

# REPORT OF THE CIVIL JUSTICE COMMITTEE

1924-1925

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Appendix No. 2—ORAL EVIDENCE

(In Three Volumes)

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VOLUME I

(Bengal, Assam and the United Provinces)



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**NOTE.**

The record given herein of the oral evidence does not always reproduce the exact words used but is to be regarded only as a rough note taken by the Committee's reporters for the purposes of the Committee. The notes have not been revised by the witnesses.

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# THE CIVIL JUSTICE COMMITTEE.

## Questionnaire.

(Please make a careful selection from these questions.)

1. What do you think is the period reasonably required, *having regard to the habits and customs of the people of your province*, for the disposal of the following classes of civil proceedings:—

A. (i) *High Courts.*

Original suits: (a) Commercial, (b) Others.

First appeals.

Second appeals.

Miscellaneous appeals.

(ii) *District and Sub-Courts.*

Original suits: (a) Title, (b) Money.

Regular appeals: Civil miscellaneous appeals against orders.

Small causes.

(iii) *District Munsifs' Courts.*

Original suits: (a) Title, (b) Money, (c) Rent, (d) Others.

Small causes.

B. (i) Claim proceedings in execution in district courts, sub-courts and district munsifs' courts.

C. Suits in the Presidency small cause courts, suits in the city civil court, Madras, and execution proceedings in these courts.

2. Does the period actually taken now for the disposal of those proceedings exceed what you consider to be the reasonable limit in *many cases*? If so, what do you consider to be the main causes of the delay?

3. *Apart from any addition to the existing cadre of judicial officers, or the opening of temporary courts*, what remedies would you suggest for shortening the period during which civil proceedings are now pending?

4. Do you think it is necessary to alter the present method of recruitment of the different grades of judicial officers, namely, district munsifs, sub-judges, district judges, and High Court Judges for the purpose of speeding up proceedings? If so, how would you change the present rules?

5. Do you think any special training is necessary for district munsifs? If so what sort of training would you suggest?

6. Is justice impeded by the too frequent transfer of judicial officers from one district to another?

7. How would you prescribe a standard of efficiency for an officer as regards amount of work done? What steps would you suggest to insure its attainment?

8. Is the present delay partly due to the concentration of *many* civil courts in one place, and the consequent waiting for members of the legal profession?

9. Do you think any change in the jurisdiction of the several classes of courts working at present will lead to more speedy and less costly justice?

10. Would you enhance the jurisdiction of the district munsifs in your province in original suits and small causes; if so, to what extent?

11. Would you give special enhanced jurisdiction to selected district munsifs, and, if so, to what extent?

12. Do you think it is necessary to relieve the district judge of miscellaneous work, (a) judicial, (b) administrative, which he is now doing, to give him more time to attend to important work? What is the kind of miscellaneous work which you would thus transfer from the district judge and to whom?

13. Would the investing of sub-judges and district munsifs, with jurisdiction to try probate and succession certificate proceedings and *land acquisition* proceedings be acceptable to the public? Would you invest all such officers with such powers, or only selected officers?

14. Would you confer *exclusive* jurisdiction on village courts and panchayats? What is your experience and opinion of the work done by such courts? Up to what extent and in what class of cases should such *exclusive* jurisdiction be given?

15. Would you restrict the scope of section 19 of the Presidency and schedule (ii) of the Provincial Small Cause Courts Act and give small cause courts jurisdiction over some and what classes of suits excluded from their jurisdiction at present? Is there any objection to suits to enforce simple mortgages by the sale of the mortgage property as also suits relating to partnership with small capital being dealt with by these courts?

16. (a) Do you consider that summary procedure as contemplated by section 128 (2) (f) of the Civil Procedure Code could be introduced in the lower courts, and, if so, with what limitations?

(b) Would it be desirable (in Bengal and Behar) to include suits for rent on a registered kabulyat or where there has been a previous decree establishing the relationship and the rate of rent?

17. Would the investing of *sub-registrars* with jurisdiction to try certain classes of cases which are not contested make for speedy and less costly justice? If so, what would you suggest as to the limits of that jurisdiction?

18. Do you think that at present the right to appeal is granted in too many cases? If so, in what classes of cases would you curtail it?

19. (a) As regards the High Court, do you think the curtailment of the right of appeal under Letters Patent from the judgment of a single judge is necessary, and, if so, in what cases if any would you curtail it?

(b) What do you think of the suggestion that in revisions and appeals from the mofussil of the value of Rs. 1,000 and under, no Letters Patent appeal should be allowed?

20. Are very many frivolous second appeals filed in the High Court of your province? If so, how would you prevent it? What do you think of the suggestion that in suits for property worth (a) Rs. 1,000 and less or (b) Rs. 500 and less or (c) Rs. 250 and less, no second appeal should be allowed, whatever the class of the suit?

21. Would you agree to the suggestion that the appellant should be compelled to deposit in full the decretal amount before the second appeal is allowed to be filed?

22. Is the power given under Order 41, Rule 11, duly and systematically exercised? If not, what would you suggest to ensure this?

23. Is the right of application in revision to the High Court much abused, and, if so, how would you curtail it? Would you accept the suggestion (1) that in cases of revision under the Provincial Small Cause Courts Act, the decretal amount should be deposited in court before a revision petition can be presented, and (2) that no revision petition under

section 115 should lie, against such interlocutory orders as can be attacked in an appeal against the decree in the suit?

24. In what ways would you change the present procedure as regards the trial of *original* and *small cause* suits, with a view to make justice more speedy and economical?

25. At present much time is taken *after* a suit is filed, in serving the defendants who are either absent or wilfully avoid service, when the process-server goes to serve the defendant's summons. What would you suggest as a remedy for this? Would the application of the procedure under section 106 of the Transfer of Property Act to civil suits be desirable?

26. Does the usual form of plaints in your province differ materially from the English writ and statement of claim? If so, would you insist on the latter from being used in all cases? Are the forms of plaints given in the Civil Procedure Code adhered to generally? If not, what penalty would you suggest for non-adherence thereto.

27. Are the provisions of the Civil Procedure Code in Orders VII and VIII as regards pleadings neglected much in your province?

28. Would the more extensive use of the post office for the service of notices and summonses be effective? Can the village officials of the village where the party to be served is living, be used for purposes of serving process, and, if so, with what precautions would you use them?

29. Would a rule be advisable requiring parties to give a registered address service at which should be deemed to be good service for all purposes of the suit and execution?

30. What do you think of the suggestion that process-server should always report himself to the pleader of the party on whose behalf he is taking out a process for service, so that the pleader or the party may assist him in finding out the person to be served and prevent waste of time?

31. What provisions would you suggest to ensure the better framing of issues?

32. Are the provisions of Orders X, XI and XII, Civil Procedure Code, as regards the examination of the parties, discovery and admission of documents, neglected in your province? If so, what is the reason for such neglect? What would you suggest as the remedy?

33. Would the examination of both the plaintiff and the defendant, not merely with a view to ascertaining what the points in controversy are at the first hearing, but as part of the trial at the beginning of it, before any witnesses are examined, tend to minimise the calling in of irrelevant evidence and of witnesses unnecessarily? Would you agree to the suggestion that it is only after the examination of the parties in that form, that any steps for the summoning of witnesses should be taken?

34. Is the provision in Order 16, Rule 16, clause (1) strictly enforced in your province? If not, what steps would you suggest to put down the system of issuing summonses to witnesses again and again for the several hearings with the consequent delay due to non-service?

35. Is much unnecessary and avoidable oral evidence let in in the courts of your province? What would you suggest to prevent the calling of several witnesses who ultimately prove nothing? Can you suggest any means by which the court can control the citing of a large number of witnesses and examination of them?

36. What is your opinion on the suggestion that in all cases where there is no appeal (except small causes) such as enquiries into claims, succession certificate proceedings, proceedings for removing an obstruction to delivery of property, as also in *ex parte* proceedings, *affidavits* should be the primary mode of proof, and no oral evidence should be allowed, except with the special leave of the court on pre-payment of special costs?

37. What do you think of the suggestion that courts should have discretion to fix a time-limit for the examination and cross-examination of witnesses?

38. Would you extend the application of Order 37, Civil Procedure Code, and, if so, to what classes of cases?

39. Could the principle of representative suits be made of wider application and are any steps necessary to ensure that this form of suit is insisted on in proper cases? How would you deal with the case of (a) Mitakshara families, (b) other co-owners, (c) Malabar tarwad?

40. Is it possible and desirable to throw the duty on a legal representative to come forward and request the court to add him as a party, on pain of his being bound by the decree, in case he was aware of the proceedings? If so, what would you suggest, as the most practical way of doing this?

41. Is much delay caused in the courts of your province by the difficulty of appointing a proper guardian *ad litem* for minor parties? If so, what would you suggest to remedy the defect? What do you think of the suggestion that instead of successive petitions being filed, as each proposed guardian refuses to act, the plaintiff should be made to name all the possible guardians in one petition and notice should be ordered to go to them simultaneously and the court should appoint at the hearing of the petition the one best fitted to safeguard the interests of the minor?

42. How far is the practice of granting *ex parte* injunctions and orders taken undue advantage of in your province? How would you check it?

43. Are judgments of the courts in your province unduly long in any appreciable number of cases and does such length interfere with the speedy despatch of business? If so, what would you suggest to shorten them?

44. Are points of law going to the root of the claim or defence usually disposed of before taking evidence in your province?

45. Are dates for original and adjourned hearing fixed by judges themselves in your province? If not, has it led to delay in disposal? If so, how would you check this irregularity?

46. Are pleaders usually consulted by the courts in fixing the time required for examination of witnesses and arguments? If not, has it led to any delay in disposal? What sort of rule would you frame to ensure such consultation?

47. Are trials in your province unduly delayed by the examination of witnesses on commission? How would you control the length of such examination? Would you add to the powers of commissioners? Would you insist on written interrogatories except by special leave of the judge?

48. Will the insistence on written applications supported by affidavits (*as a rule*) for adjournments, be of effect in speeding up work? Is the amount of *day* costs which can be allowed under the rules on applications for adjournments in your province sufficient to prevent frivolous applications for adjournments?

49. Are suits not tried continuously day by day in the mofussil courts in your province in a *large number* of cases? If so, what do you think is the reason for such omission? How would you enforce such a rule?

50. Does the High Court<sup>a</sup> exercise sufficient supervision over district judges to ensure proper inspection by the district judge of the lower courts?

51. Would a system of giving special expedition to *commercial suits* be of value in the subordinate courts of your province? If so, what method would you suggest?

52. What amendments would you suggest in the procedure for obtaining execution of the different classes of decrees?

What is your opinion on the following :—

53. Extension of the principle of section 21, Civil Procedure Code, to proceedings in execution.

54. Investing of courts to which a decree is transferred for execution with the powers which a court which passed the decree has, as to adding of

legal representatives, recognition of assignments of the decree, transfer for execution and similar matters.

55. So modify the language of section 47 as to include proceedings taken by a *stranger* purchaser at a court sale to obtain delivery of the property which he has purchased.

56. (a) Curtailing the period given in section 48 of the Civil Procedure Code for the execution of money decrees to six years, (b) altering Article 182 of the Limitation Act by substituting one year for three years therein, (c) altering of the starting point from the date of the last application to the date of the last order on the last application. What do you think of the suggestion that it shall not be necessary for a decree-holder to apply every three years or one year, and that he should be allowed to execute the decree at any time he finds it convenient to do so, provided he does not exceed the 6 or 12 years' limit?

57. Altering section 66 of the Civil Procedure Code so as to present *any* party to the suit in execution of which sale took place from saying that the apparent purchaser is not the real purchaser, and *anyone* except the *bonâ fide* creditor of the real purchaser from setting up such a plea *whether* he is *plaintiff* or *defendant*, or is one who claims under either.

58. Altering Order 21, Rules 1 and 2, in such a manner as to restrict pleas of payment out of court, to payments through *post office* or a *registered bank* or the *vakil* of the party to whom the payment is made or in the presence of the Sub-Registrar.

59. Allowing the transferee of a decree on filing an affidavit by the transferor to the fact of the transfer to have execution as though he were the original decree-holder pending issue of a notice to the transferor. Is there any objection to the second proviso to Rule 16 of Order 21 being deleted or modified?

60. Is there any objection to the deletion of Order 21, Rule 21 altogether?

61. (a) Is a special notice under Order 21, Rule 22, necessary? Can it not be made part of the notice of the execution petition in which the substantial relief is asked for?

(b) Is there any objection to the deletion of Order 21, Rule 22 altogether.

62. In Order 21, Rule 26, will a provision that there shall be no interim stay in the case of money decrees work hardship? Would you agree that in the case of money decrees, the proviso of Order 21, Rule 26 should be modified so as to give a greater discretion to the court?

63. Is there any necessity for special notices in the different stages of execution proceedings in the case of money decrees sought to be executed by the sale of immoveable properties? Will it not be enough, as in the case of suits, if the judgment debtors are given one notice at the beginning of the execution proceedings, and it is ordered that they should be called to be present in court at all subsequent stages in respect of that execution petition (*e.g.*, for settling of the proclamation, fixing of the sale, grant of permission to the decree-holder to bid)?

64. Would you be in favour of a rule that in all cases the judgment debtor should be served with a copy of the proclamation of sale? Is there any reason why writs of attachment and sale proclamation should not issue simultaneously in all suits? Can it be made a rule that notice of execution petition may be served on the *vakil* who appeared for the judgment debtor in the suit and that that will be sufficient service? Can it be made a rule that refusal by the *vakil* to receive such notice is tantamount to refusal by the party?

65. Would you approve in your province of the system of the execution of arrest warrants by village officials, such as the village headman, or the village accountant?

66. What suggestions would you make for so altering the present procedure as regards mortgage suits as to make the sale in execution of a mortgage decree clothe the purchaser with a sight to the properly free

from future litigation as much as possible? What is your opinion on the following suggestions:—

- (a) that with the plaint, the plaintiff should file an encumbrance certificate in respect of the property mortgaged for the period for which such certificate is available in the registration offices.
- (b) that the persons whose names appear in such encumbrance certificates or their legal representatives should, as a rule, be made parties to such a suit and that the failure to do so should make the suit liable to dismissal for non-joinder of parties.
- (c) that all parties to the suit should be allowed to plead their rights to the mortgaged property, and that such rights should be finally determined in that suit, at all events, *if the plaintiff so desires.*
- (d) that all sales in execution of mortgage decrees shall be free of all encumbrances, and that the rights of puisne and prior encumbrancers should attach only to the money in court.
- (e) Is too much time frequently granted by the preliminary decree in mortgage suits for payment? Is any time necessary? In simple mortgage suits is there any necessity for a final decree? Is it necessary to have a separate personal decree where the security has been exhausted?

67. Is much avoidable delay caused in the disposal of execution proceedings by frequent orders staying such proceedings made by the appellate courts in your province? What would you suggest to prevent such orders being asked for and made? Would you invest the appellate courts with jurisdiction to award exemplary compensation in cases in which they are satisfied that they have been asked for on insufficient grounds; if so, what is the nature of the compensation which you would award?

68. Would you curtail the power of co-ordinate or inferior courts to grant injunctions to stay execution of other courts' money decrees by imposing restrictions and terms—such as that the money decreed should be deposited or security to the satisfaction of the court which is executing the decree should be given?

69. Does the present law as to insolvency stand in the way of a decree-holder getting the fruits of the decree speedily? If so, in what way does it hamper? Is there any avoidable delay in the disposal of insolvency petitions and realization of assets by receivers in your province? Would the devolution of the exclusive jurisdiction which a district judge has in some cases under the present act make for speed in such matters? What kind of devolution and on whom, would you suggest?

70. Are execution proceedings in your province frequently delayed by absconding judgment debtors? What rule would you suggest to prevent it? Does the provision for arrest or attachment before judgment in the present code operate effectively to prevent such delay?

71. What provisions of the Law of Evidence now operate to protract trials unduly? What is your opinion on the following suggestions:—

72. As regards mortgage suits, is it necessary to retain the provision that the plaintiff suing on it, must call an attesting witness, if available? Cannot the provision be so changed as to make every document of mortgage, presumably *valid*, and make the person who disputes its validity prove his case?

73. As regards secondary evidence, is it not desirable to allow the parties to consent to secondary evidence being given in any form, even as regards public documents, for example, papers printed by the High Court in a previous litigation? How much time is taken by insisting on what are called "*certified copies*"?

74. In what cases do you consider that the Law of Limitation might be made more stringent?

75. What changes in the substantive law of the country would you suggest for the purpose of speedy trial of suits, or speedy settlement of

claims and speedy realization of the fruits of his decree by a *bond fide* decree-holder?

76. Would you agree that all future partitions of immoveable property should be evidenced by a registered document?

77. What is your opinion upon a similar provision in the case of partnerships started with a capital of one hundred rupees and more, and as to the compulsory registration of all contractual partnerships?

78. Do you agree that the doctrine of "part performance" practically negatives the provisions of the Transfer of Property Act as to creation of titles in immoveable property and should not be allowed scope in this country, but that every transaction relating to immoveable property in which rights of the value of one hundred rupees and more are created and to which at present section 17 of the Registration Act would apply *if there is a document*, should be entered into *only* by a registered instrument?

79. That the discharge of obligations created by registered documents should be valid only if there is a registered document to evidence it? (The cost of the registration may be made uniform—say one rupee—as in the case of the value of stamps for a receipt, whatever the value of the obligation.)

80. That no court should entertain a plea that any party executed a document, unless it is registered, *in the case of persons, who cannot sign their names*? What limitations would you suggest to such a rule in case you accept the general proposition?

81. What is your opinion on the system of allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon; that the apparent owner of property in whose name the title deeds stand, is not the real owner? Will the enactment of a rule that *no party to a transaction* shall be allowed to plead that it is benami, assist in the realisation of the fruits of a decree speedily and prevent unnecessary claimants?

82. Do you think frivolous suits can be put down by enhancing the rate of court fees in suitable cases, and if so, what suggestions would you make on this matter?

83. Is it necessary to retain the provision in the case of mortgage documents that they should be attested, and is there any justification for making a difference between them and sale deeds and leases of equal value?

84. What suggestions would you make to prevent champerty and maintenance in India?

85. Would you give the court powers to refer to referees any class of cases, and, if so, what?

86. Has a multiplication of law reports interfered with speedy justice? What would you suggest to minimise their number?

87. Do you think that codification of law to a larger extent than heretofore would help to make justice speedy and economical? If so what branches of law would you suggest for immediate codification?



# BENGAL.

## Evidence recorded at Calcutta.

### PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.  
The Hon'ble Mr. Justice L. Stuart,  
C.I.E., I.C.S.  
Dr. F. X. DeSouza, Bar.-at-Law,  
I.C.S.  
Diwan Bahadur Sir T. Desika  
Achariyar Avergal, Kt.

Mr. H. C. Liddell, I.C.S.,  
District Judge, Howrah.  
Babu Durga Prasad Ghose,  
Sub-Judge and Assistant  
Sessions Judge,  
Alipore.  
Rai Kailas Chandra Bose  
Bahadur, Senior Govern-  
ment Pleader, Ali-  
pore.  
Babu Narendra Kumar  
Basu, Vakil, High  
Court, Calcutta.

Co-opted members for  
Bengal.

Mr. C. V. Krishnaswami Ayyar—Secretary.

## List of Bengal witnesses examined in Calcutta.

### Wednesday, 6th February 1924.

- \*1. Mr. C. J. Mackay . . . . . Manager, Tagore Raj, Calcutta.
2. Babu Ankul Chandra Sanyal . . . . . Munsif, Howrah.
3. Babu Debendra Nath Ganguly . . . . . Pleader, Calcutta.

### Thursday, 7th February 1924.

4. Babu Kunj Behari Biswas . . . . . Sub-Judge, Alipore.
5. Babu Profulla Chandra Dutt . . . . . Munsif, Alipore.
6. Babu Gopeswar Bannerji . . . . . Munsif, Hooghly.
- \*7. Babu Jitendra Prasad Chatterji . . . . . Sub-Judge, Howrah.

### Friday, 8th February 1924.

- \*8. Dr. T. Thornhill, LL.D. . . . . Chief Judge, Small Cause Court,  
Calcutta.
9. Babu B. G. Chatterji . . . . . District Judge, Krishnagar.
- \*10. Mr. S. C. Mullick . . . . . District Judge, Faridpore.

### Monday, 11th February 1924.

- \*11. Mr. P. C. Mitter . . . . . Representative, British Indian Asso-  
ciation, Calcutta.
12. Mr. Lutfi Ali, Bar.-at-Law . . . . . Representative, Central National  
Mohammedan Association, Calcutta.
13. Mr. Sayed Irfan Ali, Bar.-at-  
Law. . . . . Representative, Bengal Central Ryat  
Association, Calcutta.

**Tuesday, 12th February 1924.**

- \*14. Messrs. G. C. Mandal and S. C. Sen. Representatives of Incorporated Law Society, Calcutta.  
 15. Babu Damodar Das Khandelwal Representative, Marwari Association, Calcutta.  
 16. Babu Charu Chandra Sinha . Government Pleader, Howrah.

**Wednesday, 13th February 1924.**

17. H. P. Duval, C.I.E., I.C.S. . Secretary, Government of Bengal, Judicial Department.

**Thursday, 14th February 1924.**

18. Rai Bahadur Sasadhar Ghose, Pleader, Mymensingh.  
 B.L.  
 19. Babu Gopal Chandra Biswas . Pleader, Barisal.

**Friday, 15th February 1924.**

20. Mr. C. R. Brandt . . . Representative, European Association, Calcutta.  
 \*21. The Hon'ble Mr. B. Chakraverti. Bar Library, High Court, Calcutta.

**Saturday, 16th February 1924.**

- \*22. The Hon'ble Mr. S. R. Das . Advocate-General, High Court, Calcutta.  
 \*23. Mr. N. N. Sircar, Bar.-at-Law Bar.-at-Law, Calcutta High Court.

**Monday, 18th February 1924.**

24. Babu Bimala Indu Roy . . . Vakil, Calcutta.  
 25. Babu Surendra Nath Sen . . . Senior Munsif, Baruipore, 24-Parganas.  
 26. Babu Akhil Chandra Dutta, M.L.C. Vakil, Calcutta.

**Tuesday, 19th February 1924.**

27. Babu Abinash Chandra Ghose Hazra. Munsif, 1st Court, Serampore.  
 28. Babu P. K. Bose, Bar.-at-Law . Dacca.  
 29. Babu Radhica Prasad Sanyal . Vice-President, Bar Library, Presidency Small Cause Court, Calcutta.

**Wednesday, 20th February 1924.**

30. Mr. P. C. Mitter (again) . . . Representative, British Indian Association, Calcutta.  
 31. Babu Surendra Nath Roy . . . Behala Bengal Landholders' Association, Calcutta.

**Friday, 22nd February 1924.**

32. The Hon'ble Mr. Justice T. W. Richardson, Kt. High Court Judge, Calcutta.  
 33. The Hon'ble Mr. Justice Bepin Behari Ghose. High Court Judge, Calcutta.

**Saturday, 23rd February 1924.**

- \*34. Mr. Sarat Chandra Roy Chaudhuri. Representative, Vakils' Association, High Court, Calcutta.

**Monday, 25th February 1924.**

- \*35. Babu Durga Charan Bannerji, M.A., B.L. Representative, Bengal National Chamber of Commerce, Calcutta.  
 \*36. Mr. Mohd. Nur-ul-Haq Chaudhri, M.A., B.L. Vakil, Member, Bengal Legislative Council.

**Tuesday, 26th February 1924.**

- \*37. Mr. C. G. Cooper . . . . Representative, Bengal Chamber of Commerce, Calcutta.  
 \*38. Babu Jogesh Chandra Roy. . . . Vakil, High Court, Calcutta.

**5th March 1924.**

- \*39. Mr. Cecil H. Moss . . . . Representative of Overseas Trade Union, Calcutta.  
 \*40. Mr. R. M. Downie . . . . ditto.

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**Mr. C. J. Mackay, Manager, Tagore Raj Estate, Calcutta.**

*Written Statements.*

**I.—GENERAL.**

Statistical figures of infructuous executions are very misleading. Executions are returned as infructuous:—

1. When the matter has been settled out of court and proceedings cancelled without noting satisfaction.
2. Many executions filed merely to keep a decree alive there being no attachable property of the judgment-debtor traceable at the moment.
3. Many execution petitions carelessly or inaccurately drafted. The petition is not amended but cancelled and fresh proceedings filed.

The great majority of infructuous executions belong to one or other of the above.

The trouble of the litigant is oftentimes found to begin *after* the decree. When the decree is sought to be enforced in execution the decree-holder is faced with various obstacles to get a speedy satisfaction of the decree, and this is principally due to the fact that under the present system the work of execution is left chiefly to the hands of the ministerial staff and peons.

*Remedy.*

- (1) There should be a time-limit for execution of each process; and in case the limit is exceeded the *reason* for the delay is to be *recorded* by the *presiding officer* himself, and the steps taken for avoiding a recurrence of the delay are to be noted.
- (2) There should be a time-limit for each class of execution cases; and if the limit is exceeded the cause is to be ascertained and noted by the *presiding officer* himself, and the steps taken in the matter are to be recorded by him.
- (3) The peon's duty is to be more definitely fixed. There should be a greater supervision of the staff entrusted with the service of *processes*: as

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\* Written statements and oral evidence printed.

often the delay is principally due to the *defective service of processes*. As in the case of service of processes of the criminal and revenue courts the help of an identifier may be dispensed with. It appears that often the peons try to throw the blame on ignorant identifiers and litigants in cases of undue delay and defects in their own work. It should be the peon's own duty to serve the processes successfully independent of any help from the party; and if in any case any help is found necessary he may seek it from the village panchayat which now-a-days is available in every mofussil village.

Provisions of section 153, Bengal Tenancy Act, might be extended to all purely money suits and the minimum be increased.

Section 153, Bengal Tenancy Act. No appeal from decree or order passed by (a) a district judge, additional district judge or subordinate judge, amount claimed not exceeding Rs. 100, and (b) other judicial officer amount not exceeding Rs. 50.

These might be raised to Rs. 500 and Rs. 100 respectively.

By this means the number of second appeals may be reduced.

#### *Some check on application for review.*

A great many applications for setting aside sale are instituted simply to delay final execution because this can be done at little expense if the applicant denies all liability.

The provision for deposit by applicant in section 153A, Bengal Tenancy Act, is for this reason a dead letter.

