matter of fact holds that the provisions of section 10 as clearly definite and mandatory. Even if the previously instituted suit is held to be vexatious and instituted in violation of the terms of the contract, even then the Judges of the Supreme Court found themselves helpless to prevent that abuse of the process of law. I will give you a practical example. Take, for example, there is a suit on promote. Somebody has written half a dozen letters "I am unable to pay, give me time". Thereafter knowing that this man is going to file a suit another man files a false suit in some part of the country for a declaration that the promissory note in question was obtained by defendant by fraud. Subsequent suit for enforcement of the promote will be stayed till this suit is decided even though the court may be feeling that the earlier suit is an abuse of the process of the law. Keeping that aspect in mind I have suggested that the stay of a suit should not be granted— "where the previously instituted suit has been filed by a party in breach of a lawful agreement to sue in particular courts only and such court has jurisdiction to entertain the suit; where the previously instituted suit *ex-facie* appears to be a false and vexatious suit and filed with a view to forestall the claim which is subject-matter of the subsequent suit or proceeding and grant of such stay would be unjust after taking into consideration all the facts and circumstances of the case".

Then the second branch of the amendment deals briefly with a situation like this. We know there are certain special tribunals or special courts for particular type of claims. Suppose a suit is filed in the Small Causes Court for a certain declaration that the plaintiff is tenant of the defendant, and thereafter another person has filed a suit in a civil court for a declaration that the plaintiff is the licensee. The issue is the same. Then the stay of second suit cannot be

granted as the court in which the first suit is filed has no jurisdiction to entertain the second suit. Technically the section comes in the way of doing substantial justice.

Then I have suggested "Nothing in the provisions of sections 19(i) and 19(ii) of the Code shall bar the inter-ent jurisdiction of the Court to grant stay of any suit or proceeding till the disposal of any other suit or proceeding if it is so necessary to meet the ends of justice", so that there should be no bar and section 10 should not prevent the Court from exercising inherent jurisdiction.

Then suggestion (2) is very interesting. I would request you to consider that also. I will give an example. For the second suggestion the judgment is AIR 1963 Supreme Court 1682 may be looked into. You know that under section 20 of the Code, even if no part of the cause of action has arisen within the jurisdiction of the court, a suit can be filed if the head office of the defendants is situated in the jurisdiction of that court. In this case a suit was filed against the Railway in the place where the office of Railway administration (Headquarters) was situated. The goods are booked in a different part of the country. The same were to be delivered to a consignee in another part of the country. Nothing pertaining to the transaction had taken place in jurisdiction of the place where head office of Railway was situated. The Western Railway has its headquarters at Churchgate, Bombay. The goods are booked in some distant corner to be delivered somewhere. Should we allow a suit to be filed in Bombay? It means it is not a natural forum. They may have a small claim from any part of the country. It will defeat the ends of justice. The fact was that the suit was instituted by the plaintiff against the Northeast Frontier Railway....

CHAIRMAN: I have to tell you that we have got limited time.

WITNESS: You tell me whatever time you fix, I will keep within that. I do not know what time is fixed for

us.

CHAIRMAN: One hour. Let us take up those provisions which are sought to be amended.

WITNESS: Whatever way you think....

SHRI R. D. BHANDARE: We can ask the witness to mention the case law with reference to his suggestions without going into illustrations or into the facts of the case but simply reference. Then you can elaborate some of the amendments. We can ask questions.

WITNESS: I come to suggestion (4). The provisions for jurisdiction of courts must be uniform. Today the jurisdiction of the civil court is governed by the Civil Procedure Code, whereas the jurisdiction of the chartered High Courts is governed by Letters Patent. Therefore, if a suit is to be filed in a civil court, even if a part of the cause of action has arisen within the territory of the court concerned, such court shall have jurisdiction to entertain the suit. If however a suit is to be filed in the High Court, a material part of the cause must have arisen.

Similarly about suit for land there are different provisions. There must be uniform provision for jurisdiction in respect of chartered High Courts while entertaining suits and other courts.

Coming to clause 5, it comes directly within the purview of the bill and it seeks to insert a new section 21A. According to me it is of a narrower implication because place of suing is only the territorial part of the jurisdiction. According to me section 21A will be better worded as I have put it. In AIR 1954 SC, page 340, it was held even after the decree is passed, the point of jurisdiction can be raised in the executing court. Therefore, a party can fight out right up to the Supreme Court and still contend in execution proceeding that the decree is without jurisdiction and a nullity. The object of proposed section 21A is the same, namely, the point of jurisdiction

should be raised in the original proceeding and not in execution or by a separate suit. I have suggested the amendment as follows:—

21A. *Sub-clause (i)*-No party shall be entitled to challenge the decree or order passed by any court in execution proceedings or by a separate suit or in any other suit or proceeding merely on the ground of want of jurisdiction or on any ground based on an objection as to the place of suing or contend that such decree or order is null and void on such ground and a party shall be entitled to make such a challenge only in an appeal or revision from original decree or order subject to such limitations as are provided on such right by other provisions of the Code.

*Sub-clause (2)*-Any party desiring to challenge the jurisdiction of any court to entertain any suit or proceeding must raise the contention to the said effect in the court where such suit or proceeding is instituted and in the absence of any such contentions being raised, all parties to the suit or proceeding shall be bound by the decree or order which may be passed by a court in such suit or proceeding unless the same is set aside in an appeal or revision therefrom.

*Sub-clause (3)*-The court entering an appeal or revision against any decree or order from such suit of proceeding shall not ordinarily allow a party to dispute the jurisdiction of the trial court to entertain a suit or proceeding unless such a contention was taken by such a party in the court of the first instance before the issues were settled."

Today under the provision as it stands, the jurisdiction of the court can be challenged even after the decree is passed. After the whole matter is fought out right up to the Supreme Court, a party may still contend in execution that the decree is a nullity, or file a separate suit for such purpose and not raise the point of jurisdiction in the trial court. With a view to preventing such pleas being taken, once

the decree is passed by the highest court, the point of jurisdiction should be allowed to be taken up only upto the stage of setting of views in a trial court. Once final orders are passed, there should be no question of such contention being raised in a separate suit or in execution. If an ex parte decree is passed and the same is not set aside, under Order IX Rule 13, such a decree becomes final. The law provides for 30 days limitation from the date of knowledge of the decree for making of application to set aside the decree the defendant was duly served with writ of summons and 30 days from the date of knowledge of decree. The court has power to condone the delay. If the court is satisfied that he is playing with the court, the appellate court dismisses the appeal. In execution proceedings a defeated party should not be allowed to contend that the decree is passed without jurisdiction. Once a suit is pending before a court all defence pleas must be raised before the first court and no separate suit for setting aside the decree on ground of want of jurisdiction should be permitted if there is an ex parte decree he has got remedy because the court has power to condone the delay for sufficient cause.

Coming to section 34(1), it is not being amended. The suggestion is on basis of practical experience. The courts are allowing 4 per cent. or 6 per cent. interest. If the maximum rate of interest of 12 per cent. is provided, 50 per cent. of the frivolous litigation will go away. Bogus defences are being filed many times because of such low rate of interest being awarded by the court while passing more decrees. Therefore amendment should be made in Section 34 of the code according to the changed economic conditions of today on the lines suggested.

About amendment to section 35, my submission is that even the words "excluding an appeal" should be deleted from the said provision because if the original suit is frivolous, an appeal can also be frivolous. If a person files

a proceeding which is false and vexatious to his knowledge, the court must be able to award the compensatory cost to an inherent party. If a party files a false appeal why should the court be helpless to award compensatory cost? In my respectful submission, there is no logic in the distinction sought to be made and in excluding appeals from purview of Section 35A of the code.

My eighth suggestion is with regard to section 47. Its sub-clause (i) should be amended by adding the words:—

“including the question as to whether decree sought to be executed is null and void or not liable to be executed on any ground whatsoever” after the words “relating to the execution, discharge or satisfaction of the decree.”

The question is whether such a dispute can be gone into for execution or not. The Andhra Pradesh High Court took the view that it cannot go for execution. The Bombay High Court in the 30 Bombay Law Reporter took the view that it can be gone into in execution. Therefore, I submit that even the question as to whether the decree is null and void or not liable to be executed should be decided in execution and not by a separate suit. Once a decree is passed, a party should not be again allowed to file another suit challenging such decree.

WITNESS: It is Bombay High Court Law Report 60.

Then the second suggestion in section 47 is also important. I have suggested that a new sub-clause after 47(3) be added as under—

“Wherever it appears to the executing court that an objection as to the execution of the decree is not taken *bonafide* and *prima facie* not sustainable, the executing court may allow execution of the decree pending determination of such objection on such terms and conditions as to the restitution or

otherwise as the executing court deems fit.”

That again is intended to suggest that a power should be conferred on the executing court to allow execution pending determination of a petition in such types of cases where the court feels that the objection to the execution of the decree is taken frivolously. The cases which have come in our experience in courts are like this. A decree is passed for Rs. 10,000 or for possession of a house. In execution a notice is issued because a decree is more than one year old. The judgement debtor contends “It was orally agreed between the decree holder and a judgement debtor prior to passing of the decree that the decree holder will not execute the said decree. If a predecree agreement is put forward by a judgement debtor as a bar to executing the decree, the existence or otherwise of such alleged predecree agreement has to be examined by the executing court. And it goes on for years. That is why the Law Commission has also commented that as far as predecree agreements are concerned, they should not be recognised by the executing court. The executing court should not go beyond the decree.

My third suggestion to clause (c) is on page 5—

“No executing court shall recognise any pre-decree agreement between the parties, if any, whereby the execution of the decree is sought to be prevented or otherwise affected unless such agreement is in writing and is made a part of the decree sought to be executed.”

If there is a pre-decree agreement, why not incorporate it in the decree itself? Why should the court try to investigate into the questions of alleged oral agreement so as to bar the executing decree.

SHRI R. D. BHANDARE: So you would like to modify it saying that even though they have entered into

an agreement, that should not be taken into consideration.

WITNESS: Yes, Because, if there is really an agreement it should be incorporated in the decree. But if the agreement is contrary to the decree and if it is just oral and not embodied in the decree and a party contends that the decree should not be executed on ground of alleged agreement, to allow such oral agreements to be put forward in execution proceedings promotes dishonesty, be prolonged proceedings in execution and waste of time.

Now, as far as section 60 is concerned, it has been held by the Supreme Court that privy purse is not attachable (AIR 1965 Supreme Court—1798). I am not going into the controversial question as to whether the privy purse should be abolished or not, and we are not concerned with it.

SHRI R. D. BHANDARE: You can make your suggestion at the time when we deal with section 87.

CHAIRMAN: Yes, that is what I would say.

WITNESS: Section 60 deals with the question of what property should be exempt from attachment. If a suit is filed with the consent of the Central Government there is no question of a privilege. A decree is passed. But suppose a former ruler of a State has got merely the privy purse as his property and some employee has a claim against former ruler for compensation of wages to be recovered, in that case the judgment of the Supreme Court is that under section 60 of the code privy purse is not attachable as it is a kind of political pension, and therefore, that would be exempted from attachment. In my view, the decrees should be allowed to be executed against the privy purse and the privy purse should not be exempted from attachment in execution of a valid decree. Merely because he is a former ruler

why should the people not be able to realise their money?

SHRI R. D. BHANDARE: You are quite reasonable on that point.

WITNESS: Then my next suggestion is from the drafting point of view—

“Stipends and gratuities allowed to pensioners of the Government or of the local authorities or any other employer whosoever, whether private or public.”

Here the word “other” is likely to be interpreted that it means any other similar employer like the Government or the local authorities. Therefore, from that point of view to make it specific, we should add “whether private or public”.

In 1908 agriculture was being conducted in a different way and at that time the plot of that agriculturist or his house or building was exempted from attachment. That we can understand. But today agriculture is being done on a large-scale and in a different way. Even a sugar-cane grower may say that I am an agriculturist and my house should be exempt from attachment.....

SHRI R. D. BHANDARE: For political reasons we may not touch that part now. As Members of Parliament we may not like to enter that now.

SHRI V. T. NAGPURE: Why do you mention only the figure of Rs. 5000?

WITNESS: Some reasonable value should be fixed. It may be even Rs. 10,000. The house of an agriculturist should not be exempted from attachment irrespective of its value. I have suggested Rs. 5000 as the limit. Now, Sir, the next section is 60(i) which provides as follows:

“salary to the extent of the first two hundred rupees and one-half the remainder in execution of any decree other than a decree for maintenance.”

This is on page 95 of the Bill. Now the suggestion is that this exception must be enlarged as follows :

"....other than a decree or order for maintenance including an order for alimony pendente lite and a decree or order for payment of wages of labourers and domestic servants."

If this is not done, the whole object will be defeated. The draft amendment suggested by me also includes case of labourers and domestic servants also.

Then, Sir, there is another suggestion as far as section 60(i) is concerned. As far as salary is concerned, once it has been under attachment for a total period of 24 months, thereafter it will never be capable of being attached. There must be some amount fixed for it. A person with a salary of Rs. 10,000 may be able to get a loan of a lakh of rupees and this provision is being misused. Therefore this exemption should be in favour of only those people who draw smaller salaries; that can be justified because they have dependants and others. But in the case of those persons drawing huge salaries, there should not be such an exemption.

SHRI R. D. BHANDARE: You will have no objection if the amount is raised to Rs. 1000.

WITNESS: Yes, make it Rs. 1000. Some limit must be there. If we keep it unlimited, then it might lead to injustice.

Then I have suggested the addition of sub-clause (k) as under :

"one half of the amounts payable under life insurance policies."

That is at page 6 of the Memorandum.

After that I have given the definition of the word 'agriculturist' on the same page. But since I have already been cautioned not to develop this point, I am leaving it at that.

SHRI R. D. BHANDARE: Even the tenancy laws are not able to define the word 'agriculturist'.

WITNESS: This is only for your kind consideration.

Then, Sir, in (d) on page 6 I have suggested for exemption from attachment books, magazines and other literary works except as stock-in-trade of the judgment-debtor; instruments of any professional person in so far as the same are necessary for pursuing the professional activity. Since the tools of artisans are exempted, why can't these things also be exempted from attachment? There may be some scientific instruments and other equipments. This exemption therefore in my respectful submission is quite reasonable.

Then, Sir, I am referring to section 64 and my suggestion is at item (10). This section 64 is not within the purview of the Bill. So I skip it over. But the Law Ministry should kindly examine it. According to me there is a conflict of decisions (*Interruption*).

Then the next suggestion is about section 75. I will give only one reference. It is 1961, 1 Supreme Court Report 884, Suggestion No. 11. The Supreme Court has held that even if somebody is likely to destroy the books, the court has no power to appoint a commission to seize the books and prevent such destruction. Now my submission is that there must be some power vested in the court to seize those books.

Now, Sir, I come to my suggestion No. 12 on page 7.

SHRI P. C. MITRA: You are deleting section 80 of the Civil Procedure Code.

WITNESS: I am of the opinion that section 80 should be deleted retrospectively. (*Interruption*) I may kindly be given some patient hearing. I would like to say that the pending suits and appeals should not be defeated merely on the ground of defective notice or notice not being served, but the claim must be decided on merits. I am suggesting this

because what has happened is that in one case—S. N. Dutt & Co.—the notice is given on behalf of the company but the law requires that the suit must be filed in the name of the sole proprietor and the Supreme Court held that the notice should have been given on behalf of S. N. Dutt & Co., and dismissed the claim. There are many cases where good claims are defeated merely on technical ground like defective notice.

SHRI P. C. MITRA: Section 80 covers only Government officials.

WITNESS: The suit was filed against the Government by that company, but the claim was regrettably dismissed because the notice was defective. Now suppose a party has advanced a sum of Rs. 10 lakhs by way of loan or he has supplied goods worth Rs. 10 lakhs to the Government, now the claim may be good but if the notice is given in a particular, the suit would fail. I submit that on that ground the claim should not be defeated. This has been the opinion of the Law Commission and this has been the opinion of practically all lawyers. I have been an Assistant Government Pleader in the civil court and as far as possible I have persuaded that this point should not be taken. But sometimes we have been helpless and under instructions we have to take it.

SHRI R. D. BHANDARE: Your word "retrospective" applies only to pending cases, see page 8 of your comments.

WITNESS: I have said "all pending suits". Therefore it may be put in this language "all pending cases also". The genuine claim should not be defeated on procedural and technical pleas.

SHRI R. D. BHANDARE: Not "also" but "only".

WITNESS: But section 80 is deleted for pending cases also. Therefore, viewed that way, whatever language you suggest, there is no difficulty about it. In S. N. Dutt case there was gross injustice on account of section

80 being applied. The reference is in 1962 I SCR page 560. There notice was given but it was held to be defective.

SHRI R. D. BHANDARE: He is dealing with pending cases under section 80. That is the point and he is explaining it only.

SHRI J. M. IMAM: What was the defect in the notice?

WITNESS: Where a person is the sole proprietor the suit has to be filed in the name of the sole proprietor. But the notice was given, "under instructions from my client, in the name of S. N. Dutta and Co., which is a sole proprietary concern," whereas in the plaint S. N. Dutta as the sole proprietor was the plaintiff. The Hon'ble Supreme Court held that the notice also should have said "under instructions from my client S. N. Dutt and not "under instructions from S.N. Dutta & Company, the sole proprietary concern". Now on that ground the claim was dismissed. It has been considered as one of the judgments where the law has defeated the real justice of the case, and now that there is this situation to consider this law reform, it is my humble duty to bring it to your kind notice.

Now, Sir, 87B; I have already touched on it. Now these privileges must go.

Then our items Nos. 14 and 15 we are skipping over.

SHR R. D. BHANDARE: As regards your suggestion No.(13). unless the Constitution is amended it cannot happen. Anyway that will be our lookout.

WITNESS: I have suggested that, why this consent and all that? As a matter of fact, even where some workers wanted an industrial dispute to be referred to, the point was raised that without the consent of the Central Government it cannot be done. But it takes time. Now former rules are entering into business partnerships, everyday, I have made my submissions clear. I need not develop them.

You know much better about it.

Regarding section 100 I have made the suggestion that a further category be added to section 100 as item (d):

“(d) The finding of the lower appellate court on any question of fact material to the right decision of the case on the merits being in conflict with the finding of the court of the first instance on such question”.

Today, even on a material question of facts of a case, if an appellate court has reversed a finding a second appeal does not lie. To that extent, if the two courts themselves have differed on a very material question of fact then, in that case, the High Court should be able to go into that question.

Then as far as section 115 is concerned, the view taken is that even if there is a gross error of fact or of law there can be no revision and there can be no interference unless there has been an error of jurisdiction. That is the substance of the sub-section. Now in Bombay we had in 1827 the Bombay Regulation Act, wherein it was provided that if the High Court finds that a decision is manifestly unjust or contrary to law, then the High Court shall have the power to interfere. Now that Regulation was repealed. But according to some of the judgments that jurisdiction has continued. Some others take the view that now that the Regulation is gone and obsolete.

SHRI R. D. BHANDARE: I quite agree so far as the historical aspect is concerned, but you kindly see the words suggested by you, namely, “that the decision is manifestly unjust”; you say, “to have acted contrary to law or it appears that the decision is manifestly unjust.”

WITNESS: You are aware of the cases during the course of your practice and elsewhere also. Take for example the Special Leave matters

like petitions under Article 136 of Constitution—The Supreme Court itself has held that if they find that the judgement is shocking, then in that case, even if there is an error of fact, the hands of justice will be strong enough to correct the injustice. What I feel is...

SHRI P. C. MITRA: On the grounds of error of law.

WITNESS: Error of law and also when the court finds that it is manifestly unjust.

SHRI P. C. MITRA: Every court may interpret it in . . .

WITNESS: But this power is being conferred only on the High Court; this revisional power is not being conferred on any other court. The point which I would like to put to you with your kind permission is: Would you like your High Courts to say, “Of course injustice has been done, but I am helpless”? This is the position today that, in a large number of cases, where a revision application is brought to the High Court, and where there has been great injustice, the High Court is some times placed in this position where it observes, “I want to help you but my hands are tied.” So the revisional jurisdiction should be wider and the revision application should be maintainable even on ground of error of law or error of facts or great injustice. Would you like your High Courts to be so helpless that, even where there is great injustice, the High Court will not have the revisional jurisdiction to interfere in such cases? Why not?

SHRI P. C. MITRA: Regarding jurisdiction, it has been provided for,

CHAIRMAN: Clause (b) of the amendment is on page 8 and that will cover such cases.