## II.—REPLIES TO QUESTIONNAIRE.

### I. A. (1) High Court—Bengal.

There is no delay in the actual hearing of suits or appeals but second appeals usually lie pending for about 3 years and then are frequently remanded for reasons which to the lay mind at least appear often to be quite inadequate and unnecessary.

I am not in a position to say whether the former is avoidable without increase of cadre, the latter is largely a question of personnel, some benches being much more prone to remanding than others.

B. (1) District munsifs' courts proceedings in execution could be greatly accelerated by more efficient supervision of the process department.

3. The period actually taken for the disposal of proceedings in Bengal may be said to exceed reasonable limits not in many but in almost all cases.

The causes are many and varied. Some of these are, congested files, too lenient granting of adjournments, dilatoriness and in some cases intentional obstruction on the part of litigants. Adjournments for convenience of pleaders otherwise occupied or not prepared, and sometimes pleaders engaged who have not received or not been fully paid the fees they demand. Litigious agriculturists who having exhausted their present finance wish to delay till next harvest provides further sinews of war. Substitution of heirs of deceased co-defendants who owing to Hindu and Muslim laws of co-partnery are very numerous.

#### *Remedies.*

Much might be done if judicial officers would admit that "Justice delayed is justice denied" and not seek to justify acquiescence in every application for delay reasonable or unreasonable on the alleged ground that "Tardy justice is better than speedy injustice." Only, and this is very important, the action of the judiciary should be regular and methodical and not spasmodic.

Some officers when a case has been long on the file dismiss without warning as lightheartedly as they had previously adjourned. Result: reviews and appeals.

4. I do not think that any alteration in the method of recruitment will change human nature or secure the selection of a superior type of appointee.

A competitive examination is no test of character.

5. I am of opinion that district munsifs on appointment should be posted to a headquarters station and be put through a course of training under the district judge before being given an independent charge, just as assistant magistrates are trained under the district magistrate in the various branches of their work.

Munsifs on appointment have usually had little or no practice and are entirely ignorant of procedure and departmental work and receive no preliminary training. This places them very much in the hands of the peshkar and the Bar.

6. So far as may be possible judicial officers should remain unmoved for not less than 3 or more than 5 years.

Frequent transfers tempt officers to show a good file of disposals by evading the trial of cases likely to be lengthy.

7. Standard of efficiency can in my opinion only be maintained by effective supervision.

Local conditions and cases vary so much that no standard can be prescribed.

10. District munsifs in Bengal have already more work than they can deal with. Any enhancement of jurisdiction without increase of cadre would further increase the congestion.

67. Yes. Such applications are usually instituted for the purpose of retaining possession and usufruct of property attached or sold, as long as possible.

Many applications and appeals would be avoided if the court took possession pending decision of an appeal of application to stay proceedings.

### III.

The tradition and tendency of the East is opposed to prompt action.

There are 4 parties concerned in every suit. The court, the litigants, the pleaders and the court officers.

1. In the lower courts (munsifs) the arrears in most districts are so heavy that many months elapse after institution before a suit comes to the top of the list for hearing.

This primary delay is inevitable and in the present financial stringency there seems to be little hope of improvement.

2. In the higher mofussil courts, the district and sessions judge is in most districts in Bengal so fully occupied with criminal sessions and administrative duties that he has little time left to devote to personal participation in or supervision of the civil litigation in his district. These delays lead to further delays as the pleaders are so accustomed to expect that a case will not be taken up on the first or second date of hearing that they are never prepared until convinced that the court will allow no further adjournments.

The court can and sometimes but rarely does check this to some extent by insisting that all documents relied on by the plaintiff be filed with the plaint and that any further documentary evidence required owing to new issues raised in the written statement of the defendant be filed within a limited specified time.

Also by refusing adjournments unless adequate reason is shown.

Frequently when a senior pleader in large practice is briefed, he finds that he is otherwise engaged and exhausts all possible means of securing further time—a procedure which is, of course, often readily acquiesced in by his client.

3. Another principal cause of delay is the very large number of co-defendants due to the Hindu and Mussalman Law of family co-partnership and the necessity of substitution of heirs when one of these dies during the pendency of the proceedings either original or in execution.

Owing to this difficulty of representatives, cases are not infrequent in which all progress becomes impossible.

4. As regards 3, a remedy might reasonably be found in a legislative change in the representation of joint families, especially in rent suits and money suits of small value, which constitute a very large number of the civil litigation of the country.

5. The importance of a suit cannot always be gauged by its monetary value. Thus a case involving intricate points of law may have to be instituted in a court of first instance where the standard of legal knowledge is low and this results in subsequent appeals and complications.

6. Litigants are themselves responsible for many delays. The parties or their agents are often ignorant and careless and apply for adjournments to retrieve their own laches. Not infrequently adjournments may be applied for in order to delay settlement or even for the express purpose of harassing the opposite party. An overworked judiciary too readily accepts any proposal for adjournment unless the case has been so long on the file as to be likely to attract the attention of higher authorities.

The Bar has become so accustomed to expect acquiescence from the Bench that an officer who tries to check this tendency is branded at once as whimsical or arbitrary.

7. *Execution.*—Long delay in execution is perhaps the worst blot on the present legal system. The causes for this lie mainly not in the court but in the machinery behind it. The presiding officer in all courts is constantly changed but the ministerial staff is a permanent institution indifferently paid subject to a minimum of supervision.

A clerk once appointed in the process department probably remains till death or superannuation without hope of promotion or fear of dismissal so long as he performs the minimum of work which will protect him from attracting censure from his superiors.

If in individual cases he is prepared to accelerate or retard a particular process for a pecuniary consideration, public opinion does not condemn him. He is fully protected by the powerful influence of "dustoor."

8. For the service of summonses, notices, proclamations, etc., both court and litigants are dependant on the honesty and diligence of a large and poorly paid staff of peons. The great majority of petty civil suits are decreed *ex parte* and are uncontested. It is only in contested suits that the weakness of this organisation is revealed. The return of service may be made without actual service having been delivered and if sufficiently tempted or as he considers insufficiently rewarded the peon may return the process unserved alleging that an identifier was not supplied by the party or some such plausible excuse.

Application has then to be made for fresh process. Here again the difficulty is chiefly financial.

Possibly an improvement might be made by a rule that execution processes in contested suits must be served by a nazir of the court. This would, of course, entail some extra expenditure to litigants but would probably be economical in the long run.

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**Mr. C. J. MACKAY** called and examined on Wednesday, the  
6th February 1924.

*Chairman.*—From the point of view of a large zemindar's office, you have a good deal of experience, I think, of the lower courts in Bengal.

*Mr. Mackay.*—A. Yes, Sir.

Q. And what is your experience about Bihar?

A. My experience is entirely of Northern India, United Provinces, Bengal and Assam. Before going any further, I should like to make, since reading the Government Resolution, one or two extra observations. I had not seen that when I submitted my original note.

Q. I notice that you say the court, the litigants, the pleaders and the court staff form the parties in a suit. I take it that the majority of the cases with which you have been concerned are rent suits.

A. Yes, a large majority.

Q. I take it that, under the Bengal Tenancy Act, some suits were not merely for rents.

A. That is so.

Q. But a great many of the suits were actually to recover rents.

A. Yes. Practically all of them.

Q. What is your own experience during recent years? Have the munsifs got more work?

A. So far as my experience goes, I think every munsif has got more work than he can manage. They are always in arrears.

Q. That fact you would record as a primary cause of delay in Bengal.

A. Yes, so far as original cases are concerned.

Q. Of course, that is a question as to which this Committee is not empowered to make effective recommendation.

A. So I see in the Resolution.

Q. In your opinion any consideration that left that factor out altogether would be ignoring the main cause. Does it?

A. Yes, because I think it leads indirectly to other delays. The fact that there is a large file waiting to be heard makes the munsif very lenient in granting adjournments.

Q. Now, have you had considerable experience of higher mofussil courts, the district and sessions judge's court, for example?

A. Well, so far as my experience goes, the district and sessions judge hardly ever hears a civil suit. He is so employed on criminal sessions and administrative work that all civil suits are heard by sub-judges without exception. I have had very few cases that have ever been taken up by the district judge personally.

Q. In your experience of such cases as the district judge does take up, are they taken up at regular intervals after proper notice, or taken up erratically?

A. Very erratically.

Q. The reason being, his sessions work constantly interrupts civil work?

A. Yes.

Q. Now, as regards munsifs' courts in particular, what has been your experience in recent years as regards adjournments of cases?

A. Well, I think that the general opinion of both munsifs and the vast body of their countrymen is to keep the train waiting for the passengers and not to compel the passengers to catch the train, in order that not even one passenger might miss the train. That is the opinion expressed by Mr. Ramesam of Madras, and the opinion of India.

Q. Would you admit that the appointment of dates of cases should be more regularly and strictly adhered to?

A. Certainly.

Q. I see you note that the large number of co-defendants due to the family system of this country makes it very difficult to achieve expedition. Have you considered what can be done to cope with this complication?

A. The position is this. According to my experience some thirty-four years ago notices were served on the senior member of the family or the member who was the managing member and cases were heard on the day for which they were fixed. Now since 1885 a large number of co-sharers were brought upon the record as having shares in the tenancies. Especially in the case of Mohammedans there will not be less than forty, fifty or even sixty co-sharers in a holding of ten rupees only. You cannot be able to serve summonses on all of them and very often you cannot ascertain many of them. After the case has been heard someone crops up and says: "I am a co-sharer." The delay is caused by this question of co-sharers. I would suggest alteration of the law in this respect so that the tenants resident on the holding and those dealing with the landlord should be considered as representatives and that notices served on them should be taken as notices served on the family. There will be no injustice or hardship.

Q. In Bengal there is a great difference under the Bengal Tenancy Act between what is strictly only a money decree and a decree which is taken as a rent decree?

A. Yes. In certain cases a rent decree becomes a money decree. In money decree you cannot attach the immovable property. You can attach a share or the movable property only.

Q. In a rent decree you can sell the holding as a holding?

A. Yes.

Q. Execution problem is considerably lessened?

A. Yes, Sir, very considerably lessened.

Q. You have considerable experience, I take it, of the quality of the legal practitioners in the lower courts?

A. I have, Sir.

Q. Do you think there has been substantial improvement in recent years?

A. I think the standard as regards the men at the local bar has improved, but one must remember that in agricultural cases what the agricultural tenant looks to is the cheapness, and the competition being very hard many practitioners accept very small fee, and in some cases no fee at all. Many of them are really incompetent.

Q. Can you tell us whether the practice is to charge one fee for the case or charge fees according to time?

A. I think in most cases it is a daily fee.

Q. In your opinion the delays in civil suits in the lower courts are due largely to the litigants themselves as distinct from court, pleaders or witness? \*

A. Well, Sir, roughly speaking, in seventy or eighty per cent. of cases delays are due to the convenience of the pleaders. In considerable number of cases witnesses are also not available and adjournments cannot be avoided. But I do not think it counts for a majority.

Q. I see your views on the question of ministerial staff of the court. Now would you be good enough to explain exactly what you complain of?

A. After passing the decree the execution is practically left in the hands of the ministerial staff. Courts take no part in it at all, and I think that improvement should be made in point of time by a stricter supervision by the presiding officer and by insisting upon a limit of time for the execution of processes, and a written report made to the presiding officer who will enquire why the processes have not issued in time. He will himself also make his report giving his reasons for the delay and that should go to the higher authority, to the judge or some other higher authority, so that there might be constant check over the long long delays. At present nobody worries about it, nobody hears of it and it is left to drift.

Q. Now, for purposes of better supervision what about a delay statement?

A. Such already exist in the original courts.

Q. For the purpose of checking officers in execution work?



A. Yes, at present there is practically no check.

Q. Now I see you say that once the staff in the process department is appointed, it remains for a very long time without any hope of promotion, fear of dismissal, etc. Do you think that anything could be done by changing the office staff of the court?

A. Well that is really a question which some official witness will be better able to answer than I can, because I have no personal experience of the working of the ministerial staff. I am speaking from the point of view of the toad beneath the harrow.

Q. Have you any definite reason, in your experience, to say whether persons who carry out executions are successfully bribed to a large extent, induced, for instance, not to carry out their duties?

A. Well, I think, considering their pay, and the class from which they are recruited, one might expect a good deal more.

Q. When you have been plaintiff, had you constantly processes returned without being served?

A. Very frequently. I made a remark of that in my second note.

Q. And I suppose to remedy that, a good many fundamental changes are required which this Committee cannot hope to see.

A. I am afraid, Sir, the difficulty really is to bring to book any defaulting peon. A few years ago I was able to bring to book a defaulting peon for a deliberate non-service of summons. I prosecuted him. The whole of the ministerial staff approached me and begged me to withdraw the prosecution on the ground that the peon was a Brahmin, a poor man, etc., and finally even the trying officer wrote a letter to me saying, whether I will not see my way to punishing the peon leniently. So, the whole public opinion is with him.

Q. You make a suggestion that execution processes might be served by a nazir of the court.

A. Yes, in certain circumstances. No doubt the service by a nazir is looked upon much more seriously and much more effectively than service by a peon. There again the course is expensive.

Q. I see that you make certain suggestions for the limiting of the right of appeal on the lines of Section 153.

A. I think, Sir, something might be done on those lines.

Q. I see you suggest Rs. 500 as the non-appealable limit in the case of appeals from district judges and district munsifs.

A. Yes, provided there is no other issue in the case, except money.

Q. You are speaking now about purely rent suits.

A. Yes. The present limit is Rs. 100 and I think it may be raised to Rs. 500 and Rs. 50 might be raised to Rs. 200.

Q. What do you say as regards the right of second appeal in such cases? Do you think it might be curtailed?

A. It would be a very good thing if it could be. The popular opinion is very much opposed to second appeal.

*Mr. Justice Stuart.* Q. What are the districts you work in?

A. At present I have to work with courts of eighteen districts of Bengal and Bihar, mostly Bengal. I was resident in Bihar for a number of years.

Q. In the United Provinces also?

A. In Cawnpore, I was in a business firm there concerned with zemindars.

Q. Do you think in subordinate courts things are worse from the point of view of delay.

A. Undoubtedly.

Q. I am given to understand that the execution is done in Bengal by process-servers.

A. Yes.

Q. Are those men better now that their pay has been raised? They used to get ridiculous amounts. Now I think they get sixteen rupees.

A. I do not think the increase of pay has made any appreciable improvement.

Q. How does their pay compare with that of pankha coolies or syces?

A. I think a syce gets more in some cases. The process-server in the court is now well paid but not better than a postal peon who gets about thirty-six rupees. They are both recruited from the same class.

Q. Do you think it would be better to place these men under the supervision of someone superior to the ordinary clerk, whose sole business would be to look after them?

A. Provided you get a suitable man.

Q. Supervision must be provided and one who supervises should be put on supervising work and nothing else?

A. That should be so.

Sir T. Desikachari.—Q. With regard to the service of processes or summonses do you think the use of post offices would minimise our difficulty?

A. Not to any great extent. I do not think the service of summonses by registered post, where it has been tried, has proved very successful, because when a peon or process server is sent to the village he has a better chance of getting it served than by sending it by post. I think it will result in hardship as well, because when the process is sent back the case will start *ex parte*. The peon should himself be responsible for the proper service of the summonses and he can always in several villages get the assistance of the panchayat. The identifier supplied by the litigant is generally a farce.

Q. Do you think that the employment of headman or village officer would be useful?

A. They do not exist. They used to be in the old days. There is no village officer now except the new village unions.

Q. Do you think employment of the village union for purpose of serving summons would conduce to the summonses being properly served?

A. If you send five hundred processes to the village union asking it to serve them they will never be served at all.

Q. If the plaintiff is asked to file with the plaint a copy of an acknowledgment from the defendant that the plaint has been served on him, do you think it will be practicable?

A. I do not think it will be practicable.

Q. You think there would be room for fraud?

A. I think so undoubtedly.

Q. In the subordinate courts there are many proceedings like claim petitions, petitions for removing obstruction to delivery of possession. Do you think the more extended use of affidavits would be conducive to less time than now being spent in these enquiries?

A. No, I don't think so.

Q. You said that in 80 per cent. of the cases before munsifs, sub-judges and judges, delays were due to a desire to suit the convenience of pleaders. May I put it to you that the courts in such cases are willing to grant an adjournment because they could not get on with the work posted?

A. They calculate on the adjournment being given. In fact the first three days of hearing nobody is worrying about the witnesses at all.

Q. The pleaders know that the case would not be heard on account of the heavy postings on each day?

A. Yes, at the first instance.

Q. The munsif could never get through the cases?

A. When you get past that stage, when it is really getting up at the top of the hearing list then the court suddenly declares its intention of taking up the case, and the pleaders are not ready. Then they apply for adjournment.

Q. Is it on account of the pleaders' default, or on account of the congestion?

A. I think largely on account of the congestion.

Q. With regard to sales held in court, is it your opinion that applications for setting aside sales are filed on flimsy grounds?

A. Yes, very often to get more time.

Q. How would you minimise that?

A. One suggestion I made was that a great deal of such delay could be avoided provided the court does not admit it lightly. Secondly it might be ordered that the objector to a sale should deposit the money.

Q. There is a provision in the Civil Procedure Code which lays down that the money should be deposited at once.

A. Yes, the money in full. If the judgment-debtor admits the liability then there is no delay. He deposits the money and gets satisfied. But he does not admit it and he wants to delay payment. He can do that by putting in a frivolous petition to set aside the sale.

Mr. Justice Stuart. Q. Is that not the Bengal Act.

A. Yes, under the Bengal Act.

Sir T. Desikachari.—Q. There is no other way of avoiding this difficulty?

A. I do not know. I cannot think of any other way except insisting upon a deposit.

Q. It has been suggested by somebody that the provision to have sales set aside in execution should be altogether taken away. What do you think of that suggestion?

A. No, I think it would not be right, because objections to sales do arise in genuine cases.

Q. You spoke about members of Hindu families, members of Musalman families, and co-sharers being represented by somebody for the purposes of summons. Will it do to ask the members of the Hindu family or members of the Musalman family to give the name of the accredited manager and have it registered?

A. Undoubtedly it would be more effective if they have to register their representative.

Q. If it is desirable, is it possible?

A. Well, I suggested once to the Bengal Government and they were inclined to think it was not possible. That is a matter for the Legislature.

Q. When a suit is taken up for first hearing, the issues are drafted and put in court by both parties.

A. Well it actually comes to that.

Q. Have you any experience of cases in which issues are so put in?

A. I think that is a question you better ask a lawyer. I should not commit myself.

Dr. DeSouza.—Q. From the fact that you have experience of 18 courts in Bengal and Bihar, I presume you know the methods of work of subordinate judges. What is your experience? How many hours do the munsifs and sub-judges sit in court.

A. I think, perhaps you misunderstood what I have said. I have cases in 18 districts of Bengal, and Bihar, but I do not attend the courts personally. I attend very rarely indeed. However, so far as my information goes, the munsifs and sub-judges of Bengal are very hard worked, more than you can expect them to work. They sit for about 5 hours in court. It is not their fault they never get through the file.

*Q.* You have told us that a good deal of the delays, 70 to 80 per cent., are due to the convenience of pleaders, partly because you say that they have work in other courts. Have you ever come across a system where pleaders work in a firm (it is understood such a system exists in Karachi) and that no adjournment is granted because the pleaders are engaged in other courts? Have you got any system where pleaders work in a firm?

*A.* No, for my own part, I have always employed a senior with a junior pleader. When the seniors are engaged, the juniors carry out the work.

*Q.* If there is such a firm, a good deal of the delay can be avoided?

*A.* I think if the courts refuse to accept as a reason flimsy arguments for adjournment, a good deal of the delay might be avoided.

*Q.* Would you object to your junior working for you when the senior is engaged elsewhere?

*A.* It depends upon the importance of the case. Ordinarily speaking I should not. In a very important case, I might. It might be very important for the senior to attend the court in order to follow the arguments and conclusion of an important case. In an ordinary case, I should not object at all.

*Q.* You speak of the district judges as being so engrossed with their own duty that they cannot effectively supervise the work in subordinate courts. Are you aware of any districts or any province where there is the system of giving the district judge a registrar to carry on the work of supervision?

*A.* I have no experience. That is on the lines of the suggestion made by the Hon'ble Mr. Justice Stuart. I agree with the view.

*Q.* You say that a great deal of time can be saved if the nazir was made to serve the process?

*A.* More especially attachment notices.

*Q.* What sort of men serve attachment notices in Bengal?

*A.* The ordinary peon.

*Q.* Superior grade or inferior grade?

*A.* The same man.

*Mr. Liddell.*—Nazirs' favourite peons get always the attachment processes. They remain 20 or 30 days in a place, and live on the fat of the land.

*Chairman.*—*Q.* What do you think of the Bengal system?

*A.* All the notices are served by the same peon. There is no superior class of bailiffs.

*Dr. DeSouza.*—*Q.* Is it usual for the munsif to examine the defendant and the plaintiff before the settlement of issues?

*A.* I think the plaintiff is first examined and then lawyers on both the sides discuss and argue and come to some agreement as to the trial of the case.

*Mr. Ghose.*—*Q.* You complain of delay in respect of rent suits. Do not you know that in a munsif's court in the month of April nearly three to four thousand cases are filed?

*A.* Yes, of course in the month of Baisakh. Very large number on account of closing of the year.

*Q.* According to a High Court circular order all these cases have to be disposed of within a period of six months. Can an officer avoid fixing many cases for a day?

*A.* He cannot.

*Q.* When he is engaged in a case he cannot take up another case. Can he properly reject any petition even of a frivolous nature?

*A.* He has got to pass that over.

*Q.* Do you not think that the judicial officers have more work than they can properly manage?

A. That is so.

Q. Is not every order in the execution case put up to the judge for signature?

A. Yes.

Q. If the process fee is not paid when the execution petition to made by the decree-holder, it has to be adjourned and if nothing is done by the party within the time allowed by the court the case is dismissed. Is not this the procedure that is followed by the courts?

A. Yes.

Q. Is not every important petition put up to the judge?

A. Yes.

Q. When the processes are issued by the courts the decree-holder has got to identify the judgment-debtor as also the land. If the peon refuses to serve the process notwithstanding that his man accompanies him and is willing to identify the judgment-debtor, is it brought to the notice of the presiding judge?

A. Such matters are seldom brought to the notice of the presiding judge.

Q. Has the presiding judge any alternative other than the initiation of proceedings for the prosecution of the peon when such matters are brought to his notice formally?

A. No, I do not think so.

Q. You say seventy or eighty per cent. of the causes of delay are due to the pleaders' convenience. Do you suggest thereby that the presiding judge accommodates pleaders unreasonably?

A. I do not think he hardens his heart very often. He has got a lot of other cases. He does not worry about it.

Rai Bahadur K. C. Bose.—Q. And certainly in such cases where a senior man has got to be taken, the senior man can take up cases according to his own convenience. His acceptance of or taking a case depends on his being able to attend on that particular day.

A. Yes. That very seldom happens in ordinary cases—in title cases and miscellaneous cases.

Q. In your estate the majority of cases is practically rent suits. There is practically no title suits involving complicated question?

A. Well, they are very few.

Q. Now with regard to these cases, is it not generally the case that various postponements are required on account of papers not having been found in time. On account of collection papers and other papers not having been found in time adjournments have been asked for in many cases.

A. That is so in many cases because they are not kept in order.

Q. Now is has so happened that on account of collection papers not having been filed in time, lot of evidence has to be adduced to prove their genuineness.

A. Yes, in many cases.

Q. You had some trouble in connection with papers not having been filed in time.

A. Yes.

Q. In your estate, in ordinary cases, there is not much difficulty in getting *ex-parte* decrees as soon as you desire, in cases in which there is no contest.

A. I think no difficulty within six months.

Q. Do you consider in case of rent suits, if the recorded tenant is taken to be the representative of the whole body of tenants, that will facilitate matters and save much delay?

A. Very much.

Q. It would avoid much delay if the procedure were to serve a general notice inviting the representatives.

**A. Yes.**

**Q.** And also subsequent proceedings—when one of the men turning up and saying that he is not bound by the proceedings.

**A.** Yes, that is why I suggest representation.

**Q.** With regard to setting aside the sale, I think your suggestion is that if there is a decree for a large sum, you would require the judgment-debtor to pay the entire amount of the decree. If the conditions were to deposit only the amount of sale would not that facilitate matters?

**A.** Instead of depositing the entire amount of the decree, you mean the defendant should be entitled to deposit only the amount of the sale, the amount fetched at the auction sale, instead of the amount of the decree.

**Q.** Yes, the judgment-debtor should be bound to pay that amount only before he applies for setting aside the sale.

**A.** It is not a solution which I have considered. I think it might possibly lead to some other complication.

**Chairman.—Q.** What you suggest is that it would be entirely hard to reject an application to set aside the sale unless he puts down the whole amount of the decree.

**A.** I think it is a possible solution.

**Rai Bahadur K. C. Bose.—Q.** In the majority of cases are the applications for setting aside sale only to get time?

**A.** In the majority of cases it is so. The procedure you suggest would, to some extent, stop that.

**Q.** Could you tell us how many rent suits were instituted in the year 1922 in your estate?

**A.** Roughly about 2,000.

**Q.** How many have been decreed?

**A.** Practically all of them have been decreed.

**Q.** Have all been satisfied?

**A.** Very few. But the majority have been generally satisfied in some way or other.

**Q.** Is the satisfaction in every case reported to the court?

**A.** No, that is a point I mentioned in my note, about the misleading nature of the statistics of infructuous decrees. I said that there are three categories under which infructuous decrees come.

**Q.** With regard to the satisfaction out of court, which are not certified, I think that is due to the confidence of the judgment-debtor in the landlords.

**A.** The judgment-debtor does not worry at all about going to court.

**Mr. Liddell.—Q.** In other provinces where you have been, have you any experience of rent suits tried by revenue officers?

**A.** No.

**Q.** With your experience would you give us a reasonable time by which you expect one of your own rent suits to go through?

**A.** Well, if pushed through and you keep your men constantly worrying about it, you might expect to get satisfaction in about 13 to 16 months.

**Q.** Would you call that a reasonable time?

**A.** I do not think you can get improvement on that.

**Q.** You would like to see an improvement, but at present you do not expect.

**A.** Some expedition might be made in execution.

**Q.** In the execution department, I take it from what you said, if you got a little loose money with you when you go to see the execution staff, the execution can be speeded up.

**A.** Well, you must remember that it is not looked upon as dishonesty.

Q. But do you think that section 161 of the Penal Code would not apply?

A. I do not say so.

Dr. DeSouza.—Q. In what province have you any experience of your rent suits being tried by revenue officers?