WITNESS: That will only cover the cases of interlocutory orders. “Provided that the High Court shall not.... deciding an issue” \* \* \* \* (Interruptions)



You have suggested a point and I want to give an answer. Now firstly this is a proviso to the main section 115. Now, unless there has been an error of jurisdiction, the revisional jurisdiction cannot be invoked. Kindly bear with me for a minute. Even if there has been an error of jurisdiction there cannot be a reversal of the decision unless the other conditions are satisfied. Now, if there has been no error of jurisdiction but there has been great injustice, does the proviso to section 115 meet the ends of justice? I think that the proposed proviso to Sec 115 of Code would not serve the purpose I think that I have made myself clear on the point.

SHRI R. D. BHANDARE: We are quite clear. The only difficulty is you are widening it too much, widening it to cover error of law and injustice also.

WITNESS: Under section 115 it will not be the party's right; it is the judge's right. "The High Court may" \* \* \* What I am submitting is that let the High Court not feel, in cases of injustice, that they are helpless. And we are giving the power to the High Court. In the situation in which we are passing in all these years....

SHRI R. D. BHANDARE: I quite appreciate your point. Yesterday we discussed this point in connection with the question of jurisdiction. Then some of our friends suggested "error of law" I do not know whether the Committee will agree to that. Now you are suggesting that "the decision is manifestly unjust". Double safety is being sought to be added.

WITNESS: It is with a view to preventing injustice.

CHAIRMAN: Sub-clause (b) covers such cases which are not covered by section 115.

WITNESS: I want to be listened to. It says, the High Court may.... (a), (b) and (c). That is the first part. The High Court may make such order in the case as it thinks fit. Then, it says:-

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

Now, therefore, if the case is not covered by (a), (b) and (c), the question of proviso being applied does not arise. I am submitting a reverse situation where the case is not covered by (a), (b) and (c). The proposed proviso wishes a further restriction on revisional jurisdiction and does not widen it. Even if there is an error of jurisdiction the court cannot interfere except where it is covered by (a) and (b). Error of jurisdiction is a condition precedent to the exercise of jurisdiction. This is by way of further restriction.

CHAIRMAN: It gives power to the High Court.

WITNESS: The proviso cannot widen the main section. Sub-clauses (a) and (b) are a part of the proviso to the main section. The main section seeks to restrict the jurisdiction of the High Court only to error of jurisdiction and not error in the exercise of jurisdiction. Suppose the trial court has done some great injustice, the High Court will not be able to give any relief under section 115, unless the additional amendment is made.

SHRI J. M. IMAM: Even if there is no error of jurisdiction, if there is any other defect, even then the High Court is empowered to reverse the order.

WITNESS: What I have suggested is if it appears to have acted contrary to law or it appears that the decision is manifestly unjust, the High Court should be able to set it right. It should not take the stand that although there is a manifestly unjust decision, it is not able to help in the matter. The discretion of the Judge must be widened.

SHRI P. C. MITRA: If proviso (b) is added as sub-clause (d) in section 115 (1), would that serve the purpose?

WITNESS: It will serve the purpose as far as a manifestly unjust decision is concerned, but as far as error in law is concerned, it will not help us.

SHRI P. C. MITRA: Instead of becoming a second proviso, it will become an independent sub-clause.

WITNESS: It will serve the purpose as far as 'manifestly unjust' is concerned, but error of law is a separate point and it will not be covered by this. I have suggested both. There are two aspects. The High Court should not be able to say that it is an error of law and the whole section has been wrongly construed, but it is helped to reverse erroneous conclusion on point of law in a revision application. If there is an error, it affects us throughout the State. It means that a wrong interpretation of law is allowed to prevail throughout the State at least for sometime.

CHAIRMAN: May I just interrupt? We have got the next witness waiting for three-quarters of an hour now. Would it not be better if we call him now here?

WITNESS: It is entirely in your discretion, but I would prefer continuity. Furthermore, I have fixed some cases in the Court in the afternoon.

SHRI R. D. BHANDARE: May I suggest a via media? Let the other witness wait. After all he is not going back to Chanda today. We shall continue with the present witness.

WITNESS: The other portions of my memorandum may be deemed to be read.

CHAIRMAN: Members would like to put questions to you.

WITNESS: I do not mind whatever you say. I am putting it in all humility and with politeness. I should not be misunderstood.

CHAIRMAN: You might continue for the present.

WITNESS: Then I have suggested an amendment for section 148. It is self-explanatory. The courts have realised the difficulty, and the section requires to be amended. Suppose the amount is to be deposited on a particular day. Somebody comes with the money and he is robbed. Next day he wants to deposit it. Should the court say that it is helpless? It is causing considerable hardship.

Then I have made suggestions 18, 19 and 20. Twenty is a formal thing. I have suggested the following addition: "and the court, after recording reasons, certifies that the compromise is for the benefit of all persons sought to be represented in the suit but who are not present before the Court". In the case of a representative suit, somebody files a suit for a declaration that a particular temple is a public temple. It should not be allowed to be compromised unless the court certifies that the compromise is for the benefit of the persons who are sought to be represented.

The next suggestion, 21, is for addition of a new sub-rule to rule 10, Order I. Suits have been filed in the courts against the Electric Supply Company restraining them from giving electric to the owner of a factory without making the factory owner a party. Suppose the landlord of the land has filed a suit against the company saying, do not lay down cables, do not give electricity to the factory owners, the court must have discretion to hear the parties affected, if they are going to be affected by the decision, even if they are not parties to the suit. That is the suggestion.

The next suggestion is for amendment in Order III, Rule 3. In what categories the vakalatnama must be treated as continuing? I have added two more categories. One is "proceedings relating to execution of any decree or order in a suit till the same is fully satisfied". In some of our court rules this provision is already

there. For execution, why a separate vakalatnama? The same vakalatnama should be treated as continuing. It exists in our Court rules. In the Civil Procedure Code it is not there. We are trying to have some sort of uniformity of the good provisions. In our Bombay City Civil Court the rules provide that the appearance shall be deemed to continue even for the purpose of execution. My submission is, why not put it in the Code? The other category is: "for making applications for setting aside ex-parte decree or ex-parte order of dismissal of a suit or an application for default of appearance or proceedings connected therewith". These are the two categories.

The next suggestion is No. 23. This is about service of summons. The following words are sought to be added: "the defendant is absent from his residence at the time when the service is sought to be effected on him and there is no likelihood of his being found at his residence within a reasonable time". It is page 15 of the Bill. Order V, Rule 15, provides for vicarious service of summons. It can be served a defendant at place of residence, the writ of Summons is not on some other member of the family. The submission is the words "is absent from his residence at the time when service is sought to be effected and there is no likelihood of his being found within a reasonable time" will create complications. As far as possible there should be personal service. The said section be modified as under: "Unless it is possible for the plaintiff to obtain the address of the defendant where he may be at the time when the service is sought to be effected or details about his whereabouts so as to enable the plaintiff to serve the writ of summons on the defendant personally".

Then suggestion 24 is about rule 19A, i.e. simultaneous service. It merely provides for summons to be served at the registered postal address or at the place where the defendant ordinarily resides or carries on his

business or personally works. According to me we can say "or where the defendant is last known to have resided" etc.; it is a matter of phraseology. You may kindly examine whether the phraseology suggested is correct.

The next is suggestion 25. "The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading" on grounds (a), (b) and (c). This has been taken from the Annual Practice. The suggestion is that after category (a), (aa) may be added by saying: "It discloses no cause of action or the defence, as the case may be". This has been taken from the Annual Practice according to the rules of the Supreme Court in England. The submission is that it is a salutary provision and therefore it may be added.

The next suggestion 26 is based on English practice. It is very necessary. Suppose an application is made that particular allegations are scandalous and therefore they may be deleted. On such an application oral evidence should not be allowed to be taken. This is incorporated in Annual Practice. It appears to be a useful provision, namely, "No oral evidence shall be admissible on an application under Order VI, rule 16(a)". Rule 16(a) reads "which may be unnecessary, scandalous, frivolous or vexatious". In the suit suppose somebody has made an allegation that so and so is a goonda, and it is a scandalous word. For these things we do not want that oral evidence should be allowed. On the basis of the Annual Practice in England this suggestion may be considered. Our second suggestion says:—

At the end of Order VIII it may be added as under:

"The defendant shall also file a list of draft issues on the pleadings in the suit along with his written statement."

Coming to my 28th suggestion, the point of jurisdiction should be decided as a preliminary issue immediately on the filing of the written statement where the said issue is a pure issue of law or is a mixed question of fact and law, and the question of jurisdiction shall be decided by the court within a period of three months from the date of the filing of the written statement or within such shortest time as possible. If there is dispute as to jurisdiction the suit should not be put in cold storage to await its turn for trial on all issues after several years.

Then, whenever any question of law arises in a suit or proceeding which can be determined without recording any evidence, the said question should be decided by the court expeditiously, even though the hearing of the suit on other questions is adjourned to a later date.

29th suggestion relates to the addition of Order XXA. I am speaking from point of view of the litigant and as to what is in public interest and not from personal angle of a lawyer. Filing certificate of fees received by a pleader in a court of Law does not serve any useful purpose, and the proposed Order XXA of the code should be deleted. I have discussed this question with other lawyers and they also feel that it does not serve any useful purpose. The client may be at Sholapur and the lawyer may be at Bombay. Such a provision may be all right for the Supreme Court. If we are going to have such a provision to be applied to each type of case, it will lead to unnecessary work and harassment unless the costs are to be awarded by the court on the basis of the amount actually spent. In my submission, such provision will increase the work of lawyers and courts without any utility.

CHAIRMAN: It is a very salutary rule.

WITNESS: The question is whether it is not going to add to the work

without any utility to the administration of justice as far as the drawing of the decree is concerned. It is not correct to say that. Merely because the certificates are not required to be filed, tax is evaded. . .

CHAIRMAN: It is a natural corollary.

WITNESS: The question is we are considering it from the point of view of congestion in the courts. I can understand if you are going to allow the cost in the decree on basis of fees actually received by a pleader. Suppose I have charged Rs. 500 as fee, are you going to consider it?

CHAIRMAN: The Allahabad High Court is carrying on this for a number of years and there is no difficulty whatsoever. Similarly whatever amount is shown by the lawyer that amount will be taken as part of the cost.

WITNESS: My submission is when there is congestion in the courts, unless there is utility, we will be adding to the filing work.

CHAIRMAN: After arguing the case you give the certificate to the reader.

WITNESS: You might be aware in the Supreme Court in some of the cases where lawyers from other States appear certificate could not be filed in time and the party is deprived of the cost. I am pleading on behalf of the litigant public. The question is whether it is going to serve any useful purpose for the purpose of administration of justice. If you say it is for the purpose of tax revenue, in that case let there be a provision in

the Income Tax Act. Here if for some reason, the certificate is not filed within time, the party will be deprived, of his cost. Therefore, the submission is that such a provision will add to the work without any corresponding utility to the administration of justice.

SHRI P. C. MITRA: After the case is decided it will benefit the lawyers and, therefore, the lawyers will not give the receipt.

SHRI R. D. BHANDARE: The Law Officer should be able to mention the rationale behind it. Suppose an advocate comes from another States. Unless he files it immediately the question of cost cannot come.

CHAIRMAN: In the Allahabad High Court whether a lawyer comes from Bombay or Madras, he certifies how much money he has received.

WITNESS: I am very sorry to say that in our courts there is so much shortage of staff that even records of proceedings many in cases are not available. His Lordship Justice Patel observed in one case that it is regrettable that the Government is not increasing the staff. Therefore, the courts today are so much congested. Formerly whereas the number of cases in the city court was 3,000 per year, now it is 10,000. Therefore, it will be unnecessarily adding to the work

SHRI R. D. BHANDARE: He has made a positive suggestion here.

WITNESS: I have suggested the addition of the following clause:—

“While determining the costs awarded, the Court shall have discretion to increase the amount of costs prescribed by the scale with a view to reimburse the party in whose favour the order for costs is passed in the light of the costs actually incurred by such party.”

Declaratory suits, for example, some times go on for a month.

CHAIRMAN: Then why give discretion to the court? In some cases it may allow, while in some others it may not allow. If any change is necessary it may be made in the rules.

WITNESS: In case of money suits the scale gets revised but it is not so in the case of declaratory suits. Where a suit goes on for two months in the court, each party may have to spend a sum of Rs. 10,000 towards cost of the suit. Then the suit is dismissed with cost. Costs are for the purpose of reimbursing to a successful party by the defeated party. The case genuinely goes on for two months. Suppose here are 500 documents in the case. Unless the court is given judicial jurisdiction it is difficult for us to mathematically formulate what costs should be awarded in declaratory suits. We may say “taking into consideration the reasonable length of the arguments or the evidence led”. The discretion may be fettered. It cannot be unfettered. Even if there is unfettered discretion it really means that it has to be reasonable. But how are we going to estimate the reasonable amount of costs in declaration suits? Suppose there is an acquisition order being challenged in the Bombay High Court. There has been a case like that recently. A plot was acquired for giving it to the working women’s hostel. That went on for a period of six weeks. The Advocate-General of Bombay appeared. The suit was dismissed with Rs. 125/-. But actually Rs. 125/- is not a reasonable reimbursement. The case has gone on for six weeks in the court and each party has spent quite a good amount. But the innocent party should not be told that you have succeeded, you have reasonably spent large amount of costs, but the court will award a sum of Rs. 125/- only towards costs.

Then about XXI(41) I have made a suggestion that if the affidavit is not filed by the judgment-debtor, the court may compel him to make an affidavit of his assets.

Then sub-rule (2) on page 31 of the Bill—

“(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation any officer thereof, to make an affidavit stating particulars of the assets of the judgment-debtor.”

is a very good provision. It is very salutary. The only thing is if the affidavit is not filed or if the affidavit is defective, then, it must be provided that the court may compel the attendance of the person in such manner as the court deems fit.

Then you are making a substantial amendment to rule 58, Order XXI. We are suggesting that a special clause 2A be added as mentioned in our note on page 13, item (31)—

“All questions relating to title to the attached property between the parties to a suit or between a third party and the decree-holder shall be determined by the executing court and not by way of a separate suit;

Provided, however, that where the total value of the attached property in question exceeds the pecuniary jurisdiction of the executing court any of the parties concerned shall have an option to file a suit for declaration of title in a court of competent jurisdiction, provided such option is exercised within one month from the date of knowledge of such attachment. Such option shall be exercised by making a written application to the executing court within the above referred to period. The Executing Court may direct a party applying for exercise of such option to furnish security or execute a bond or deposit such amount as the executing court deems fit towards preservation of

the subject-matter of the execution and also direct such party to give security towards the costs of other party in the proposed suit which may be filed. The period of one month mentioned hereinabove may be extended for sufficient cause by the executing court. The executing court may pass such interim orders as it deems fit for custody, preservation and sale of the attached property as it deems fit. The executing court shall decide any application for raising of attachment expeditiously and within a period not later than four months from the date of application for raising the attachment as far as possible.”

The suggestion is that in cases where the value of the attached property exceeds the jurisdiction even of the executing court, to make the decision of the executing court in a summary matter or matters of title absolutely final and conclusive for all purposes may mean some hardship. That is why we have suggested this amendment.

Then we come to Order XXIII, rule 1. Here according to my limited legal experience this provision for the liberty of withdrawal of a suit to file a fresh suit is also sometimes being deliberately misused. A man files a suit with some sort of a defect. After the lapse of some time he says, I want to withdraw it and file a fresh suit; and this process goes on like that. Generally it happens when a person is to be deported; it happens in the case of citizenship matters. First they file a suit and after waiting for some months or some years they will say they want to withdraw it and file a fresh suit. And in this process if they do, they will have been able to stay here for some years. That is why we have suggested that—“No such liberty shall be granted if the court comes to the conclusion that granting of such liberty would cause serious prejudice or harassment to the other side.”

What actually happens in Bombay may be illustrated. A suit is filed for citizenship. A notice of motion is taken out for an interim injunction that the plaintiff should not be deported out of India. That man is heard at length. Thereafter the motion is dismissed. Then the man goes in appeal against the motion. Ultimately here comes the liberty. He says the defendant is not served with a writ of summons. In this manner three or four years will lapse on the ground of a formal defect. So, the liberty of withdrawal should not be allowed beyond a particular date.

SHRI R. D. BHANDARE : You have made your points sufficiently clear.

WITNESS : Then, we have made some very important suggestions to Order 37. You may consider them. Next we come to Order 20, rule (2). There is a peculiar position here. If there is a decree for money the court should have the power to grant instalments after the date of the decree without the consent of the judgment-debtor. If on the date when the decree is passed, either because of floods or some such natural calamity the man suffers and wants to be allowed to pay in instalments, if the court has to take the consent of the decree-holder, the decree-holder may or may not give his consent. So, the court for a sufficient cause should be able to grant the instalments. That is why we have suggested this amendment—delete the words “with the consent of the decree-holder” and substitute the words “for a sufficient cause”. Then, Sir, Order XXXIX is within the purview of the Bill. My suggestion is contained in item No. 37 on page 18. I will give you the corresponding reference. According to me it is a very salutary provision. Order L Rule 1 of the Annual Practice Rules of the Supreme Court in England is identical to sub-clause (1), which I am respectfully suggesting namely, that in appropriate cases the court must have power to ask the party to

deposit the disputed amount in the court, where the liability is established. In trespass and leave and licence matters there is no provision.

The next suggestion is about the receiver, Order XL of the Code. It is not within the ambit of the subject-matter. But suggestion 38 we will take up later.

I would like to take up suggestion No. 40 which deals with clause 53 of the Bill. Now, Sir, clause 53 of the Bill provides that the court must have power to punish for disobedience of injunction. It is at page 48 of the Bill. In this Order I have suggested that the words ‘or under section 151 of the Code of Civil Procedure’ be added in the second line after the words ‘order made under rule 1 or rule 2’. The suggestion is self-explanatory.

Then, Sir, as far as Order XL is concerned, it is not within the purview of the Bill. But I will mention it in passing. This suggestion is taken from Order L Rule 15A of the Rules of the Supreme Court of England. This is about the receiver. In my opinion this provision is salutary and it may be considered. It is on page 18, suggestion No. 38.

Then, Sir, you are suggesting one amendment in Order XXXII, rule 2; on page 19 my suggestion is No. 39; it is with regard to the demand of security from the next friend of the minor. In this connection I draw your attention to clause 49 of the amending Bill which is given at pages 44 and 45 of the Bill. The next friend may be a person uninterested in the litigation; he is trying to protect the property of the minor. There may be frivolous litigation or *bona fide* litigation. Therefore I am suggesting that a proviso should be added as contained in my suggestion No. 39 on page 19, which says :

“Provided that the court is satisfied *prima facie*..... against the next friend.”

There must be some restriction. Therefore the court must come to a judicial conclusion that the claim on behalf of the minor does not appear to be *bona fide*. That is the suggestion made as far as this particular provision is concerned.

Then, Sir, I come to my suggestion No. 41 regarding Order XLI, rule 1, which is sought to be amended by clause 54 of the Bill. This is about certified copies being required to accompany the appeal. Now in our High Court in Bombay we have got a rule that the court may entertain an appeal on the certified copies of the decrees. But what actually happens is that sometimes the judgment is delivered at Sholapur and the man has to come immediately from that distance. I have suggested that another proviso be added at the end of Order XLI, rule 1 to the following effect :

“Provided that the Court may, in exercise of its discretion, entertain the appeal without a certified copy of judgment or decree at the stage of filing of the same subject to the same being produced at the stage of final hearing of appeal or subject to ordinary copy thereof being produced on the same being dispensed with on such terms and conditions as the Appellate Court deems fit.”

Under the Bill you have made a provision that if there are common judgments, then you may allow one judgment to be filed, but that is only one aspect of the matter. This is another difficulty which I am putting forth.

SHRI R. D. BHANDARE: You would like that certified copies should be dispensed with?

WITNESS: It should be left to the discretion of the court. Suppose it is not ready, an undertaking may be taken to file it as soon as it is ready. In the trial court it may not be ready.

CHAIRMAN: The Court will be in a difficult position whether to admit or not to admit the appeal in the absence of the certified copies.

WITNESS: I will answer that question. Suppose a copy of the judgment is available but the decree drawn up is not available—it normally takes more time. That is one way of looking at it. There is the other way of looking at it. Suppose a certified copy is not available but an ordinary copy is available, it may be admitted for the time being.

CHAIRMAN: Uncertified copy?

WITNESS: At least so far as the decree is concerned, there is another way of looking at it. The court may entertain the appeal, may not finally decide without copies being filed. The mere justice of the case requires that time be allowed to file it later on. This is the type of difficulty I am pointing out.

CHAIRMAN: These things can be done by the Rules of the High Court; the Rules of the High Court can provide for these contingencies.

WITNESS: I quite see the point. I thought that when we are making provision for dispensing with the filing of more than one copy of the judgment in common judgments, *vide* Order XLI, rule 1, the other difficulty may also be put before you.

Then, Sir, comes our suggestion No. 42 regarding Order XLI, sub-rule (3)—clause 54 of the Bill. Now that is where the Law Commission has recommended—you will kindly see the explanatory note on page 87 of the Bill.

“The Law Commission in its 14th Report has recommended that certain restrictions should be imposed such as the requirement of a deposit on the furnishing of security for decretal amount as a condition precedent to the admission of appeals. However, it is proposed to be restricted to appeals against orders made in execution alone. Sub-rule (3) of rule 1 is inserted to achieve the purpose.”

Now that is where our submission comes. If it is to apply in case of



execution matters, should also apply in case of appeal against money decrees, but there should be a proviso that in appropriate cases the appeal court may dispense with such security being furnished, and I have reformulated sub-rule (3) on page 20 of my note. What I am saying is that I am making a distinction there. In appeals against the execution of a money decree the security may be taken or may not be taken. The court in its discretion may exempt an appellant from furnishing such security or may reduce the amount of deposit or security to be furnished on the ground that the appellant has a substantially good chance of succeeding in the appeal or for any other sufficient cause. I am supporting the Law Commission's suggestion. At the same time, suppose a very wrong decree is passed by the trial court which shocks the appellate court, and the man is not in a position to furnish the security then, in appropriate cases, if a case is made out to that effect, the appellate court should have the power to exempt him from furnishing the security. That will meet the requirements of both frivolous appeals and *bona fide* appeals. Otherwise, a man who is not able to furnish the security will never be able to file the appeal. So a proviso may be added on the lines I have indicated in my suggestion No. 42 on page 20 of my note.

SHRI R. D. BHANDARE: You say "good chance".

WITNESS: Whatever it is I am only conveying the idea. As a lawyer I have formulated it in a particular way, and your draftsman may formulate it in another way. Instead of "good chance" it may be "substantial chance". Remove the word "good" and put some other word. I am only conveying here the main idea. It may be "substantial chance of succeeding" etc. I am ready to amend it like that.

Order XLIII of the Code is sought to be amended by clause 55 of the

Bill. Now there I have got some little grievances and I would mention it. Today the position is that if an *ex parte* decree is refused set aside, an appeal lies. If it is set aside, then the appeal does not lie. If the *ex parte* decree is in a summary suit, then there is the provision in Order XXXVII, Rule 4, for setting aside such decree. Now in respect of Orders passed on applications under Order XXXVII, Rule 4, there is no appeal. There is a lot of inconsistency in Order XXXVII, Rule 4 because the provision is that, in a summary suit, if a decree is passed, then in special circumstances it may be set aside. Now, whether it is set aside or refused to be set aside, in either event there is no appeal from an order under Order XXXVII, Rule 4. If the matter is covered by Order IX, Rule 13, then the same principle should hold good in the case of Order XXXVII, Rule 4. If a man is told that "you deposit Rs. 10,000; if you do not deposit, we won't allow you to defend the suit", then there is no appeal. If the order for such deposit is made by the Original Side of the High Court, then the appeal lies, but if it is made by a City Civil Court, then the appeal does not lie. Again, if an injunction is granted, then an appeal lies, and if the injunction is refused, then the appeal does not lie.

SHRI J. M. IMAM: In either case there must be appeal, you say.

WITNESS: If the Receiver is appointed, then the appeal lies, and if no Receiver is appointed, then no appeal lies. Recently one gentleman applied for an injunction praying that he should not be deported out of India because he was an Indian citizen. The injunction was refused and so there is no appeal and the suit has become infructuous. If the injunction would have been granted, the Government would have had the right to appeal. Therefore my submission is that the provision for appeals should be uniform, both in respect of the Original Side of the High Courts, which are governed by

Letters Patent, as well as other courts, and I have suggested providing for these appeals (1) Appeal from order on summons for judgment or on an application for leave to defend or an application under Order XXXVII, Rule 4, of the Code; (2) Appeal from order on an application under Order IX Rule 9, or Order IX, Rule 13, allowing a new trial or setting aside an *ex parte* decree; and (3) Appeal from an order on an application for injunction, or receiver under the provisions of Order XXXIX, Order XL, Rule 2, or under section 151 of the Code granting or rejecting an application for such relief. Suppose an injunction is granted under section 151 and not under Order XXXIX, then it is very much arguable because Order XLIII provides for "Appeals from orders". Suppose the injunction is taken under section 151, it restrains the other man from proceeding with the suit. Such injunction is covered by section 151—according to the Supreme Court—and not by Order XXXIX, and so against such orders there is no appeal. So I would request you to examine it in the light of my note and give as much importance to my note as it deserves. I leave it to you.

CHAIRMAN: I am sorry you have been kept engaged for so long. Now there is no time to put you questions. I thank you very much. I am sorry that because the time is limited we have not been able to put you questions on various points which we would otherwise have liked to put.

SHRI J. M. IMAM: Your note has been quite interesting.

WITNESS: I am thankful to you for the very patient hearing that you have given to me. I thank you very much.

CHAIRMAN: We are indeed thankful to you for the very lucid manner in which you have explained your suggestions, and I am sure we will try to benefit by them.

WITNESS: I thank you again, Sir. I am obliged to you.

(At this stage the witness left the hall)

(The witness Shri B. R. Satarkar was then called in)

CHAIRMAN: We are sorry for having kept you waiting for so long. In your letter of the 18th July you have supported the amendments. I may tell you that the proceedings are confidential and as such they should not be published until the Committee submits its report to Parliament. If you have anything to add, you may do so.

WITNESS: I have to add only one thing. My suggestion is that the existing section 80 of CPC may not be omitted. Two months notice to the Government or Government servant or public servant is necessary. Within this period of two months the State Government or the State Government servant can settle the matter. They can examine the legal position. It could also check false and vexatious suits against the Government and Government servants.

CHAIRMAN: Will you kindly tell us whether it has been within your experience that certain matters are compromised after giving notice under section 80?

WITNESS: Yes, many matters are compromised.

CHAIRMAN: As far as the State Government of West Bengal is concerned, their representative said that they have no objection to section 80 being deleted. He said that no useful purpose would be served by retaining section 80.

SHRI R. D. BHANDARE: I think even if it is deleted, he is only telling us his experience.

CHAIRMAN: It seems that formerly he has supported the amendment, according to the memorandum, but now he thinks that section 80 should not be dropped.

WITNESS: Many of the matters will be settled and compromised within these two months and it will avoid unnecessary litigation against the State Government and the State Government servants.

CHAIRMAN: What have you to say about the dismissal of cases just because of some irregularity in giving notice. The notice is not found in order and it is rejected on that ground. Is it desirable?

WITNESS: It is not desirable.

CHAIRMAN: Merely because the formalities have not been complied with, do you think that the suit should be maintained or should the suit be thrown out on the ground of irregular notice?

WITNESS: The party giving notice should take care to give proper notice to the State Government or State Government servant.

SHRI R. D. BHANDARE: If on some technical ground the case is rejected, would you like the man to go without justice?

WITNESS: No, I would not like it to be so.

CHAIRMAN: It should not be thrown out on some technical ground. What about section 115 and the changes which are being made regarding the revisional powers of the High Court?

WITNESS: The amendment is necessary.

CHAIRMAN: Do you think that the sub-clause and the proviso should be allowed to remain? Do you think that sub-clauses (a) and (b) should be retained?

WITNESS: They should be retained.

CHAIRMAN: Do you not think that it is taking away the powers of the High Court to some extent?

WITNESS: The High Court will be exercising its revisionary powers.

CHAIRMAN: It is limited to these cases which are covered under sub-clauses (a) and (b).

WITNESS: I think more powers are given to the High Court to do justice.

CHAIRMAN: There is another view that it is restricting the powers of the High Court. I am saying that some think that it is an enlargement of the powers, while others think that it is a restriction on the powers of the High Court. Both views are there.

WITNESS: The High Court's powers will not be restricted.

CHAIRMAN: Is it necessary to impose these restrictions?

SHRI R. D. BHANDARE: We may not put it to the witness.

CHAIRMAN: Would you like the proviso to remain? Would you consider that this will mean restriction of the powers of the High Court?

WITNESS: These will be considered as restrictions on the powers of the High Court.

CHAIRMAN: Then you would oppose it?

WITNESS: High Court powers may not be restricted.

CHAIRMAN: That is exactly one view which has been taken by some witnesses. They say that section 115 should not be interfered with. If any changes are made in section 115, then that will unsettle the law, and various High Courts will take various views. Their point of view was that no change should be made.

WITNESS: My opinion is also that there should be no change. The powers of the High Court need not be restricted and the existing section may remain.

SHRI R. D. BHANDARE: You say that this is a restriction on the powers of the High Court. Kindly look at proviso (b). If the High Court comes to the conclusion that such an order

would cause irreparable injury to the party against whom it was made, in that event the High Court shall interfere. That is the main thing. Where is the restriction on the powers of the High Court? Because (a) and (b) as a matter of fact widen, give more latitude to the High Court. If there is irreparable loss, then the High Court can exercise the revisionary powers. Similarly, whatever may be the first part of the proviso, (a) again widens the powers of the High Court.

CHAIRMAN: The other view is that they are limited by this provision. They will have power only when those conditions are fulfilled.

SHRI R. D. BHANDARE: My view is totally different. I will come to the other point. Section 115 speaks of revisionary powers. When we talk of powers of revision, we always talk of restriction. It has been suggested that apart from the question of jurisdiction the High Court should also be given power to deal with a matter where there is an error of law or where there is injustice on the face of it. This is the suggestion. Would you agree with that?

WITNESS: I would like to agree.

SHRI R. D. BHANDARE: It has been suggested that there should be added another sub-clause (d) to the effect "on the ground of error of law or if injustice is done on the face of it".

WITNESS: Yes, such sub-clause could be added.

श्री बी० एन० मंडल : जो अमेंडमेंट है उस का क्या मतलब है वह क्लियर होना चाहिए। इसके लिए अच्छा होगा कि हम लोग पहले आपस में बात कर लें। मैं जानना चाहता हूँ कि जो ऑरिजिनल सेक्शन है और जो अमेंडमेंट है इन दोनों में आप को कोई फर्क मालूम पड़ता है? अगर कोई फर्क मालूम पड़ता है तो वह फर्क क्या है?

साक्षी : ऑरिजिनल सेक्शन जो है वह हाई कोर्ट को रिविजनरी पावर्स देता है और

उनके आधार पर हाई कोर्ट इंटरफियर कर सकता है अंडर ए, बी और सी, . . . .

चेयरमैन : यह ए, बी और सी तो जो अमेंडमेंट किया जा रहा है उसमें भी है।

साक्षी : अगर लॉअर कोर्ट ने इनजस्टिसकी है then also the High Court may have the power to call for the records and pass orders.

SHRI R. D. BHANDARE: Which is sought to be done in the amendment.

श्री बी० एन० मंडल : तीन सरकार-सटांसेज दिये गये हैं ऑरिजिनल सेक्शन में कि जिन में रिविजन हो सकता है। जो अमेंडमेंट है उसमें भी तीन सरकार-सटांसेज दिये गये हैं और ये सरकार-सटांसेज वही हैं जो कि ऑरिजिनल सेक्शन में हैं और अमेंडमेंट में उसके बाद प्राविजो दिया गया है उस में पहले में कहा गया है कि वह अगर जो कि अगर पिटीशनर के फेवर में पास होता तो वह केस सेट रेस्ट हो जाता और दूसरे में कहते हैं कि अगर वह आर्डर ऐसा हो जो इरि-पेयरेबिल लास कर सकता हो। तो अगर यह हालत है तो रिविजन हो सकता है। यानी पहले रिविजन के आर्डर को यह रिस्ट्रिक्ट करता है। तो ऐसी हालत में कोर्ट का डिस्क्रिशन फेटर्ड होता है। अगर यह होता तो यह अमेंडमेंट होना चाहिए या नहीं यह मैं जानना चाहता हूँ?

साक्षी : अगर पेटेंट इनजस्टिस हो तो होना चाहिए।

श्री बी० एन० मंडल : यहां एक अमेंडमेंट है और इन दोनों में कांशिश की गयी है कि रिविजनरी पावर्स कोर्ट को रहे, लेकिन एक में कोई रिस्ट्रिक्शन नहीं है और दूसरे में रिस्ट्रिक्शन दिया गया है। तो क्या इस रिस्ट्रिक्शन का रहना अच्छा होगा?

चेयरमैन : बिटनेस ने कहा है कि जो प्रोजेक्ट ऐक्ट है उस में कोई इंटरफियरेंस नहीं किया जाना चाहिए ।

श्री बी० एन० मंडल : आप ने जो बात कही उसका यह मतलब है कि जो रिस्ट्रिक्शन अमेंडमेंट के जरिये आ रहा है वह नहीं होना चाहिए और ऑरिजिनल सेक्शन वैसे ही स्टैंड करनी चाहिए ?

साक्षी : मेरी राय में यही ठीक होगा ।

CHAIRMAN: Some are of the view that the law should not be interfered with and the section should be allowed to stand as it exists today.

SHRI R. D. BHANDARE: We shall argue it.

SHRI J. M. IMAM: If there are any other suggestions you would like to make to the Committee, they are welcome.

WITNESS: Only about section '80 I have to make some suggestion.

CHAIRMAN: I thank you very much for having come and waited all the while. Thank you once more for your views.

*(The witness then withdrew)*

*(The witness, Shri M. A. Rane, Shri Sharad Manohar, Shri C. R. Dalvi and Shri D. M. Rane, were at this stage, called in)*

CHAIRMAN: You may continue, Mr. Rane.

SHRI M. A. RANE: We are sorry all of us could not be present today being a working day. Only Mr. Dalvi, Assistant Government Pleader in the High Court, and Shri D. M. Rane could come. I would request my friend, Mr. Dalvi to say what he has to say.

CHAIRMAN: I wish you could involve some formula on which all of you were agreed that would help us.

SHRI M. A. RANE: Even otherwise we will meet again and submit a note if it is permissible.

CHAIRMAN: Within a fortnight's time because after that the Committee will take clause by clause consideration of the Bill.

SHRI C. R. DALVI: So far as section 115 is concerned a clause may be added so that error of law may be corrected.

CHAIRMAN: What is your view on the proviso which is sought to be added to section 115?

SHRI C. R. DALVI: Because of the addition of the proviso to the section the powers of the High Court are enlarged. The proviso says:—

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

(b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made.”

This enlarges the power of the High Court and we can retain this. My submission is that for doing justice between the parties a clause may be added. It should correct an error of law; otherwise our experience is that if the provisions under section 115 are done away with, that does not stop litigation because the people then approach under article 227.

CHAIRMAN: A view placed before us is that section 115 should not be interfered with, that the proviso should not be added; the section should be allowed to continue in the present form. Any addition would unsettle the law. If we add something to it, the various High Courts would take different views.

SHRI C. R. DALVI: In view of our Association the amendment that is

proposed here is a wholesome amendment.

In addition to this we have to suggest that it should also extend the scope of the amendment a little more. Apart from the proposed amendment I want to suggest one or two things more. One is in respect of section 100. The scope of section 100 should be expanded. If there is a decree by the trial court and if the appellate court reverses that decree, then there should be a right of appeal as a matter of course....

CHAIRMAN: But it is not being amended by this Bill.

SHRI C. R. DALVI: I am only suggesting that there should be an automatic right of second appeal. Then, my second suggestion is in respect of section 87(b). It should be deleted. It is no longer necessary.

CHAIRMAN: It is also not being amended. And it involves some difficulty, whether it is necessary to amend the Constitution.

SHRI C. R. DALVI: No, it may not be necessary. This is a provision so far as the Civil Procedure Code is concerned.

CHAIRMAN: That is all right. But....

SHRI C. R. DALVI: Though the section is deleted, I do not think any amendment to the Constitution is necessary.

CHAIRMAN: If we delete this, is this not a right given to the princes that they will not be called upon to come to the court and for calling them to the court the consent of the Government has to be taken? This is also a privilege.

SHRI R. D. BHANDARE: Mr. Dalvi these rights and privileges accruing to the State rulers arise out of the Acts of Succession, agreements, covenants, etc. which have been incorporated in the Constitution. Certain agreements and Covenants have

been arrived at between the Central Government and the princes and they have been incorporated in the Constitution.

SHRI C. R. DALVI: If I am not mistaken, section 87 was there even before the Constitution.

SHRI R. D. BHANDARE: I quite agree. Because of suzerainty certain powers were given to the rulers under the Criminal Procedure Code as well as the Civil Procedure Code. After the coming into force of the Constitution the covenants and agreements entered into between the Government and the princes have been enshrined in the Constitution and those provisions are continuing.

SHRI C. R. DALVI: The provisions were there before the Constitution and they have continued after that.

SHRI R. D. BHANDARE: Anyway, that is a point to be looked into. Regarding section 100 you would like to put in sub-clause (3).

SHRI C. R. DALVI: Yes. That is one....

CHAIRMAN: Mr. Dalvi, I would ask you to see the 27th report of the law Commission. I would like to draw your attention to page 25 of that report on section 115.

SHRI C. R. DALVI: Yes. (a), (b) and (c) are the main restrictions. As a matter of fact the criminal courts were never interfering. I think it is a wholesome provision that this clause is sought to be defined. Revisional jurisdiction is always a discretionary jurisdiction.

CHAIRMAN: You also see section 87(b) in the report on page 23, paragraph 33.

SHRI C. R. DALVI: Yes.

SHRI M. A. RANE: It is a political matter and after all the Parliament should decide it. If privy purses are going to be abolished, there is no reason why this should remain.

CHAIRMAN: If any change is brought about on a political plane, then it can be done, not otherwise.

SHRI M. A. RANE: Parliament is concerned with politics.

SHRI R. D. BHANDARE: Mr. Chairman, I would suggest that since they have made the point for the deletion of section 87 and since the matter is now already before Parliament whether privileges and purses should be abolished, that point will be taken into consideration at that time, why argue and discuss it here?

CHAIRMAN: Quite right.

SHRI DALVI: These are the two main things which I wanted to suggest.

SHRI R. D. BHANDARE: Supplemented and complemented by what Mr. Dhanuka has said.

SHRI DALVI: Yes, he is a member of our Association.

SHRI M. A. RANE: Under section 144 I want to make one suggestion. The legal position as it stands at present is that there is no stay which can be given in respect of restitution proceedings. Even if an appeal is admitted, the party concerned cannot get stay of the restitution proceedings. It works hard on some parties sometimes and so many problems arise. Therefore should some power not be conferred upon the court to stay restitution proceedings also?

SHRI R. D. BHANDARE: I would suggest that you can prepare a note and send it on incorporating in it all the conflicting views, how it acts against the interests of the parties so that we can think over the proposal instead of making an oral proposal here. You may cite the cases where injustice has been done.

SHRI M. A. RANE: Yes.

Then, Sir, there is an anomaly in respect of section 115 about the calling of records. In all statutes *suo*

*motu* powers are conferred on authorities to examine and see whether there is an error or it is illegal. Of course we find some object is there but that object may be defeated at certain times. In many cases it can be decided without records. The revisionary power is to call for the record. That section itself begins like that. The object to call for the record is to see whether the orders passed by the lower authority are correct or not. But this unnecessarily holds up litigation. In fact yesterday I was at pains to point out that this works some hardships. For example the matter is finally disposed of and nothing is to be done, nothing is pending. In that case why should not the record be called. Either the matter should be left as it is or some provision should be made that the entire record in original should not be called for unless directed by the court.

SHRI R. D. BHANDARE: So you want these two words to be deleted 'shall not' and replaced by some other words? But the inherent power is there to call for the record.

SHRI M. A. RANE: It is a matter to be considered by the hon. Committee how these two things will go together. In fact that is the principle of revisional powers.

SHRI P. C. MITRA: You want only 'may' or 'may not'?

SHRI M. A. RANE: Yes.

SHRI R. D. BHANDARE: 'may not' also means 'may' or 'may not'.

SHRI P. C. MITRA: In many cases 'may' also means 'shall'. If you say 'may not', then it might be left to the discretion of the court to call for the record or not.

SHRI R. D. BHANDARE: Usually the discretion is given to the court. But 'shall not' means a prohibition.

SHRI M. A. RANE: Sir, 'shall not' means that the record cannot be called for.