A. No. I have no experience.

Mr. Liddell.—You are fairly well organised. I want to know why the adjournments are given for the convenience of pleaders. Do you think your pleaders represent or do they tell you that there is no chance of the case being taken up?

A. My pleader is fully instructed before the case is filed. I supply all evidence that is required and then I ask him to let me know definitely when the witnesses are to be heard.

Q. Then you anticipate from your experience that there is a considerable delay in the party instructing the pleaders?

A. Undoubtedly.

Q. In connection with your being organised, I take it that you retain pleaders. You have as many as five or six pleaders. You have in your vakalatnama empowered all the five. Where the court is ready to take up a case you have first pleader, second pleader and so on to attend. Is it not done?

A. I think as far as my own pleaders are concerned they do not oppose any adjournment because they might have another case in which they might get more concession. They always tell me and I suggest to them to oppose any further adjournments; but they say "let us not antagonise the court."

Q. You spoke of the standard of efficiency of the bar. You have long experience; and looking back over that do you think that defences which are now put up are becoming ingenious to the point of obstruction? Did you find that the tenant is becoming more ingenious in putting up objection?

A. No. I do not think that the tenant is becoming more ingenious. There are two classes—the commercial class, their anxiety is to settle the case. Then there is agricultural class. They have an entirely different point of view. They do not want to be in hurry.

Q. How much do you realise from the decrees in the course of the year?

A. About one lakh to two lakhs.

Q. In the case of rent decrees how many of these are infructuous.

A. Money decree is almost entirely infructuous because no separate property is generally available which can be attached. Most of my debtors are of the agricultural class.

Chairman.—Would you have rent suits tried by any other tribunal?

A. I do not think we have anything to complain against tribunals. The munsif of Bengal is a very good judicial officer. I do not know of any other agency which you can expect to be equally good.

## Babu JITENDRA PRASAD CHATTERJEE, Sub-Judge, Howrah.

### Written Statement.

#### I.

The following suggestions may reduce the duration of cases without entailing any additional cost:—

1. Much time may be saved if evidence be recorded by stenographer at the dictation of the presiding officers and if those officers be permitted to dictate their judgments. Shorthand knowing clerks are now easily available

and those already in service may be directed to learn shorthand writing. If this system be introduced the judges will certainly be able to dispose of a greater number of suits within the prescribed time.

2. Guardians of minor defendants cannot now be appointed without the consent in writing of the proposed guardian. Order 32, Rule 4, Clause (3) lays down that no person shall without his consent be appointed guardian for the suit. If the proposed guardian does not give such consent, the court has to appoint a third person, usually a pleader as guardian. If the said provision in the law be changed it will be possible to make suits ready for hearing earlier. Where there is a certificated guardian, such guardian should, as a rule, be appointed guardian for the suit, where there is no such guardian, notice should be served on the natural guardian of the minor for appointing him guardian for the suit; if there be no objection on his part he should be appointed guardian for the suit and in case he objects, a third person should be appointed. Consent of the proposed guardian should be presumed if he does not object and the guardian appointed. If this procedure be followed much time will be saved.

3. In suits for recovery of money if the defendant wants to set aside an *ex parte* decree his application should not be entertained unless he deposits the decretal money in court or gives security to the satisfaction of the court for payment of that money. In such suits no appeal by defendant should be entertained unless the decretal money is deposited or security given. Where cost is allowed to the winning party no appeal against the decision in any suit should be entertained unless the same is deposited in court or security given. If any such provision in the law be made much delay and harassment of the decree-holder may be avoided.

4. Many applications for execution are infructuous because they are instituted only to save limitation and give a fresh starting point of three years under Article 182 of the Limitation Act. If the period of limitation be changed and it be made six years there will be considerable decrease in the number of such execution cases.

5. Appeal against preliminary decrees and interlocutory orders is one of the causes of the delay, in the final disposal of suits. The period of limitation for filing such appeals in the High Court should be one instead of three months as means of communication have now much improved and rules should be made for the early hearing of these appeals.

6. The present system of service of processes is partly responsible for the delay in the disposal of suits. I would like to substitute for it service by registered post and also service by local agencies. The village administration provided by Act 3 of 1892, sections 5, 6 and 7 may be usefully utilised for this purpose, the affidavit of the serving peon should be accepted as sufficient proof of the service until its correctness is questioned.

6A. The joint family system prevailing amongst Hindus governed by the Mitakshara Law frequently causes delay in the disposal of suits. In suits by and against joint families governed by the Mitakshara Law complications do not arise by death because the survivor would represent the joint family. The difficulty arises only in case of births after suit. This difficulty will be sufficiently and safely met by a provision that members born after suit will be deemed to be represented by those already on record but the guardians of any such minors will have a right to apply to court and be made a party. In case of death of a party proclamation in mofussil and after substitution of the names of the heirs known to plaintiff, with a provision that the absent members will be bound thereby unless they appear, will obviate the difficulty of getting the names of all legal heirs for substitution.

7. Delay in some cases occurs for non-payment of process fees in due time. Rules should be made for payment of process fee and filing of written processes when the plaint or the memorandum of appeal is filed and so long as this is not done no plaint or appeal should be admitted.



8. Much time may be saved by the strict observance of the provisions of Order 12, Rule . . . If by admissions it does not become necessary to adduce evidence for proving documents and some facts the duration of cases will be reduced.

9. Delay in judicial work is sometimes due to want of method among the young judges. They should be kept as probationers for a reasonable time and be given training in judicial work.

10. Munsifs of ten years' standing should in suits for money and moveables be made the final judges of fact when the value of the subject matter does not exceed Rs. 250. Sub-judges should also be made final judges of fact in such suits when the value of the subject matter does not exceed Rs. 1,000. All such suits above the value of Rs. 250 should be instituted in the sub-judges' court.

11. The delay is mainly due to the fact that the judges have to do more than they can cope with.

12. Much time is taken by parties in filing deficit court-fees on plaints. A limit not exceeding 15 days should be fixed for this purpose.

13. As regards the question of champerty, no enactment is necessary at present.

14. Order 21, Rule 2 (applications by judgment-debtors for payments out of court or for adjustment to be certified). Orders of munsifs exercising small cause court powers in suits up to Rs. 100 and sub-judges on such applications when the payment does not exceed Rs. 100 in one case and Rs. 500 in the other should be final. Such courts when exercising powers of a small cause court judge pass final orders in such cases and there is no reason why the same procedure should not apply in the case of regular suits. This will reduce the number of appeals.

15. It very often happens that objections to execution of decrees under section 47 of the Civil Procedure Code are preferred at the very last possible opportunity—sometimes when the auction sale is about to begin. The wide latitude afforded in the existing law and practice for the preference of such objections gives rise to numerous frivolous and vexatious objections and consequent delay in the final disposal of the execution cases. I would suggest that a time-limit of 15 days should be fixed within which such objections may be preferred and entertained—the limit to be calculated from the date of the judgment-debtor's knowledge of the execution proceedings. In order to fix such date the issue and service of notice in all execution cases [and not simply in case of execution of one year old decrees provided by Order XXI, Rule 22, clause (1) (a)] should be insisted on. Such service of notice will have another good aspect; it will prevent a false creditor to get at the doors of an innocent judgment-debtor with process of arrest and attachment of moveables.

16. To reduce the duration of execution cases, I would like to have the writ of attachment under Order XXI, Rule 54, and the sale proclamation under Order XXI, Rule 67, issued simultaneously as is done in rent execution cases (and when objections under Order 58, Rule 21, are preferred, fresh sale proclamation may be issued, if necessary).

17. Summary procedure may be introduced in suits contemplated by section 128, clause (f), sub-clause (ii) of the Civil Procedure Code. If this be done the delay in disposal of suits may be reduced. This procedure should not govern suits between landlords and tenants in which there is a *bonâ fide* dispute as to the character of the tenancy.

18. The notice provided in Rule 66, sub-rule 2, Order XXI, need not be given if the notice proposed by me to be given just after the filing of the execution cases be issued.

19. The judgment-debtor in money decrees should not be allowed to file petition under section 47, Order XXI, Rule 2 and Rule 90 unless the decretal money is deposited or security be given to the satisfaction of the court.

## II.

## ANSWERS TO THE QUESTIONNAIRE.

## 1A (ii) Original Suits.

(a) Title suits in which local investigation is not necessary, should ordinarily be disposed of within one year, and in partition and account suits preliminary decrees should be passed within one year.

(b) Within one year.

Regular appeals . . . . .	Within six months.
Miscellaneous appeals . . . . .	Within three months.
Small causes . . . . .	Within three months.

(iii) Munsifs' courts.

Title suits . . . . .	Within nine months unless the local investigation is delayed for the land being under water.
Money suits . . . . .	Within six months.
Rent suits . . . . .	Four months.

B. Three months.

2. Yes. The rest has been answered last.

3. This has been answered last.

4. No alteration in the present method of recruitment of judicial officers can speed up the proceedings. Under the present system of administration of civil justice in this province, quickness of officers is considered as the most important factor at the time of their promotion; this encourages the officers to be quick but this defect is often found in the system that quality is sacrificed to quantity. Both the number of disposals and the quality of work done should be the factors at the time of promotion. Hasty and careless judgments are often the causes of increased litigation.

I do not think that competitive examination is the best method of recruitment as it is often found that officers with academical distinctions are not the quickest and best officers of the service.

5. I think that munsifs should have a training for two years; of this period he should spend six months in learning office work and all kinds of judicial work with the help of experienced munsifs and sub-judges; after this period he should officiate in leave vacancies and when unengaged he should be employed in clearing off arrears wherever there is any; greater probationary period than six months is not necessary for graduates in law with experience in the bar.

6. Too frequent transfers of judicial officers must impede justice.

7. There cannot be any hard-and-fast rule about the amount of work to be done by an officer. More frequent inspections should be made with the object of seeing whether the officers fully utilise their time or not and the reports should be considered at the time of their promotion.

8. The concentration of many civil courts in one place is no doubt responsible for some loss of time in taking up one case after another has been finished. In every station practice is confined to a few pleaders and their services are requisitioned in all courts of the station; the courts have therefore to wait for them.

9. In Bengal there will not be more speedy and less costly justice by changing the jurisdiction of the different classes of courts, inasmuch as there is a very small difference of pay between a senior munsif and a junior sub-judge.

10. At present munsifs have jurisdiction to try original suits up to the value of Rs. 2,000 and small cause suits up to the value of Rs. 250. I would not change the jurisdiction.

11. To a few selected munsifs, powers may be given up to Rs. 4,000 but it should be considered in this connection that the percentage of sub-judges in Bengal is low compared with other provinces for which already there is discontent among the munsifs and if the increase of powers results in the further reduction of sub-judges, this discontent will be accentuated.

12. (a) Miscellaneous judicial work may be transferred to sub-judges and munsifs on the basis of valuation.

(b) The district judge has to attend to a large amount of administrative work; at present he, being overworked, has to rely on his serishtedar for assistance in this matter; and as the serishtedar is a ministerial officer, the district judge has either to devote more time to this work at the expense of judicial work or if he places implicit reliance on his serishtedar for saving his time, he makes mistakes which have a prejudicial and demoralising effect upon the entire administration of the district. I would suggest that the seniormost munsif or a sub-judge should be in charge of all matters of administration including nazarat, record-room, and copying department subject to the control of the district judge, that the time devoted by the officer in charge of this work each day should be noted in his diary which should be counted as work in his monthly statements; otherwise the tendency would be to do as little of administrative work as possible.

I shall mention a recent experience of mine. I am in charge of the nazarat of Howrah station and soon after my arrival here in July last I found that there was great delay in the issuing of processes from the offices and serving thereof from the nazarat and so I introduced distribution of processes to peons by lottery the day following they were filed in court; as a result, the parties had not to approach the nazarat for the prompt issue of processes and dishonest parties could not make arrangements with an obliging peon or officer of the nazarat for the suppression of any process. The interest of the peons and all persons connected with them was affected and various representations were made to the district judge, who took up the matter firmly in hand. The serishtedar, however, put an extraordinary note on my report (which I learnt subsequently from the district judge) which he did not accept and my method of distribution of processes was maintained by him and an enquiry was started by him (Mr. H. C. Liddell) for the punishment of the revolting peons who are trying by all means to get the rule cancelled. In my experience I rarely found a district judge like him who would study these questions for himself against the obstruction of his serishtedar; at this stage we learn that he is about to be transferred after his labours in the Civil Justice Committee. I should not conceal that if I do not get the same support from the present district judge, the improvements made by me cannot continue. If a judicial officer was in charge, there would not have been any apprehension of the misplacement of the fact by the ministerial officers before his successor.

I would also suggest that a subordinate judge should be appointed as an Assistant Registrar, or Deputy Registrar in the High Court whose duties should be to examine the work of the subordinate courts. At present the clerks, who have no experience in such matter, are entrusted with this work. The Hon'ble Judge in charge has little time to devote to such matters and the Registrar, who is an inexperienced judicial officer, does not get proper help.

13. I do not think there would be any objection from the public. Sub-judges and munsifs of certain standing should be invested with such powers.

14. No. Qualified and impartial men can rarely be available in villages for the trial of civil suits.

15. I think that suits to enforce simple mortgages and partnership suits cannot be conveniently tried by small cause courts as in such suits intricate questions of law and fact are involved.

16. (a) and (b) Summary procedure may be introduced in suits contemplated by section 128, clause (f), sub-clause (ii) of the Civil Procedure Code; this procedure should not govern suits between landlords and tenants in which there is a *bonâ fide* dispute as to the character of the tenancy or the rate of rent.

17. The sub-registrars, as at present recruited, are not fit to try suits contemplated in this question.

18. Orders of munsifs exercising small cause court powers up to the value of Rs. 100 and of sub-judges on applications by judgment-debtors for payments out of court or for adjustments to be certified under Order 21, Rule 2, should not be appealable upto the value of Rs. 100 when orders are passed by munsifs and up to the value of Rs. 500 when orders are passed by sub-judges.

20. I would not like to restrict second appeals as suggested in this question.

21. Yes.

22. In first appeals there is very little practical advantage in exercising this power as in very few cases only questions of fact in appeal can be decided without hearing the respondent and so if this power is exercised practically appeals will have to be heard twice.

23. I accept the suggestion about the deposit of decretal money in this question and the restriction of revisional applications against interlocutory orders, which can be questioned in appeal.

25. Service on defendants should be made through local agency and when it is reported by such local officials that the defendant wilfully evades service substituted service should be allowed and in addition registered postcards should be issued.

If this suggestion be accepted, the provisions of section 106 of the Transfer of Property Act need not be applied to Civil Procedure Code.

26. The forms are not adhered to generally. When the defect is found after the appearance of the defendant costs may be awarded to him.

27. In some cases the provisions of Orders VII and VIII, Civil Procedure Code, are neglected.

28. Service of notices and summons by registered post should be more extensively used as an additional safeguard but it should not be adopted as the substitute for the mode of service laid down in the Civil Procedure Code for then the whole staff of postal peons will be found to be as corrupt as the civil court peons.

The village officials should be used for the purpose of serving process and the service should be made in the presence of two neighbours of the person served with notice who, if literate will sign their names, and if illiterate, they should give their names through the pen of others. The President Panchayet should be made the commissioner of affidavits and also the agent of the court to receive the process and send them back through post after service.

The President should be given a percentage of the process-fee realised as remuneration for his labour and also for other incidental charges. The tax-collector or a peon under the President who will serve the process will swear the affidavit before the President who will transmit the same to court.

Where the services of village officials are not available, service of summonses and notices on defendants should be entrusted to plaintiffs who would get them served and swear affidavit in court through the person who served them; in such cases, registered postcards should always be served on the defendants in addition.

29. No.

30. This is unnecessary under the suggestions given in answer to Question 28 and also the suggestion made in this question does not go to the root of the evil.

31. The parties should be examined at the time of framing issues; this is not done and the issues are also not generally framed by court after going through the pleadings, for the heavy work the officers have to cope with at present and for their anxiety to show greater disposals.

At present there is no column in the periodical statements for showing the number of suits in which issues have been settled and the time devoted to this work is not taken into account in judging the work done by an officer.

It is for this reason that the procedure is generally neglected and the officers utilise the time which might have been devoted to the framing of issues to the trial of suits for showing a better outturn of their work. It is often found that cases, in which issues have been settled, are compromised or disposed of otherwise than on contest and the time spent in framing issues in these suits is ultimately found to be of no use; but this should not weigh much if the welfare of the litigants be taken into consideration as it would reduce the volume of evidence and the cost of litigation.

The courts should, therefore, be encouraged to use these provisions of the code by inserting a column in their periodical statements about the number of suits in which issues have been settled by them.

32. The provisions of Orders X, XI and XII, Civil Procedure Code, are neglected in this province; the principal reason for such neglect is that litigants do not, as a rule, understand the advantages of these provisions. The remedy seems to be that the courts should encourage the litigants to avail themselves of these provisions as far as practicable.

33. This becomes unnecessary after answer to Question 31; steps for summoning of witnesses should be taken after settlement of issues as suggested under Question 31.

34. The provisions of Order 16, Rule 16, clause (i), are not strictly enforced in this province.

No steps are necessary to compel the attendance of witnesses who have already appeared, as such witnesses usually turn up whenever they are informed that the suit would be taken up for hearing. It is only in rare cases that processes are required to compel the attendance of such witnesses.

35. Unnecessary and avoidable oral evidence is not usually let in, in the courts of this province.

If the expenses of citing witnesses who do not prove relevant facts are not allowed as costs of suits, this will be some check to the citing and examination of a large number of witnesses.

36. I do not approve of the suggestion of proving claim by affidavits in cases other than rent suits; if affidavits be allowed in other classes of suits it will encourage false claims and corruption in court.

37. I do not agree with the suggestion. If the courts have discretion to fix a time-limit they will be tempted to exclude evidence for showing a greater number of disposals which is now the principal factor in judging merit. Full latitude should be allowed for the cross-examination of witnesses for eliciting truth; it will prejudice the parties seriously if they are deprived of that right.

38. I would not extend the application of Order 37, Civil Procedure Code, to other suits.

39 (a) In suits by and against families governed by the Mitaksara law complications do not arise by the death because the survivors would represent the joint family. The difficulty arises only in cases of births after suit. This difficulty will be sufficiently and safely met by a provision that members born after suit will be deemed to be represented by those already on the

record; but the guardians of any such minor will have a right to apply to court to be made a party.

(b) In case of death of a party proclamation in mofussil after substitution of the names of heirs known to plaintiff with a provision that the absent members would be bound thereby unless they appear will obviate the difficulty of getting the names of all the legal heirs for substitution.

40. The question has been answered under Question 39 (b).

41. Guardians of minor defendants cannot now be appointed without the consent in writing of the proposed guardian. If the proposed guardian does not give such consent the court has to appoint a third person, usually a pleader, as guardian. If the said provision of the law be changed it will be possible to make the suits ready for hearing earlier. Where there is a certificated guardian such guardian should as a rule be appointed guardian for the suit. Where there is no such guardian notice should be served on the natural guardian of the minor for appointing him guardian for the suit; if there be no objection, he should be appointed guardian for the suit and in case he objects a third person should be appointed. Consent of the proposed guardian should be presumed if he does not object after service of notice.

I do not approve of the suggestion made in the second part of the question.

42. Undue advantage is not taken in this province of the practice of granting *ex parte* injunctions and order.

43. Judgments are not usually lengthy but it is occasionally found that young judges write lengthy judgment, paying more attention to the language than to the questions of law and fact involved in the case; this defect will be easily remedied by giving them training during the probationary period.

44. Questions of law going to the root of the case are usually decided first.

45. Dates of cases which are ripe for hearing are fixed by judges themselves and dates of other cases are usually fixed by the bench clerk under the instructions of the presiding officer. This practice does not lead to delay in disposal.

46. Pleaders are generally consulted in sub-judge's court about the probable time to be required for the case. In munsif's courts also some idea of the time is taken.

47. Commissioners should have power to disallow questions and the propriety of disallowing such questions should not be allowed to be challenged at the time of trial.

Written interrogatories should be insisted on when the cross-examining party will not take a pleader to attend the commission.

48. No action is necessary; parties come ready when the case is likely to be taken up.

We award sufficient day-costs to prevent frivolous applications for time.

49. Suits are tried from day to day in this province. Piecemeal trial is prohibited by High Court's Circular Order No. 51, Chapter 1, Vol. 1.

50. High Court exercises supervision over district judges to ensure proper inspection by the district judge of the lower courts. Notes of inspection should be invariably taken by the district judge personally. It is sometimes seen that the serishtedar or other ministerial officer is sent previously or accompanies the district judge for taking the notes; this practice is very demoralising and should on no account be followed. It lowers the position of the presiding officer and is insulting to them if a ministerial officer be directed to take notes of the work done by them.

51. There are very few commercial cases in mofussil. So no rule need be made for their expedition.

53. The principle of Section 21, Civil Procedure Code, should be extended as suggested.

54. The powers should be extended.
55. The modification may be made.
56. I think the decree-holder should be allowed to execute the decree at any time he finds convenient within 12 years. This will reduce the number of infructuous applications.
58. Such an alteration should not be made. It will be putting people to unnecessary trouble.
59. The suggested change should be made; no separate notice to the transferor or the judgment-debtor is necessary where affidavit of the transferor to the fact of the transfer is produced.
60. The court's discretion should not be curtailed.
- 61 (a) Notice under Order 21, Rule 22, is not necessary but notice in all cases should be given after application for execution.
- (b) No, if the above suggestion be accepted.
62. Greater discretion should be given to court as suggested in this question. If a provision be made that there would be no *interim* stay in money decrees it will work hardship.
63. There is no necessity for giving notice at different stages; one notice should be sufficient as suggested in question number 61.
64. Writ of attachment and sale proclamation should issue simultaneously; I am not in favour of service of notice on the vakil for the judgment-debtor who appeared in the suit as the vakil may not take any interest after disposal of the suit. A copy of the sale-proclamation may be sent to the judgment-debtor by registered post with acknowledgment due.
65. No.
- 66 (a) Some provisions in the Registration Act should be made laying down the procedure for the compulsory granting of encumbrance-certificates by sub-registrars; such certificates may be directed to be filed with the plaint.
- (b) Persons whose names appear in such encumbrance-certificates or their legal representatives should be made parties to mortgage suits and on plaintiff's failure to do so, such suits should be liable to dismissal.
- (c) Only mortgagees and persons holding charges should be allowed to plead their rights in the mortgage suits; persons setting up paramount title should not be made parties in the mortgage suit and if any party takes such a plea it should not be investigated in the mortgage suit; such a procedure would lead to increased complications and would stand in the way of speedy disposal.
- (d) The sales in execution of mortgage decree shall be free of all encumbrances so far as the parties represented in the suit are concerned. But it should not affect the rights of any mortgagees or encumbrance-holder whose name might not have been mentioned in the encumbrance-certificate. The rights of previous and prior mortgagees should, as suggested, attach only to the money in court.
- (e) No time need be given in preliminary decrees in mortgage suits for payment.

There is no necessity for a final decree in simple mortgage suits. I consider it as unnecessary to pass a separate personal decree when the security is exhausted. In the decree it should be provided that the decretal money would be realised, first by sale of the mortgaged property and if that be found insufficient from the person and other properties of the judgment-debtor.

67. Delay is caused by stay of execution proceeding by the appellate court, but it cannot be avoided for the interest of the parties. If, however, decretal money is deposited or security for the same is furnished, the execution case should be struck off. I would not like to invest the appellate courts to award exemplary compensation.

68. A provision should be made that before granting injunction for staying execution, the decretal money should be deposited or security for the decretal amount should be furnished as may be directed by court.

69. The present law of insolvency does not unduly stand in the way of decree-holders getting the fruits of their decree.

70. Execution proceedings are not frequently delayed by absconding judgment-debtors.

71. Some provisions of the law of evidence lead now to protract trials unduly.

72. I do not think it necessary to retain the provision of calling attesting witnesses for proving mortgage-bonds; mortgage-bonds should not be made presumably valid but provision should be made for proving them like other documents without the examination of attesting witnesses.

73. If the parties consent, the court may accept secondary evidence of any form without insisting on certified copies.

74. Period of appeal against preliminary decree and orders to the High Court should be reduced to one month as means of communication have now much improved.

75. Courts should have discretion to call for deposit of decretal sums or security at any stage from the judgment-debtor or any person who files objection in delaying the execution or the sale or the delivery of possession of the property in execution.

76. No.

77. No.

78. No such difficulty as is stated in the question arises in this province in mofussil. I agree that the doctrine of part performance should be abolished in this country as it is a fruitful source of litigation.

79. No.

80. No.

81. The people of this country are accustomed to *benami* transactions for such a long period that the practice will be followed in spite of any legislation to the contrary. Any attempt to change the law will bring hardship to many and create confusion.

82. Court-fee should not be enhanced further and such enhancement will not have the effect of putting down frivolous and malicious suits.

83. I consider it unnecessary to retain the provision that mortgage-bonds should be attested; the law has now been changed and all such documents are now compulsorily registrable; so the additional safeguard is not necessary.

84. No action should be taken as it will deprive poor men of this country in coming to court for relief.

85. The cases should not be referred to arbitrators without the consent of parties.

86. There should be only one set of law reports for each province in which all important cases should be reported. Multiplication of law reports causes much inconvenience and puts those who have to deal with law to much unnecessary expense.

87. I do not think that codification of law to a larger extent should be made.

2 and 3. Main causes of the delay and their remedies.

(i) Much time is devoted in recording evidence and writing judgments by judges with their hand; at least half the time in doing so will be saved if evidence be recorded by stenographers on dictation of presiding officers, and if these officers are permitted to dictate their judgments.

(ii) The delay is mainly due to the fact that the judges have to do more than they can cope with.



From the administration reports it appears that litigation steadily increased up to 1920; the receipts during the years 1917-1920 from civil justice were Rs. 1,47,56,574, Rs. 1,49,02,371, Rs. 1,66,84,507, and Rs. 1,68,61,146 respectively so that the receipts increased in 4 years by 20 lakhs while the number of officers were not increased; on the contrary leave vacancies not having been filled up, the strength of the cadre was considerably weakened; so the delay is due to a false economy on the part of government. The system of administration should be elastic enough to adopt itself to the requirements.

(iii) Much time is taken by the party in filing deficit court-fee on plaints; a limit not exceeding fifteen days should be fixed for the purpose.