**SHRI R. D. BHANDARE:** Under what provision you are making the prayer? That we have to answer.

**LEGAL COUNSEL:** If the record has to be called for, the prayer would be for the 'stay' also, and if the 'stay' is granted the record can be called for, and if the record is called for, how can the case proceed? Both are to be read together.

**WITNESS:** Now there are many cases where the 'stay' is not required. Because there is an adverse order the litigant makes an application in the trial court. His application is dismissed because no stay is required for him. There are many such cases where no 'stay' is required by the applicant who goes to the High Court. In such cases does it mean that the High Court will be powerless to exercise its revisionary powers? In any case it will be powerless to call for the record.

**LEGAL COUNSEL:** Once the High Court comes to the conclusion that the record has to be called for how can the case proceed in the lower court? That is our understanding. If the 'stay' is a prerequisite for calling for the record, how can the case proceed when the record is called for?

**WITNESS:** There are several such cases where the 'stay' is not required.

**LEGAL COUNSEL:** If the record is required, then the party should apply for stay of the proceedings.

**SHRI M. A. RANE:** There are concrete examples. There are cases which are finally disposed of, for example under the local Acts. Of course this question does not arise where a second appeal is permissible.

**LEGAL COUNSEL:** I would submit that this sub-section (3) of section 115 has got to be examined in the light of the new proviso where the powers are sought to be restricted. Now, in the light of that proviso . . .

**WITNESS:** Here is a concrete example. Under the Bombay Rent Act

a second appeal is not provided for to the litigant. So he may approach to the High Court in revision.

**LEGAL COUNSEL:** Then you go to Article 227.

**WITNESS:** He has a right to go in Revision also, where it involves a question of jurisdiction to try that particular suit. Now if that question is disposed of and the court says 'no', under the Act the matter is taken for appeal. And if the appellate court takes the same view, the suit is dismissed. Then Revision is filed because it is a question relating to jurisdiction. Now such a case need not come under Article 227. In such cases what is the harm if the record is called for? No stay is necessary. He will not be in a position to pray for a stay because nothing has to be stayed. The matter is finally disposed of and, therefore, in such cases . . .

**LEGAL COUNSEL:** If you say that the record should be called for, how can the case proceed?

**WITNESS:** You contemplate a case of an interlocutory nature. We contemplate also cases where there is the decree and there is the final decision.

**WITNESS:** Under that sub-section, in a concrete case the record cannot be called for because there is no question of stay.

**SHRI R. D. BHANDARE:** May I explain the stages? If the three clauses (a), (b) and (c) come into operation and I want to take advantage of the three clauses, then I move the court. I have come to the conclusion as a practising lawyer that no justice can be had unless I move the court under the Revisionary powers appearing in clauses (a), (b) and (c). If fortunate I may succeed in winning over the court or in making the court see the justice of the matter before the court and the order may be passed. But no record is called for. Because the provision in sub-section (3) say that "the High Court shall not call for the records' on what ground am I to



argue? There may be an occasion who I can argue on the face of the record which is in my possession. But it is absolutely necessary at time convince the court that the court itself must go through the records. And I can also point this out. As it happens, we go down below to the office and see the record or take down certain points. Then we address the court saying, "My Lord, this is the page and this is the line, and here is injustice done. Your Lordship may kindly look into the records." But if you put a restriction that no record shall be called for, then what is the use of having section 115? Show me a case where no record shall be called for but at the same time I can take the advantage, for purposes of justice, of section 115. Give me an illustration. Give me a case.

**LEGAL COUNSEL:** Interlocutory orders.

**WITNESS:** There are the litigants who are poor litigants and they are 200 miles or 300 miles away from us. We are dealing with such litigants also. Now those persons may not be in possession of all the papers. They send us a brief and the brief is not complete. But more light is thrown when the records are had. It may be doing injustice to the parties if the records are not called for.

**SHRI C. R. DALVI:** A perusal of the records is more likely to do justice to a case. We fully agree that the record should not be called for as a matter of course, and ordinarily it is not necessary. In certain interlocutory cases the cases are decided without calling for the record. A written statement is not allowed to be amended or an issue is not allowed to be framed. Where the record is not necessary the record is not called for. But a mischievous litigant may manage to see that the record is called for and somehow the proceedings of the lower court are stayed. That is what is sought to be prevented. That can be prevented by saying that

the record shall not ordinarily be called for and the court may exercise its revisionary power even without calling for the record.

**CHAIRMAN:** We shall consider that.

**WITNESS:** What you are considering are interlocutory orders. I will give you a concrete example under the Rent Act, Recent Supreme Court decision is that it does not apply to Cantonment areas. Now I am the plaintiff filing the suit and asking for possession. The defendant takes the plea that this is in Cantonment area and therefore the Rent Act will not apply and that therefore the suit is not in order. Now the plaintiff may produce certain documents, maps, etc. to show that this is not Cantonment area. Now, if under the revisionary powers the court is not calling for the record, the map would not be there and so the court would not be in a position to decide the question of jurisdiction. In interlocutory cases it is all right. Therefore there should not be any fetter on the judges.

**SHRI R. D. BHANDARE.** The Chairman has already appreciated your point. Either the word 'shall' may have to be removed, or what you suggested yesterday may have to be accepted: it should be in specific cases. Either of these two amendments may have to be accepted.

**WITNESS:** Not only in interlocutory cases but also pending suit application for injunction is filed. This is dismissed. The appellate authority also dismisses. Then the party goes in Revision. At that stage the record may be necessary but no stay is required.

**SHRI SHARDA MANOHAR:** I want to say a few words and I want to draw the attention of the Committee to certain points. One is about section 47 which is proposed to be amended. Kindly refer to page 5, clause 13 of the amending Bill. It says—

"The provisions of section 11 shall, so far as may be, apply in relation

to proceedings under this section as they apply to suits."

Now, at the very outset I would like to say that the intention of this provision is certainly welcome, but in order to avoid all ambiguity it is better that it is reviewed. The principle of *res judicata* as embodied in section 11 of the Code applies in respect of questions relating to execution determined under this section, viz., section 47. If there are differences of opinion the sanctity of law would certainly be at stake. It may give rise to a spate of litigation. So, hon. Members may kindly apply their mind to it. Kindly have a look at section 11. It says: "No court shall try a suit or issue in which the matter directly or substantially is an issue in a former suit." Now, you say that no court shall try any application. We shall have to read it like this. No Court shall try any application, instead of the word 'suit', in which the matter directly and substantially has been an issue in a former suit or former application between the same parties or between parties who claim to speak under the same title. Suppose a person files a suit as a trustee. The word 'title' means in the same 'capacity'. That is how it has been construed. It says ". . . or between the parties under whom they or any of them claims in court competent to try such subsequent suits." This is going to give rise to difficulties. Under section 39 of the CPC there is provision for the transfer of a suit. Now by virtue of the amendment sought to be made certain restrictions are sought to be placed upon the powers to transfer a suit. I will come to that later on. The transferee court's jurisdiction is limited by virtue of this Bill itself. Now, all the questions arising between the parties cannot be decided. For instance, the assignee of a decree cannot have the execution at the hands of a transferee court by virtue of the decree. Suppose the matter is decided between the assignee and the judgment-debtor in the original court, and the matter is transferred, all sorts of

questions will arise in the transferee court. So, this particular clause needs to be suitably amended. By merely saying '*mutatis mutandis*' it might not be sufficient. Now, the settled law will be unsettled to a large extent. The law as regards the principle of *res judicata* is settled. Now, by virtue of the statutory provision in section 11, making it applicable, you will be unsettling that. Again a spate of new litigations will start. I am inclined to agree with the intention behind the amendment. It is certainly desirable, but the manner in which it is being done, the object of the amendment is likely to be defeated. Again different courts might interpret section in relation to section 47 in a different manner. This should be reconsidered.

SHRI R. D. BHANDARE: Courts should not interpret the same matter in different ways under sections 11 and 47. Therefore, section 11 is sought to be made applicable to section 47.

SHRI SHARAD MANOHAR: That is the intention, but how far will it be carried out by virtue of this amendment?

SHRI R. D. BHANDARE: It is to do away with anomalies that section 11 is made applicable.

श्री बी० एन० मंडल: जो वह कह रहे हैं वह बहुत अच्छी बात कह रहे हैं। उनके कहने का मतलब यह है कि जे सेसन में पहले अप्लीकेबिल नहीं होता था इस ला के जरिये अप्लीकेबिल होगा, होने जा रहा है। लेकिन उसके सिलसिले में जो वर्डिंग है उसमें कम्प्यूजन बड़ेगा। यही उनका कहना है। इस लिए उसकी वर्डिंग में चर्चा होना चाहिए।

SHRI SHARAD MANOHAR: I am obliged to you. That is what I wanted

to say. This will require to be reconsidered. The manner in which it should be redrafted is a matter of detail on which our Association would certainly like to give help. It is an extremely important provision. The provision of *res judicata* is one which goes to the root of the Civil Procedure Code. So it will not be advisable that we should give our opinion or our draft in haste. We should certainly like to send our note. But your Honours might be pleased to consider this aspect of the case before finalising it.

The second aspect of the matter is I am alive to the fact that here we are concerned with the Bill as it stands. What it has not done we are not for the present in a position to consider. But the position is while we bring in the provision of section 11, certain drawbacks, anomalies, deficiencies, etc. in section 11 are likely to be brought in here again. The one which I am contemplating is as regards the matter in a former suit that was an anomaly. Section 11 embodies the general principle of *res judicata* which is based on the principle of public policy. The general principle of public policy is once a matter is decided between the parties, the parties should not be allowed to re-agitate it again and again. That was the general principle. That was decided in the Duchess of case. Section 11 gave to it a bit of technical application. You would be pleased to see that section 11 is so peculiarly worded. For instance, it says "in a court competent to try such subsequent suit". That means in the previous suit the particular question was decided. But the subsequent suit in which the question arises, that suit could not have been decided by the previous court. Then it is not *res judicata*. Under the terms of the section itself the position is, supposing the present suit is for a sum of Rs. 25,000. The cause was in a previous suit where the valuation was Rs. 5000 only. Then the previous court could not have decided the present suit where the valuation is Rs.

25,000. The previous suit would have been tried in a court of Sub Judge. This suit would be tried by the Civil Judge. Even though the matter might have been in that previous suit decided and agitated right up to the Supreme Court and final judgment given, that judgment is not binding on the subsequent court. The position will be this. Are we going to import that technicality also in execution proceedings? At present it is not there, by virtue of the general principle of *res judicata* which is made applicable to the execution proceedings. By virtue of importing these words in so far as they are applicable we will be importing the technicality also. To my mind it is not desirable.

SHRI R. D. BHANDARE: It is better, you give a note in writing.

SHRI SHARAD MANOHAR: We would like to give our assistance. We will be very happy.

CHAIRMAN: You might see pages 26 and 27 of the Law Commission Report, paragraph 60.

SHRI M. A. RANE: "The Law Commission has made certain suggestions as to how delay resulting from stay granted by the High Court in exercise of its revisional jurisdiction could be reduced. The real remedy, as observed in that Report, lies in the superior courts keeping in view the following essential rules in dealing with these revisions:—

(1) That the rule *nisi* should not be issued except upon a very careful and strict scrutiny.

(2) That where a stay is not granted, the records of the subordinate courts should be called for and when the records are necessary, only copies of the records should be required to be produced.

(3) That whenever a rule *nisi* is granted and a stay order issued, every effort should be made to dispose of the revision application within two or three months."

In fact we are aware of this.

**LEGISLATIVE COUNSEL:** The draft is based on this. We are implementing the recommendation of the Commission, whatever point you have made.

**SHRI M. A. RANE:** There are certain anomalies which we have pointed out.

**SHRI SHARAD MANOHAR:** We go to section 42 which is suggested to be amended. I made a passing reference to it. This particular amendment which I am referring to appears to be without purpose—page 5. I would like to understand the purpose of it. Otherwise it is not necessary. It says at page 5 that the transferee court has got certain jurisdiction under section 42 of the Civil Procedure Code. The jurisdiction is the same. There is no distinction. Here there is a fetter put upon the jurisdiction of the transferee court. It says: "Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely: (a) power to order execution at the instance of the transferee of a decree", etc. I want to invite your attention to two aspects of the matter. The first aspect is to consider as to whether this provision is advisable or desirable. The second aspect is, I am afraid the constitutional aspect will require to be reconsidered. I will go to the latter aspect first. When a decree is obtained by a person, then that decree becomes his property; as the law stands, the powers given to the decree-holder are defined. When a person purchases that particular property, he steps into the shoes of his own seller. He could not be having lesser right than the seller. So his right to property is the same. When he gets a decree against the property of the judgment debtor, wherever the property might be situated—suppose the property is not situated in district A but is in district B, the assignee will be entitled to execute that decree in district B, but by virtue of this it cannot be done. First of

all we shall have to consider whether under articles 14 and 19 it is a reasonable restriction. Moreover it might be considered that articles 14 and 19 will be very much in the picture. There are two persons. One is property owner. A who is having his own decree. Supposing he has paid money to a person of Rs. 5000 and he gets a decree against him. He can execute the decree against the property of his judgment debtor at any place. Supposing another person purchases the decree for consideration of Rs. 5000, he cannot execute the decree against the same person in another district. We will be required to consider in the first place whether this classification is constitutionally valid. This is the first question.

The second question would be apart from the validity of the classification whether the particular classification is advisable. What is the purpose behind it (*Interruption*) Suppose the property is situated in the transferee court jurisdiction. That transferee court must be able to execute the decree. This provision puts a fetter in the jurisdiction with the result that the assignee of the decree will be losing all his rights.

**SHRI P. C. MITRA:** Just as the judgement debtor is transferred to another person the decree can also be transferred.

**SHRI SHARAD MANOHAR:** There they will be governed by section 53 of the Transfer of Property Act. What I am submitting is, what is the purpose behind it? By putting this fetter what is achieved? Similarly, provision arises in the shape of sub-clause (b) of clause 12(4) at page 5 which says:—

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

The original decree-holder could have taken leave from the court. Therefore, I do not find any particular purpose behind the object. I have submitted

the desirability and the constitutionality of it.

Again in Notes on clauses, on page 60, on clause 12 it is said:—

“With regard to the exercise of these powers, a transferee Court should be as much competent as the Court of first instance. At the same time special provision is being made [vide proposed sub-section (4) of section 42] to ensure that matters which should be determined by the Court which passed the decree are not considered by the transferee Court.”

This is the purpose which is defeated. The question is whether the transferee of a court would execute the decree or not. These questions have nothing to do with the original court. Sub-clause (4) of clause 12 says:—

“Nothing in this section shall be deemed to confer on the Court to

which a decree is sent for execution any of the following powers, namely:—

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

This is not something which the original court could have done. When a decree is assigned the question of what happened in the suit is irrelevant; it is academic the litigant.

CHAIRMAN: All right. The Law Ministry has noted your points. I thank you all on behalf of all Members of the Committee and on my behalf for your valuable evidence. I hope you will kindly send your comments and explanations in writing to the Committee in a fortnight's time.

SHRI C. R. DALVI: Thank you, Sir.

(The witnesses withdrew.)

---

Thursday, the 12th February, 1970 (at Madras)

PRESENT

*Rajya Sabha*

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

MEMBERS

- |                          |   |
|--------------------------|---|
| 2. Dr. B. N. Antani      | 6. Shri V. T. Nagpure                     |
| 3. Shri Jagat Narain     | 7. Shrimati Annapurna Devi<br>Thimmareddy |
| 4. Shri Syed Ahmed       | 8. Shri P. C. Mitra                       |
| 5. Shri Purnanand Chetia |   |

*Lok Sabha*

- |                               |   |
|-------------------------------|---|
| 9. Shri D. Balarama Raju      | 17. Shri Mahendra Majhi                 |
| 10. Shri Rajendranath Barua   | 18. Shri Bhaljibhai Ravjibhai<br>Parmar |
| 11. Shri Shri Chand Goyal     | 19. Shri S. B. Patil                    |
| 12. Shri Ram Krishan Gupta    | 20. Chaudhuri Randhir Singh             |
| 13. Shri Heerji Bhai          | 21. Shrimati Savitri Shyam              |
| 14. Shri J. M. Imam           | 22. Shri K. Subravelu                   |
| 15. Shri Thandavan Kiruttinan | 23. Pandit D. N. Tiwary                 |
| 16. Shrimati Sangam Laxmi Bai |   |

MINISTRY OF LAW

Shri P. L. Gupta, *Additional Legislative Counsel.*

SECRETARIAT

Shri Kishan Singh, *Under Secretary.*

WITNESS

- (1) Shri Cojande Dairianadin, *Advocate-Counsel, Pondicherry.*
  - (2) Shri Jaganou Diagou, *Advocate-Counsel, Pondicherry.*
-

*(The witnesses, Shri Cojande Dairianadin and Shri Jaganou Diagou were called in).*

**CHAIRMAN:** Mr. Dairianadin, I would like to know if you have any further comments to offer, besides what you have mentioned earlier in your comments on the Bill. Now I have to inform you that the proceedings of the meeting which we are holding to-day is of a confidential nature and the proceedings of the Committee are not to go out until the report of the Committee is submitted to the Parliament.

**MR. DAIRIANADIN:** Mr. Chairman, Sir, I am glad that the amendments proposed to the Code of Civil Procedure are directed towards eliminating or minimising delay in civil litigation and thereby reducing costs.

I approve the amendment to section 25 of C.P.C. concerning transfer proceedings in a High Court.

I welcome that section 80 which provides for compulsory notice before institution of suit against Government is being omitted.

I am willing to put forward the following amendments:—

1. The words "before delivery of judgment" must be added to paragraph 1 section 24.

2. The words "if the value of the suit exceeds one thousand rupees" must be added to paragraph 1 of section 96.

3. A section must be provided allowing the costs of suit to the advocate of the winning party as in French law instead of to the winning party himself.

4. The paragraphs 3 and 4 in section 55 must be omitted.

5. The words "to the extent of the first hundred rupees", must be added in (h)—section 60.

6. The words "or such officer as it appoints in this behalf" must be omitted in para 1 of rule 1 of Order IV.

7. In order V, rule 20 after sub-rule (1) the following sub-rule shall be inserted namely—

'(IA) where as the Court acting under sub-rule (1) orders service by advertisement in a newspaper, the newspaper shall be a daily or a weekly newspaper circulating in the locality in which the defendant is last known to have resided, carried on business or personally worked for gain.

8. I am of the opinion that if we want to eliminate or minimise delay in civil litigation the oral evidence must be allowed only in some cases as in the French procedure. The order X must be omitted. The order XIV concerning settlement of issues must be also omitted to save time.

9. In the New Order XX A rule 2 must be omitted.

10. A section must be provided holding that every judgment in a civil case shall be notified by the winning party to the losing party through court and the time to appeal must be counted only since that notification.

11. Ten days must be given between the date of issuing the process and the date of the first hearing.

12. Judges must have at least two months' time for giving the judgment in a case where judgment is reserved. This two months' time will permit to the judge to think over the case.

**SHRI SHRI CHAND GOYAL:** May I seek a clarification. I want to know whether you are being governed by the Civil Procedure Code or some other Code?

**WITNESS:** Civil Procedure Code.

CHAIRMAN: I want to seek a clarification from you. In your written comments which you have sent earlier, with regard to the first paragraph, you have stated that the exchange of written statements between the advocates of the parties must be substituted to the trial (oral evidence) because trial in civil cases is unnecessary and is a waste of time. I am not able to understand how the exchange of written statements between the advocates of the parties could dispense with the trial of the suit?

WITNESS: According to the French procedure only statements are exchanged between the advocates of the parties. Therefore trial is not necessary.

SHRI GOYAL: Two parties would be filing different statements and how to find out, which statement is correct?

WITNESS: In the statements filed by the advocates of the parties, all the facts of the case are discussed in detail and very clearly. The two advocates argue their case before the judge in support of the statements filed by them. Then the judge reads the statements, comes to certain conclusion and then delivers the judgment.

CHAIRMAN: Supposing I have advanced to a particular person Rs. 1,000 and it is necessary for him to pay back the money to me. That person, on the other hand, contends that he has not received the money and that he has not taken any loan from me. How is the case to be decided by the court— which party is telling the truth and which party is telling the falsehood. We want to know facts in regard to this aspect of the matter.

WITNESS: In French Law, there is no promissory note. It is only 'notarial deeds'. Before a Notaire the two parties write the deed and the Notaire signs it.

CHAIRMAN: Supposing that plaintiff is not able to produce that document itself. How will the Court decide?

WITNESS: Then the Court will reject.