Delay also occurs for non-payment of process-fees and not filing of written processes and copies of plaints in due time. Rule should be framed for payment of process-fees and filing of written processes and copies of plaints when the plaint or memorandum of appeal is filed; no plaint or appeal should be admitted so long as this is not done. After tamadi institutions many adjournments are taken simply for the purpose of filing written process and process-fees and copies of plaints; much time is wasted in passing orders on them which are too many in number; if their filing is insisted on before the admission of plaint or appeal the parties will take care to file them as soon as possible and also the duration of cases will be reduced by avoiding unnecessary adjournment.

(iv) The present system of service of processes is partly responsible for the delay in the disposal of suits and if improvements be made as suggested in answer to other questions, this source of delay will be removed.

(v) Want of time of the presiding officer to supervise the work of the ministerial officers is another source of delay; the corruption amongst the ministerial officers cannot, therefore, be checked and the litigants remain entirely at the mercy of those officers who would not issue process from court, send or comply with requisitions for records on fixed dates of hearing unless they are satisfied. The work of the court should not be so heavy as to deprive them of the time they should devote in looking after the work of the ministerial officers.

In this connection I should also mention that even if a judge be inclined to work extra hours and put down these corruptions he finds himself in a very awkward position because he has to face the combination of the meanest peon to the highest ministerial officer of the district. If my suggestions in answer to Question 12 be accepted and a judicial officer be kept in charge in the district headquarters, the hands of all judicial officers of the district will be greatly strengthened and they will have the courage of making attempts to put down corruption.

(vi) It very often happens that objections to execution of decrees under section 47 of Civil Procedure Code, are preferred at the very last possible opportunity, sometimes when the auction sale is about to begin. The wide latitude afforded in the existing law and practice to the preference of such objections gives rise to numerous frivolous and vexatious objections and consequent delay in the final disposal of the execution cases. I would suggest that a time-limit of 15 days should be fixed within which such objections may be preferred and entertained, the limit to be calculated from the date of the judgment-debtor's knowledge of the execution proceedings. In order to fix such dates the issue of service of notice in all execution cases (not simply in cases of execution of one year old decrees provided by Order 21, Rule 22, clause (1) (a) ) should be insisted on. Such service of notice will have another good aspect; it will prevent a false creditor to get at the door of an innocent judgment-debtor with process of arrest and attachment of moveables.

(vii) The judgment-debtor in money-decrees should not be allowed to file petitions under section 47, Order 21, Rule 2 and Rule 90 unless the decretal money is deposited or security given to the satisfaction of the court; this

will put a stop to frivolous and vexatious petitions and objections in executions.

In suits for recovery of money, if the defendant wants to set aside an *ex parte* decree, his application should not be entertained unless he deposits the decretal money in court or gives security to the satisfaction of the court for payment of that money. In such suits no appeal by defendant should be entertained unless the decretal money is deposited or security given. Where cost is allowed to the winning party no appeal against the decision in any suit should be entertained unless the same is deposited in court or security given. If any such provision in the law is made, much delay and harassment of the decree-holder may be avoided.

(viii) The period of limitation prescribed for application for review of judgments under Order 47, Rule 1, Civil Procedure Code, should be reduced to one month from the date of the decree.

(ix) At present there is great dislocation of business of courts by a large number of institutions on the tamadi day; at first many adjournments are taken for filing deficit court-fee; then the suit is registered and written processes, process-fees and copies of plaints are called for from the plaintiffs; considerable delay occurs in complying with these orders and much time of court is wasted for the many orders in the numerous cases; then considerable time is spent in getting the process served on the defendant.

To meet these causes of delay I have suggested as above a time-limit of 15 days to file deficit court-fees; the suits should not be registered so long as all the requirements for serving processes on the defendants are not complied with and thus the age of the suit would not run before the courts have any control over it; service of process on defendants would not take much time according to my suggestions in answer to Question 28. The claims may be proved by affidavits as suggested in section 93 of the preliminary draft of the Bengal Tenancy Amendment Bill published in the *Calcutta Gazette*, dated the 10th January 1923.

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**Babu JITENDRA PRASAD CHATTERJI called and examined  
on Thursday, the 7th February 1924.**

*Rai Bahadur K. C. Bose.*—Q. How long have you been at Howrah?

A. Since 2nd July.

Q. And before that?

A. I was at Midnapur for about 6 months.

Q. Could you name a place where you have been for three years?

A. At Dacca.

Q. You are one of the senior men. Will you give us a rough idea as to the number of suits instituted in Howrah besides small cause suits?

A. About 100 suits.

Q. I believe, money, rent, etc.

A. Yes.

Q. Do you find any difficulty in serving summons upon defendants in those cases?

A. Yes, very great difficulty. So my procedure was to issue registered postcards and I found in many cases that it was successful. By the issue of summons the parties did not turn up, but by the issue of postcards, the parties turned up and contested the suits.

Q. In how many cases was it reported that the men could not be served?

A. In 25 per cent. of cases.

Q. In the remaining 75 per cent. you have been satisfied with the service?

A. No. Though it was said that the summons was personally served, I was not satisfied. In about 40 per cent. I was not satisfied and so I issued postcards.

Q. So that in your experience so far as service by post is concerned, it was found effective in many cases.

A. Yes, that was more successful.

Q. Out of these cases, how many were *ex parte*?

A. About 50 per cent.

Q. In how many cases applications for re-hearing are filed?

A. In about 25 per cent. of cases.

Q. Successful applications for hearing?

A. About 20 per cent.

Q. First service generally was not considered sufficient. By the second service, you say you were satisfied that there was good service of summons.

A. Not in many cases. Those who are determined to suppress the summons influence the peon and the nazir, and the defendants do not get the summons.

Q. Is it your opinion, as far as your information goes, that if summonses were issued by post, it would secure better service?

A. Yes.

Q. You consider that in *ex parte* cases, time may be saved by means of affidavits?

A. Yes. But I would suggest that summons be served by persons who have the knowledge of the locality. Under the present Local Self-Government Act, there are panchayats. A few peons are to be kept under the President Panchayet. Those persons who serve under the President have knowledge of the locality and they also know the persons on whom the summonses have to be served.

Q. And you think that service through them might be more effective?

A. I would suggest both. Service by registered postcard and also through that agency.

Q. Do you consider a patrol book might be kept by the panchayat in order to show that the peons went there and served the summons?

A. Yes, that would be useful.

Q. In regard to hearing of suits. First of all the examination of witnesses on commission, is it your experience that there is much waste of time over it?

A. The juniors generally examine witnesses. They have not power to omit irrelevant portions, so they put both relevant and irrelevant questions.

Q. Do you suggest that commissioners should be selected from senior men who would be in a position to use their discretion when recording evidence?

A. Yes.

Q. Do you suppose that if power is given to the commissioner that would check the length of examination?

A. Yes.

Q. Don't you think that some time-limit might be usefully fixed in the examination of witnesses by commission?

A. Time-limit cannot be fixed.

Q. Don't you think that if a commission goes on for a length of time, the court will have to wait for a long time to take up the case?

A. Yes, that will be waste of time. Usually the commissioners are nominated by district judges and appointed by trial courts.

Q. Can you suggest any remedy?

A. One commissioner should be entrusted with one commission and the number of commissioners should be increased.

Q. Can you suggest any remedy for avoiding the anomaly of commissioners' and courts' taking evidence?

A. Usually courts have not to take any evidence. In very exceptional cases courts have to do so. My experience as a judicial officer is that no cases come up before me, but while I was a practising pleader in sub-judges' court I found on two or three occasions that the sub-judge had to take evidence for the reason that the parties suspected the honesty of the commissioners.

Q. Can you suggest any remedy which would avoid delay in partition suits?

A. I was placed in charge of the additional sub-judge's court and found that partition suits in my court were pending from six or seven years.

Q. Even after preliminary decree had been passed?

A. Yes, because one of the parties died.

Q. Is not the period of six or seven years too long?

A. But that cannot be avoided. In partition suits all the parties must be on the record.

Q. What is your experience about the working out of partitions after the preliminary decrees? How much time does it take?

A. Even two years are taken. From June to November the land remains under water and it takes at least six months to work it out on the spot.

Q. Can you suggest any remedy by which partition can be effected more expeditiously? Do you think that if it is done by the pleader commissioners, it will shorten the period?

A. It must be done by the pleader commissioners and also the number of commissioners should be increased.

Q. At Howrah how many suits have been pending for partition and to what period do they date back?

A. When I came here I found cases pending from 1917-18, but during the last six months they have been much reduced and now they are pending from 1921.

Q. Do you consider that the delay is due to other than natural causes, that is to say, death, etc.?

A. The only reason that I can think of is that the courts have much more to do than they can cope with. I am not aware of any other reason.

Q. Can you suggest any other remedy by which these partition suits can be more expeditiously disposed of?

A. Occasionally it is found that after the passing of the preliminary decree, appeals are preferred against the decrees of the sub-judges' and munsifs' courts. Appeals are then heard by the High Court and there they remain pending for not less than two years. Then after two years the decision of the High Court is communicated and cases thus remain pending for so long a time. Now I suggest that the period of limitation for preferring appeals against preliminary decrees should be reduced from three to one month and that special arrangements should be made for the disposal of cases in the High Court.

Chairman.—Q. In trying regular suits and title suits do you examine parties and take and order admissions, discovery, etc.?

A. We have no time to do that.

Q. But if the admission of parties is taken, do you consider that that will shorten matters and will reduce the volume of evidence? I think that will be better.

A. It is difficult, courts have no time to do so when issues are framed.

Q. Now, what about settlement of issues?

A. Both parties give written issues. If I find any difference between them then this is done. When the parties appear issues are framed.

Q. With regard to the procedure of interrogatories, discovery, inspection, etc., is that procedure followed very much in Dacca?

A. In my court I used to do that, not at the time of the settlement of issues, but at the time of trial. When the trial commences my first duty is to ask the parties to admit documents. I used to take the statement of parties then and to find what facts were admitted and what had to be determined by the court.

Rai Bahadur K. C. Bose.—Q. Do you think that much time is wanted over irrelevant questions?

A. Yes, much time is wasted. Even a decision of one small question takes several hours.

Q. Will strictness do any good?

A. Strictness would not do.

Q. What is your idea as to the judgments being very long?

A. Judgments are generally long but all the material points must be in the judgment.

Q. In regard to execution matters, would you suggest any method of shortening the present procedure by repealing or modifying any provision of the law?

A. I suggest that one notice should at first be given in all execution cases. At present the practice is that when execution cases are instituted after one year notices are given. I suggest that in all execution cases notices should be issued in the first instance. That will be convenient to the parties and will be a check on the false creditors. Then my suggestion is that cases under section 47 of the Civil Procedure Code should not be allowed. It frequently happens that when the property is about to be put to auction a party comes with objection under section 47 and wants the postponement of sale. My another suggestion would be that in most cases appeals should not be allowed ordinarily when payment or adjustment is pleaded by the party. Appeal should not be allowed in cases of under Rs. 100 disposed of by small cause court and in cases of under Rs. 500 disposed of by sub-judges. There is another suggestion which I wish to make. In most cases applications are merely made to save limitation. Three years' limitation is provided by Article 182. I want to make it six years instead of three years to allow decree-holder to save the decree.

Chairman.—Q. Under the Civil Procedure Code attachment is to be issued and then there will be a sale. Should not the attachment and sale be simultaneous?

A. I think it will be useful if attachments and sale proclamations are made simultaneously.

Q. What value would you put in proclamation in that case?

A. It is not of much use now. The decree-holder puts the value, the judgment-debtor puts the value and under the present rule the court is to determine the particular value, but it is not done generally. I would rather suggest that no value be put at all. It would be the look out of the bidder what value it will fetch.

Rai Bahadur K. C. Bose.—Q. Now, with regard to applications for setting aside the sale, do you think some security should be deposited by the man to show his *bona fides*?

A. In my note I have suggested that. In all applications, that is whenever *ex parte* decree for money is also to be set aside, he will either have to deposit decretal amount or the security.

Mr. Ghose.—Q. You said that commissioners while examining witnesses should exercise check in stopping irrelevant questions?

A. Yes.

Q. Do you think that the pleaders who examine the parties would submit to such checks and would not the courts be put to great inconvenience if they have got to decide such questions every now and then?

A. If the commissioner is given the power to disallow irrelevant questions, it might go a great way.

Q. But would not the parties resent that and would not the parties' pleaders go on arguing before the courts if the commissioners disallow questions.

A. In the trial courts the parties should not be allowed to question the correctness of the question.

Q. But do you know that in some cases when a question is disallowed by a subordinate judge's court, the aggrieved party seeks the revisional jurisdiction of the High Court, and do you mean to say that once a question is disallowed by the commissioner, there should be no reference either to the court trying the case or to the appellate court?

A. If that too is not necessary (in reference to appellate court) the time of hearing of the appeal may be altered.

Q. Is there any guarantee that the decision of the commissioner would be correct?

A. Commissioners are lawyers.

Q. Do you think that senior men would care to execute a commission for Rs. 12 a day?

A. Unless that is done, the difficulty will continue to be the same.

Q. In every question that is disallowed by the commissioner if the court has to decide the matter that would cause great inconvenience.

A. Yes.

(The witness also said that in a big suit which was before him, the examination of one witness was prolonged for 20 days. There were so many irrelevant questions which the commissioners could not check. He himself felt tired to read the evidence.)

Q. If the commissioner is vested with the absolute power to check irrelevant questions, would that be a remedy?

A. Yes, some sort of remedy. Unless he is given absolute powers, the court will be bothered again and again.

Q. If every court persuades the defendant to admit facts set out in the plaint, then cases could be disposed of in a much shorter time. But is it possible? Did you try it successfully in title suits?

A. Yes.

Q. Did you succeed in any title suits of importance in eliciting admissions from the defendants regarding the facts set out in the plaint which were contradictory to what they had stated in their written statement?

A. It often happens that the written statement is drawn up by the defendant's lawyer.

Q. You have said that if issues are fixed by courts then matters can be disposed of sooner. Are not the issues fixed by courts in every case practically?

A. In subordinate judges' courts. I know that even in sub-judges' courts, for example in my own court, I am very busy with another important suit. That is also the date fixed for framing issues in a particular suit. If there is no difference between the parties regarding the issues, the issues suggested by them in their notes are generally taken.

Q. What practice do you follow as a subordinate judge?

A. I do that, but in case of difference, I decide what is to be kept and what is to be expunged.

Q. Do you succeed in expediting the disposal in such cases by fixing the issues yourself?

A. No. The thing is that in those cases in which there is no difference between the parties, I have not to consider the plaint or the statement. I have no idea of the suit even. In case of difference, I have to consider the plaint and statement.

Q. How many cases had you for framing issues daily?

A. Two or three.

Q. If you go through the plaint and written statement in each such case, what time do you take?

A. Much time. Nearly the whole day.

Q. If you take nearly the whole day in attending to the plaint and written statements when would you try cases?

A. If I have to do that work myself, i.e., frame issues in two or three important suits, a day would be taken.

Q. If you read the plaint and written statement in those cases, even when there is no difference between the parties regarding the issues, you have to waste a full day.

A. Yes.

Q. Now, if the case be settled or cannot be disposed of quickly then that labour is lost.

A. Yes, if the suit is compromised.

Q. If these cases cannot be disposed of quickly then that one day's time is gone for nothing. You could better utilise it in recording evidence in another case. It is possible that in a sub-judge's court a big title suit can be disposed of quickly if the judge attends to the plaint and the written statement at that stage and takes good care of fixing the issues himself?

A. It may not be disposed of quickly, but unnecessary issues need not be framed. That would be a check. Occasionally it happens that 20 issues are suggested by the parties, but only 10 or 12 issues are necessary.

Q. Even if there be no difference the court has to sign the set of issues it approves and at that time can you not very well exclude some of the issues if they are not material?

A. If I know the facts of the case.

Q. Even if you do not know, at a glance you can know the nature of the case. If it is a mortgage suit and if there are certain issues that do not generally arise in a mortgage suit, you can exclude them?

A. That is not safe. Without having an idea of the suit, to expunge issues is not safe. There may be issues of fact and issues of law, which cannot be settled without reading the plaint and written statement.

Q. If you cannot frame the issues by reading the plaint and written statement at that stage, would you devote the whole day? Then when will you hear cases?

A. It will not be possible to settle two or three issues in a day. Whenever a case is taken up for hearing and is opened by the vakils or pleaders of one side and the other side too gives an idea of his case, then we see what issues have been framed. If we see that some issues have been unnecessarily framed, we expunge those issues and if we find that an important issue is not framed we frame that issue. That will be done, not at the time of trial, but when the issues are framed.

Q. What is the practice at Howrah if any omission is made by the court?

A. If any omission is made in fixing any issue one of the parties comes before the court and makes a petition that that issue be added.

Sir T. Desikachari.—Q. Do you think that suits which are now tried by munsifs can be tried by any other agency?

A. Any other agency, I cannot follow.

Q. You just referred to some union courts, panchayat courts, etc. Do you think that suits of the value of Rs. 50 can conveniently be allowed to be tried by them?

A. If good panchayats are available. I do not think any good panchayats are available. If they do not belong to one or the other party, they may be entrusted to try suits of small value provided questions of law are not involved.

Q. Do you think that suits of the value of Rs. 50 or 100 may be transferred to sub-registrars?

A. No. Sub-registrars are not experienced men in this province. They have no idea of law.

Q. What do you think about honorary munsifs?

A. Such persons can be found. Only experienced retired judicial officers should be appointed, but they would not like to live in mofussil, because party spirit is so strong in villages that it is very difficult to live there.

Q. In what class of cases would you refer cases to arbitration?

A. I cannot suggest any class. But my practice is that when I see that there is a difference between the nearest relations or between intimate friends, I usually refer the matter to arbitration so that good feeling may be restored and they may not be ruined by litigation.

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**Dr. T. THORNHILL, LL. D., Chief Judge, Small Cause Court,  
Calcutta, called and examined on Friday,  
the 8th February 1924.**

(No written statement received.)

Chairman.—You are the chief judge of the presidency small cause court in Calcutta: how long have you presided over that court?

A. Since June 1911.

Q. Are there puisne judges?

A. There are six judges besides myself. There were six judges when I came in.

Q. What is the system of arranging work between the different judges?

A. The chief judge takes up cases from Rs. 1,600 to 2,000.

Q. And the other work is divided equally among the other judges?

A. At one time I tried to take from Rs. 1,400. There were many contested cases. So much of the time goes to decide and control applications that I found it impossible to dispose of them.

Q. The cases that go to other judges are allotted by you?

A. They are allotted by the registrar.

Q. They are not selected?

A. No.

Q. The procedure in the small cause court is not quite the same as under the Code, in some respects?

A. No.

Q. What is the main difference?

A. We are governed by our own Act of 1882: that is the fundamental basis on which we work.

Q. As regards other matters, execution, etc.?

A. Of course, as regards real property, I have no jurisdiction.

Q. There is a certain time by which the defendant has to appear. How long is the time?



A. I think it is 10 days and 14 days. Really the registrar deals with it. It depends on the distance from Calcutta.

Q. At the end of the 10 days or 14 days, what has the defendant to do? Has he merely to enter an appearance or lodge a defence?

A. What we call entering an appearance strictly means entering an appearance and a written statement of facts, but I know there has been a good deal of objection made over granting time for filing; they enter an application very often, and take two or three weeks for detailed statement. Well, of course in the case of the mofussil, sometimes they are ill, sometimes they have to come from long distances. Really they cannot come within the time-limit.

Q. In those cases they enter an appearance in time and ask for adjournment?

A. If they do not make their appearance, the suit is decreed *ex parte*. If the written statement is filed in time, the case will be set down in about 10 days' time.

Q. The Chamber of Commerce has suggested that the time might be shortened.

A. I think the suggestion is good. We have a ruling to that effect.

Q. Of course if the normal time is only 10 days, one cannot curtail time for filing written statement very much?

A. Well, five or six days.

Q. In certain cases, is it possible to make an application and have the date of hearing expedited?

A. Yes.

Q. It has been suggested that when the defendant wants time to file his written statement, he should be compelled to make it in the presence of the plaintiff?

A. The present registrar has adopted a course which seems to me to be a good one, and absolutely fair. That is, the case is posted giving the date for entering an appearance as 10 days. On the fixed day the case comes before the registrar. If no one turns up, it is decreed *ex parte*.

Q. That is to say the application for further time to file written statement is usually made in plaintiff's presence as it is.

A. Of course.

Q. On what date is it usually made?

A. The date for appearance is fixed on February 8th. That appears in the list of the registrar. That is the time for application when the plaintiff should be present.

Q. When time is allowed, is it allowed on an affidavit or a petition or a mere statement?

A. Mere statement. Sometimes it is made by the pleader without the defendant being present.

Q. It might be possible perhaps, if there were any alteration, to insist on some sort of affidavit before an adjournment is granted. The time allowed to file should not be more than 3 or 4 days.

A. Yes. It could be made by the pleader.

Q. Could you tell me with special reference to your court, as to whether there are large number of defendants coming from the mofussil?

A. A good many. As a rule when merchants want to sue a member of a family, they do not know whom to sue. The parties are 4 or 5 in a joint family. They put all of them as defendants. I may mention I have always been in favour of the idea that the partnership should be registered. Tremendous lot of time is wasted.

Q. There have been proposals in Bengal for the registration of partnerships. But has it ever been considered practicable to insist on registration of the members in a joint family.

A. Well, I have mentioned that point to some Bengali gentlemen. I do not think they have any objection. I think it could be done.

Q. I understand from this report that the serving of process is done chiefly under the postal certificate system?

A. That is quite wrong. The facts are, according to our rule we send a process-server with either the plaintiff or the plaintiff's man. But the bailiff has to make a statement as to whether he served the process personally on the defendant. That is the fundamental rule. That rule exists and it is always followed.

Q. As an additional check?

A. Merely as an additional check. We do not pay much attention to that.

Q. So you can send registered postcards?

A. I do not think so, because when defendants in Calcutta will come to know that this is being done by registered postcards, they would not, I think, accept them and if they do accept them at all, a large number of people, particularly Marwaris would not sign them. It will only be gomashtas who would sign them and the postal peon would not be able to read the Marwari characters. It will create much suspicion as to whether they are signed by the defendant or not.

Q. Have you ever seen any figures or have you formed any impression as to the total number of cases in which *ex parte* decrees have been made where-in applications to set aside decrees have been preferred on the ground of non-service?

A. Yes—greatly.

Q. Have you any idea what proportion of the total number of *ex parte* decrees result in the re-opening of suits on that ground? Perhaps more than 5 per cent.

A. I think probably 7 per cent.

Q. How many cases, as a rule, are decreed *ex parte*? Is it a large number of the total suits?

A. About twenty-five thousand suits were decided and about nine thousand were decreed one way or the other. It means that about one-third of the total number of suits are decided *ex parte*?

Q. Of that one-third the question of service is raised in about 7 per cent.

A. If not more.

Q. I observe that the Chamber are satisfied that at any rate a good number of people do not in fact receive processes.

A. That is so. Courts are deceived by plaintiffs in the granting of *ex parte* decrees. In a substantial number of cases I think that is so.

Q. One has to bear that in mind in considering the question whether payment of money in court or giving of security may in all cases be made a condition of leave to apply to set aside the decree.

A. Yes, sir.

Q. If a substantial number of *ex parte* decrees are the result of non-service, one might do considerable hardship by rigid rules.

A. Very often, if it looks a clear case, the defendant is ordered to pay money in court.

Q. Take the case of an *ex parte* decree—the plaintiff is minded to take out execution and the defendant is minded to apply for the setting aside of the decree on the ground that he has not been served—do you think that when the defendant makes his application, the execution of the decree is automatically stayed?

A. No, no. It does not operate automatically. They take stay orders.

Q. When the defendant makes his application, does he make it simply in a formal manner stating what he wants or does he file a statement of facts?

A. Well, he has to be examined, he gives evidence on oath; but he does not make an affidavit.

Q. Then applications to set aside are made in court?

A. Of course.

Q. Supposing I am a defendant and there is an *ex parte* decree which I want to set aside. Do I give notice to the plaintiff?

A. You go to the court and get leave to make an application.

Q. Supposing at the time the application comes on to be heard the judge is busy. Is it adjourned?

A. These applications are not adjourned. Of course there are occasions when they are adjourned, but very often settlement is made.

Q. I see there is a complaint made in the Chamber's report about the question of instalments. There is a note to this effect that if the defendant has taken time for written statement or has moved for adjournments of the date of hearing, in such a case he should be taken to have forfeited his right of payment in instalments. Have you considered this, that where the defendant has obtained some delay by asking for adjournments he ought to be taken to have forfeited his right to further payment in the form of instalments? The suggestion is this, that you should take into account not merely how much time has elapsed since the passing of the decree but how much time has passed since the institution of the suit.

A. I agree with the Chamber. Dishonest defendant does not deserve any consideration.

Q. It is not possible to know who is honest and who is dishonest by looking at him.

A. Of course that is so.

Q. The defendant who has a decree passed against him in a contested case and who has not applied for instalments, applies for instalments when the plaintiff takes out application for execution and that I take it prevents the execution of a decree. Can you stop that?

A. Unless you lay down a limitation within which an application for instalment may be made.

Q. If you draw hard and fast rules do you think plaintiffs will be unduly delayed?

A. Of course, but in this instalment system the plaintiffs do not look into the merits because many plaintiffs do not get a farthing and they want to get anything. I take the figures, the number of institutions in Bombay is greater than in Calcutta. In 1916 the number of decrees satisfied in Bombay was 2,208 and in Calcutta 4,302. The amount realised is quite double in Calcutta.

Q. Do I understand that in Bombay they have no instalment system?

A. No, they have the same system. They are governed by the same law.

Q. Then more use is made in Calcutta than in Bombay and that accounts for the greater amount of satisfaction received?

A. Yes, that is so.

Q. What reason have you to say that more use is made in Calcutta? Do these figures show that?

A. No. But Mr. Dalal's report makes references to the first instalment.

Q. That is your impression.

A. Yes.

Q. What I would like to find out is this. Supposing a person prays for instalments, does that operate as an automatic stay of execution?

A. Very often the judge makes an order. He won't accord stay of execution until he hears the party.

Q. Have you ever seen figures or derived any information on this point? What are the longest adjournments given by judges of your court for the satisfaction of a decree?

A. Some are long if you take extreme cases.

Q. What do you mean by extreme cases?

A. I might mean up to 4 years. A decree is very often made up largely of interest.

Q. Now, take rent cases. What is the longest time that you ever had to give a man?

A. So far as I know pretty short time.

Q. What would you put as a maximum?

A. Six months in my court as the longest.

Q. The Chamber appear to allege that some orders are passed by bench clerk.

A. I am afraid that is quite a mistake on the part of the Chamber. They are formal orders. An application is made by a plaintiff or defendant for return of old exhibits. The bench clerk sees the application and if he finds that it is a formal order, he brings it to the judge to his chamber and the judge signs. I never had a single complaint. The judge signs and he is responsible for every order.