CHAIRMAN: Oh! because he has no document in his possession.

WITNESS: Yes.

SHRI SYED AHMED: If the document is produced and the other side denies it?

WITNESS: Nobody can question it.

SHRI SHRI CHAND GOYAL: If it is a forged document, suppose the other party says that the signature there is not his, how can you find out whether the document is forged or genuine, unless evidence is taken?

WITNESS: Then it goes to criminal procedure.

CHAIRMAN: From civil position, it will go to criminal position because it is a forged document.

WITNESS: Yes.

SHRI SYED AHMED: You have been practising in French Courts in Pondicherry before merger. You were following at that time French Procedure, viz., Code Napoleon.

WITNESS: Yes.

SHRI SYED AHMED: The Code Napoleon and the Code of Civil Procedure which we are following now under Anglo-Saxon law are diametrically different. They differ much in regard to burden of proof etc. We, on our part have nothing to do with Code Napoleon. Don't bog us down with principles adumbrated in Code Napoleon. We are concerned with Code of Civil Procedure. You must suggest amendments to the Code of Civil Procedure, which is what is followed in Pondicherry after merger.

WITNESS: I have suggested certain amendments.



**CHAIRMAN:** Since you have a radically different procedure, what Shri Syed Ahmed says is that instead of in respect of Civil Procedure Code itself . . .

**SHRI SYED AHMED:** Knowing the basic principles on which Code of Civil Procedure is based, you have got to give your suggestions; if you digress on civil law under Code Napoleon it will not be relevant for our purpose.

**CHAIRMAN:** I understand that you have already said that you are following now the Civil Procedure Code. If it is so, what amendments do you suggest in the Civil Procedure Code whereby any difficulty at present experienced by you can be resolved.

**WITNESS:** I have mentioned it in my statement.

**CHAIRMAN:** I have gone through it.

**SHRI SHRI CHAND GORAL:** You have followed both procedure. You have worked under French Procedural Law and at present under Civil Procedure Code. Do you know that the object of the present Bill is to cut down delays and bring down cost. What is your experience as Advocate General? May I know whether that procedure was simpler. Were there lesser delays and costs in French Procedure or is it the case in our Code of Civil Procedure.

**WITNESS:** Under French Procedure, there were lesser costs and it was speedier.

**SHRI SHRI CHAND GOYAL:** We contend that our Civil Procedure Code is based on an entirely different legal system than that of the French Law. Therefore it is not easy for us to make changes in our Civil Procedure especially in regard to limitation or burden of proof. Linked as we are with our system, it will not be easy for us to revert to the other. We think of making some changes in our present Code of Civil Procedure. What are your views on that? You say that cases must be decided

on the exchange of written statements of the advocates. You say that further trial must be cut down. Under our Civil Procedure Code, after the statements of the two sides issues are raised; and after taking evidence, judgment is delivered. In order to establish which is the correct version, evidence is let in, document and oral, in our Civil Procedure Code. You seem to suggest that there should be no evidence oral or document. We have to judge the correctness of the document by means of evidence. What have you to say to that? Of course I understand your difficulties under French law.

**WITNESS:** Oral evidence is allowed only upto Rs. 90. Afterwards only document.

**CHAIRMAN:** Up to Rs. 90, oral evidence is allowed. Since your state is now governed by Civil Procedure Code under the Indian administration of law, what is the position in your State? Is no evidence being taken in Courts now? Are the issues not struck?

**WITNESS:** We now follow the Indian Civil Procedure Code.

**CHAIRMAN:** It is possible that there is delay in the trial of suits. Do you think that the Indian method of administration of justice is preferable to the French system?

**WITNESS;** Yes.

**SHRI SHRI CHAND GOYAL:** Is better justice being done now? It may involve more time.

**WITNESS:** Yes, better justice.

**CHAIRMAN:** What is the position of clients? Do they not find the new method of Civil Procedure more advantageous? Do they not think that a more better class of system has been introduced?

**WITNESS:** Clients prefer the Civil Procedure Code now. To minimise delay, I have suggested certain amendments.

**DR. B. N. ANTANI:** Do you really think that the French Civil Procedure

Code gave better justice than Civil Procedure Code? What is your impression? Do you think that the French Civil Procedure Code rendered justice easier than the Civil Procedure Code? I had put it in a nut-shell.

WITNESS: In the Indian Civil Procedure Code also, we have justice. But a lot of time is being wasted.

DR. B. N. ANTANI: I agree. You say that the system of framing issues should be abolished. If you do not frame issues, it will be difficult to generalise from the statements of the advocates. Don't you think that framing of issues gives you a think to touch upon and decide?

WITNESS: In the prayer of the plaintiff, the issues are there.

DR. B. N. ANTANI: You must have heard that our judges deliver judgment extempore as soon as trial is finished.

CHAIRMAN: I think Dr. Antani, you are moving away to some other points.

DR. B. N. ANTANI: I shall finish this one question. You say that two months' time should be allowed for judges to write down judgments which are reserved. Do you expect a human being to have such a great memory to have the impression psychological and otherwise of the witnesses and parties in the case to write down judgment after two months? Is it feasible?

WITNESS: In the case of French Law, there is no oral evidence. It is all documents. With documents, they have six months. We only want two months.

CHAIRMAN: Issues are framed for the purpose of crystallising matters as between parties. With the help of issues, one can understand the points to be decided.

WITNESS: In the prayer of the plaintiff, the issues are indicated. It

will be known when the case is introduced.

CHAIRMAN: The Court has some evidence and it is for the court to decide which of the issues are relevant and which are irrelevant. If any matter is left out to be mentioned by the plaintiff, the court will frame the issues. It also shows which part has to give, evidence and on what particular matters. The burden of proof is thrown on the respective parties so that they have to take care of it. We cannot understand how it would be possible for the court to decide?

WITNESS: If oral evidence is maintained, the issue is necessary.

CHAIRMAN: As regards time, you said that judges should be allowed 60 days to deliver judgements. There are cases where judgements are reserved. In more complicated cases judgements need to be delivered, and judgements are delivered at the convenience of the judges. When it is possible for the court to deliver judgements even in cases where judgement is reserved, within one or two months, why should we fix a minimum period for it. If we fix two months, it will mean that courts will think that it is not necessary to deliver judgements then and there and therefore they will delay judgements and correspondingly trial also will be delayed. Is it not?

WITNESS: If oral evidence is maintained, there is no need for time to be fixed.

SHRI P. C. MITRA: Therefore, what you mean to say is that the maximum period should be two months, i.e., within two months judgement should be delivered. You do not say 'at least within two months' judgement should be delivered? Therefore, the judge can deliver the judgement earlier also?

WITNESS: Yes, yes.

CHAIRMAN: I understand that. But the moment you say that courts will be at liberty to go up to two months to deliver judgements, the

tendency of the courts would be to take up the maximum time. While at present they give the judgement within any time, without any stipulation, why should we have such a clause in the Civil Procedure Code extending the time limit?

WITNESS: It is only my suggestion.

SHRI SHRI CHAND GOYAL: When you fix two months, it is possible that the materials are forgotten by judges and advocates within the time the judgement is delivered. Therefore why fix any time limit at all?

WITNESS: Two months is only if there is documentary evidence; but if there is oral evidence, I do not press it.

SHRI SHRI CHAND GOYAL: What is the position in French Law? Do the judges verify facts put before him from his personal source? Or does he deliver the judgement with the material supplied to him?

WITNESS: Judges take the statements of parties and also reserve certain questions for verifications. So he can either accept or reject or reserve for verification.

SHRI RAJENDRANATH BARUA: Can he do it without the knowledge of the parties?

WITNESS: It is only on points of law. He can take his own time to study case laws and deliver the judgements.

CHAIRMAN: What was the usual length of time in delivering judgements by the French Courts?

WITNESS: Normally, within a month; it may be longer also.

CHAIRMAN: What was the maximum period.

WITNESS: Six months as permitted in the law.

CHAIRMAN: What was the proportion of cases that were decided within six months and within a month.

WITNESS: Complicated cases would go upto six months; but simply cases would be disposed of immediately.

CHAIRMAN: Do you not think it is better to leave the matter in the hands of judges to deliver judgements as soon as they can, instead of fix a time-limit.

WITNESS: Yes. We agree; we do not insist on it.

CHAIRMAN: With reference to paragraph 4 of your comments where you have said that 'every judgement must be notified by the winning party to the party who have lost the case', is it not usual for the courts to declare the judgements in the presence of the parties or deliver judgements in courts while the parties are present?

WITNESS: In French courts, it is not necessary that the parties should be present when judgements are delivered. Only from the notification of the judgement, parties will know.

SHRI SHRI CHAND GOYAL: How does the winning party get to know about it?

WITNESS: Judgements are delivered only on one day of the week, namely, on Fridays. Anybody is present at the time and generally the advocates of the parties would know and communicate to their parties.

SHRI SHRI CHAND GOYAL: Does the court convey the judgement?

WITNESS: No, it notified and the advocates inform their clients.

SHRI SHRI CHAND GOYAL: How does the losing party know?

WITNESS: His advocate notifies; generally, he forgets to inform his client.

SHRI SHRI CHAND GOYAL: How does anybody know which judgement will be delivered on a particular Friday. In six months there may be 24 Fridays.

WITNESS: Fridays are allotted for reading of judgements and advocates

will be present. Copy of the judgement is supplied to the losing party by the court.

**SHRI SHRI CHAND GOYAL:** French law seems to be very interesting.

**CHAIRMAN:** Supposing the Court hears a case on a Monday or Tuesday, will it not declare the judgement on either Tuesday or at the latest Wednesday or will it wait until Friday and then only deliver the Judgement?

**WITNESS:** All Judgements are delivered only on Fridays.

**CHAIRMAN:** So, the next two days will be lost and the Court will deliver the Judgement only on Friday.

**WITNESS:** Every Friday 10 or 12 judgements are delivered by the Judge.

**CHAIRMAN:** Only in such cases which are reserved for Judgement, judgements are delivered on Fridays or in all cases?

**WITNESS:** All cases.

**CHAIRMAN:** Even though the hearing of the case was actually finished on a Monday.

**WITNESS:** Yes.

**CHAIRMAN:** Why do you think that it would be better if the winning counsel is burdened with the duty of informing the losing counsel? In our Courts the procedure is that both the parties are present when the judgement is declared and hence, they know their respective positions whether they are the winning side or the losing side. It is not necessary for any burden to be cast on any party to know what the judgement is. After the judgement is declared, they obtain copies of judgements and then they have to decide whether they want to appeal or not. Where is the necessity of introducing this new system and saying that the burden will be cast on the winning side to inform the other side?

**WITNESS:** In French procedure the presence of the parties is not compulsory.

**CHAIRMAN:** You now agree that it is better that both the parties are present when the judgment is announced.

**WITNESS:** Yes.

**CHAIRMAN:** If you agree to that, you must also agree that asking the counsel of the winning side to inform the counsel of the losing side is not at all necessary.

**WITNESS:** Not necessary.

**CHAIRMAN:** I suppose since the introduction of the Civil Procedure Code in your Courts now that practice has been given up.

**WITNESS:** Yes, given up.

**CHAIRMAN:** You have stated that the time of appeal must be counted from the date of notification. If there is to be no date of notification, then the time is calculated as at present under the Civil Procedure Code from the date the judgment is delivered plus days of obtaining copies of the judgment. That is the limitation period. Is it not a satisfactory procedure to adopt?

**WITNESS:** Yes, it is.

**CHAIRMAN:** Regarding the costs, if we accept your suggestion that time must run from the date of notification, then what will be the position if the counsel for the winning side takes longer period for informing the counsel for the losing side?

**WITNESS:** Without receiving the information of the judgment from the winning side, the losing side can appeal.

**CHAIRMAN:** So, this becomes unnecessary when we decide to act according to the present provisions of the Civil Procedure Code that no notification will be necessary and the parties will themselves know the decision when they are in Court. Even if one of the parties is not present in Court, then it is his duty to find out

what judgment was given in his case and proceed accordingly.

WITNESS: In French procedure all the judgments must be notified.

CHAIRMAN: I have not yet been able to understand what particular advantage is obtained from the method which was pursued by the French Courts. Nor have I been able to comprehend what advantage can come to the litigants from the procedure adopted in the French Courts.

WITNESS: In French procedure the Advocates must do all the things and the parties ignore the case till the case is decided finally. Therefore, there must be notification of all decisions of the Court to the losing party.

CHAIRMAN: Supposing the Advocate does not comply with the condition imposed upon him to inform the losing side, then the losing side suffers.

WITNESS: The losing side does not suffer. Within time he can appeal.

CHAIRMAN: That is to say, it will be his own effort to find out the result and to act accordingly.

WITNESS: Yes.

CHAIRMAN: That is exactly what our law at present provides. We need not revert to the procedure followed in the French Courts.

WITNESS: Yes.

CHAIRMAN: You have stated in your comments that the Counsel of the winning side should be authorised to recover the costs of the case from the losing side. At present according to the Civil Procedure Code it is for the party who has to receive money from the opposite side whether it is on account of costs or other amounts according to the judgment of the Courts, to apply for the payment of that money by the losing side. Why do you suggest that it should be through the counsel for the winning side? Is it not possible that the counsel for the winning side, even though

he realises the money, either the costs of the suit or other monies, may keep it with him and does not pay it to the winning party.

WITNESS: In French procedure the fees is not paid in advance by the parties.

CHAIRMAN: Not in advance. After the case is finished, why should it not be left to the party himself to recover the money from the person from whom it is due, instead of asking the counsel for the winning party to recover it from the counsel of the losing party and then pay it to the client. Because my fear is, it may happen at times that the counsel may not pay that money to his client at all and keep the money with him.

WITNESS: In French procedure the winning counsel takes for him the monies. He need not pay the money to the client.

CHAIRMAN: The party who has to get that money must get it either from the counsel or from the losing client himself. That money has to be recovered.

WITNESS: The Advocate takes the monies from the losing party.

CHAIRMAN: I understand that position. But I want to know how it is advantageous. Is the procedure adopted under the Civil Procedure Code better, that is, any party who has to recover the amount of costs or other monies from the opposite party must put in his application for execution and then it is through the Court that he directly receives it.

WITNESS: In French Courts, pleader's fees is not mentioned in the judgments. Therefore, the winning Advocate must recover his fees from the party.

CHAIRMAN: How will it be determined? What is the fees that he is entitled to?

WITNESS: There is a separate schedule for that. The Court must indicate 'agreed' in the statement. Then

the winning Advocate becomes the creditor of the losing party concerning Pleader's fees.

**SHRI SHRI CHAND GOYAL:** You suggest that the cost must be recovered by the counsel rather than by the party. It is not clear as to whether the counsel will utilise the money for himself or he is expected to pay it to the party.

**WITNESS:** For himself.

**SHRI SHRI CHAND GOYAL:** If the money is meant for the Counsel, then he can be authorised to recover it.

**WITNESS:** Yes.

**SHRI SHRI CHAND GOYAL:** What is the position with regard to the amount of Court-fees? Supposing the party pays a Court-fee of Rs. 500 and the winning party is entitled to recover that amount of Court-fee, will that amount also go to the pocket of the Counsel?

**WITNESS:** No. Only the Pleader's fees. The winning Advocate recovers from the losing party the Pleader's fees and also Court-fees and other fees and he keeps the Pleader's fees for himself and he gives to his client the Court-fees, etc

**CHAIRMAN:** You have stated that the winning Advocate must be authorised as in French law to recover the costs of the case and not his own fee.

**WITNESS:** Fees is also included in the cost.

**CHAIRMAN:** It is cost of suit including the Pleader's fees as well as other amounts which the party might have spent. If the counsel collects all that money, there will be an excess over his own fee. Supposing he does not pay that amount to the client, what will happen?

**WITNESS:** In French procedure the client need not pay the fees to the Advocate. The Advocate advances all the monies from his pocket and afterwards he takes it.

**CHAIRMAN:** My difficulty is this. If the Lawyer is not honest, even though he realises the money from the other side, he may not pay to his client what is due over and above his own fees.

**WITNESS:** In French law the Lawyer is always honest. He is never dishonest.

**CHAIRMAN.** You expect every man to be honest, but in spite of that there are some dishonest people also.

**WITNESS:** There, the number of Lawyers is limited. 12 Advocates only before.

**CHAIRMAN:** Are there any stamp duty to be paid?

**WITNESS:** Yes.

**DR. B. N. ANTANI:** Is that also to be collected by the Counsel?

**WITNESS:** In French law, the court fees are only Rs. 5 for a suit of Rs. 1,000.

**CHAIRMAN:** Seems to be very little.

**WITNESS:** Yes.

**CHAIRMAN:** Suppose the claim is for Rs. 1 lakh, then that amount at Rs. 5 per Rs. 1000 also becomes a big figure.

**DR. B. N. ANTANI:** According to your suggestion, that cost also should be collected by the Counsel? Is not the plaintiff supposed to pay the sum when he files his plaint?

**WITNESS:** All the cost is collected by the Advocate. Afterwards he pays to the client.

**CHAIRMAN:** Am I to understand that when presenting a plaint in the Court it is not necessary for the plaintiff to affix any court fee stamps on the plaint? It is only after the case is decided that it will be known what amount of court fee is due to the Government and that is realised by the counsel of the winning side and

then paid into the Government account.

WITNESS: In the French procedure, plaint is not filed in the Court but notified to the defendant. There is very great difference between the Indian procedure and the French procedure. It is purely democratic in French law.

CHAIRMAN: Does the State succeed in getting its own dues under the Court Fees Act properly by this method? Supposing a case is filed by a party without payment of any Court fee and subsequently he withdraws the suit, then the Government loses its money by way of court fee which is due on that plaint.

WITNESS: Yes; the Government loses.

CHAIRMAN: Is it not better that the plaintiff himself pays the dues of the Government irrespective of whether he succeeds or fails or withdraws—whatever the result may be?

WITNESS: The plaintiff must pay.

CHAIRMAN: Do you think that the system under the Indian Civil Procedure Code is better than the French?

WITNESS: Yes; the Indian Civil Procedure Code is better in some respects only.

CHAIRMAN: You welcome the omission of Sec. 80 whereby under our law it is necessary for Government to be given two months' notice prior to the institution of suit against the Government or Government officer. You welcome the idea of doing away with that Section?

WITNESS: Yes.

CHAIRMAN: In French law, there was no such requirement as giving notice in case of suit being filed against the Government.

WITNESS: No.

CHAIRMAN: I suppose it is a very short period since the new method of

administration of law has been introduced in your State and you cannot yet find out whether the system under the Indian Civil Procedure Code is better or that of French is better?

WITNESS: Yes.

SHRI RAJENDRANATH BARUA: While talking about intimation to the parties I was under the impression that unless you give notice to the other party the time for appeal will not run.

WITNESS: From the date of notification only; not before that.

SHRI RAJENDRANATH BARUA: Does it not take a long time on account of postal delays, etc., for the service of summons? The parties may plead that they had not received the summons. How does the summons reach the party?

WITNESS: The summons is delivered by the Court to the party. If the party is not there, it is notified to the Mayor of the locality. He serves it to the party.

SHRI J. M. IMAM: Can you suggest any concrete measures which we can profitably adopt from the French procedure and incorporate them in the Indian Civil Procedure Code?

DR. B. N. ANTANI: Can you suggest any alternative measures to be incorporated with our Civil Procedure Code which will facilitate justice, after your experience of French law?

WITNESS: Yes. My suggestions have already

SHRI J. M. IMAM: The onus of proof lies on the accused in the Indian Civil Procedure Code. What is the procedure under the French law? On whom does the burden of proof lie?

WITNESS: The burden is on the plaintiff.

SHRI J. M. IMAM: In criminal cases is it on the Government or on the accused?

WITNESS: On the accused.

CHAIRMAN: What about the benefit of doubt?

WITNESS: There is benefit of doubt in the French law.

SHRI J. M. IMAM: If a man dies as a result of an accident or being knocked down by a motor-car, on whom does the burden of proof lie?

WITNESS: On his heirs.

SHRI J. M. IMAM: To prove the death of the man as also compensation which is due?

WITNESS: Yes.

CHAIRMAN: Could you tell us what is the procedure under the French law about appeals?

WITNESS: The memorandum of appeal is notified to the party and the party engages counsel. He comes before the Court and pleads.

CHAIRMAN: Does the appeal lie to the High Court? How many stages of appeal are there?

WITNESS: One appeal and one revision.

CHAIRMAN: Revision on what points?

WITNESS: On law points only.

CHAIRMAN: How much accumulation of cases are there in the High Court? I mean, the accumulation of arrears of cases in courts.