Q. As regards the arrangement of the daily list, supposing I was a judge of the small cause court, what sort of list would I find in front of me?

A. You will find some notice cases, new trial applications, and then a lot of more cases than you could do.

Q. About how many cases should I find contested, or cases that might be contested, for disposal?

A. About 30 or 35.

Q. And ordinarily how many of these have to be carried to another day?

A. Great many. We have got more cases than we possibly could get through.

Q. Could not something be done to put a less number of cases in the list to begin with?

A. So many new cases are filed that the registrar puts them down in the list of contested cases.

Q. Does he take the new cases?

A. He takes the new cases that are on the top. If no parties are there, he goes on to the next. Not the contested cases, but the old cases.

Q. Of course there is nothing to be gained by putting down cases if you cannot possibly hear them. Could something not be done to prevent people coming again and again unnecessarily?

A. Well, in new cases people are so eager to get decrees that they insist upon a list so far as possible. They say our case has nothing in it, it is so short, we will take our chance. In that way they get a lot of cases down.

Q. Of course in your court, when you are six judges, it might be possible to arrange that the short work should be put down before a certain judge for the particular day for that particular month, but that the other judges should be engaged with lists of substantial matters and simply have a reasonable day's work put down in front of them. Could not something like that be done?

A. You mean to say that practically all the new cases, practically 60 new cases, should go before one judge, and he should decree those that have not much in them.

Q. And in those that have to be adjourned, the parties have to take their turn. Would not that be better than cases coming in again and again?

A. Yes; if it were workable, it would be better.

*Mr. Justice Stuart.*—Q. As regards service of summons is there any advantage in having identifiers?

A. You cannot do without them, because you cannot expect bailiffs to do that work.

Q. I think it is only in Bengal that you have got identifiers. I do not think there are any in any other province.

A. Well, it is only because Calcutta is a very big city and about 100 men live in the same house. It is very difficult for the ordinary process server to serve on the proper person without the help of the identifier.

Q. But I think there are dishonest identifiers as well and if it is so, the system of keeping identifiers is not a check at all.

A. In that case it is not a good check.

Q. Then it is only a waste of time and increase of expense.

A. Yes, but here in Calcutta it is impossible to do without identifiers. If the summons is taken first to the man by the ordinary process server, it is brought back unserved, but if the identifier goes, then it is served.

Q. When a plaint is put in (small cause court) then the first process is served. Now, what date is fixed for the service of the first process and who fixes that date?

A. The date is fixed either by the bailiff or the registrar, whoever is responsible. The date for Calcutta is 10 days, and 14 days for mofussil.

Q. If you have got no identification system, could you carry on if you had better process servers?

A. I am afraid it is very difficult in Calcutta to do without identifiers. As I have already said about 100 people live in one house and to serve on the proper person would be very difficult.

Q. But what class of people are these bailiffs? What are they paid?

A. They are paid Rs. 20 a month.

Q. Would it not be an improvement to employ better men? It will make much difference I think.

A. Of course.

Q. If an earlier date is fixed for the service of the process, will it not be possible that all men can be served in that period?

A. Ten days I suppose to be the reasonable period.

Q. Under whose supervision are processes served?

A. Under the supervision of the registrar.

Q. But who is the immediate superior?

A. I should say the head bailiff and the deputy registrar.

Q. What is the pay of the head bailiff?

A. His pay is Rs. 250 per mensem.

Q. How many bailiffs are there in all?

A. About 30.

Q. I think this number of 30 can be supervised easily?

A. No, sir, it is very hard to supervise.

Q. In 1901 and later there was an elaborate system of fraud worked in the small cause court in Calcutta. There were men from Ghazipur and other districts who had come to work in Calcutta in various capacities. They instituted suits in the small cause court, Calcutta against men who really lived in their own districts. The summonses were served on the accomplices who accepted them; a decree was given *ex parte* and the decree then transferred for execution to the districts where the judgment-debtor lived. Do you remember such cases?

A. I was also acquainted with one such case.

Q. What action is taken against the men for deliberate false return of service? Are they prosecuted?

A. I think many of them escape because the judges are not satisfied that they can get convictions. In one case I myself prosecuted five.

Q. When a case comes before the judge do you know whether it is a contested case or not?

A. Of course.

Q. Then your position is that you know that there is a contested case but you do not know whether it is to be very seriously contested?

A. No, of course not.

Q. In producing evidence you have to have your evidence ready on the first day?

A. Ordinarily that is so.

Q. Do you agree that in many cases the money is realised but that all the payments are never satisfied?

A. I do not think so.

Q. Do you think that defendants always certify payments?

A. I think the defendant as a rule takes care that he certifies; otherwise the pleader will again take up a case against him.

Sir T. Desikachari.—Q. May I ask you whether the work in the small cause court is very heavy?

A. It is very heavy and at the same time very important.

Q. Judging from the duration of suits I do not think it takes more than three or four months in an uncontested suit?

A. I think so.

Q. I put it to you whether in your opinion it is a reasonable time?

A. I think it is.

Q. May I ask if it is possible to alter section 19 so as to increase the jurisdiction of small cause courts by eliminating some classes of suits from the list in that section?

A. I should like to go through the provisions before answering. As matters stand at present we cannot increase the jurisdiction if it is going to bring in more judges.

Q. What I mean is, will it be conducive to speedy disposal of cases by having some sort of devolution of powers from a higher court to a lower court?

A. I think the presidency small cause court is quite competent.

Q. Could any suits relating to recovery of possession of property, in addition to those mentioned in Chapter VII, be transferred to presidency small cause courts, or rather placed within the jurisdiction of the presidency small cause courts?

A. I do not know that we may not want further machinery. But if the machinery is correctly set up, I do not see why it should not be done.

Q. Will the same be done to suits of higher value in which the matter is evidenced by registered deeds?

A. Well, I should think the same thing.

Q. It was urged in some places that the power now given to the parties to have a suit removed to the High Court under Section 39 of the Act may be altogether done away with, in order to relieve the High Court, and in order to see that there is expedition in the disposal of cases?

A. I think it might be done away with.

Dr. DeSouza.—Q. Is there a substantial number of cases where execution is delayed by allowing the defendants to ask for instalments after decree?

A. Yes, the defendant always does that.

Q. Would it work as a serious hardship if it were provided that if instalments are granted at all they should not be granted after the decree?

A. I think it would, especially in cases of *ex parte* decrees.

Q. In the case of decrees in suits which are heard and decided?

A. Well, if they do not apply for instalments, they are supposed to acquiesce in the judgment.

Q. I ask this question because you say that there are a number of cases in which there is delay in the execution of decrees owing to instalments being applied for after decree.

A. Yes. Supposing I am a merchant with a small stock-in-trade. Supposing there are 5 or 6 decree holders. They will get only a trifle. If you do not grant instalments at least to small business people, they would simply rush to insolvency, and then what good is that.

Q. In case of suits brought against residents in mofussils, you said there are fraudulent suits against fictitious persons. Have you not got a system here by which the interests of defendants in distant places are safeguarded?

A. First of all we send summons by registered post. If that is marked "left", "not known," we then send the summons to the civil court having jurisdiction.

Q. Is there no safeguard to prevent fictitious cases?

A. No. One court has to rely upon the other.

Q. With regard to service of process, you say service by registered post would be more or less useless in Calcutta?

A. I am afraid so.

Q. Would it work very great hardship where registered letters are refused by a defendant and knowledge of the contents is imputed to him?

A. But it is so difficult to prove that he has refused the letter sent by registered post.

Q. Practically it depends upon the postal peon.

A. To a great extent.

Q. Who is more honest? The process server or the postal peon.

A. Process server, I think.

Q. You would not approve of that method.

A. I do not think that is practicable.

Mr. Basu.—Q. What percentage of cases do you think have to be adjourned by judges because the list is too full?

A. Even if the parties are ready and willing to go on, about 20 per cent. of cases have to be adjourned.

Q. In what percentage of cases is the decree ordered to be paid by instalments?

A. Well of course small cases are generally paid.

Q. What do you mean by small cases?

A. By small cases I mean cases up to Rs. 100.

Q. Then I take it that the number of cases in which instalments are granted is very small?

A. No, it is really big, a decree may be payable in two or three instalments.

Q. In the case of arrears of house rent, do you think that the instalments are less than the monthly rent due?

A. No, never, I do not think so. The instalment might be a little less than the monthly rent provided that the instalment order ceases to operate.

Chairman.—Q. Do you think any good can be done in this class of cases? Supposing the plaintiff sues for Rs. 75 and the defendant really admits Rs. 50. Can anything be done to enable the court to give a decree straight-away for Rs. 50 and then to adjourn the case?

A. Well of course it would be worth while. Very often the judges say, 'Well, if you want an adjournment pay the money admitted.' That is the only way in which it is practicable.

**Mr. S. C. MULLICK, I.C.S., District Judge, Faridpur.**

*Written Statement.*

**I.—REPLIES TO QUESTIONNAIRE.**

**1. A. (ii) Contested.**

Original suits (a) 7 or 8 months.

(b) 4 or 5 months.

Regular appeals, 3 months, civil miscellaneous appeals against orders, 5 or 6 weeks, small causes, 2 months.

**(ii) Contested.**

Original suits (a) Title, 6 months.

(b) Money, 4 months.

(c) Rent, 3 months.

(d) Others, 3 months.

Small causes, 5 or 6 weeks.

**B. (i) District courts and sub-courts, 2 months. District munsifs' courts, 6 weeks.**

2. The period which is actually taken now for the disposal of the above proceedings exceeds the reasonable limit in many cases. The main cause of the delay, in my opinion, is that civil litigants in this province have at present got the idea that in civil courts time is of little consideration and that civil courts also have been a little too partial to the dictum that tardy justice is better than speedy injustice. The people of this province are often accused of dilatory habits. But so far as civil litigation goes, this dilatory habit is not a thing which can be said to be inherent in their character. This habit of delay is a creation of some other factors and the principal among those factors are (a) the knowledge that civil courts have got more work than they can expeditiously get through, and (b) the idea that time is not of much consideration in civil courts. The courts do not mind very much such dilatory habits on their parts. That the people are not by nature dilatory in litigation would appear from the fact that no such dilatory habits are evinced in criminal litigation.

**3. A. A little more strictness on the part of judges throughout.**

**B. Devoting a little more time by judicial officers to administration work such as the work of the nazarat and the process serving department.**

**C. Fixing dates of cases themselves as far as possible.**

4. I do not think so.

6. Not in my opinion.

8. To a certain extent it is. Judges have to send for members of the legal profession and have occasionally to wait for them.

9. I think so.

10 and 11. I would. In the case of district munsifs I would have their ordinary jurisdiction in original suits raised to Rs. 2,000 and in the case of some selected officers to Rs. 5,000. In the case of small causes I would have the jurisdiction enhanced to Rs. 500.

12. I think it is very necessary to relieve the district judge of his miscellaneous work both judicial and administrative, so that he may have more time for the work of supervision in order that he may be the effective head of civil justice in his district. The district judge ought to have an officer like a registrar who can do a considerable portion of the *mamuli* work of administrative nature which the judge has himself to do at present.



I would have the majority of the insolvency, probate, succession, administration and will cases, both contested and uncontested tried by sub-judges and some of the insolvency and probate cases by some experienced munsifs. The majority of the cases under the Guardians and Wards Act can also by an amendment of the law be got tried by sub-judges.

13. I do not think the people would raise any great objection. I know of cases where there are sub-judges who try land acquisition cases without any objection from the public. I would, however, have only selected officers vested with these powers.

14. I would confer *exclusive* jurisdiction, when such jurisdiction can be given to village courts. I am doubtful, however, if materials are available all over the province for the constitution of such village courts and panchayats. I have not seen any work done by any such court. If any exclusive jurisdiction is to be given, it should be given in petty cases to begin with suits for recovery of money on bonds of small value for instance and petty rent suits where the question is of payment only.

20. I am inclined to think so. I am in favour of the suggestion that in certain suits no second appeal should be allowed—suits for property worth Rs. 250 and less, whatever be the class of suit.

21. The suggestion that the appellant should be compelled to deposit in full the decretal amount before the second appeal is filed, commends itself to me.

22. I am afraid not. If this power is duly and systematically exercised it may reduce the number of appeals which have to be regularly tried and thereby save some time.

27. They are to a certain extent in the mofussil courts.

28. It may be a little more effective in the beginning; but I am inclined to think that the postal peons also will in a short time learn the little tricks of the present process-servers.

The village officials of the village can, in my opinion, be more advantageously used for the purpose of serving processes. I would have the processes sent to the president panchayats of the unions and the president panchayats can have the processes served with the help of village chowkidars who should report the service to the president panchayats and the president panchayats will return the processes by post to the issuing courts. The great drawback, however, of this scheme is that the judicial officers have got no hold or control over the president panchayats. But this is not an insurmountable difficulty.

30. I do not approve of this suggestion.

31. I would have a more extensive use of the provisions of Order 10 of the Civil Procedure Code. As matters stand at present the framing of issues in mofussil courts has become more or less a formal affair. No particular care is taken either by the judges or by the pleaders representing the parties for ascertaining before the settlement of the issues what the *real* points in dispute in the case are. Experience shows that sometimes considerable mass of evidence is introduced of which hardly any use is made at the time of giving final decision in the case. If clear-cut issues are framed before the actual trial begins, a considerable saving of time can be effected. I have thought over the matter why judicial officers in the mofussil do not pay any great attention to the provisions of law as contained in Order 10. An anxiety on their part to show a presentable outturn of work seems to me to be the real cause of this. To examine parties and to hear them before the settlement of issues takes time and as there is always a considerable interval between the framing of issues and the final disposal of the cases, judicial officers in mofussil perhaps think that if there will be any saving of time by having clear cut issues settled before the hearing of the case begins they themselves will not derive any benefit therefrom and that the time taken in the examination of the parties under Order 10 will be so much time lost to them.

32. I am afraid they are neglected in the mofussil courts. Some of the reasons for such neglect I have given when answering Question 31. As to the neglect in making use of the provisions of Orders 11 and 12, the reason perhaps is want of earnestness and an inclination in some quarters to have the proceedings protracted as long as possible. The only remedy that suggests itself to me is to impress on the courts the provisions of Order 10 of the Civil Procedure Code and to tell them that they should encourage a greater use of the provisions of Orders 11 and 12. The parties cannot be compelled to make use of the provisions of these two Orders.

33. I am inclined to think that it would tend to minimise and I agree to the suggestion that steps for the summoning of witnesses should be taken after the examination of the party in the form mentioned.

36. I am in favour of the suggestion.

37. I am in favour of the suggestion.

40. It is possible, but I doubt if it would be desirable. The majority of the people in this country are illiterate and in matters of litigation, unless they would get something in the way of summons or an order from the court they would not realise that they have got any duty to do. Ignorance of law is no excuse, it is true; but it would be extremely hard always to follow the dictum in this country.

41. I am inclined to think so and I cannot think of any suggestion to remedy this defect. The only partial remedy that I can think of is the suggestion contained in the latter part of the question, a suggestion which commends itself to me.

42. I do not think any undue advantage is taken.

43. Not in any appreciable number of cases.

44. In a very few cases indeed so far as my experience goes.

45. Ordinarily they are not fixed by the judges themselves and I think it does to a certain extent lead to delay in disposal. If the importance of the point be impressed on the judges, matters may be improved.

46. Not usually.

I do not think it has led to any delay in disposal in any appreciable number of cases. I am not in favour of framing any rule to ensure such consultation, as any rule on the subject will not, in my opinion, improve matters.

47. I think so. The commissioners should have powers to disallow irrelevant questions, and they should exercise those powers. Experience shows that examinations of witnesses on commission are inordinately long and all sorts of questions are put to the witnesses before the commissioners. I would also insist on written interrogatories except by the special leave of the judge.

48. To a certain extent it will be. Adjournments are very often applied for and obtained on simple petitions, containing only some stereotyped reasons which are not always based on correct or true information. These applications are very often the handiwork of the pleaders' clerks and they are based often on very flimsy grounds and sometimes on no grounds at all. If affidavits are insisted on it will be a considerable check on the filing of these *mamuli* applications for adjournments and will thereby though in an indirect way help in speeding up work.

I am afraid not.

49. In Bengal suits are ordinarily tried continuously day by day.

61. (a) I do not think it necessary.

(b) I cannot think of any. A judgment-debtor cannot under the present law come with any plea of satisfaction or adjustment after 90 days. Notice under Order 21, Rule 22, only invites a judgment-debtor to show cause why

the decree shall not be executed. But he cannot obviously come with a plea of satisfaction which is more than 90 days old. The law does not require a notice when a decree is executed after 90 days of the decree. Why should a notice be required after a year?

67. Some delay is caused and to prevent it, I would invest the appellate court with jurisdiction to award exemplary compensation in cases in which they are satisfied that such applications for stay orders have been asked for on insufficient grounds. As to what the nature of the compensation to be awarded should be, I would leave it to the discretion of the courts. I would also insist on the deposit in court in all cases of the decretal amount before such applications are entertained at all.

72. I do not think it is necessary. I am in favour of the proposed change.

73. I would agree to the suggestion made.

80. I am not in favour of this proposal. It will, if accepted, cause, in my opinion, a good deal of hardship.

81. The system of allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon, that the apparent owner of property in whose name the title deed stands is not the real owner, cannot be supported on any reasonable or moral grounds. The enactment of a rule that no party to a transaction shall be allowed to plead that it is *benami* will, in my opinion, assist in the realization of the fruits of a decree speedily and prevent unnecessary claimants. The *benami* system in this country is responsible for some delay in civil litigation and as I have stated above, it cannot be supported either on reasonable or moral grounds. The sooner it is put an end to the better.

82. I do not think so.

83. I do not think so.

86. I am afraid it has. I would have only those cases reported where there is any clear proposition of law laid down and any publication where this rule is violated should not be recognised at all.

87. I have my grave doubts about this.

## II.

In an average Bengal district, the district and sessions judge is more a criminal than a civil judge. Except, perhaps, in the few districts where there are one or more additional judges, the judge has to devote considerably more time to criminal work than to civil work. As far as my experience goes, there are districts where the criminal work takes nearly two-thirds of the judge's time. There can be no difference of opinion that this is not a very desirable state of affairs.

There are two ways of rectifying this undesirable state. One of them is by increasing the number of judges and another is by finding out means by which a judge may be relieved to some extent of his criminal work and also of work of a *mamuli* nature which can be more advantageously done by some cheaper agency. To increase the number of judges is a remedy which is out of the question at the present time of financial stringency. The suggestions which I would make to secure the object in the second way are as follows:—

(1) The summary or small cause court procedure should in my opinion be extended. At present munsifs in Bengal ordinarily exercise small cause court powers up to Rs. 100 and in the case of a few selected officers this power has been enhanced to Rs. 250. I would have this small cause court power enhanced in the case of munsifs ordinarily to Rs. 250 and in the case of selected officers up to Rs. 500.

(2) I would have the small cause court procedure applied also to rent suits up to the value of Rs. 50.

The suggestions given above, if given effect to will save the munsifs of the province a very considerable amount of time and this time they can utilise in doing some work which is at present done by subordinate judges and thereby save some time of these latter officers.

(3) At present munsifs in Bengal have ordinarily got powers to try suits up to the value of Rs. 1,000 and there are only a selected few who have got powers up to Rs. 2,000. I would have this power enhanced to Rs. 2,000 in every ordinary case and in the case of some selected officers to Rs. 5,000. This would give considerable relief to the subordinate judges, as the majority of cases which the subordinate judges have at present to try do not exceed Rs. 5,000 in value.

(4) The small cause court powers of the subordinate judges are at present limited to Rs. 500. This amount should, in my opinion, be raised to Rs. 1,000.

Suggestions Nos. 3 and 4, if given effect to, will save the subordinate judges of the province a considerable amount of time and the time thus saved to them can be utilised in giving some relief to the district judge by helping him in the disposal of petty sessions cases and by relieving him of some civil work which is of a simple nature and which, in some cases ordinarily is, and in others has to be, done by the district judge himself. I would have the majority of the insolvency, succession, probate, administration and will cases, both contested and uncontested, tried by subordinate judges and some of the insolvency and succession cases even by some experienced munsifs. This can be done without any amendment of the present law. The majority of cases under the Guardians and Wards Act can also be tried by sub-judges. But an amendment of law would be required here.

A very large percentage of the sessions cases which have to be tried by sessions judges can be disposed of by officers vested with the powers of an assistant sessions judge.

(5) My proposal is that in each district headquarters there should be at least one sub-judge vested with the powers of an assistant sessions judge. If the criminal powers of such officers are taken full advantage of, it would give a considerable relief to the judge so far as his criminal work goes.

(6) In office matters also the judge has to do a lot of things which are purely of a *mamuli* nature and which in my opinion can very safely be entrusted to a gazetted officer subordinate to him. I would have in each district an officer like a registrar, of the same rank as a munsif, who will do all the office work of a *mamuli* nature which is at present to be done by the judge himself. Most of the charges in Bengal are, it is true, not so heavy as to require one whole-time man for this kind of office work. For those districts I would have a munsif who will work as a registrar for a portion of his time and as a munsif for the rest.

(7) There is another way of giving some relief to the judge so far as his criminal work goes. At present the judge himself has to record the whole evidence in sessions cases in his own hand. I would have a stenographer to take shorthand notes of the depositions of witnesses at the dictation of the judge as the examination goes on. At first sight this may appear to be an expensive measure. But a closer examination of the question will show that this is not so. If shorthand notes are taken by stenographers the recording of depositions would be considerably expedited and if by the taking of shorthand notes of depositions the amount of criminal work which the judge does in a month can be done in 4 or 5 days less—and I have no doubt that that can be done—the amount of money saved in the judge's pay for those 4 or 5 days, would more than cover the pay of two or even 3 stenographers. The quality of work, moreover, will, in my opinion, be improved if stenographers are employed for taking shorthand notes of depositions of witnesses.

**Mr. S. C. MULLICK, I.C.S., called and examined on Friday, the 8th February 1924.**

*Mr. Justice Stuart.*—*Q.* I think you have got considerable experience as district judge both in Bihar and Bengal?

*A.* Yes, Sir, I was for some time in Bihar and am now in Bengal.

*Q.* For how many years have you been at Hooghly?

*A.* I have been at Hooghly for three years.

*Q.* Am I right in saying that under you there were five subordinate judges, four small cause court judges and about fourteen munsifs?

*A.* I will give you the exact number including Howrah. I shall have to count them, Sir. Yes, there were five subordinate judges, four small cause court judges and fourteen munsifs under me.

*Q.* Well, I understand that under the system prevailing in Bengal supervision of the courts is not practicable?

*A.* The High Court Judges have no time at all to inspect. During this period of three years and-a-half no High Court Judge has inspected the courts.

*Q.* And statements of delay do not go to the High Court?

*A.* No.

*Q.* Of course you are very busy?

*A.* Yes, Sir, I am very busy.

*Q.* Is your criminal work heavy?

*A.* Pretty heavy.

*Q.* I think you decided something like 150 civil appeals?

*A.* I should think so.

*Q.* And miscellaneous work?

*A.* I had to try land acquisition cases as well.

*Q.* Could you possibly find time for the supervision of nineteen courts?

*A.* I think supervision is not done as it ought to be.

*Q.* Have you any holidays in Bengal the date of which depends upon the moon becoming visible?

*A.* Yes, there are Mohammedan holidays.

*Q.* You have got four or five such holidays?

*A.* Yes, I think so.

*Q.* If you have fixed cases and then you find that that day is a holiday, is not that time wasted?

*A.* It is in a way wasted if we have to change, but very often we have list of holidays when the days are fixed. Of course, sometimes we have to change but then I do not suppose there are many changes.

*Q.* Supposing now on the 4th January it is Id and if moon is not visible it is on the 5th January. Do you not think it will really save delay if you fix no cases for either of these days?

*A.* That would be possible, Sir, in the case of courts at a station.

*Q.* Now, there is another point. Do you find that your work is very much thrown out when new local Government holidays are made known?

*A.* Sometimes it does cause dislocation of work.

*Q.* When one of your officers goes on casual leave do you see that he has arranged his court list?

*A.* Not always. It is rather hard on the public when a man goes on casual leave and people who have got cases fixed come up.

*Q.* People are put to unnecessary inconvenience?

*A.* Yes.

**Q.** How much time is taken up during the day for your office work?

**A.** Are you referring to my present district or Hooghly?

**Q.** Say, Hooghly?

**A.** In Hooghly it was rather heavy. I used to do administrative work at home.

**Q.** Do you think it will effect any improvement to get some senior sub-judges to take up the office work?

**A.** Yes, someone like registrars. That would be a real economy because the judicial work would be disposed of more quickly and at the same time it will relieve the judicial officer of a great deal of unnecessary work.

**Q.** In Bengal do you have to spend much time on accounts work?

**A.** Yes, it is done by the sub-judge.

**Q.** Would it not be better if the registrar were in charge of this?

**A.** I think that would be a very good idea.

**Q.** Do you find that cases are very much tied up both in your court and in the subordinate courts by an appeal being filed to the High Court and the records sent away and the whole proceedings tied up?

**A.** The number cannot be very high but the time taken is very great.

**Q.** It has been suggested to us that if we increase the pecuniary jurisdiction of the small cause court to cover some title cases, that will make for expedition. Do you think such a movement will be very unpopular with the people of this country?

**A.** I do not think so. There may be some outcry in the beginning, but after some time it will subside. It depends upon the amount. If it is very big there will be greater objection.

*Sir T. Desikachari.*—**Q.** At present district judges have got a lot of work to do, so much so that they cannot devote any time even to original suits.

**A.** That is true. In my experience it was at Gaya that original suits were possibly taken up.

**Q.** Do you agree with me in thinking that a district judge should be in a position to do the superior civil work in the district?

**A.** It would be better if it could be arranged.

**Q.** What do you think of devolution of power that is now exercised by district judge, in such cases as probate and land acquisition, to district munsifs and subordinate judges?

**A.** Majority of these cases are really of very small importance and there is no reason why that kind of small work should not be done by the sub-judge.

**Q.** Do you think that concentration of too many courts in the same place makes for delay?

**A.** Yes, to a certain extent it does.

**Q.** Apart from the consideration of the bar, do you think it will be better to have courts distributed in different areas?

**A.** I do not quite see how it could be done.

**Q.** Now witnesses come from sixty to eighty miles. If the courts are located in the centre of the various territorial jurisdictions they would not have to travel all the distance and evidence could be made available easily.

**A.** If the distance is taken into consideration it may save time, but I do not suppose it will be very much.

*Dr. DeSouza.*—**Q.** Is the concentration of too many courts in one place responsible for the applications for adjournment or postponement of cases?

**A.** To a certain extent it is. As a pleader has to plead in two courts, he has got cases fixed in two courts, but he cannot attend in both. Naturally

he would come and ask for adjournment to suit the convenience of the members of the bar.

Q. So that for the convenience of the bar, you would grant adjournments?

A. It has to be done, and it would add to speedy disposal.

Q. What do you think of increasing the jurisdiction of district munsifs?

A. Some have powers to exercise up to Rs. 2,000.

Q. What do you say about increasing it to Rs. 3,000?

A. I would accept it very readily.

Q. Could it be raised to Rs. 5,000?

A. To selected officers: to some selected senior munsifs.

Mr. Ghose.—Q. In sub-divisions also?

A. If there are senior officers.

Q. What is the small cause jurisdiction of district munsifs?

A. Ordinarily it is Rs. 150. But there are some of Rs. 250 also.

Q. What do you think about increasing the amount to Rs. 500?

A. I would have it. That is one of my suggestions before the Retrenchment Committee.

Q. Would you select a number of classes of suits to which the summary procedure might be extended? That would make for the speedy disposal of cases.

A. Of course, it would give more time to the officers.

Sir T. Desikachari.—Q. As a district judge, with your experience, what do you think would be the feeling if we take away the right of second appeal in certain classes of cases, say, up to Rs. 200, Rs. 300 and Rs. 500?

A. It is rather difficult to say how the people would take it.

Q. What do you think yourself?

A. From the judicial point of view, I think it can be safely excluded, i.e., in petty matters, second appeals should not be allowed.

Q. As a district judge have you exercised the power of rejecting first appeals under what is called the old section 551?

A. No.

Q. You think it would be a hardship to do that?

A. I think it will.

Q. Having regard to the large amount of work that has to be done by a district munsif, do you think that there are munsifs enough to dispose of work which is allotted to them?

A. They are very hard worked.

Q. Therefore, you think that some relief must be given to them?

A. If we want to expedite matters.

Q. Without thinking of increasing the number of munsifs, what other agency would you suggest?

A. I think there are some means of expediting the work even without increasing the number. I am speaking of original suits only. For instance, officers are a little too partial to the dictum of the law that "tardy justice is better than speedy injustice". That is being carried too far. The right thing to do is to follow the mean.

Q. If the munsifs were faced with more work than they could get through, could a portion of that work be allotted to other agency? For instance, the village tribunal, the panches, etc.

A. I think in Bengal also it is being slowly done. In Hooghly district, I know it to be a fact.

Q. Will not the extended devolution of power to such institutions lessen the number of cases instituted in munsifs' courts?

A. Yes.

Q. What do you think should be value of the suits entrusted to such agencies?

A. In the beginning about 20 or 25 rupees. But later, it may be extended as they gain experience.

Q. So you are in favour of village courts being established for the trial of suits of a small cause nature, starting with Rs. 25 and gradually going up to Rs. 100?

A. If suitable men are there.

Q. This will be a great convenience to plaintiffs and defendants, and also possibly avoid witnesses coming and telling lies at a distance from their villages.

A. Yes.

Q. With regard to suits before village courts, I am told that at present the defendant has the option of going to district munsifs.

A. Yes, the law will have to be changed in that respect.

Q. Would you give exclusive jurisdiction to village munsifs?

A. I do not think that jurisdiction ought to be concurrent if the full benefit of the system is to be obtained.

Q. What is your opinion regarding courts being empowered to refer certain classes of cases to arbitrators?

A. That will lead us to the consideration of other things. It depends upon whether the arbitrators will be available or not.

Q. There is a question as to whether a culvert has been properly built, or there is a question as to whether a particular ceremony was properly done, or something which must be judged only by relations or experts. In such cases would you much rather have the power for having the thing decided by arbitrators instead of by taking oral evidence before you?

A. I think it would be a good thing if you have good arbitrators.

Q. With reference to suits which are tried by you, do you find that a large number of witnesses examined to prove a fact on either side make for repetition of the same thing?

A. Yes, Sir, they make a repetition of the same thing.

Q. Then how would you minimise the question of numerous witnesses on either side?

A. I think some legislation may be undertaken in order to give greater discretion to the judge. I do not suppose that there is any other way of stopping it. As things stand at present, we cannot stop it.

Q. Do you find that pleaders let examination go on for two, three or four days?

A. I do, of course. I may say it cannot be avoided because strictly speaking all these questions are relevant but at the same time absolutely pointless.

Q. Do you think that munsifs and subordinate judges in your district are exercising their powers in controlling examination of witnesses, etc.?

A. I do not think so. They are not doing so. At the time of writing judgment we see a huge volume of evidence which is not made use of at all. We cannot avoid taking evidence of all the witnesses.

Q. But what remedy would you suggest to avoid it?

A. I understand that in the High Court it is done before issues are framed. In my opinion there ought to be a hearing so that when a court proceeds to try a case it may have some clear issues before it.

Q. May I take it then that your suggestion is that at the first hearing both parties must be examined?



A. Of course, if necessary.

Q. Do you think that in the present Code there is any power of cross-examining either plaintiff or defendant at this stage?

A. I think there is a provision. It is allowed, but it is not made use of by any munsif.

Q. If use is made of some such provision do you think that it would lessen the volume of evidence?

A. It will eventually be reduced. If I am allowed to say something on this point I would say that the main reason why judicial officers do not make use of this provision is that they do not get immediate credit for it. What I mean to say is this: As things stand now they are judged almost entirely by their outturn and if a particular judge devotes some of his time to this kind of procedure he does not get any benefit. Perhaps his successor will get it. He only cares for the present outturn of his work.

Q. Would you like to have the power to have parties examined as at the trial just before the settlement of issues?

A. Not at that length, but only real points that are in dispute.

Q. The present Code gives the power to the court to examine the parties if it likes to?

A. I know that the court has got that power, but what I say is that that power is very seldom exercised.

Q. I think a greater use of that power will be very useful.

A. Yes, Sir.

Q. How many old suits are pending in your district?

A. I do not think they are very many. I can't give you the figures off hand.

Q. How many one year old suits are pending in your district?

A. Roughly speaking there are about 50 of them, but more than half of these suits are lying with commissioners. I should say in a majority of cases delays are caused on account of commissioners.

Q. Do you not think that inspection of courts by district judges would conduce to work being done by sub-judges and munsifs in a better manner?

A. I think so.

*Dr. DeSouza.*—You belong to the Indian Civil Service?

A. Yes, I do.

Q. Have you served in the revenue branch?

A. I served for four or five years.

Q. You were first assistant collector and from that you were appointed directly as district judge?

A. Yes, I was appointed directly as district judge.

Q. You know there is a good deal of complaint in India on the score of young civilians being appointed district judges without experience of civil work?

A. Yes.

Q. What method would you suggest to remedy this evil?

A. Well, one experiment was tried in the case of two or three officers in Bengal. They were appointed munsifs in the first instance to try original civil suits.

Q. Has that experiment been given up?

A. I have not heard of it any more—so I think it has been given up. I did not notice any such appointments in recent years.

Q. Do you not think that to allay public dissatisfaction, young civilians should be allowed to do munsif's work only for a year or so at the least?

A. I think it would be a very good idea.

Q. It is an experiment tried in Bombay. Do you not think by its extension to other parts of India the complaint will be remedied?

A. I think so.

Q. But considering that such officers are mostly ignorant of the language and customs, do you think that such a system would be popular with the public?

A. I do not think there would be much objection; at most, it would be temporary.

Q. I take it then that you do not approve of the present system of an officer having experience of revenue work only being appointed a district judge?

A. No.

Q. What period would you suggest for an assistant collector being put in charge of subordinate civil courts before being appointed as a district judge?

A. For a couple of years he should do work as a munsif and for another two or three years as a sub-judge.

Q. Now, how many working days have you in a year?

A. I suppose about 260 to 270 days.

Q. Is your district considered a heavy criminal district?

A. Practically so.

Q. How many days do you devote to criminal cases?

A. I think it is more than one half.

Q. How much time in a year do you devote to original and appellate work?

A. About sixty days.

Q. What sort of original suit do you take up?

A. Probate.

Q. In your present district of Faridpur do you have heavy civil appeals?

A. I have been in that district for not more than a couple of months. During this time I have had 273 appeals.

Q. Then a lot of the district judge's time is taken up with hearing sessions cases and criminal appeals?

A. Yes.

Q. What remedy would you suggest so as to make him the real head of the civil justice of the district, instead of being nominally so, as he is at present?

A. He ought to be given some relief. So far as criminal work goes, that might be done, without entailing much expense, by investing subordinate judges with powers of assistant sessions judges.

Q. It is a very difficult question. You ought to find a solution. What would you suggest as a remedy so as to make a district judge a real head of civil justice, instead of being nominally so?

A. I will give him some relief so far as criminal work goes. Perhaps that can be done without additional expenditure. More subordinate judges might be given the powers of assistant sessions judges. If you would make a change throughout, I would have summary procedure applicable to more cases. I would have the power of the munsifs increased.

Q. With regard to the examination of parties, I do not think you have had experience of much original civil work?

A. No.

Q. Similarly, with regard to the supervision that you exercise over the subordinate courts, the munsifs' courts, and the returns—monthly, quarterly and yearly, I suppose they are scrutinised by the head of the office—sarishtadar. What sort of an official is he? What is his pay?

Q. He is always a graduate?

A. No.

Q. He has no knowledge of law?

A. Generally none.

Q. Then, as regards munsifs' courts and subordinate judges' courts, so far as delay statements and execution work are concerned, no supervision is exercised at all. Perhaps you have no time.

A. Personally I myself sometimes do it, but very rarely. The present rule is one should inspect once a year: the High Court do not say anything if we do it within three years.

Q. Supposing we appoint registrars for district courts of the grade of subordinate judges, whose business would be to inspect courts, to check delay statements, to check execution statements, to check the work of guardians appointed by courts. What do you think of the appointment of such an officer?

A. Of course he has to be a high paid officer, if he is given the powers of checking the work of subordinate judges' courts.

Q. Suppose a munsif or sub-judge of 8 or 10 years' standing is appointed, would such an officer be an efficient check upon the administration of civil justice in the district?

A. Certainly.

Mr. Basu.—Are suits under section 92 many in your district?

A. During my three months, I do not think I received more than 2 or 3.

Q. Applications under the Religious Endowments Act?

A. I received only one.

Q. With regard to suits under the Act of 1840 or under section 92, application for leasing of part property, could not they be taken up by sub-judges?

A. I do not find why they should not.

Q. With regard to civil appeals which are filed in your court, do you make it a point to take up a case on the application of the respondent?

A. So far as I am concerned, I fix a day.

Q. As a matter of fact I suppose that with regard to civil appeals, you find no difficulty to go on with them, if you find time?

A. No. I was very successful for a short time in Hooghly. There was a large congestion of such appeals and I made it a point that I would send for the pleaders and ask them if it would be convenient for them to take the appeal, and then fix a date and on that date I would positively take the case up.

Q. How long do you take generally to finish miscellaneous appeals, in which there is stay of execution, stay of injunction, etc.?

A. Three months.

Q. Do you make it a point of speedily disposing of them? I suppose if you want to speedily dispose of them, there is nothing to prevent it so far as the lawyers are concerned.

A. No, not on stay matters.

Rai Bahadur K. C. Jose.—Q. Now, as regards setting aside of sale, can you give us an idea as to what number of cases turn out to be successful?

A. I do not think they are very many—only a very small number of them.

Q. Do you think that the petitions are always actually *bona fide*?

A. They are not always actually *bona fide*.

Q. What remedy would you suggest?

A. One thing that I would like to say in this respect is that whenever there is any such application for setting aside of sale, I would call upon the

judgment-debtor to deposit the decretal amount or at least a part of it. I think that will exercise a salutary check over filing of frivolous applications.

Q. With regard to injunctions, do you think that injunctions are granted rather lavishly?

A. I think they are granted as a matter of course.

Q. Do you think that is a satisfactory state of things?

A. But I do not think it causes much hardship because my experience is that these injunction proceedings are disposed of in a very short time.

Q. And do you think that in those cases where public bodies suffer they should be granted?

A. Where it is obvious that public bodies would suffer, in that case, courts ought to be chary in granting injunctions.

Q. Now, in regard to commissioners for local enquiries, do you think that that procedure really helps or simply causes delay?

A. In my opinion that procedure simply causes delay. The judges have got a list of commissioners with them, but they are not in a position to know which commissioners are engaged and which not, because the power of appointing commissioners is only with the district judge. Each subordinate court has got a list of commissioners, but they cannot be sure which of them are engaged.

Q. Then you mean that much delay is caused in regard to commissioners.

A. Yes, Sir. When a suit is pending the munsif has to refer the matter to the district judge and so much delay is caused in that way.

Q. Supposing that power is taken away from the district judge?

A. Then, of course, it will facilitate matters.

**Mr. P. C. MITTER, Representative of the British Indian Association, Calcutta, and late Minister to the Government of Bengal.**

*Written Statements.*

I.

*Some useful statistics are collected from page 81 of the Administration Report of Bengal for 1921-22.*

*Year 1921.*

Total number of suits instituted in	
1921	644,045
Rent suits	340,000 (52 per cent.)
Money suits	237,597 (about 37 per cent.)
Title and other suits	66,448 (about 10 per cent.)

Of these title and other suits 43 per cent. are mortgage suits, therefore over 4 per cent. are mortgage suits. In value title suits represent more than half the total litigation of the province.

Plaintiffs successful	70.6 per cent.
Compromise	10.8 „
Dismissed for default	10.6 „
Plaintiffs unsuccessful	8 „
<b>TOTAL</b>	<b>100 per cent.</b>

Total number of suits decided after contest . . . . . 81,733 = 12.6 per cent. of the total number of suits instituted.

Total number of suits decided after contest . . . . . 562,312 = 87.4 per cent.

Of these contested suits 84.4 per cent. resulted in favour of the defendants.

*Average duration of contested suits.*

District judges . . . . .	361
Subordinate judges . . . . .	590
Munsifs . . . . .	268

Considering that more than half the number of suits are rent suits and more than one-third are money suits the average duration of contested title and other suits is really much longer than what appears in these figures. Of the 340,000 rent suits only 2,557 exceed Rs. 500 in value. It may therefore be taken that the munsifs dispose of most of the rent suits. The duration of 268 days of suits disposed of by munsifs practically represents the time taken by them in disposing of rent suits and money suits for less than 10 per cent. are title and other suits and out of this 10 per cent. over 4 per cent. are mortgage suits. The duration of suits tried by munsifs is therefore very unsatisfactory. The duration of 590 days of suits tried by subordinate judges appears on paper to be far more satisfactory than those of the munsifs but in point of fact a large percentage of suits tried by the subordinate judges are title suits. I have not got before me figures relating to suits tried by the subordinate judges but I find from page 180 of the administration report of Bengal, 1921-22, that suits exceeding Rs. 500 in value are classified as follows:—

Suits for money and moveables . . . . .	7,578
Suits under rent law . . . . .	2,567
Title and other suits . . . . .	11,679

The sub-judges in some places deal with suits of value of over Rs. 1,000 and in others over Rs. 2,000. The percentage of title suits is much larger in case of the sub-judges. The real duration of title suits therefore is often more than 3 years. At the present moment the jurisdiction of sub-judges and munsifs is divided according to thanas within their areas. In the interest of 90 per cent. of the litigation represented by rent suits and money suits I suggest that the present system be changed with regard to title suits. Rent suits and money suits should be instituted according to the jurisdiction of thanas at the present moment and the subordinate judges and the munsifs should deal with these suits very promptly. One subordinate judge and one munsif, however, should receive all title suits within the jurisdiction of the district or the sub-division in the chowki as the case may be. He should deal with these suits in their preliminary stages and till they are ripe for hearing. That is to say the admission of the plaint, the written statement, production and discovery of documents, interrogatories, preliminary citing of witnesses should all be taken up by this officer. When these title suits are ripe for hearing they should be distributed under orders of the district judge amongst the different subordinate judges and the munsifs. This re-arrangement of the work will facilitate disposal. As regards uncontested rent suits and money suits the munsifs and the sub-judges should be expected to dispose of such suits within 2 months from the date of institution and as regards contested rent suits and money suits they should be expected to decide the same within 4 months from the date of institution, where there is no question of *jama* or enhancement in rent suits. Where however there is a question of *jama* or enhancement they should be expected to decide these suits in 6 months' time. Speedy disposal of 90 per cent. of suits instituted will mean relief to litigants and will remove congestion in our civil courts. The inspecting judicial officer will give special attention to the disposal of the different types of suits and should not merely proceed on the basis as to whether a suit has been decided after contest or without contest.

## II.

I am a Vice-President of the British Indian Association and was a Minister to the Government of Bengal for three years. I am a vakil of

the Calcutta High Court, of 27 years' standing. From 1894 to 1904 I managed 3 zemindary estates with a total rent roll of over 2 lakhs a year. These zemindaries are in 7 districts of Bengal. I have some experience, though limited, of trial of original suits in our subordinate courts.

The problem with which the Committee has to deal is one of extreme difficulty. Apart from the intrinsic difficulties of the problem arising out of the points of reference the difficulty is enhanced by many local factors such as the dilatory habits of many litigants, ignorance and helplessness of a section of these litigants, the wickedness of a set of people who hang about law courts and try to take advantage of the ignorance of the litigants, the poverty of a large section of the litigating public, the want of business habits and close supervision of an important section of the richer litigants, the extremely litigious spirit of a section of litigants and other extraneous reasons which I do not desire to enlarge further.

In view of the shortness of time at my disposal and the intrinsic difficulties of the problem, I express my views with some degree of diffidence and I would like the Committee to take my views more in the nature of suggestions some of which the Committee might think it worth their while to investigate than as my final and definite opinion.

I desire to divide my evidence into three main heads:—

- (1) Suggestions relating to trial of suits.
- (2) Suggestions relating to improvement in execution proceedings.
- (3) Those relating to appeals and revisions.

About suits I desire to touch on the following points:—

- (a) More effective methods of valid service of summonses and notices so as to avoid so far as possible the re-opening of *ex parte* decrees and orders.
- (b) Adjournment taken for filing written statements.
- (c) Time taken for citing witnesses.
- (d) Time taken for production of documents.
- (e) Limited use of provisions relating to interrogatories.
- (f) Discovery and inspection of documents, as also applications of Order 12, Rule 2 for admission of documents.
- (g) Expediting the decision of rent suits, suits on promissory notes and money claims.
- (h) A more strict observance of some of the rules of procedure as laid down by the Civil Procedure Code, and the rules and orders of the High Court.
- (i) A suggestion about a more effective inspection of judicial work by competent judicial officers.

Before I deal with these specific points I would like to observe that in many suits more than a year generally elapses from the date of the filing of the plaint to the time when the case is really ripe for hearing. This, in my opinion, ought to be shortened and can be shortened if there be a more strict observance of the existing provisions relating to the rules of procedure and the circular orders of the High Court. In some cases it may be necessary to introduce some modifications in the existing procedure and circular orders.

(1) *Suggested improvement in the service of summonses and notices.*— Under the present system a number of peons are attached to the courts which are situated either at the headquarters stations of a district or at a sub-divisional town or in the munsifi chowki. The peons are under the nazarat department. They go out from their headquarters station into the interior and serve summonses on the identification of the plaintiff or his servants. A district often comprises several thousand square miles and a sub-division several hundred square miles, travelling is slow, tedious and expensive. The process-serving peons as also identifiers are poor men in

humble walks of life. The temptation to avoid the tedious journey and pocket the travelling expense are factors which cannot be ignored both with regard to the process-serving peon and the identifier even when the plaintiff himself has no fraudulent intention. When the plaintiff has a fraudulent intention the opportunities of suppression of summons are great. In rural areas there are no streets with municipal numbers such as we have in Calcutta. The natural difficulties of proper service are great as compared with, say, service within the original jurisdiction of the Calcutta High Court. The peons naturally do not know the parties and the dishonest plaintiff can, if he so desires, get the process suppressed or make a pretence of serving taking good care to keep the defendant in ignorance. I suggest processes may be served in rural areas by a number of peons placed under the presidents of village union boards where these exist or the president panchayat where these do not exist. At the present moment there are about 1,500 union boards in Bengal and their number is increasing. In areas where there are no such boards, there are the panchayati organisations. When the whole of Bengal will be divided into union boards the number will be about 7,200. I suggest that the local peon under the local president will serve the process on the identification of the identifier. The peon as well as the identifier will then swear the affidavit of service before the president of the village unions or the president panchayat as the case may be. The president should be given power to hold a summary enquiry about the service and he will return the summonses after service to the court with his endorsement thereon. He will be permitted to express his opinion about the truth of the service and if need be to ask the peon and the identifier to call upon the defendant again if he thinks necessary. The court on the filing of the plaint will send a copy of the plaint with the summons to the president under a registered cover and the peons at the disposal of the president panchayat will serve the writ locally on the identification of the identifier. A registered post card will also be issued by the court direct to the defendant stating the number of the suit, the name of the plaintiff, the nature of the claim and the date fixed. This system will assure double check. Service through the intervention of the president will be an improvement on the present system because the president is a local man of some position and it will be more difficult to suppress the summons if it has to be served through the president. The peons also being local men are likely to know many of the defendants. This system will also mean some saving in the expenses of the process-serving department as the time and expense wasted by the peons in travelling over a large area will be saved. There should be strict rules to ensure honesty in service. If the identifiers or the peons are negligent there should be provision for fine to be realised from the identifier (not necessarily from the plaintiff) and the peon. If they act fraudulently then they should be criminally prosecuted. Whenever there is a criminal prosecution the ministerial officer of the court should notify the fact amongst serving peons. If the president acts negligently he should be fined, if he acts fraudulently he should be prosecuted. The president should get a small remuneration for his trouble and should have the services of a muharir (whole time or part-time as may be necessary). He should keep a register of service with the help of the muharir and forward copies of such register to the civil court concerned every week. No additional expenditure will be necessary for all this as the present process-serving fees will be more than ample. The number of peons at the headquarters may be very considerably reduced. The only peons that I would retain at headquarters will be those necessary for attachment and sale of moveables of judgment-debtors and for serving processes, say within an area of 5 miles from the court houses. The ministerial nazarat establishment at the headquarters can also be considerably reduced.

The peons are likely to serve at a lower remuneration in their village homes than at the headquarters station. From the savings so effected I would provide for the peons of the president, the president's remuneration, the remuneration of his muharir and of one or two supervising officers in

each district whose duty it will be to inspect the process-serving work of the presidents. The president will be responsible to the district judge for due discharge of his process-serving duties.

If the executive authorities raise a practical difficulty about employment of presidents for service of summons then I suggest power should be given to the district judge to select a prominent man from each village union or panchayati area to discharge the same duty that I have suggested that the president should discharge. The average area of an union board is about 10 square miles and when the whole of Bengal will be parcelled out into union boards there will be about 7,200 union boards. As an alternative measure I suggest that district judges may be allowed to select one prominent man in each local area of 10 to 15 square miles. It will perhaps be convenient to follow the units of village union or panchayati boards. The person so selected may be paid a small percentage of the process fee and his peons and mahurir may also be similarly remunerated. Selection by the district judge will perhaps add to the prestige of the judiciary and may be seriously considered as an alternative proposal. Similarly in municipal areas one person may be selected in small municipalities and two or three persons may be selected in larger municipalities.

2. *Time for filing written statements.*—Three weeks' time is ordinarily allowed for filing written statement. I suggest that the court should not allow more than one adjournment and that adjournment should not be more than 3 weeks for filing a written statement. If, for any reason, the court considers it necessary to allow more than one adjournment then the defendant must move the court by petition and give special reasons for such adjournment and the court shall not grant any such adjournment unless special reasons exist and such special reasons should be recorded in the order sheet. For any adjournment (including the first adjournment) for filing a written statement the court shall award cost.

3. *Time for citing witnesses.*—Within one month from the filing of the written statement both parties must cite their witnesses. Subsequent summoning of witnesses must be by moving the court and for special reasons. If for any reason the case is adjourned on the date fixed for hearing the court officer should endorse on the summons the date of the next hearing and direct the witnesses to come on the next date without service of further summons.

4. *Time for production of documents.*—The plaintiff must within a month from the filing of the plaint file his documents. The defendant also must within a month from the filing of the written statement file his documents. If the time for the filing of the documents be extended then it must be by motion to court giving special reasons and the court shall not grant time to file documents unless it is satisfied that special reasons exist. Such special reasons should be recorded in the order sheet.

5. *Interrogatories.*—Very little advantage is taken of the provisions relating to interrogatories. If advantage be taken of these provisions then litigation is likely to be shortened. In passing orders of cost at the final hearing the court shall take this fact into consideration.

6. *Discovery and inspection of documents.*—No more than month's time should be given for this purpose from the date of filing of the documents. If more time is required then such time may be given after a petition to court giving special reasons and the court must record in the order sheet what these special reasons are. All orders for extending the month's time must be on payment of costs.

7. *Service of notice on pleaders after appearance of defendants.*—Although the pleaders for both parties have appeared notices are sometimes served not on pleaders but on the clients. This means delay. After pleaders have appeared notices to the pleaders should be enough and the service on the parties should be dispensed with.

8. *Expediting rent suits.*—Pages 59 and 60 of the General Rules and Circular Orders of the High Court (1918) contain rules directing that the



date for hearing of the rent suits shall ordinarily be 14 complete days after service of summons. In point of fact rent suits are very seldom really tried after 14 days from the date of the summons. The rent suits form a large percentage of litigation in rural Bengal. Volume II, Appendix A, page 139 of the General Rules and Circular Order of the High Court show that a register is to be kept for money suits and rent suits more than six weeks' old, more than 3 months' old and so on. But these suits are very often not tried promptly. Strict orders about speedy disposal of rent suits and money suits will have a salutary effect in preventing the lengthening of proceedings and inspection should be specially directed about the speedy disposal of rent suits and money suits. A separate note is submitted about rent suits and money suits.

9. *Rules of procedure and circular orders to be strictly observed.*—Proper observances of rules of procedure and circular orders will have a salutary effect.