WITNESS: Now the arrear of cases is very heavy.

CHAIRMAN: Were there High Courts under the French law?

WITNESS: Yes; there was the Supreme Court in Paris only. For all French territories in India, there is

only one Supreme Court in Paris.

CHAIRMAN: A case decided in India had to go up to Paris for final decision as in British times it had to go to the Privy Council in England?

WITNESS: Yes.

CHAIRMAN: Do the High Courts have large number of cases as arrears?

WITNESS: In Pondicherry there was only one High Court.

CHAIRMAN: What about arrears of cases pending?

WITNESS: About 200 cases were pending.

CHAIRMAN: It is not a heavy work for the High Court?

WITNESS: No.

CHAIRMAN: You may have seen that under the Indian Civil Procedure Code there is one Section 115 which confers powers on the High Court to exercise jurisdiction of the law courts as also to revise judgments. I hope you are aware of that now. Can you tell me whether any change is necessary under Section 115 either to give additional powers to the High Courts or to take away some of the powers of the High Courts.

WITNESS: No change is necessary.

CHAIRMAN: Thank you very much. It is very good of you to have come and given us your views. The French law and the Indian law is different and it is difficult to reconcile the two and make any changes in the present system of law before us. But, anyway we shall keep in our mind what you said.

*(The witness then withdrew)*



*Saturday, the 14th February, 1970 (at Madras)*

**PRESENT**

1. Pandit Sham Sunder Narain Tankha—*Chairman.*

**MEMBERS**

*Rajya Sabha*

- |                         |   |
|-------------------------|---|
| 2. Dr. B. N. Antani     | 7. Shri Purnanand Chetia                  |
| 3. Shri Rattan Lal Jain | 8. Shri V. T. Nagpure                     |
| 4. Shri B. N. Mandal    | 9. Shrimati Annapurna Devi<br>Thimmareddy |
| 5. Shri Jagat Narain    | 10. Shri P. C. Mitra                      |
| 6. Shri Syed Ahmed      |   |

*Lok Sabha*

- |                               |   |
|-------------------------------|---|
| 11. Shri D. Balarama Raju     | 19. Shri B. P. Mandal                   |
| 12. Shri Rajendranath Barua   | 20. Shri Bhaljibhai Ravjibhai<br>Parmar |
| 13. Shri Shri Chand Goyal     | 21. Shri S. B. Patil                    |
| 14. Shri Heerji Bhai          | 22. Shri Jharkhande Rai                 |
| 15. Shri J. M. Imam           | 23. Chaudhuri Randhir Singh             |
| 16. Shri Kameshwar Singh      | 24. Shri K. Subravelu                   |
| 17. Shri Thandavan Kiruttinan | 25. Pandit D. N. Tiwary                 |
| 18. Shrimati Sangam Laxmi Bai |   |

**MINISTRY OF LAW**

Shri P. L. Gupta, Additional Legislative Counsel.

**SECRETARIAT**

Shri Kishan Singh, Under Secretary.

**WITNESS**

- (1) Shri S. Ramchandra Rao, Advocate, representative of the Visakhapatnam Bar Association, Visakhapatnam.
  - (2) Shri R. Ramasubramaniam, Secretary to the Government of Tamil Nadu, Law Department, Madras.
-

CHAIRMAN: I have to inform Shri Ramachandra Rao that the proceedings of this Committee are confidential and they are not to be disclosed until the report of the Committee has been submitted to the Parliament.

Secondly, I find from your comments that generally you agree with most of the amendments proposed in the Bill. But you have expressed a desire to add and explain some of the amendments proposed by you and you may kindly do so.

WITNESS: I will briefly explain the amendments that I consider necessary.

Clause 5 of the Bill seeks to amend Section 21 of the principal Act and it is proposed to apply it to *ex parte* decree. Suppose there is a particular suit wherein the defendant does not have notice of the suit and an *ex parte* decree is passed. If later on another suit is filed against him in respect of the same subject matter . . .

CHAIRMAN: He will not be allowed to set up plea.

WITNESS: Therefore, in such cases the court will say that there has been a decision formerly and it operates as *res judicata*. So, I suggest that *ex parte* decrees may be exempted from the operation of the proposed amendment.

CHAIRMAN: Do you think that there are many *ex parte* decrees of such a character?

WITNESS: There may be cases where the stakes of the defendant are very high. Nowadays there is a lot of objectionable procedures and undesirable means adopted. I suggest that provision is made for the service of the notice through registered post and it is very desirable because the present method adopted in the court is not desirable.

CHAIRMAN: You have said that the proposed amendment may be dropped.

WITNESS: It is better it is dropped. If it is not possible, at least *ex parte* decrees may be exempted.

SHRI SHRI CHAND GOYAL: If the word 'contested' is added, if we say 'no party shall be allowed to question the validity of a contested decree' it will meet your objection.

WITNESS: Yes.

SHRI RAJENDRANATH BARUA: Supposing a suit is disposed of without contest?

WITNESS: If it is not possible to drop it entirely, at least exclude *ex parte* decrees.

CHAIRMAN: What is your point, Shri Barua?

SHRI RAJENDRANATH BARUA: Exclude *ex parte* decrees. Otherwise it will lead to more complications. The witness also wants exclusion of *ex parte* decrees. He should be more specific about it. Otherwise we shall be landing ourselves into more trouble. It will lead to more complications in Courts of Law. The best thing is to exclude *ex parte* decrees.

CHAIRMAN: It will be better.

SHRI RAJENDRANATH BARUA: He may be persuaded not to contest. He may die. Better exclude *ex parte* decrees.

WITNESS: There is a Clause which deals with transfer of suits. From one court it is transferred to the other either by District Court or High Court. The High Court or District Court has the power to withdraw or make over the matter pending in a subordinate court to another court. These transfers are effected by the inherent powers vested in the Court or on application of one of the parties. That *suo-motu* power should be restricted; for administrative reasons they withdraw

the matter first and give no notice to the parties concerned. With the result, the party does not have his say, once the matter is withdrawn. They invariably reject application of the parties for retransfer of the matter. Therefore the *suo-motu* power should be restricted by saying that before transferring a matter pending before a subordinate court, they should give notice to the parties and transfer the matter after hearing their objections. As at present they don't hear objection of parties before transferring on administrative grounds.

CHAIRMAN: Has this sort of thing happened out of your experience?

WITNESS: It had happened very recently. That is why I have suggested this.

CHAIRMAN: Courts usually give notice to the parties concerned before transfer.

WITNESS: For administrative reasons they withdraw the cases and send the list to the Bar Association that such and such cases have been withdrawn.

CHAIRMAN: Leave alone the Bar Association. Are not the parties informed?

WITNESS: Under Sec. 24 it is transferred. We have to infer that it has been done due to administrative reasons.

SHRI SHRI CHAND GOYAL: There may be a District Judge. Another Additional District Judge might have been appointed. The District Judge has to transfer some cases from his file to that of the Additional District Judge. If we accept your suggestion, then it will not be possible for the District Judge to re-transfer the cases from his file to that of the Additional District Judge.

WITNESS: I agree: But it is not always from one Court to additional court. Sometimes we find something

different. Very recently a matter, concerning a property situated in one taluk, was transferred to the file of a District Munsif who had no territorial jurisdiction over that property. It was stated that this had been done for administrative reasons.

CHAUDHURI RANDHIR SINGH: That is distribution of work. In transfer of cases, the parties are heard. It is mandatory. What you are saying is about 'distribution of work'.

SHRI SHRI CHAND GOYAL: There are the following words, 'or of its own motion without such notice' under Section 24.

SHRI P. C. MITRA: Section 24 reads like this: "On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard . . .

SHRI SHRI CHAND GOYAL: "Or of its own motion". Those words are there. Please see.

CHAUDHURI RANDHIR SINGH: Distribution of work is not decided on merits. Transfer is decided on merits.

SHRI SHRI CHAND GOYAL: Sometimes an inconvenience may result later on. You want such a situation to be avoided.

SHRI RAJENDRANATH BARUA: Such inconveniences occur very rarely.

WITNESS: Yes.

SHRI RAJENDRANATH BARUA: You can obviate it by putting a fresh objection to the Transfer Judge.

WITNESS: Of course that is possible.

DR. B. N. ANTANI: Is it your experience that District Judge transfers the cases without giving notice to parties.

WITNESS: Yes.

SHRI SYED AHMED: At present cases are transferred generally in courts after the party makes an application. In such cases, either party is given notice. Is it not?

WITNESS: Yes.

SHRI SYED AHMED: Where a case is transferred without application from any of the parties, it is not 'transfer' but it is withdrawal. The Court in its inherent power transfers it to some other court. All these cases are covered by Section 24. If there is application for transfer, notice must be given to the parties. Your objection is covered in that case. If there is no application, for administrative convenience, if some court has been appointed to try a list of cases, is it necessary and is it possible to give notice to all?

WITNESS: In such cases it may be necessary, because the judge may not know the difficulties of the parties; to get witnesses, there are difficulties.

SHRI SYED AHMED: We are concerned with jurisdiction. A Judge has been appointed and he has been given jurisdiction to try a certain number of cases. In that case transfer takes place. Allotment of cases take place on administrative grounds for expeditious disposal of cases. Due to pressure of work in one Court, the cases are transferred here. Suppose 20 cases are transferred; how will you deal with such a situation? It will not be possible to give notices to all parties. If an application is made alleging bribery against a Judge, if some sort of allegation is made, then only the question of transfer to another judge comes. Generally notices are issued to parties in transfer cases, as pointed out by Mr. Goyal. Section 24 speaks of cases by which a Judge can without application, due to administrative convenience, transfer cases, withdraw and allot cases to another. So you may now see that your amendment is not necessary. In all cases, it may not be necessary.

SHRI SHRI CHAND GOYAL: Supposing 100 cases are transferred from the file of District Judge to Additional District Judge. In that case, notice to all parties is unnecessary. The difficulty which you envisage may happen in one out of 1000 cases. It is

very rare. But if we accept your suggestion that will cause embarrassment and lead to undue delay when cases are transferred to file of Additional District Judge, as I have pointed out.

WITNESS: I may be pardoned if I say something. Once it is transferred, there will be delay. We have to come up with an application against the transfer. It takes two months to hear.

SHRI SHRI CHAND GOYAL: That may be one in thousand cases.

WITNESS: Parties have their own difficulties.

CHAIRMAN: Proceed to the next point.

SHRI SHRI CHAND GOYAL: You have suggested that the inherent powers could be confined only to transfer of a suit or other proceedings. Do you mean to suggest that it should not apply to appeals? We have not been able to understand your meaning correctly.

WITNESS: What I insist is on the restriction of the discretionary power. That is what I want.

SHRI D. BALARAMA RAJU: The appeal courts are sobre?

WITNESS: At that rate, all courts are sobre.

MR. CHAIRMAN: In Clause 7, do you want any safeguards to be added on?

WITNESS: No, Sir. So far as clause 7 is concerned it seeks to amend section 25 of the Principal Act. I do not seek any safeguards.

SHRI D. BALARAMA RAJU: But you say this is necessary.

SHRI SHRI CHAND GOYAL: You read the clause. In sub-section (2), it is said 'every application under this section shall be made by motion which shall, except when the application is made by the Attorney-General of India or the Advocate-General of a

State, be supported by affidavit or affirmation'. Do you agree to this?

WITNESS: Yes. Because, the Attorney-General of India or the Advocate-General of a State can be expected to be highly responsible and we....

SHRI SHRI CHAND GOYAL: The other advocates are irresponsible, is it?

WITNESS: It is not so; I do not say that I myself being an advocate. So far as the affidavits are concerned, in some cases, the Attorney-General and the Advocates-General should have some privileges which the other advocates may not have. Even in the question of audience of courts, preference is given to them. Therefore, in that view, I said it.

SHRI SHRI CHAND GOYAL: The Advocates-General or the Attorney-General appear on behalf of some departmental head or some other official. Why not they support their case with an affidavit.

WITNESS: Even now they are doing such things in writ petitions where the affidavit of the Secretary of the Department concerned is filed.

SHRI SHRI CHAND GOYAL: Why should we then make any exception?

SHRI D. BALARAMA RAJU: In a strict sense they are appearing on behalf of not any party, but they are only appearing to guide the court for coming to proper decision and therefore they should not commit themselves before hand by an affidavit. The main function of the Attorney-General or the Advocates-General is not to take brief of any party, but only to guide the court to come to proper decision and therefore they should not be expected to give an affidavit on any point. Is that your point?

WITNESS: Even in the case of the Attorney-General or the Advocates-General, they do represent a party, for the State is also considered a party . . .

SHRI D. BALARAMA RAJU: Even so, their real function is to guide the court....

WITNESS: With due respect, I submit, Sir, it is the duty of the other advocates also to guide the court. But the only thing is this. By virtue of their office, they have some privileges which the other advocates do not have.

SHRI RAJENDRANATH BARUA: You said that the affidavit part of it is exempted in the case of the Attorney-General and the Advocate-General of the States. Don't you agree that after all even though they appear on behalf of the State, our experience in many cases is that their affidavits on behalf of Government officials have been found to be not in accord with the real state of affairs and therefore the Courts concerned had to give some strictures. Probably, that is the purpose of the Government in bringing in this amendment to avoid such things. Therefore, my own personal view is that exemption in this case should not be there. Do you not agree?

WITNESS: I quite agree with your views. So far as the affidavit is concerned, some stringent action against the deponent who gave false affidavit is called for. But as things stand now, the courts do not at all take any follow-up action even where it is found that the false affidavit had been given. Courts keep quiet over the matter. Therefore something ought to be done in these cases.

SRI RAJENDRANATH BARUA: Strictures are passed.

WITNESS: But there is no follow-up action. In most cases, the affidavits do not disclose the true facts. More so it is the case in these applications for attachment before judgement. In these applications invariably some averments are made and court should take action. Otherwise, the very sanctity of affidavits is lost.

CHAIRMAN: A suggestion has been made to us. It has been suggested that after the words "...ends of justice" in clause 25(1), the following words may be added: "...or the court considers it conducive to the convenience of all the parties to the litigation or at least the defendant or respondent or his witnesses, if any"

Do you think that these words should be added as suggested or do you think it is not necessary?

WITNESS: I think it is not necessary to make any additions. These words are not necessary. Because, the expression 'ends of justice' is quite comprehensive and will take in cases where convenience of the parties are involved. Convenience of parties also would be covered by those words.

CHAIRMAN: 'ends of justice' would be sufficient?

WITNESS: Yes. That will cover all things.

I move on to clause 13 which seeks to amend section 47 of the Principal Act. In Explanation 2(b), it is provided that "all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section." So far as delivery of possession of property is concerned, Order 21, Rule 95, deals with the procedure that has to be followed in the case of application for delivery of possession of property. Therefore, I think this sub-clause (b) is not necessary to be incorporated in the Section 47 by way of this amendment. Because this would be superfluous in Section 47. There is Order 21 providing for the procedure to be adopted.

CHAIRMAN: A suggestion has been made by an Advocate of the Supreme Court that in this clause 13, (a) should be omitted completely and section 47(4) should not be added on;

that is his suggestion. The reason given is that Section 11 should not be extended; the principle of *Res Judicata* is applied to judicial proceedings. The reason is that objections in execution are not fought out with the same solemnity as suits. This will entail delay and expense. Execution proceedings are decided and disposed of by Courts rather in a summary manner. Therefore section 11 should not be extended.

WITNESS: I think it is better that this principle of *Res Judicata* is made applicable to execution proceedings also. The only safeguard that can be provided is that the procedure that is to be adopted by the Executing Court should be the same procedure as adopted in the Suits... After they have fought in the executing court and lost, the party can go for suit and prolong the matter...

CHAIRMAN: The suit will be barred?

WITNESS: Maybe. Many difficulties may arise by making this principle of *Res Judicata* applicable to the execution proceedings. Only safeguard that should be made is the proceedings should be the same as that adopted in the suits in the original court. Then it will obviate it. In most matters, cases are decided on the basis of affidavits and no oral evidence is adduced; in the claim applications we can have this oral evidence. In the amendment it is proposed that the decisions in claim petitions are to be treated as decrees and appeals are provided. In the same manner appeal should be provided on these matters so that it will be treated as suits. That is, what I submit would avoid much of litigation.

CHAIRMAN: So, you still maintain the position that you have taken.

WITNESS: Yes.

Explanation 2(b) in Clause 13 may be dropped because there is also Order 21 Rule 97 and other rules which provide for the enquiry into obstruction and other things. So, I think this would be superfluous.

**CHAIRMAN:** Or it may be considered further safeguard so that the position may be made clear.

**WITNESS:** In that case Order 21 Rule 97 and other Rules will have to be amended suitably as a consequence of this.

**CHAIRMAN:** Do you agree with the raising of the amount from Rs. 50/- to Rs. 200/- in Clause 14?

**WITNESS:** So far as the attachment of the salary of the Central Government employees is concerned, whatever they get over and above Rs. 200/- can be attached. So, there is a limit. Hence, the change does not in any way affect them.

**SHRI SHRI CHAND GOYAL:** But what about persons other than salaried persons? It will benefit persons other than salaried persons.

**WITNESS:** I think we can substitute Rs. 200/- for Rs. 50. Rs. 50 has now no value.

**CHAIRMAN:** The criticism against this is that economic conditions keep constantly changing and there is no ground of sufficient reason to amend the law from time to time to keep pace with them.

**WITNESS:** Think this amendment seeks to move with the times. That was a time when most people were not able to make a living. Now since there is some betterment of the economic conditions, Rs. 200 is all right.

*Clause 15.*—I have suggested that the civilian employees of the Air Force, Army and Navy may also be exempted from attachment. When there was emergency the Government had issued a G.O. which stated that the civilian personnel following the defence personnel are also exempt from arrest and their salary was also exempted from attachment because they were considered essential for the proper working of the Armed Forces. There is Submarine Headquarters at Visakhapatnam. There are civilian employees there and some of them are as vital as the pilot of the submarine because they may be in the Stores Department. If such a person

is arrested or if his salary is attached, a lot of inconvenience would be caused to the Armed Forces.

**SHRI CHAUDHURI BANDHIR SINGH:** What about Border Security Force and the Central Reserve Police?

**WITNESS:** I think they come within the Army.

**SHRI RAJENDRANATH BARUA:** In our country there is a large number of people outside the ambit of Government officials. You have made your suggestion in respect of the civilian employees of the Defence Department. Why this distinction is made? You encourage people to borrow money and they will just go on defaulting and get the protection. Why should there be an attitude which is not in conformity with the normal moral standards? Don't you feel that the time has come to get rid of all these things, except for the extremely essential service like Defence Department?

**WITNESS:** There is a lot of indebtedness among the employees of the Central Government and the State Governments. They are indebted to such an extent that it is impossible for them to come out of it. By force of circumstances, they get into the hands of the money-lenders who actually lend half of the amount and obtain a pro-note for double the amount with penal interest. Once they get into the hands of these money-lenders who are ready to lend them money, they are put to a lot of harassment.

**SHRI CHAUDHURI BANDHIR SINGH:** Therefore, you feel that this provision is necessary?

**WITNESS:** Some protection should be given to the Central and State Governments' employees. Almost all of them are debtors of this nature. Some relief ought to be given to them.

**SHRI RATTAN LAL JAIN:** How do you justify the provision for detention or arrest?

**WITNESS:** I am totally against putting any person in jail in execution. Even as it is, the provision relating to the order of arrest is very stringent. But some discretion is left in the Judge and very often the order depends upon the frame of mind of the Judge. I am putting it more frankly, because Judges are not generally inclined to send persons to jail. If the judgment-debtor makes some token payment—suppose the decree amount to be paid is Rs. 300 or Rs. 400 and if he makes a payment of Rs. 20 or 30 the Judges are generally inclined to give him some time. But there are some Judges—they are few in number—who take the view that since he has taken the amount in a lump sum, he has to pay it in a lump sum. But the economic condition of the employees is not such that they can pay the amount in a lump sum. There is some difficulty in our Court itself at Visakhapatnam where we have a District Munsif. With great respect to him, I should say that he is very much in favour of the decree-holders and he does not very much relish the contentions put forth by the judgment-debtor.

**SRI SHRI CHAND GOYAL:** Why do you want the bonus amount to be kept imuned from attachment?

**WITNESS:** He gets it gratis. Gratuity which he gets gratis is exempt from attachment. He gets bonus once a year at the time of Deepavali or during some festival occasion. It would be a great hardship if it is not exempt.

**SHRI RAJENDRANATH BARUA:** The farmers' produce are completely sold. What do you think of it?

**WITNESS:** There is provision in Section 60 wherein their agricultural holdings and their houses in which they live are exempt from attachment.

**SHRI RAJENDRANATH BARUA:** There are agriculturists who are extremely poor who have no land or no house and we have no money for

making their living. But we are making all sorts of provisions against them.

**WITNESS:** For such men our nationalised banks only can come in handy. The Bank of India celebrated the Republic Week and they invited us. They said 'when you have a steady income we are going to give you' . . .

**MR. CHAIRMAN:** Please confine your remarks to the matters under discussion.

**SHRI P. C. MITRA:** Just now you said that Government officers may have to give promissory notes for Rs. 200 or Rs. 300 when they take a loan of Rs. 100. If you stop all the channels for realisation of loan, will it not be more difficult for them to get a loan and there may be more stringent conditions put on them when any party gives loans to them. If you say that the salary should not be attached and the bonus should not be attached, then how will the salaried persons repay the loans taken by them? If such conditions are put, they may not get any loan at all. Even if a loan is given the conditions will be more stringent than you have just now put forward. Therefore, don't you think that some scope for realisation of loan from the salaried parties also should be there?

**WITNESS:** Yes; I quite agree. But, so far as the civilians employed in the Navy, Army, etc. are concerned, they should be treated as essential services and necessary protection given to them.

**SHRI P. C. MITRA:** We accept that they should be treated in a different way than other persons.

Have you gone through sub-clause (ii) of Clause 15? There it is stated:

"Provided that where the entire portion of such salary or any part of such portion which is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twentyfour months, such portion



shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree."

That means, a person getting Rs. 1000 as salary has borrowed from two persons—Rs. 200 from a shop-keeper and Rs. 500 from another—and the person who lent Rs. 500 had filed a suit and got a decree. Is the other man who lent him money to wait for a further period of twelve months? This is an instance of a person getting Rs. 1000 as salary and not poor people getting small salary. If the high salaried persons also do not want to pay their creditors, what is the remedy? Should there not be some clause so that high salaried officers may not get the privilege of this section?

WITNESS: Some reasonable classifications will have to be made. If a person getting a fat salary runs into debt, he must have some compelling reasons for it.

I suggest that the term 'salary' may also be defined. It may be defined as 'basic pay' because the allowances are also sometimes attached. Very often doubt arises whether the allowances that are payable to the employee are also exempt from attachment. Therefore, it is better to define the term 'salary'. It may be defined as 'the basic pay'. That will solve a lot of trouble.

The term 'labourer' may be defined as an 'unskilled person' or an 'unskilled worker'. The term 'labourer' should include an unskilled worker also.

CHAIRMAN: Let us come to Clause 16, i.e., omission of section 80.

WITNESS: I welcome it because section 80 as it stands places the Government in a privileged position. It is not at all desirable that any discrimination should be made between the parties before the court of law

and the equality of law should be maintained.

CHAIRMAN: Is it not your experience that at times certain things are settled out of court by the Government moving in the matter?

WITNESS: With great respect I must say that Government never moves in the matter. We do not even get a reply.

DR. B. N. ANTANI: In a nutshell, do you agree to the total repeal of section 80?

WITNESS: Yes.

CHAIRMAN: You must be aware of certain Acts whereby the provisions of section 80 are modified and some limitations are placed. Would you not like that this section 80 should remain according to those provisions?

WITNESS: No; not at all. As it is, it is not serving any purpose at all. First of all, when the suit notice is issued to the Government, the Government does not move in the matter. Even after it receives the notice, it takes three months to file a written statement.

CHAIRMAN: Notice is given to the Government. How is the Government to know what are the facts upon which a suit is being brought against it. It must find out facts; otherwise, people rush to a court and file a suit and the Government is put to extra expenses.

WITNESS: There is provision for a compensatory clause.

Then, there is clause 17 which seeks to amend section 82. Here again I say that this makes a distinction between the ordinary judgment debtor and the Government where the Government is the judgment debtor. Why should Government have three months' time to pay off its debt? Why not the ordinary citizen be given the same privilege? Even in cases where three months have been given, the

Government do not move in the matter for payment of debts. When the order of execution goes, the Government do not move.

CHAIRMAN: Suppose a suit is being brought because of the action of Government servant, then is it not necessary that after decree is passed Government must be informed and given time in order to find out who this man was, whether his action was in pursuance of Government duty or whether it was outside it or whether he acted rightly or wrongly. Unless this fact is determined by the Government, how can they act?

WITNESS: This fact can be determined during the pending period.

CHAIRMAN: Government is not a party to the suit.

WITNESS: It is in his official capacity that the Government servant has acted.

CHAIRMAN: A person files a suit against a Government servant. It is not known whether the Government servant has acted on behalf of the Government. The suit is finally decreed against him. Then, will it not be necessary for the Government to know whether the action of that particular person was right or wrong and what the position was? And for this purpose, it is absolutely necessary for the Government to go into facts of the matter and then decide to pay or not to pay.

WITNESS: I respectfully disagree with you. It is very much like the surety made to pay in the first instance. Then, later on, he seeks reimbursement from the party. In the same way, if the Government is made to pay, the Government can find out and proceed against its employee. It is very much like the principal and surety, surety being made to pay first; then, later on the surety seeking reimbursement from the principal.

CHAIRMAN: That is another matter. In the case of surety, there is an undertaking given by him.

WITNESS: In the same manner, the State has to pay what its employee has to pay.

CHAIRMAN: The State takes no responsibility for the action of the employees. It does not take any responsibility. The person may be acting in his individual capacity and not as an agent of the Government.

WITNESS: When the decree is against the Government, why should Government not pay?

CHAIRMAN: I am saying that the decree is not against the Government; the decree is against the officer. Government is not made a party to the suit and the suit is decreed against the officer. Then, is it not necessary that the Government must have time to consider this point to know the facts before it is asked to pay?

WITNESS: Once there is the decree the events should take their own course. It is not necessary that the Government should be given time so that it may find out and put in a contest. If it is given time for three months, the Government will come with an application for review of the matter. Therefore, the Government can pay it first and then seek remedy against the officer concerned.

CHAIRMAN: It is not a remedy at all.

WITNESS: As it is, it certainly puts the Government in an advantageous position.

CHAIRMAN: It is not a question of advantage at all.

WITNESS: Now, the successful party is prevented from putting an execution immediately whereas another decreeholder is in a position to put his execution immediately soon after the decree is passed. One has to wait for three months and the other is able to realise his dues immediately. There is this disadvantage.

CHAIRMAN: What is the disadvantage?

WITNESS: Equality before law is very much minimised.

CHAIRMAN: It does not mean that we should not give an opportunity to the other or opposite party.

WITNESS: The opportunity should be there but to keep in suspension a decree for three months is not desirable because the successful party is prevented from proceeding further in the matter.

SHRI SHRI CHAND GOYAL: Your reason is that since the Government have defended the suit, they are already aware that the decree is passed.

CHAIRMAN: The Government are not a party to the suit. The suit was brought against a particular officer. Also, should not the Government have time to go into the facts of the case?

WITNESS: The issue is that the court has the power to add parties which are necessary. Once the officer files a written statement that the Government is the party, it is added.

CHAIRMAN: No, it is only when the defendant has made a statement that it is also responsible and not otherwise.

WITNESS: Yes, he will say 'I am not the person liable to pay and the Government are liable to pay'. The plaintiff will make him a party.

CHAIRMAN: There are so many cases where the Government are not made a party because no sufficient reason is before the court to make him a party. After the decree is passed against that person, if he pleads that the Government will pay it, it is the business of the Government to find out the circumstances . . .

WITNESS: Where the court finds that he is not the person to pay but it is the Government which has to pay, the suit will be dismissed.

CHAIRMAN: You are absolutely mistaken. The Court will not find the Government responsible for it. The Court will pass a decree against the officer.

WITNESS: If on the date of the passing of the decree no decree is passed against the Government, the Government will not be called upon to pay it.

CHAIRMAN: It is only when he says that he is not going to pay it, the amount has to come from the Government.

WITNESS: Execution will not be against the Government.

SHRI GOYAL: Your point is if the decree is passed against the officer in his individual capacity, then the liability of discharging that decree is on the officer and it cannot be shifted.

WITNESS: Yes.

SHRI P. C. MITRA: You want the deletion of Section 82.

WITNESS: Yes, I want the deletion of Section 82 along with Section 80.

SHRI MITRA: There may be certain officers who may have acted highhandedly against the people and the Government will not know about it and a case would have been filed against them. But those officers will file the case upto the Supreme Court at public cost. According to the new amendment, a subordinate officer need not report to the higher authorities about the filing of cases upto the Supreme Court at public cost. Do you think that the officer will commit less highhandedness after the incorporation of this amendment?

WITNESS: I do not think so. In the first instance I am not in favour of the amendment because it makes a distinction between two litigants in a court of law. Very often it is found that in the execution proceedings when the decree-holder obtains an order for the delivery of property, he

has to refer to Order XXI and make an application. Then when he goes to take delivery of the property, he may be faced with some obstruction by either a judgment-debtor or a third party. Then he has to approach the court to issue an execution order complaining of the obstruction. Then the matter is heard. After giving notice to the obstructor some orders are passed. In some cases the courts are granting aid of the police also for effecting delivery. So I suggest that where the court is granting the aid of the police to the decree-holder for obtaining the delivery of the property, the notice of the application for the grant of the police aid should also go to the person against whom the matter is raised. Recently, the Calcutta High Court has held that the notice of the application filed by the decree-holder for police aid, should also go to the respondent.

**SHRI BARUA:** Why it is necessary?

**WITNESS:** Psychologically when the Police go along with the decree-holder the parties concerned are very much afraid to put forth their case even and the property delivered. So, it is better that he is heard.

**SHRI BARUA:** Now people know what is what . . .

**WITNESS:** Grant of police aid is a very drastic step. There is the officer of the court to deliver it. My point is that even if the obstruction is by the judgment-debtor, he has to be heard. We must know why he has obstructed and what is his say in the matter.

**CHAIRMAN:** With regard to clause 23, you have stated that in view of sub-section (1) which lays down the cases in which the power of revision is to be exercised the proviso and the explanation do not seem to be necessary.

**WITNESS:** Yes.

**CHAIRMAN:** Do you think that the proviso restricts the power of the High Court or enlarges its powers?

**WITNESS:** They do not in any way abridge or enlarge its powers because

the conditions under which the power of revision is to be exercised are quite exhaustive so far as (a), (b) and (c) are concerned.

**CHAIRMAN:** General powers are stated in (a), (b) and (c) but now a limitation is placed that these powers will be exercised only if conditions in (a) and (b) of the Order are fulfilled. Therefore, they restrict the power of the High Court.

**WITNESS:** Restriction is already there.

**CHAIRMAN:** In sub-clause (a) it is stated—

‘the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding.’

That is a limitation.

**WITNESS:** Yes; The expression ‘finally disposed of’ could be a matter of controversy.

In sub-clause (b) it is stated—

‘the order, if allowed to stand, would cause irreparable injury to the party against whom it was made’

The expression ‘irreparable injury’ may be interpreted differently by different persons. One person may say that it is an irreparable injury and another person may say that it is not an irreparable injury.

**CHAIRMAN:** It will be for the court to decide it.

**WITNESS:** One judge may think that it is an irreparable injury and another judge may think that it is not an irreparable injury. So, I feel that (a), (b) and (c) are quite sufficient to cover all cases.

**SHRI RAJENDRANATH BARUA:** The word ‘irreparable injury’ has been widely interpreted. There are every so many decisions on that. Why bother now?

**WITNESS:** Take application for stay. One can say that if stay is

granted, it may cause irreparable injury. You can put any interpretation on that. These are practical difficulties.

**CHAIRMAN:** The expressing "any case which has been decided" includes any order made in course of a suit or other proceeding, including an order deciding an issue. Previously there was difference of opinion between various High Courts. Now that had been set right by our explanation on Page 9 of the Bill.

**WITNESS:** We follow certain procedure in Andhra Pradesh. Issues are settled by Court. We obtain certified copies. If we find that a particular issue is not necessary, then we make an application to the court in the first instance. If it comes again, we prefer a revision. No appeal is provided for. The words "any case which has been decided" includes issues also.

**CHAIRMAN:** It includes any order made in the course of a suit.

**WITNESS:** Issues of law come before issues of fact. There is the issue of Court Fees, issue of jurisdiction. It is decided as preliminary issue. If it is to be issue framed under Order 14, it is all right. If it is preliminary issue, there is appeal.

**SHRI SHRI CHAND GOYAL:** Your suggestion is we retain sub-para I and delete the proviso along with explanation and also sub-clauses 3 and 4. Ultimately it comes to this. We retain the old section 115.

**WITNESS:** Yes. Sec. 115 is serving its purpose.

**SHRI SHRI CHAND GOYAL:** You have studied the law well and you have given us useful suggestions. Kindly tell us how far this piece of legislation has achieved its objective viz. to minimise delays and to reduce costs. How far has this measure succeeded in that?

**WITNESS:** If the procedure that is prescribed under the Act is followed

456 RS—24.

by all the advocates, much of the present time taken could be minimised. It is a well-drafted Code. It provides for various procedures. Once the statement is filed, issues are framed. If issues are framed, there is provision for filing of documents. Once document is filed, if the advocates are vigilant, they can ask the other party which are the documents to be proved.

**CHAIRMAN:** In other words, you say that if the present Civil Procedure Code is followed with care, there will be no delay. Except some minor changes, major changes are not necessary in your view.

**WITNESS:** Yes. There is one more point I want to say. In Clause 39, it is said as follows:—

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

Filing of document, filing of interrogatories are there. The 10 days' time limit is not at all enough. Some more time should be allowed.

**CHAIRMAN:** All right. We note it. Thank you so much for having come here and for having given us the benefit of your advice.

*(The witness then withdrew)*

*(At this stage the witness, Shri R. Ramasubramaniam, was called in.)*

**CHAIRMAN:** Thiru Ramasubramaniam, Law Secretary, Government of Tamil Nadu has come before you gentlemen to give evidence. He has sent his comments earlier. We request you to let us know on what points you would like to elaborate.

**WITNESS:** I am a Judicial Officer, having been District Munsif for about

a decade, Subordinate Judge for six years and District Magistrate for some time, I have been a Judicial Member of the Sales Tax Appellate Tribunal and after becoming District Judge, I have become Law Secretary to Government of Tamil Nadu.

At the outset I want to say that the views that I am giving are my own views. They are not the views of State Government.

I may refer to Clause 7. It is modification of Sec. 25. It relates to transfer of cases pending before High Court. Previously the transfer was done by State Government. The present proposed clause makes a sense of omission in two ways. It takes away the power of State Government and vests it in Supreme Court. I do not know the reasons which prompted you to make this change. I want to tell all of you that we are not under a Unitary type of Government now but under a Federal Type of Government. The proposed clauses provide for transfer totally ignoring the remarks or opinion of State Government, whereas under Sec. 25, the power is given to the very State Government to make a transfer. Even calling for remarks or opinion of the State Government is not provided for in the proposed Clause.

CHAIRMAN: This particular thing covering transfer of a case from one State to another is considered more of a judicial act than an administrative act. If it is an administrative act, if it is to be done on administrative grounds, the State comes in. Since it is a judicial act, we thought it better to leave it to the Supreme Court, the highest authority in the land so far as judiciary is concerned.

WITNESS: At least for "consulting" the State Government, provision could have been there. I use the word "consulting" after much care.

CHAIRMAN: There has not been much objection to that. What you say will lead to delay. Suppose a transfer

application is moved in a High Court. Notice should be issued to State Government. If the State Government were to come before the Court with some plea, it has to be heard. All these mean delay. To avoid such delays, power has been given to Supreme Court.

SHRI SHRI CHAND GOYOL: It may be a dispute between party and party; the State Government does not come in. In such cases, it may so happen, the State Government has no remarks to offer.

WITNESS: If it is feared that reference to State Government will take time, a time-limit could be fixed and that would solve the problem.

CHAIRMAN: You see. When notice is given to the Supreme Court, they will have to call for remarks of the State Government and that will take time, say at least one month.

WITNESS: We have delays in respect of civil cases. As District Magistrates, we are expected to dispose off a certain number of cases within a year in respect of the original side. If such suits are transferred from one place to another and for consultation of the State Government, if it takes one more month, it will satisfy the requirements of our Federal set-up of our Government. I do not think giving one month will create any great difficulty. Further,...

CHAIRMAN: It does not mean bypassing the State Government in any manner.

WITNESS: Section 25 gives power to the State Government and now that very power is attempted to be taken away that too behind the back of the State Government. Further, Civil Procedure Code is a concurrent subject and the State Government has every power, subject to sending the Bill to the President for his consideration. It is not a subject exclusively left to the Central Government, in the present set-up of our Government. Our Government, the State Government, have

set up a special Commission to enquire into the relations between Centre and State, headed by the eminent jurist, Dr. P. V. Raja Mannar. When such is the situation, to say that the Government of the State will not be consulted in respect of these transfers is not quite proper and it is only in that aspect. I am putting that point emphatically before this Select Committee.

**SHRI CHAUDHURI RANDHIR SINGH.** One question, Sir.

**CHAIRMAN:** Put the questions later. I draw the attention of the witness to the notes on clause 7, page 59 wherein it is stated there what is the idea behind this amendment and why this new change is being made. It is said: Section 25 of the Code empowers the State Government to transfer suits, etc. in certain circumstances from the High Court exercising jurisdiction in the State to another High Court. This section is very narrow in scope as it provides only for transfer of suit, appeal or other proceeding pending in a High Court presided over by a single judge. Besides the State Government does not seem to be an appropriate agency for exercising the power of transfer. New section 25 seeks to transfer to the Supreme Court the existing powers vested with the State Government and to confer on the Supreme Court some wide powers of transfer as it has in criminal cases under Section 527 of the Code of Criminal Procedure. "Two lines below, it is said:" It is also thought unnecessary to vest in the Attorney-General or the Advocate-General a general power of moving for transfer of any proceedings". Therefore, you will see that it is not the idea of the framers of this Bill to bypass any of the State Governments in any manner, but it is considered that powers which would be vested in the Supreme Court will be more in consonance with justice and they will look into all aspects, administrative as well as otherwise.

**WITNESS:** If I remember aright, the Criminal Procedure Code was amended somewhere in 1955....

**CHAIRMAN:** Yes.

**WITNESS:** Up to 1967, the history of India will show that it was under the rule of one party both in the States and in the Centre. But after the 1967 General Elections, we have got a different complexion, different parties ruling in different States and a different party in the Centre. If a different Government happened to be in power in different States and the Centre, the position in 1955 would have been different and some States might have objected to the amendment of the Criminal Procedure Code. Therefore, the political complexion in 1955 was quite different. What was stated by one man was simply followed by others and other States. But now every State Government feels that it should have more powers.

**SHRI CHAUDHURI RANDHIR SINGH:** It is not a question; I want to say something. If you see it closely, there is no usurping of any powers of the State here and it will not injure you. Just as a District Judge or a Sessions Judge has the right to transfer cases from one court to another, and just as High Court has powers to transfer cases from one Sessions Judge to another, similarly this is done. What is the harm in Supreme Court having the powers of transferring cases from one High Court to another. Where has this politics come in the matter?

This is in consonance with the Civil Procedure we are following and therefore there is no political angle to this problem. Would you kindly dilate upon the views that I am proposing?

**CHAIRMAN:** I may inform you that this Bill was introduced in the Legislature long before the 'complexion' changed.

**ONE MEMBER:** Therefore it is he is raising this pertinent question.

**CHAIRMAN:** There is no intention of the Central Government ignoring the State Governments in this.

**SHRI RAJENDRANATH BARUA:** He is concerned about the powers vested in the State Government.

**WITNESS:** Exactly.

**CHAIRMAN:** You can proceed.

**WITNESS:** Secondly . . .

**CHAIRMAN:** We are only trying to remove the misapprehension in your mind. We are assuring you that the Central Government is not taking any action like that and they are not overlooking the interests of the States. It is only doing this because of the interests of the litigants as well as Supreme Court being the highest authority to decide on these matters of judicial nature. You can proceed.

**WITNESS:** The second thing is about transfer of case from a subordinate court to another State. The clause provides for two things one is it deprives the State Government of its powers and vests it in the Supreme Court and the second is whereas Section 25 related to High Court, in the proposed amendment transfer from one subordinate court, to another court from one State to another State is ought to be provided for. Section 25 relates only to cases pending in the High Court. In the proposed amendment, not only cases pending in High Courts, but also other civil courts and therefore it includes the court of a district judge, a subordinate judge, a district munsiff and even a village court.