10. *Divisional judicial inspectors.*—The present system of judging the work of judicial officers by the number of cases disposed of is unsatisfactory and, paradoxical though it may seem, helps in the accumulation of arrears. A natural anxiety to show disposals very often leads to the disposal of simple contested cases and putting off all intricate and difficult cases with the result that it really means more delay in the disposal of cases. I suggest that the present system should be done away with and that one experienced and strict judicial officer should be appointed for each of the five divisions of Bengal for inspecting and examining the work of the courts in each division. This officer may examine at random, say, 10 per cent. of the cases disposed of. It will be their business specially to see whether provisions for speedy disposal of suits have been observed and the procedure laid down in the Civil Procedure Code under the circular orders for shortening litigation have been kept in view. He will also have an opportunity of judging the real quality rather than the quantity of the work. He will examine as to whether difficult and intricate cases have been unduly put off and easy cases have been disposed of in order to show an apparent good result on paper. Subordinate judicial officers have complained that the work of examination of disposals is sometimes practically left in the hands of subordinate ministerial officers. If that is so it is not a right thing. The appointment of experienced judicial officers as divisional inspectors will have a salutary effect. Their pay will I believe be more than met by speedy disposal of suits and by the resulting convenience to the litigant public. I suggest further that a Judge of the High Court should devote about 60 days every year to check the work of these judicial divisional inspectors. The whole object of the inspection will be to look to the quality rather than to the quantity of the judicial work and to see that salutary provisions for curtailing the length of judicial proceedings are kept in view by the subordinate judicial officers. The subordinate judicial officer should try to cultivate the habit of having a grip over his file and to make due arrangement about different types of work.

*Setting aside of ex parte decrees.*—I have already suggested a more effective procedure for service of summons. I suggest further that within 3 days from the date of passing an *ex parte* decree the court shall send a registered postcard to the defendant giving him the number of the suit, the name of the plaintiff, the nature of the claim, the amount decreed and the date of the decree. In view of these safeguards I suggest that in suits for money (including by that expression rent suits and mortgage suits) applications for setting aside *ex parte* decrees should not be entertained unless cash or promissory note to the extent of the decretal amount and costs be deposited along with the application for re-hearing. In other suits the costs as also say 20 per cent. of the value of the amount as found in the judgment should be deposited in cash or in promissory note along with the application for setting aside the decree. Section 153A of the Bengal Tenancy Act (being section 47 of Act I of 1907 B.C.) is a provision intended to safeguard against filing of frivolous applications for setting aside *ex parte*

rent decrees. This provision appears all right on paper but in actual practice this provision of law is easily evaded by an unverified statement that nothing is due to the plaintiff. If my suggestions about setting aside of all *ex parte* decrees be accepted this provision will be superfluous but if this provision has to be retained then in order to give effect to its intention it should be provided that the petition must be supported by an affidavit and when payment is pleaded the particulars of such payment, *e.g.*, the amounts paid, the date of such payment and the name of person to whom such payments have been made should be given. As rent suits and rent decrees, money claims and money decrees based on *kistibandis* executed by tenants form a very large percentage of civil litigation in this province, I am submitting a separate note on the subject.

#### *Delay in execution proceedings.*

This is a difficult problem. The following seem to be root causes for delay in execution proceedings in Bengal:—

1. A large section of the rural population do not possess valuable assets in the shape of moveable properties, such as, furniture, shares, debentures, banking accounts, hook-debts, etc., and in many cases immoveable properties divided into small plots form practically the only source from which money can be realised.
2. The owner of the immoveable property clings to it with extreme tenacity and will take every conceivable step to postpone parting with his possession.
3. The fight often starts at the time of attachment. It is carried on when sale proclamation is issued, property brought under hammer and even at the time when the decree-holder or the auction purchaser tries to take possession.
4. It is often difficult for the decree-holder to get the particulars of immoveable property of his judgment-debtor. Particulars as to location of the small plots, their value, title, etc., are not often available to the judgment-creditor. The consequence of this want of knowledge on the part of the decree-holder is that charges of fraud are often justly made, but the procedure is such that it enables the dishonest judgment-debtor to put forward a charge of fraud unjustly.

One important remedy will be to make a more extended use of Order 21, Rule 41, Civil Procedure Code, which is based on Order 42, Rule 32 of the rules of Supreme Court in England. So far as my limited experience goes this provision is seldom taken advantage of. This is due practically to want of knowledge on the part of many munsifs' courts' pleaders to take proper advantage of this provision and also because the only penalty for non-compliance of the judgment-debtor is the ordinary penalty under Penal Code for non-compliance with the order of the court. It is believed by the practitioners of the munsif's court, who ought to know their judges, that the munsifs are reluctant to take applications under Order 21, Rule 41 seriously. I suggest for the consideration of the Committee that in case a judgment-debtor does not appear in court when a notice under Order 21, Rule 41, is issued, the court should appoint a receiver of all the immoveable properties of the judgment-debtor. It may be said that it will be difficult for the receiver to take possession of various small plots of land, lands scattered in the different parts of the country. This difficulty may be obviated if some sort of an official receiver being attached to each court. It will be open to that official receiver to take charge of various small plots of lands, through the help of the president panchayat, the process-serving agents of the court, in the different villages and the municipalities within the jurisdiction of the court. This official receiver will naturally have to deal with a large number of plots as there are a large number of money and rent execution cases and it will be possible for him to have some sort of staff. If the judgment-debtor knows that the effect of his non-compliance

will be that he will have to part with possession of his properties in favour of an official receiver of the court he is more likely to appear in compliance with the notice under Order 21, Rule 41, than he is inclined at the present moment. Possession by receiver will have more than one salutary effect. It will enable the decree-holder to know the particulars of the property so that the decree-holder will have a better knowledge of the value and location of the property. As most of these properties will be agricultural holdings it will be possible for the court through its receiver to allow a subsistence allowance to the honest judgment-debtor, in case the judgment-debtor himself be chosen to cultivate the land. With regard to the dishonest judgment-debtor the fear that he will have to make over possession to somebody else will have a salutary effect. Effective application of the provision under Order 21, Rule 41, will shorten a good deal of litigation in execution proceedings and will prevent much of the dishonesty on the part of the judgment-debtor as also the decree-holder. The court in these proceedings will have an opportunity of getting important information about the value and the situation of the judgment-debtor's properties. These informations will relieve the court of a considerable amount of litigation arising out of Order 21, Rule 90, Civil Procedure Code. It will also have the effect of bringing the decree-holder and the judgment-debtor face to face in court. If the decree-holder be dishonest the judgment-debtor will have an opportunity of placing important facts before the court, on the other hand, if the judgment-debtor be dishonest much of his dishonesty can be successfully met. The court after it has passed the decree ought to see that its decree is not flouted and this procedure will prove helpful in bringing execution proceedings to a speedy conclusion.

In case where the decree-holder can satisfy the court by affidavit or by statement on oath that the judgment-debtor is delaying execution the court should direct the judgment-debtor to give security as a condition precedent to taking steps to meet the decree-holder's claim in execution proceedings. This power, however, should be exercised cautiously as it might work injustice in case where the judgment-debtor is unable to provide security; but in case of judgment-debtors of means it will have a salutary effect.

Another reason for delay in execution proceedings is the law of limitation on the subject. The law of limitation often compels the judgment-creditor to make frequent applications in order to keep alive his decree although for want of adequate information he is not in a position to effectively enforce execution and has no real intention of enforcing execution. A provision similar to Order 42, Rule 20 of the English Supreme Court Practice may prove helpful. Under the said rule a writ of execution, if unexecuted, remains in force for one year. Order 21, Rule 57 of the Civil Procedure Code was embodied in the Act of 1908 with a very laudable object. But it often results in causing more delay, for upon dismissal of the application the attachment ceases and that means the whole process has to be started over again. The difficulty in many cases is want of knowledge of the decree-holder of the judgment-debtor's affairs.

In many cases the decree-holder has to purchase the property in auction sale, that means that another litigation in execution proceedings is started for setting aside the sale. If the sale is set aside then the decree-holder has to start afresh. I suggest that where the decree-holder is auction-purchaser, before the judgment-debtor is allowed to file his application for setting aside the sale he should be compelled to put in the decretal amount. It may be said that the decree-holder may have purchased the property for a small sum. In such a case undoubtedly the judgment-debtor is entitled to relief for the decree-holder may pursue the judgment-debtor and cause other properties to be sold. But when the decree is final there is no doubt that the decree-holder is entitled to his decretal amount and no injustice will be done if the judgment-debtor be compelled to deposit the full decretal amount.

Another trouble of the decree-holder auction-purchaser is that even after purchasing the properties, in many cases, he cannot take effective possession

and cases are not uncommon where he has to start another title suit to get back possession. The usual plea in some of these cases is that the decree-holder auction-purchaser was again dispossessed after the auction purchase, and the suggestion that I have made about the appointment of a receiver to take possession of the judgment-debtor's property will effectively put an end to the prolongation of the litigation at the stage of execution and subsequent thereto.

5. Execution matters are generally taken on Saturdays and the harassed munsif has to go through a large number of execution cases. In another part of my statement, I have suggested that one of the judicial officers should be specially set apart for dealing with title suits in their preliminary stages. It will be possible for this judicial officer to give two days in a week to execution cases. In my view of the matter I suggest that in the interest of speedy disposal of execution cases, instead of 4 days in a month being set apart for such cases, at least 6 days in a month should be set apart.

#### *Appeals.*

I will first of all deal with appeals in the High Court. As regards 2nd appeals I suggest that preparation of paper books should be dispensed with. When the case is heard under Order 41, Rule 11, typed copies are prepared for the use of vakils and of the 2nd Judge. In my opinion there is no point in printing the two judgments and the grounds of appeal over again. This merely causes delay and saddles the parties with unnecessary expense. Typed briefs in 2nd appeals will be helpful in speedier disposal of such appeals. In appeals from original decrees the question is more difficult. The printing of papers means heavy expenditure to the parties and long delay. In the district courts, where there are European judges, they can manage to hear appeals without a printed paper book. The vernacular portion of the record is translated by an officer of the court. A similar arrangement may well be tried with regard to first appeals. I make this suggestion with some degree of hesitation. The bar as well as the bench are accustomed to argue with reference to the paper book. That the paper book is more convenient there can be no doubt nor can there be any doubt that the preparation of paper book means delay and expenditure. I would suggest for the consideration of the Committee that the procedure now obtaining in district courts, where there are European district judges, may be tried. If, however, one of the parties would agree to prepare a printed paper book within a reasonable short time I would give him the option to prepare such a paper book.

As regards appeals from original orders my suggestions are the same as in that of appeals from original decrees.

I am not generally in favour of curtailing the right of appeal. The whole question may have to be examined, but such examination should be on different basis. The very existence of a right of appeal has a salutary effect not only on the decision of cases of the subordinate judiciary but gives the High Court an opportunity to judge of the quality of work of the subordinate judiciary.

### III.

#### *A note on rent suits and money suits in Bengal.*

The rent suits and money suits form a very large percentage of litigation in Bengal. I have shown elsewhere in my statement that rent suits number 52 per cent. and money suits 37 per cent. of the total litigation in Bengal. 89 per cent. of the total litigation is, therefore, in rent suits and money suits. It will be useful to get an idea of economic questions connected with these suits.

Most of these suits come from rural Bengal. The population of the province is about 48 millions, out of which over 3 millions live in urban areas and over 42½ millions live in rural areas. Of the 3 millions in urban areas

Calcutta and its neighbouring municipalities, Howrah with a population of over 1 lakh and 80 thousand, Dacca with a population of over 1 lakh and 10 thousand, are important towns. The rest are comparatively small towns with no industries. The population of the towns other than Calcutta, its neighbourhood and Howrah depend mainly on reproduction of basic agricultural wealth. A considerable portion of the population of Calcutta, its neighbourhood and Howrah also depend on reproduction of basic agricultural wealth. The economic prosperity of the province, therefore, depends on the economic prosperity of the agriculturists and the landlords. Of the total population of Bengal about 36 millions depend on agriculture and of these 36 millions, about 13 lakhs depend on income from rent of agricultural lands (*i.e.*, they are landlords). Of the 36 millions, who depend on agriculture, only about 10 millions are actual male workers, the rest are either females or other dependants of theirs. Of the 13 lakhs who depend on income from rent of agricultural lands, less than 3 lakhs are male heads of families, less than one lakh are female heads of families and over 9 lakhs are their dependants. The prosperity of Bengal, therefore, largely depends on the prosperity of the ten millions of actual male workers and of the four lakhs of rent receivers. Any system, which causes great economic loss to the ryots and the landlords, must react prejudicially not only on the landlords and ryots dependant on agriculture but on other important sections of the community, who depend on the reproduction of the basic agricultural wealth produced by the agriculturists. Prolonged and harassing litigation is baneful both to the ryot and to the landlord. It also affects prejudicially other members of the community who depend on the prosperity of the ryot. The money, which the ryot loses over litigation, saps capital at its root and must be strongly deprecated. The ryot often listens to the siren voice of the village tout, launches into litigation to put off the evil day and, at the end of 2 or 3 years, finds that he is not only out of pocket by a considerable extent in defending his rent suit but he has also to pay a much larger sum to his landlord in the shape of costs and interests included in the decretal amount. It is a cruel kindness to the ryot to perpetuate a system by which his agony is prolonged and his economic destruction is ensured. The bulk of the landlords in Bengal are poor men and the economic loss to these landlords is very severe. The average income of a landlord in Bengal (the expression landlord is according to the definition in the Bengal Tenancy Act, and includes the proprietor of estates as also the proprietor of tenures) is Rs. 22 a year. There are not more than 400 landlords in rural Bengal whose minimum income is over Rs. ten thousand a year. The maximum income of a few landlords may be more than 2 or 3 lakhs a year, but 99 per cent. of landlords, at the present day, are poor men. This is due to partition, sub-infeudation, migration to towns and other causes into which we need not enter. The condition of the poorer middle class in Bengal, who own the petty tenures of Bengal, is deplorable. Litigation in rent suits and money suits, therefore, affect the poor in Bengal, the poor landlord, the poor tenure-holder and the poor ryot. The speedier the disposal of rent suits and money suits the better for all classes in Bengal.

I desire to examine the question from another point of view. The total rent-roll of Bengal is less than 13 crores of rupees (this will appear from the Land-Revenue Reports of Bengal). The total value of suits instituted in the year 1921 amounted to over 10 crores of rupees (see page 180 of the administration report of Bengal for 1921-22). The year 1921 was a lean year for litigation. From rough calculations that I have made I find that out of the total value of 10 crores over four crores was the value of rent suits. It is well known that the bulk of the rent suits is instituted when the claim for rent is about to be barred, *i.e.*, after 3 years and 11 months and on the last date of the Bengali year. The total value of four crores in rent suits, therefore, means that for over about one-third of the total demand for rent of the province the landlords have to wait for 3 years and 11 months before they institute their suits. They very often do not get their money before another 3 years or 4 years elapse. The whole system is

vicious, and should be done away with. It means great economic loss both to the landlord and the tenant. It is extremely unjust to the landlords and also unfair to the tenants if their true interests be considered. The only class of people who are benefited are the village tout and the petty lawyers.

Money suits very often are based on *kistibandis* executed by tenants who after wasting their substance in litigation find that they are unable to pay their landlords in cash. Speedy disposal of rent suits and of money suits will really affect the village tout and the petty lawyer more than either the landlord or the ryot. Speedy disposal of rent suits and money suits will greatly improve the economic condition of the ryot and the landlord and will help in building up capital.

I, therefore, suggest that effective steps should be taken for the disposal of uncontested rent suits and money suits within 2 months from the date of institution, for contested rent suits (where there is no question of *jama* or enhancement) and money suits within 4 months from the date of the institution and other rent suits and money suits within 6 months from the date of the institution. As regards execution of rent and money decrees I suggest that the court should attempt to finish realisation in these decrees within 6 months from the date of the decree so that the whole litigation will be at an end within a year at the most. It will be the duty of the inspecting judicial officers, whose employment I have suggested, to examine specially the speedy disposal of rent suits and money suits.

Lastly, I suggest, in rent suits the landlord will have to sue only his registered tenants and will not be bound to implead any one other than the registered tenants.

#### IV.

#### ANSWERS TO QUESTIONNAIRE.

1. A. (i) First appeals, ordinarily two years, if the present system of printing paper books be followed. In appeals with a small paper book, one and a half year. Second appeals, originally 15 months to 18 months. Miscellaneous appeals, originally 15 months to 18 months.

(ii) *District and Sub-Courts*.—Original suits; (a) Title, ordinarily 18 months; (b) Money, ordinarily 6 months.

(iii) Original suits; (a) Title, ordinarily 15 months; (b) and (c). Money and Rent—Contested suits should ordinarily take not more than 6 months. *Ex parte*, not more than 6 weeks.

6. Ordinarily no.

8. Normally no.

9, 10 and 11. Unless the strength of the cadre of the munsifs be increased this suggestion will lead to more delay. As increase in the cadre of judicial officers is outside the scope of the Committee's enquiry, these questions must be answered in the negative.

14. No, not in Bengal.

17. No.

18. No.

29. I think this is a good suggestion, but it will take a long time to reap the full benefit from this suggestion. There are difficulties but they are not insurmountable.

31. The judge should always read the pleadings and try to have a clear idea as to what the litigation is about and frame issues intelligently. The comparatively short time taken in doing this will ultimately save a good deal of public time.

32. These provisions are ordinarily neglected. They are due partly to want of knowledge on the part of the pleaders in many places and to want of encouragement on the part of judicial officers. Many judicial officers are apt to think that the time taken up in giving effect to these provisions is

time wasted. I do not wholly blame those judicial officers who have this attitude of mind so long as the present system of judging their work by number of disposals continues. I have already made suggestions for a remedy of this attitude of mind.

44. Very seldom. The subordinate judiciary cannot be wholly blamed in this matter for the High Court has often discouraged this.

45. Very seldom. It is ordinarily left to the peskar. If the system of judging of results by number of disposals be done away with and the subordinate judiciary encouraged to have a better grip over their files there will be improvement.

47. In most cases no.

50. The supervision is practically *nil*. Such, as exists, hampers rather than encourages speedy disposal.

64. I am in favour of the judgment-debtor being served with a copy of the proclamation of sale and for simultaneous issue of writs of attachment and sale-proclamation. The notice of execution should be served on the vakil who appeared for the judgment-debtor in the suit and that will be sufficient service. But for greater safety I will also issue a registered post-card to the judgment-debtor giving particulars. I am in favour of making it a rule that the refusal by the vakil to receive such notice is tantamount to refusal by the party.

74. I am generally not in favour of changing the Law of Limitation. Changes may perhaps be introduced here and there with advantage, but there may be disadvantages too. After all a dilatory plaintiff or a dilatory decree-holder has no right to complain. The plaintiff or the decree-holder, who takes proper steps and is hampered by the action of the court, has a right to complain. Not others.

80. I would not go so far., But it may be worth while to consider that in the case of all registered documents the onus of proof should be on the executant if he chooses to question the execution of the document.

81. I am not in favour of this suggestion.

82. I am not in favour of this suggestion.

84. I am not in favour of this suggestion.

## V.

A large percentage of litigation in this province being rent suits any satisfactory device for diminishing such suits or speedy disposal thereof will result in relieving our law courts of its present congestion. Under section 158A of the Bengal Tenancy Act, provision already exists for the application of summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act of 1913. This provision is, for all practical purposes, a dead letter. There are only a few proprietors who are allowed the benefit of this section. In my opinion the provision of section 158A with safeguards can be justly applied to a very fair number of rent suits. With safeguards of the nature, I shall mention below, there will be no risk of injustice.

There are usually two questions in rent suits—a question of *jama* and a question of payment. A dishonest landlord or a dishonest gomasta of a landlord may not give rent receipts and the ryot may be prejudiced thereby. Sections 57 and 58 of the Bengal Tenancy Act provide for rent receipts and receipts in full of all rents falling due at the end of the year. Section 58, clause 3 also provides for the penalty. Under clause 3 of section 58 the collector, after a summary enquiry, has the right to convict the agent. This right should be more freely exercised. It is more often the agent than the landlord who is really guilty for not granting a rent receipt. Application of the provisions of the Bengal Public Demands Recovery Act will facilitate the exercise of power by the collector under section 58, clause 3

of the Bengal Tenancy Act. Sections 9 and 10 of the Bengal Public Demands Recovery Act give the certificate officer summary power to determine the question of liability. If during such enquiry it transpires that the agent had not given rent receipts the certificate officer (who should always be given the powers of a collector under section 58, clause 3, of the Bengal Tenancy Act) should freely fine the gomasta or the agent. This will be a better system, for at the present moment when the munsif finds that a gomasta has not granted any receipt he has no power to fine the gomasta, but the question of finding has to be enquired into by the collector. As the certificate officer can go into the objections summarily and any question of *bond fide* claim to right of property there is provision for referring the case to civil court under which harm will be done with regard to enquiry about questions of payment by the extension of the certificate procedure if a summary enquiry be held by the certificate officer.

The more important question is the question of *jama*. In case where there is a record of rights, or where a registered *kabuliat* exists, or where there is a previous rent decree, or where payment at the rate claimed is proved by the production of the counterfoil of the rent receipts, signed by the tenant, for a period of 5 years, the certificate procedure should be extended to all landlords.

I would also have a provision in the Bengal Tenancy Act to the effect that the tenant on receipt of the rent receipt will be bound to sign the counterfoil of the rent receipt. If in any suit or proceeding in civil court or in any proceeding in a revenue court it is proved that the tenant did not sign the counterfoil I would give power to the court or officer to fine the tenant up to five or ten rupees and in case of repetition of the offence to ten or twenty rupees.

If the certificate procedure be extended to the class of cases mentioned by me, in all probability, the total number of rent suits will be reduced by about  $\frac{2}{3}$  of its present number. As rent suits form over 52 per cent. of the total litigation the extension of this system will mean a reduction of 34 per cent. of the total litigation of the province.

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**Mr. P. C. MITTER, Representative of the British Indian Association,  
Calcutta, and late Minister to the Government of Bengal,  
called and examined on Monday, the 11th February 1924.**

*Rai Bahadur K. C. Bose.*—Q. You have much experience in matters of rent suits?

*Mr. Mitter.*—Not lately, but during the last eight or ten years I had a good deal of experience of such suits.

Q. With regard to the rent suits have you experienced much difficulty in serving summonses on the defendant?

A. Yes sometimes but not always.

Q. I may take it that so far as you are concerned there have been very few applications for setting aside *ex parte* decrees?

A. I think there have been very many applications. It happens very often that a defendant would allow an *ex parte* decree to be passed against him. After a month he would come forward and file an application for re-hearing of that decree.

Q. With regard to the service of summonses in rent suits, do you think there is delay in finding out the real address of defendants so far as zemindars are concerned?

A. Yes, where the defendant lives on his property the difficulty is very small but on account of economic reasons a fairly large number of tenants have now migrated from their village homes and that gives rise to a trouble.



Q. With regard to your suggestion about the service of summonses, the identifier should be the headman of the village or the panchayat?

A. Yes. My suggestion with regard to the service of summonses is not confined to rent suits. I have made that suggestion with regard to all the suits. It is better to get the affidavit of somebody. Merely taking the signature will not have the desired effect. The affidavit should be taken before the headman of the village or the panchayat.

Q. With regard to your suggestion that the service practically may be left to the panchayat, do you not consider that that would be more costly and sometimes cause delay?

A. I do not think so. At the present time the peons are at the headquarters and they have to go to many distant parts and in many places facilities of travelling are very scarce. If the service is left to a local man it will be more economic.

Q. Do you think that in transferring the work of serving summonses the control of the court over the peons would be lessened?

A. My opinion is this; the district judge being the head of the process-serving department, the headman of the village panchayat will be responsible to the district judge for the proper serving of summonses. The president or headman will for this purpose be under the district judge and the latter may choose his own man according to his own notions who may be made responsible for the service. This is a matter of detail whether the panchayat or the district judge appoints the man. Personally I would like that he should be chosen by the district judge.

Q. Will you give us some idea as to the number of rent suits, so far as you are aware, which were instituted say in the year 1921 or 1922?

A. During the last ten years there have not been many cases. Before that there were many. My experience is that the majority of the tenants are honest.

Q. Your scheme really aims at dishonest zemindars?

A. It is far more comprehensive. If my suggestions are adopted there will be very little trouble in serving summonses.

Q. So far as the service of summons is concerned I think that will do for the present; we shall consider it at some other time. Now I find that there is another comprehensive suggestion of yours that one munsif and one subordinate judge should receive all title suits within the jurisdiction of the district, that he should deal with these suits in their preliminary stages and till they are ripe for hearing.

A. My suggestion is that a differentiation should be made between money suits and rent suits, issues in which cases are very simple, and title suits, issues in which are generally complicated. The statistics that I have given in my statement are quoted from page 180 of the report on civil administration for the year 1921-22. From these statistics it is clear that about ninety per cent. of litigation in Bengal consists of rent suits and money suits issues in which are generally simple. Therefore an attempt should be made to make a differentiation between this sort of suits and title suits which are usually complicated. It will be seen from the statistics quoted that there are about 52 per cent. rent suits, 37 per cent. money suits and about 10 per cent. title suits—out of this ten per cent. about four per cent. are mortgage suits. Therefore it means that 93 per cent. of litigation in Bengal consists of rent suits and money suits. Therefore my suggestions are that the ordinary munsifs and subordinate judges should have charge of these rent suits and money suits according to their jurisdiction, and with regard to the remaining seven per cent. they should deal with them in their preliminary stages, that is to say, the admission of the plaint, the written statement, production and discovery of documents, interrogatories and preliminary citing of witnesses. And it should be the duty of these officers to make the case ready for hearing but at the same time their idea should be on the one

hand to accelerate things and on the other to see that by undue haste injustice may not be done to any of the parties, and I am sure that if that special attention is paid to this class of cases, many cases will be ripe for hearing in less than one year's time which can afterwards be distributed amongst the different munsifs.

*Q.* In which of the sub-divisions would you suggest that this principle should be adopted?

*A.* Where there are three or four munsifs in the sub-division and in sub-divisions where there are many suits; but that is a matter of detail.

*Chairman.*—But I think there would be exceptional cases where that rule cannot be applied?

*A.* As regards exceptions, I would suggest that if there is one man at a place, he should set apart half of the day for that purpose, say on each Monday or each Friday.

*Q.* Now as regards your suggestion about the appointment of receivers, do you think that if the judgment-debtor does not come before the court receivers should be appointed?