**CHAIRMAN:** Yes, it will.

**WITNESS:** Can't you be satisfied with transferring such cases from one district to another district within the State? Why should we provide for transfer outside the State?

**SHRI CHAUDHARI RANDHIR SINGH:** Supposing there is a peti-

tioner who thinks that the Chief Minister of Haryana, Bansilal or Gurnam Singh the Chief Minister of Punjab, is against his case and therefore will not be interested in its transfer and therefore think that the Supreme Court can do justice, what is the harm in giving the powers to the Supreme Court. If the powers are with the State Government, justice may be denied to the private party. I am not talking about the Tamil Nadu Government, I am referring to my own State. Supposing such a situation arises?

**WITNESS:** Why should one presume that the State Government will not render justice?

**SHRI CHAUDHARI RANDHIR SINGH:** I just want your reply to my proposition.

**WITNESS:** So far as we have elected representatives . . .

**SHRI CHAUDHARI RANDHIR SINGH:** Suppose, I am a petitioner against the Chief Minister of Haryana or Punjab, they will not naturally agree to the transfer of the case to some other High Court. I suppose the Supreme Court can in such a context be given the power to transfer such a case. What is the harm?

**WITNESS:** The whole thing smacks of suspicion in the integrity the subordinate judiciary, the High Court Judges and the State Government. If a transfer is necessary, if a transfer is thought necessary from Madurai District Court, supposing you have no confidence in the Madurai District Judge, well, why not transfer it to Coimbatore or some other place within the State?

**SHRI RATAN LAL JAIN:** Your point is this. Formerly, only cases of High Court can be transferred. But now any case at any stage of any State can be transferred to any other State . . .

**WITNESS:** Including the village court.



SHRI RATAN LAL JAIN: And therefore a solvent party, a rich man can move the Supreme Court and drag a poor party to any place.

WITNESS: Yes, if a big man is involved, he can play terrific havoc.

ONE MEMBER: Thereby, the cost is also increased.

WITNESS: Therefore it is I say that the proposed amendment is unfair to the State Governments. As was said by the Member, it will indirectly increase the cost also. I therefore make an emphatic protest against the proposal. You may record it.

I now go to the next point. Clause 15 proposes to amend Section 60 of the principal Act. My only simple objection—I would not even say it is an objection—remark is that it seeks to deprive the decree-holder of his remedy to proceed against the debtor by attachment of salary. It restricts him to 24 months only. This is a Procedure Code, it is not a substantive law. To deprive the decree-holder of a particular remedy—of course there are other remedies also—and restrict it to a particular period is not proper. I am afraid it may not also be within the scope of the Procedure Code, for his substantive right is affected. It is for you to consider this aspect, whether it is competent to enact that within the Procedure Code. This provision affects the substantive law. It has got to be done under the general law.

I am also against the omission of the salutary provision which is working satisfactorily for several years. That is, I am against the omission of Section 80.

Now in our High Court there are about 6,000 Writs. The Deputy Secretary in charge of Courts dealing with them is here by my side. We are living in a welfare State where the Government want to take progressive and development procedures and schemes for increasing the amenities to the general public. If scope is given

to a disgruntled person to stop a particular progressive scheme by misrepresentation or suppression of facts and getting an injunction, it will stop the particular scheme for several months. That is why an opportunity is given to him to send a notice to the Government. Then, it is left to the Government to think over it and accept it or not. Unlike an individual the Government cannot at a particular level take a decision immediately. If a notice is given by a to B, B, being an individual, immediately comes to a conclusion. But if notice is sent to the State Government, it goes to the Secretary in the Industries Department and he sends it to the Director of Industries who in turn sends it to the Assistant Director of Industries. It will take time. After all these stages the Government comes to a conclusion and naturally it takes time. Government is an institution. It is better to retain the Section so that we have frivolous claims made by persons at random immediately and injunctions got.

SHRI RAJENDRANATH BARUA: So, you say that the Government will be flooded with injunctions and no progress will be made if this Section is taken out.

WITNESS: Partly right.

SHRI P. C. MITRA: Suppose it concerns a demolition of a house which, it is stated, is dangerous to the public ....

WITNESS: In those occasions I have the privilege of giving injunction. They arise only once in a thousand or ten thousand cases.

SHRI P. C. MITRA: You are in favour of amendment of Section 80.

WITNESS: I want the retention of Section 80. Ample power is given to the Court in cases of emergencies like which you have stated. Even without notice I have given injunctions.

SHRI RAJENDRANATH BARUA: If Section 80 is taken out of the Code,

then the progressive schemes like building construction road making and acquisition of lands for such purposes will come to a standstill. In that view you say that Section 80 should be retained.

WITNESS: We have got more than 600 acquisition applications.

SHRI P. C. MITRA: You want some modification to be made for dealing with emergencies.

WITNESS: If special circumstances are mentioned. But the point is either omission or retention with which we are concerned. If certain amendments are brought, then it is open to me to say whether those amendments may stand or may not stand. I am against total omission. We are at that point.

SHRI SHRI CHAND GOYAL: If Section 80 is mostly utilised by the litigants who have their personal grievances, I have not yet understood how it is going to prove an obstruction in the way of development activities because nobody brings a suit to obstruct a particular activity of the Government. Somebody may claim his salary or his other right. It is very seldom that the Government's particular development scheme is challenged in law courts. I am not able to appreciate how it is going to obstruct or prove a hurdle in the way of development activities of the Government.

WITNESS: If notice is not given, he can straightaway go and file a suit and get a stay order. If notice is given, the Government have time and they will take necessary steps. What I say is, there may not be an equality between the Government and the individual at the present stage of welfare State, as there is scope for misusing the same.

SHRI SHRI CHAND GOYAL: Our experience is, that in not even one out of 1000 cases the Government responds or takes any advantage of this Section.

WITNESS: I regret to say I hold the opposite view. Let us beg to differ.

CHAIRMAN: I was asking you about your experience. On receiving notice does the Government act and either compromise or make the thing clear to the opposite party that no money is due or no remedy is necessary? Or is it ignored generally by the Government? The experience of the various persons has been that the Government does not respond to the notice and two months' time is wasted without any good results following. It is true that some of the witnesses before us have stated that at times matters are compromised and therefore, the Section should not be omitted. But what is your experience?

WITNESS: A general statement cannot be made to the effect that the Government does not concede real claims. In certain cases the State has conceded and instructed the Government Pleader to accept it.

CHAIRMAN: That is exactly what I wanted to know. So, cases are compromised by the Government.

WITNESS: Certainly we have instructed to compromise in certain cases and I have also instructed the Government Pleader like that as Law Secretary to the Government.

CHAIRMAN: Will you kindly see page 22, para 52 of the 27th Report of the Law Commission on this subject? Please mark the words "Experience has also shown that the provision of this Section has worked great hardship, particularly in suits relating to injunctions. For these reasons we have recommended omission of this Section."

WITNESS: As I have just now discussed with the Hon. Member, in a few cases of injunctions there may be injustice and I have also told him what I have done. My point is, it does not warrant the omission of the entire provision which will deal with

all kinds of litigation against the Government. Further, to compare with Anglo-Saxon country may not be all right. There, the Parliament is supreme. Whatever laws that are passed by Parliament in England cannot be questioned by any Court saying that it is *ultra vires*. But that is not so in our country. The law-making power of a State or Centre must be within the scope of their respective jurisdictions. questions of *ultra vires* nature of a particular rule or a particular Act will come up before any court. So, I am not able to agree with the comparison with England. I certainly agree that there may be a few cases of injunctions like that, but they will be very little, not even 5 per cent. On that ground to say that the entire Section should be omitted, I do not agree with it. That is my humble suggestion.

MR. CHAIRMAN: May I also draw your attention that we have circulated this Bill to the Madras High Court and their comments have also been received. But they have not opposed the deletion of Section 80 in their comments.

WITNESS: I am not responsible for their views. I have initially stated that what I say here is not the view of the State Government. The State Government permitted me, Ramasubramaniam, to give evidence before you. I am giving my own views on this matter.

CHAIRMAN: We gave ample opportunity to all persons to come forward with their suggestions.

WITNESS: I do not make any protest against that.

SHRI P. C. MITRA: The High Court did not oppose the giving of the power to transfer cases to the Supreme Court.

WITNESS: I am under the control of the High Court. The High Court has lent my services to the State Government for a few years. I am not expected to say anything about

the views of the High Court. That is why, I do not say anything about it.

DR. B. N. ANTANI: Would you agree with me when I say that it is very often said that this provision of section 80 is exploited by Government?

WITNESS: I emphatically deny it. I was an Advocate from 1942 to 1950 and a judicial officer for ten years.

DR. B. N. ANTANI: You are aware of the Foreigners Act, as it not happened on border areas that in regard to citizenship, steps have been taken to take certain persons out of India and thus this section 80 is exploited?

WITNESS: I do not propose to deny that.

DR. B. N. ANTANI: There may be few cases of this type, for which modifications may be required.

WITNESS: we are here on the total deletion of section 80.

SHRI SHRI CHAND GOYAL: Experience shows that on account of notices being defective many suits have been lost. On the ground that the affidavits are defective suits have been lost. That works a hardship on the citizens.

WITNESS: If the litigant chooses to engage a lawyer who could not send proper notices, he has to pay for it. It is his duty to choose a better lawyer. If he does not choose an able lawyer no wonder he loses his case. We have hundreds of very good lawyers.

CHAIRMAN: A suggestion has been made to us that if section 80 is to be retained, then a provision which is found in the Municipal laws of various States should be added.

WITNESS: I beg to state that I am not prepared for the supplementary question, because I did not think over about this particular point. I was asked to offer my views about the deletion or not of section 80.

**CHAIRMAN:** Since you are in favour of the retention of section 80 and if section 80 is allowed to remain, will it not be alright if a proviso as in the Municipal laws of various States is included in it?

**WITNESS:** In cases of certain injunctions damages can be granted. I am not able to reply offhand.

Then, with regard to clause 30, this provides for giving plaintiff copies after the admission of plaintiff. Hitherto, the procedure is, plaintiff copies should be received at the time of the registering of a suit and given a particular number. As a judicial officer, we are expected to dispose of a particular original suit within a particular time limit. Some times if the plaintiff is defective, we return it asking the party to rectify the mistake and resubmit it. After it is returned rectifying the mistake, if any, it is registered. After everything is ready, it is registered and given a number. Once it is registered and given a number, it cannot be tampered with. Then, the time runs from the date when the plaintiff is registered and the judicial officer is bound to dispose it off within a specified period. I am on the procedural matter.

**CHAIRMAN:** Kindly see page 65 of the Bill. Under Clause 30 (Order V)—Sub-clause (a), you will see the following:

“Accepting the suggestion contained in the 14th Report (vol. 1 p. 302, page 11), it is proposed to add a proviso to sub-rule (1) of rule 1 to the effect that in appropriate cases the Court may direct the filing of written statement on the date of appearance and issue a suitable summons for the purpose. In respect of failure to comply with such direction, it was felt that the provisions contained in Order VIII, rule 10 would be sufficient.”

**WITNESS:** Generally in original suits we give two weeks time and in small causes one weeks time. If further time is required, we ask the party

to file a separate application stating the reasons. If written statement is not filed within two weeks, we ask the party to file the written statement on the date of his appearance and that may work hardship on the defendant. Of course, giving two weeks' time may not much affect the duration of the suit.

**CHAIRMAN:** I was referring to Clause 30.

**WITNESS:** I am sorry. I mistook it for Clause 32.

With regard to Clause 32, registering of suit is done only in chambers and it does not come to the open Court. After the plaintiff is found correct, we issue notice. Only after the plaintiff presenting all the copies, it should be numbered. Once a number is given, there is no question of giving time. Even before numbering the suit plaintiff copies must be obtained. Time runs only from the date of numbering. We say “Suit No.... Filed. Issue Notice to the Defendant for 10.2....” Before that date everything is to be ready. Along with the summons plaintiff copy will go.

I am now coming to Clause 33. As it now stands, when a defendant makes a counterclaim, we give time to the plaintiff and ask him “What do you say for the counter-claim?” He files a reply statement. When we say ‘defendant’ we may not be able to say which defendant—defendant of the original suit of the defendant in respect of the counter-claim. To avoid that confusion my suggestion is there.

**CHAIRMAN:** We will examine that.

**WITNESS:** With regard to clause 35, the presiding officer must read the plaintiff before he puts questions. Another point is, supposing the defendant says that for a claim of Rs. 200 he has paid Rs. 150 and the balance is Rs. 50 that should be recorded. Next time, he may engage another lawyer and he may raise another plea also. That is debarred now. Recording the statement of the defendant is necessary.

CHAIRMAN: What is your opinion about pre-trial? Before the actual trial takes place, the Court brings the parties together and discuss the matter.

WITNESS: I will decide unofficially. For instance, in maintenance cases, we ask the parties "why don't you take your wife?" Bring somebody from the village who can act as panchayat-dars". There are certain cases in which compromise may be reached. We generally do it in maintenance cases.

In partition cases, there may be claims and counter-claims. We do not enter that. In such select cases, there is possibility for compromise. We may have a discussion in the chambers and in the presence of lawyers we ask them. I have succeeded like that in partition suits and maintenance cases in effecting a compromise.

CHAIRMAN: It is said that in foreign countries such a beneficial step has been taken to help the parties to come to a compromise or a settlement. But the Law Commission did not accept it.

WITNESS: Now I come to clause 39. It is a salutary provision. The provision regarding the filing of a list of witnesses is a salutary one. A copy of it should be furnished to the opposite party. As regards non-appearance a fine is sought to be imposed and I am unable to find such a provision anywhere in the Civil Procedure Code and it may amount to a 'conviction'. In a civil court you can award a penal cost or compensatory cost. Sometimes in respect of the service of summons, there may be a false endorsement that a witness is not available and it may lead the court to believe that it is so and they may fine him. If the word 'fine' is removed, I have no objection to the provision.

SHRI CHAUDHURI RANDHIR SINGH: We are not putting him behind prison bars.

WITNESS: Even if it is fine, it is a conviction.

CHAIRMAN: Your point is that in civil matters, these things should not be restorted to.

WITNESS: When a person is fined there is stigma attached to it. There are provisions in other Acts, according to which if a person is fined Rs. 50 he is debarred from contesting an election.

Then I come to clause 44. There is a proviso which says that upset price may not be fixed. If there is such a proviso, it may lead to the possibility of the property being taken away for a lower value. Generally the court will fix Rs. 1000 and the bid will start. As a District Munsif I know that many properties were taken away for a lower price.

CHAIRMAN: But the court has power not to recognise the sale of properties where the price is found to be lower.

WITNESS: But it is better that the upset price is also taken into account.

CHAIRMAN: Then with regard to clause 23 of the Bill (and Section 115 of the Act) do you think that it increases the powers of the High Court or restricts its powers? Also whether it is desirably to have the proviso, namely—

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

- (a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or
- (b) the order, if allowed to stand, would cause irreparable injury to the party against whom it was made.'

WITNESS: The proviso in a way restricts the powers of the High Court.

**CHAIRMAN:** There is another view which holds that it enlarges the powers because the sub-clause (b) says-

'the order, if allowed to stand, would cause irreparable injury to the party against whom it was made'.

**WITNESS:** I do not think that it is an enlargement of the powers.

**CHAIRMAN:** This change is being brought about to restrict the litigants from rushing to the High Court in respect of a trivial matter. As you must be aware heavy arrears are pending in the High Court.

**WITNESS:** I am of the view that there should be reasonable restriction.

**CHAIRMAN:** Do you think that we should allow the present position to continue?

**WITNESS:** From the practical point of view these aspects are considered before the High Court passes any order on that. Is there any case in justification for the insertion of such a proviso in this Bill?

**CHAIRMAN:** On Page 63 you may find that power of revision is limited.

**WITNESS:** High Court is now called upon to deal very often with interlocutory applications.

**SHRI F. C. MITRA:** Revision petitions are mostly rejected by Courts, after they are kept pending for years. If restriction is put, number of revision petitions may be reduced.

**WITNESS:** Only appropriate cases will come up before High Court, then.

**CHAIRMAN:** Kindly refer to Para 54, Pages 23-24 of the 27th Report of Law Commission.

**WITNESS:** I agree with its findings. When I was a Subordinate Judge in Tirunelveli, there were two suits in 1960, viz. O.S. 19 of 1950, O.S. 25 of 1925. Both the parties had their own eminent lawyers. There were civil revision petitions of more than 50 and most of them were dismissed by High

Court. I asked my Bench Clerk as to the number of C.R.Ps. He said that there were more than 50. They were dismissed on frivolous grounds. The point was whether a particular woman claiming a share was a concubine or wife. That was the issue. But there were so many civil revision petitions. On that account, the hearing of the suit was stayed. The issue to be decided was whether she was wife or concubine.

**CHAIRMAN:** That is a vital issue.

**CHAUDHURI RANDHIR SINGH:** There is the fundamental right of the citizen to have the all the remedies open to him. Or you might increase the number of High Court Judges so that the interest of the citizen may be best served. After years and years, the matter comes up before the High Court and the matter is decided by the High Court. The citizen should have all remedies open to him. Secondly the overload on the Judges should be reduced. Have you any concrete suggestions to make on how the present pressure of work in the High Courts could be reduced and justice rendered speedier.

**WITNESS:** I am only a witness before the Select Committee. Having been a lawyer myself, I know that I have come for a limited purpose only. Rajaji has said that after Independence in 1947, the Constitution has become a paradise for lawyers. Under Article 226 we are dealing with more than 6000 writ applications. That has increased the volume of work in High Courts. The other litigations have not increased much. Three single judges and two benches are dealing purely with writ jurisdictions. In most cases the respondent is State Officer or State Government. If we can find a way out to lessen this, it will be better. Under Land Acquisition Act, more than 1000 writ petitions are pending from 1965. We are not able to proceed with the work. MLAs make representation that work is being delayed. But it takes time for the

Courts to decide. Government are trying to address the High Court to see whether two or three judges could hear these cases so that 1965 cases could be disposed of at least in 1970.

**CHAIRMAN:** Thank you very much for the trouble you have taken.

**WITNESS:** I deem this as a privilege shown to me by the Committee. If we have said anything irrelevant, we may be excused.

*(The witness then withdrew).*

**CHAIRMAN:** We have finished our session in Madras. I require your co-operation in submitting our report before the next session of Parliament ends. It will be necessary for you to undertake the trouble of attending the meetings during the session period. I have chalked out a programme. Before 5 P.M. on 24th February, 1970, you may kindly send your amendments to the Bill. You may all be in Delhi on 17th February, 1970 and you have a week's time. We will have a sitting on Friday 27th February, 1970 at 3.30 P.M. when the session will be on. I intend having our meetings on Fridays and Saturdays; on Fridays it will be from 3.30 P.M. to 5.30 P.M. and on Saturdays it will be from 10.30 P.M. to 1.00 P.M. (except the second Saturday of the month, which is a closed day for Rajya Sabha). In six sittings, we can finish clause by clause consideration. That will be enough, I think.

**SHRI TANDAVAN KIRUTTINAN:** Kindly extend the date for submitting amendments to 28th February, 1970. Some of us will be reaching Delhi later than 17th February, 1970.

**CHAIRMAN:** I suppose all Members will be there in Delhi. You may send your amendments by post. My only anxiety is that I should be prepared

to file the report of the Committee before I retire on 31st March.

**SHRI SHRI CHAND GOYAL:** During week-ends, on Fridays and Saturdays, we usually visit our constituencies. This being a budget session, it will be a long one and during week-ends, we have to visit our constituencies. If you have meetings on Fridays and Saturdays, it will deprive us the opportunity to visit our constituencies. The question of quorum is there.

**CHAIRMAN:** I seek your co-operation.

**SHRI RATTAN LAL JAIN:** Perhaps you may utilise the Lunch hour of the Lok Sabha.

**CHAIRMAN:** If the progress we make is good, we can leave out one or two Fridays and Saturdays. I have calculated six days would be enough for discussion. If we find we make good progress, we can give up one or two days. In any case, I am leaving out second Saturdays of the Month and I am also leaving out all holidays.

**CHAUDHURI RANDHIR SINGH:** You may do as best as you can, Sir.

**CHAIRMAN:** All right. That is agreed.

Now, I have to thank the Speaker and the officials of the Tamil Nadu Legislature Secretariat for the comforts and convenience they have provided for us. On your behalf and on my own behalf, I thank them all. I thank you all very much for your co-operation.

**HON. MEMBERS:** We thank the Chairman very much.

*(The witness then withdrew).*