*A.* My suggestion about the appointment of receivers is secondary. What I want or suggest is that more use should be made of Order 21, Rule 41. At the present time very little use is made of Order 21, Rule 41, perhaps even some of the members have also experience in this respect. So far as my limited experience goes this provision is very seldom made use of. This is due practically to want of knowledge on the part of many pleaders of munsif's courts. They do not take proper advantage of this provision. What I want is to bring the judgment-debtor and the decree-holder face to face in the court. Of course if the judgment-debtor does not appear in court when a notice under Order 21, Rule 41, is issued, the court should appoint a receiver. Effective application of the provision under Order 21, Rule 41, will shorten a good deal of litigation in execution proceedings and will prevent other difficulties.

*Rai Bahadur K. C. Bose.*—So far as rent suits are concerned, I do not think there is much difficulty, because the landlords know the land of the tenant, specially after the record of rights has been made.

*A.* There is a good deal of difficulty. I have some experience of two districts. I may not have difficulty about finding out the plot. After the record is prepared, generally the position of the parties is changed. For the first year or so, the record is popular. In Bengal it is not a popular thing. The reason of the difficulty is that where you have got to sell out the right and after selling out take possession, that is needless inconvenience for all parties concerned. If the decree-holder goes before the court, he will be able to find out what the property and assets of the judgment-debtor are. The decree-holder puts Rs. 500 as the value of the property; on the other hand he has no idea of the value of the property.

I have suggested the appointment of a receiver only in case the judgment-debtor does not appear. That is a penalty I suggest for his non-appearance.

*Sir T. Desikachari.*—*Q.* Don't you think judgment-debtors are afraid of coming before the court? At least they are in Madras.

*A.* Why should they. They won't be arrested.

*Rai Bahadur K. C. Bose.*—Under the old Civil Procedure Code the property was placed in the hands of receivers after attachment. With regard to the appointment of a receiver, you have at times to consider as to whether Order 21, Rule 22, should be changed or not, because much time is wasted in the appointment of a receiver.

*A.* A receiver is appointed at the present moment under different conditions, but the receiver, I suggest should be appointed, will be upon a consideration different to what we have. Even at the present moment, in

execution proceedings, the receiver can be appointed, but considering the peculiar conditions of Bengal and considering the difficulties of execution, I have suggested the appointment of a receiver only when judgment-debtors do not appear.

Q. With regard to the time for filing of documents do you think that the law is too strict in this respect?

A. Yes, the law is too strict for the ordinary habits of the people with the result that the judges in order to avoid injustice are sometimes too lenient. I have suggested a middle course in my note, that is to allow a period of one month.

Q. Do you consider interrogatories should be extended also to rent suits?

A. I leave it to the discretion of the judge. There are sometimes very complicated suits but I do not like the general extension of the rule as it would mean some delay.

Q. There is one other matter. With regard to the rent suits there is a provision in the Bengal Tenancy Act that after the decree if the defendant comes to set aside an *ex parte* decree he should deposit the decretal amount?

A. I have made suggestions for setting aside *ex parte* decrees. The present section of the Bengal Tenancy Act is a farce. From actual experience I have seen that defendant comes forward saying that nothing is due from him to the plaintiff; then the whole litigation goes on merrily. Of course there may be cases where the defendant has paid and the landlord has not credited it.

Q. So far as Bengal Tenancy Act is concerned you are perfectly aware that the landlord generally grants receipt. They are liable to heavy penalty if they do not grant receipts. Therefore it may be taken that defendants who plead payment had got receipts.

A. I am sorry the difficulty is that these landlords generally have gomashtras who receive payments but do not generally grant receipts and the tenants are put to great trouble. I would like to have an additional provision that before the landlord is fined the gomashtra should also be fined.

Q. You consider that the provisions in the Bengal Tenancy Act do not improve the situation?

A. Not always. There is a large number of middle class landlords who work for their living in places like Calcutta and Dacca and there are very often co-sharers in these estates which specially lead to a good deal of difficulty. Perhaps the annual income of many of the co-sharers does not exceed Rs. 200 or Rs. 300.

Q. Now calling attention to the provisions of the Bengal Tenancy Act with regard to various provisions on the question of limitation may I suggest that limitation of three years for execution of decrees be fixed for cases up to Rs. 1,000?

A. No; for this reason. Large class of landlords in Bengal, perhaps 95 per cent. of them are very small people. I am not speaking of big landlords. Statistics show that out of one hundred and thirty-four thousand revenue paying landlords there are hardly five or six hundred whose income is beyond ten thousand rupees a year. Therefore in regard to small landlords whose vocation is not that of a landlord but something else, the raising of limitation will work out in hardship.

Q. Would you desire that limitation for suits of more than Rs. 500 may be shortened to six years?

A. I would leave the present limitation as it is. I have suggested in my statement the difficulty of shortening the time for execution proceedings. I have suggested something on the lines of the Supreme Court rules, namely, one year. There should be no further attachment within one year.

Q. Would you continue the present process of applying within three years? At present there are too many applications to keep the decree alive but which are never intended for execution.

A. I have made some suggestions on that point in my statement. At present the decree-holder has to experience many difficulties. If something is done to keep the decree-holder informed as to what the judgment-debtor's properties are the necessity of submitting applications every three years may be dispensed with.

Q. Under the Bengal Tenancy Act, don't you think that the enhancement suits take a very very long time, longer than any other suit?

A. Yes, owing to the complicated system.

Q. Do you know any method to shorten the proceedings?

A. No. Because in a suit where the capitalised value is Rs. 40 by the time the litigation is over, each party must have spent Rs. 1,000. So if he wants to get the rent of one tenant raised by 2 annas in the rupee, the other tenants may not agree. Now both the tenant and the landlord are ruined. But in the settlement court, the system is better. There the settlement officer goes into the question over the whole village, and it is much more easily settled.

Q. In these cases, I do not suppose there is any suggestion to shorten the proceedings.

A. It is difficult. If we attempt to shorten the proceedings, it may be unjust to the tenant and the landlord.

Q. With regard to ejection and enhancement, don't you think that section 46 may be done away with?

A. Speaking off-hand, I agree with you. But other matters have to be considered. The provisions taken from the English Law have not got any relevancy here.

Q. With regard to section 150 of the Bengal Tenancy Act where the tenant is bound to deposit the amount, would you accept the suggestion that unless the tenant produces a rent receipt in proof of payment, no notice should be taken?

A. I will go so far as to favour the tenant and accept his affidavit.

Q. Under section 153, would you enhance the amount from Rs. 50 to Rs. 250 and Rs. 100 to Rs. 500?

A. The difficulty I feel is this. Sometimes the pecuniary value of a suit is not its real value. I would prefer to wait and see how the changes in the system work. I think by a re-arrangement of work much of the present delay will be avoided.

Q. Say, with regard to munsifs who are specially empowered, I think it won't matter if we increase the amount to Rs. 100?

A. Well, I am not for any change.

Q. With regard to suits under the Bengal Tenancy Act, I do not think you have got any suggestion just now to shorten those proceedings?

A. Not that I have not got any suggestions. My view is that the present system should be changed with as little administrative changes as possible.

*Chairman.*—I suppose before making any changes in the Bengal Tenancy Act, we ought to know a good deal about the local conditions of Bengal.

A. I venture to suggest to the Committee that the local laws be better left alone. It is more or less an all-India problem which the other Committee is dealing with, and the field of enquiry is wide, while social and political questions will also be raised.

Q. At the same time dealing with munsifs courts, do you think there is much difficulty in raising their powers from Rs. 50 to Rs. 150?

A. I do not think there is much difficulty. I do not think it has much to do with the subject-matter of the enquiry here to-day. Where there is a question of *jama*, where there is a question of title, appeal is allowed under section 153; where there is no substantial question, then the judgment-debtor appeals in order to put off execution.

Q. With regard to rent suits against registered tenants, do you think that any injustice will be done to the tenant who has been served with a notice and has refused to accept it, if the case is decreed against him?

A. No, I do not think so. When there is the question of payment of rent, I do not think that any injustice will be done if the man is sued and the case is decreed against him.

Q. One or two questions more. Now looking at the figures in the report on civil administration of 1922, I understand that there is a very small proportion of contested cases in munsifs' courts. Title suits are about forty per cent. and mortgage suits are about forty or forty-three per cent.?

A. Yes, Sir, according to the report the proportion of contested rent suits to the total number of suits is very small.

Q. Now as regards money suits, do you think that anything can be done by extending the small cause court powers in Bengal?

A. Well, Sir, I have not considered that question carefully and I do not like to offer any opinion on it, but I will go into the question and will write on the subject. I am sorry that I have not been able to go into the question.

Q. A great majority of rent suits are under Rs. 50 and if the amount is raised to Rs. 100 I think a very large proportion of cases will be covered.

A. Yes, Sir, that is the case.

Q. Do you think that those cases which are contested are usually up to the amount of Rs. 100 and do you think that contested rent suits are as many as uncontested suits up to the amount of Rs. 50?

A. Sir, the rent suits are contested for one or two reasons:—Where the question of enhancement and *jama* is there even a rent suit for the amount of two rupees may have an important bearing either for the landlord or the tenant, but when the question of enhancement or *jama* is not involved a rent suit even for rupees five hundred may not be important either to the landlord or the tenant.

Q. Supposing rupees fifty were raised to rupees hundred do you think that it will have an appreciable effect in the number of appeals?

A. No, I do not think it will have much effect. It will have very little effect.

Q. Would you explain to me why the question of rate of rent which may be five rupees a year becomes so much more important?

A. The reason is this that section 50 of the Bengal Tenancy Act, after twenty years, gives right to permanent assumption. Now if there is a question of raising of the rent it affects reversion.

Q. Of the forty per cent. of title suits are they not in many cases of very small holding?

A. I think so because out of sixty-six thousand suits only five or six thousand exceed rupees five hundred in value. From my experience I find that most of the mortgage suits are mortgages executed in favour of ordinary "mahajans." They are all generally of small holding.

Q. Do you think it could be possible to do anything to expedite mortgage suits?

A. I think ordinarily mortgages are based on registered documents.

Q. On the whole your opinion is, if one looks at the contested suits, that there is no larger scope for clearing the decks by limiting further the right of appeal?

A. That is my opinion. In important matters there should be right of appeal.

Q. As regards these matters one has to consider the practice of the local Governments in granting powers to munsifs under the small cause court procedure and also summary powers under section 153. From your knowledge of profession do you think that local Governments should be more liberal than they now are in granting these powers?

A. I have considered that, Sir. Speaking personally I do not think that much harm will be done if summary power is given by local Governments to selected officers.

Q. Then you think any revision of that matter might assist in speedy disposal of cases?

A. It may not have much effect, but it is bound to have some effect.

Q. Taking the amount of business done in munsif's court the number of uncontested rent suits put through is very large. Thus there are over three lakhs of such suits. They are filed, as I understand, in May because the period of limitation commences with the agricultural year in Bengal. I take it that no good will be done by attempting to shorten the period of limitation. That will increase the number of such suits. Have you thought whether it could be possible to get rid of this mass of over three lakhs of uncontested rent suits?

A. I think where there is no record of right stricter system making penal for "gomashtas" if they do not grant receipts should be introduced.

Q. Now you have dealt with certain other questions. Do I understand that figure for the average duration of contested suits under ordinary procedure before munsif's court as for 1922 is 268 days? The ordinary time taken must be a good deal more.

A. Very much more.

Q. The reason being that the title suits are a small proportion of contested suits. Looking to that figure about what number of days you think would more fairly represent the time?

A. Something double of that figure.

Mr. Justice Stuart.—Q. In your opinion would it be possible to abolish the system of identifiers in the service of process? In criminal matters you do not employ identifiers when you have to summon witnesses.

A. My opinion is this. In criminal matters you get them served by a police constable. In civil matters the peons are under the nazir, a man who himself is paid low and no one supervises him. The munsif is very busy otherwise. Therefore from that point of view it is wiser to fix the responsibility on somebody on the plaintiff's side.

Q. May I take it that you think the necessity of identification is really founded on the insufficient supervision of process-server. Could it not be possible to abolish the identifier if you improved supervision?

A. Yes, but I would like to wait for five years to see how the things work.

Q. In your scheme you suggest the employment of union boards. Do you think that they are responsible persons?

A. At the present moment in most of the villages in Bengal there are very few men of education and most of them are not above party feelings. Therefore from that point of view the scheme may not be a desirable one. But surely the headman of a village will be no worse than a nazir.

Q. Now a peon has to go seventy or eighty miles, perhaps on foot, to serve a notice. On arrival in the village he finds the man on whom the notice is to be served is not there. Do you think that that process could be left to the headman of the village or do you think it could be possible to send the process to the head of your union board by post telling him to serve it on such and such a person?

A. Yes, I think it could be done.

Q. That is really your idea. I entirely approve of it. Now I take it there is a great deal of trouble in Bengal in serving some men over and over again. Do you think it will be feasible to make the parties register their addresses and get the notices served on those addresses?

A. I have thought over it but I hav'nt had time to examine the idea very carefully.

**Q.** Take an ordinary class of defendants, say, villagers. Many of them serve in towns. If you register their town addresses they will in most cases get the summonses? If a man changes his address he should send to court the change in his address.

**A.** Theoretically it will be possible but practically it will be impossible. Our men are not of businesslike habits.

**Q.** We have that difficulty too. You know a very large number of men from the United Provinces are actually working in Calcutta. But would you not try it?

**A.** Most of these things depend upon one's experience. I have no objection to the thing being tried in Calcutta.

**Q.** Would it be possible to recruit members of the legal profession to work as masters or registrars with prospects of promotion afterwards?

**A.** Yes. In the long run that may be done. But for the present I am not inclined. I won't do it immediately. I will first of all get the system changed and see how it works for 5 years.

**Q.** Have you any experience of Midnapur?

**A.** Some experience.

**Q.** There are 4 munsifs' courts in Midnapur itself. In one year 6,945 rent suits were instituted of which 1,054 were contested. The number of contested cases was very very high.

**A.** In that particular year, a good deal of litigation was going on between zemindars and the ryots.

**Q.** Supposing out of the four munsifs two are specially put on trying rent suits and nothing else. Don't you think it would improve matters, and will that be practical?

**A.** It depends upon the nature of contest.

**Q.** In your experience, how many contested rent suits can a munsif get through in a day?

**A.** I think quite a number.

**Q.** I find that in original suits for money, there were 23,770 of which no less than 22,619, i.e., 94 per cent. were under Rs. 500. Why not give a little bit more work of this nature to munsifs and cut off the work of the sub-judges?

**A.** From the point of speeding up justice, it may be done. But the munsif has too much to do, and unless you can give more munsifs, the position cannot be improved.

**Q.** Have you got now an incremental system of munsifs' pay in Bengal?

**A.** The munsif stops at Rs. 700.

**Q.** Do you think that we can do anything by training probationary munsifs, by pointing out to them the difficulties, training them to study pleadings and showing them possible pit-falls?

**A.** If we can afford the money it is a good idea. The officer who trains the new man, should himself be an experienced and sound man.

**Q.** An officer of a provincial civil service or a retired district and sessions judge would make a good instructor?

**A.** Yes.

**Mr. Basu.—Q.** Do you think that there is a large mass of cases where execution of decrees is held up by the interference of High Court in interlocutory matters?

**A.** Not a large mass of cases. A few cases here and there. There were only two judges, who, in my experience, used to interfere in interlocutory matters.

**Q.** Do you think that there is a large number of frivolous second appeals filed?

**A.** Well I do not think there is a large number.

*Mr. Liddell.*—*Q.* You are very strong on supervision and control. You have suggested the appointment of divisional inspectors for the work, which if properly managed would primarily be the duty of the district judge. If the district judge who gets time looks after that work, will that suit you?

*A.* Yes, I think that would suit.

*Q.* If the work of supervision is to be in the hands of divisional inspectors who is going to have control over munsifs?

*A.* The district judge should be the head of the district. The divisional inspector, however, who will be a whole-time officer will be in a better position to judge the best officers in his districts.

*Q.* Who is to do merit reports and confidential reports?

*A.* This is a matter of detail. It may be left to the district judge. There are many other points; the judge who is keen on his work will keep such matters in his own hands.

*Dr. DeSouza.*—*Q.* With regard to your suggestion about having processes served through the local agencies, if possible under the control of the district judge, will not that involve a question of initial expenditure?

*A.* The headman of the village has got his own vocation. If the service is effected through him a small percentage by way of process fee may be paid to him. I think the arrangement will be much cheaper.

*Q.* With regard to your scheme for the distribution of work may it not happen that the judge who tries a suit after the issues are framed may consider that the issues have not been properly framed?

*A.* That will depend upon particular judges.

**Messrs. G. C. MANDAL and S. C. SEN, Representatives of the  
Incorporated Law Society of Calcutta.**

*Written Statement.*

There is at present no reasonable ground to complain of delay in the disposal of cases on the Original side of the High Court.

There are a number of facilities for expediting the hearing of suits and contentious matters on the Original side of the High Court which are not available to litigants in the subordinate courts, viz. :—

(1) Summary procedure in suits on Negotiable Instruments (Order 37, Civil Procedure Code).

(2) The Procedure of Originating Summons (Chapter 13 of the Rules of the High Court, Original side). In the following cases, it is not necessary to file a regular suit, but relief can be obtained by application in chambers. If, however, the Judge is of opinion that the matters in respect of which relief is sought cannot be disposed of in a summary manner he may refer the parties to a suit in the ordinary course.

(a) The executors or administrators of a deceased person or the trustees of any instrument or any person claiming to be interested in the relief sought as creditor, legatee, heir or legal representative, or as beneficiary under the trusts of any instrument, or claiming by transfer or otherwise under any such creditor, or any other person aforesaid, may take out an originating summons returnable before a Judge in chambers for the determination, without an administration of the estate or trust, of various specified questions.

(b) Any of the persons last mentioned may, by originating summons returnable before a Judge in chambers, apply for and obtain an order for the administration of the estate of the deceased or for the administration of the trust.

(c) A vendor or purchaser of immoveable properties may take out an originating summons returnable before a Judge in chambers for



the determination of any question which may arise in respect of any requisitions or objections or any claim for compensation or any other question arising out of or connected with the contract, not being a question affecting the existence or validity of the contract.

- (d) Any mortgagee or mortgagor may take out an originating summons returnable before a Judge in chambers for relief of the following nature or kind, viz., sale, foreclosure, delivery of possession by or recovery of any deficiency from the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.
- (e) Where existence of a partnership or the right to or the fact of the dissolution thereof is not in dispute, any partner in a firm or his representative may take out an originating summons returnable before a Judge in chambers against his partners or former partners or their representatives for the purpose of having the partnership dissolved and for taking the account of and winding up such partnership.
- (f) Any person claiming to be interested under a will or other written instrument may apply in chambers by originating summons for the determination of any question of construction arising under the instrument and for declaration of the rights of the persons interested.

(3) Summary procedure in suits to recover a debt or liquidated demand in money or for recovery of immovable property with or without a claim for mesne profits by a landlord against a tenant whose term has expired or has been determined by notice to quit or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant. (Chapter 13A of the Rules of High Court, Original side).

In such a suit, as soon as an appearance is entered by the defendant, the plaintiff may on summons apply before a Judge in chambers for final judgment. The defendant may show cause against the application and upon such application the Judge may, unless satisfied that the defendant has a good defence to the claim on the merits make an order refusing leave to defend or forthwith pronounce judgment in favour of the plaintiff. Where leave to defend is given, it may be unconditional or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit.

(4) Classification of cases into (1) Commercial suits, (2) Suits for liquidated claims, (3) Short causes and (4) Other suits. There is a Judge specially appointed by the Hon'ble the Chief Justice from time to time to hear Commercial suits, which are heard in priority to all other suits. There are special rules for expediting the procedure in such cases. Further rules are now under consideration for still further speeding up the hearing of these cases.

Suits for liquidated claims are given preference over other suits.

A suit where the parties agree and counsel on each side certify that the trial will not in their judgment occupy more than an hour may be marked as a "Short Cause" and set down on the top of the peremptory list of defended causes, subject only to any part-heard case or specially fixed case, thus giving it priority over other cases.

Other facilities available on the Original side are:—

- (1) Service of summons and other processes by registered post with the leave of a Judge or the Registrar or Master (Chapter 8, Rules 11 and 24A of the Original Side Rules).
- (2) Garnishee Orders (Chapter 18 of the Original Side Rules).
- (3) Substitution of parties by *ex parte* applications.

On the Original side, if a plaintiff is diligent and avails himself of the facilities provided by the rules, he can have his case ready for trial (*i.e.*, awaiting a hearing by the Court) in a very short time.

Ordinarily most suits are ready for hearing in less than 6 months and commercial suits much before. As soon as a case is ready for hearing it is, on the requisition of any party, placed on the prospective list and awaits its turn to be heard by the Judge.

Unless a plaintiff takes the necessary steps to have his case placed on the prospective list within 6 months from its institution, his case is placed on a special list and is liable to be dismissed for want of prosecution, irrespective of its merits.

There are, however, one or two suggestions which our Society desires to make about further expedition at some of the stages of a suit. They will save only a few days, but nevertheless are worth consideration.

(1) The Rules provide that the writ of summons should be delivered to the sheriff for service on the defendant within 14 days from its institution. This period can be reduced to 7 days as has recently been done in the case of notices of appeal from the Original side. The change would necessitate plaints being registered in the Registrar's office the same day as they are filed, and the return to the plaintiffs' attorney of the writ of summons duly signed by the assistant registrar in sufficient time for delivery to the sheriff within 7 days. Writs of summons should be prepared by the plaintiffs' attorney and filed with the plaint, and not afterwards as prescribed by the existing rule. (Rule 2A, Chapter 8 of the Original Side Rules.)

(2) There is some delay in the sheriff's office in translating the writ of summons in cases in which the defendant is not a European or certified by the plaintiffs' attorney to be acquainted with the English language. These translations are of no practical use, as the number of persons likely to have litigation in the High Court who do not understand English is negligible. The language of the High Court is English, and there is no good reason now-a-days why a vernacular translation should accompany the English writ. Other processes of the High Court, which are served by the attorneys are not accompanied by any translation nor are processes issued by the Calcutta police court or the Calcutta small cause court so accompanied. The processes of the mofussil courts are ordinarily issued in the language of the court, even where intended for Europeans or other persons unacquainted with such language, and are not accompanied by any translation into English or any other language. There is no reason in principle why a writ of summons of the High Court should be accompanied by a vernacular translation.

(3) We suggest that Order 49, Rule 1 of the Civil Procedure Code should be so amended as to empower the High Courts to authorize the plaintiffs' attorney to serve the writ of summons in the same manner as other processes. If the plaintiffs' attorney is so authorized it will mean considerable saving of time and expense.

(4) We suggest a reduction from 10 days to 7 days of the time allowed by Order 11, Rule 17 of the Civil Procedure Code.

(5) We recognise the present delay in issuing orders and decrees by the Registrar's office, and we trust that it will soon be remedied. Having regard to the large increase of work on the Original side in recent years, it is imperative that the subordinate staff in the Registrar's office should be substantially strengthened. The staff that was fixed years ago, when the work was very much less, cannot obviously cope with the increased work, and as a result there is delay in the disposal of work in the Registrar's office, which can be avoided with an increased staff.

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**Messrs. G. C. MANDAL and S. C. SEN called and examined on  
Tuesday, the 12th February 1924.**

*Chairman.*—I see from your statement on behalf of the Incorporated Law Society of Calcutta that there is no reasonable ground to complain of delays in the disposal of cases on the Original side of the High Court. At

a matter of fact a great deal has been done in recent years in making rules to prevent delay in civil cases.

*Mr. Mandal.*—Yes, Sir, that is so.

*Q.* I also see from your statement that there are a number of facilities for expediting the hearing of suits and contentious matters on the Original side of the High Court. Now, first of all there is the procedure under Order 37. I think I am right in saying that every Monday the judge on the Original side has a long list of cases recently instituted for disposal and that a substantial proportion of these suits are under Order 37. There is also a rule which allows the plaintiff for sufficient cause to move in the presence of the defendant to discharge an order giving leave to defend. As a matter of fact suits under Order 37 are generally relating to Negotiable Instruments.

*A.* Yes, Sir.

*Q.* There is also as you point out the originating summons procedure for the decision of points under wills and trusts.

*A.* Administration matters generally.

*Q.* You mean that trustees or other persons need not bring a suit but simply swear the necessary facts to verify the will or other document and then the matter is decided.

*A.* That is so.

*Q.* And this originating summons procedure is applied also to vendors' and purchasers' cases?

*A.* Yes, Sir, it relates also to partnership disputes.

*Q.* And also in cases of mortgagor and mortgagee?

*A.* Yes, Sir.

*Q.* With regard also to the matter which has recently been introduced on the Original side, namely, the procedure for recovery of debts or liquidating demand in money, and cases between landlords and tenants regarding ejectment?

*A.* That is so, Sir.

*Q.* I think that has been enforced in the High Court?

*A.* Yes, Sir, since November last.

*Q.* Can you tell me if any orders giving leave to have summary judgment have been made?

*A.* Several have been made.

*Q.* In what class of cases so far has that proved useful?

*A.* Mostly in ejectment suits and also in liquidated demands.

*Q.* Do you think that the new procedure has been well received?

*A.* What—summary procedure?

*Q.* Yes, summary procedure?

*A.* Yes it has been well received by the litigant public.

*Q.* Now, suits on the Original side have always I think been classified in recent years into commercial suits and suits for liquidated claims?

*A.* Yes, Sir.

*Q.* Now, as regards commercial suits, I think that at one time the commercial list was very much congested owing to non-acceptance of goods. The fact that after the war prices of piece-goods in market in Calcutta fell very heavily was the main cause why about two or three years ago there was considerable congestion in the commercial list, and there being that congestion, suits did not come on for disposal until a long time; people who had no defence were tempted to put in some sort of defence to gain time.

*A.* Yes, Sir.

*Q.* As far as the commercial list is concerned, I think it is pretty well worked?

*A.* Yes, Sir.

Q. I understand that the commercial list in the High Court is really very well up to date. Is that so?

A. Yes, Sir.

Q. Have you any amendments or criticisms to make on the working of that system?

A. I think the system is working very well. Recently some rules have been drafted introducing the form of application for directions. These rules are under consideration and the High Court is still considering them. We do not know what will be done.

Q. But your society is I understand making representations to the judges before the rules are finally passed.

A. Yes, Sir.

Q. As regards service of summonses and other processes there is a provision that with the leave of the judge or the registrar the service of summonses may be made by registered post. Have you found that a useful provision?

A. Sometimes very useful.

Q. Then in ordinary way, apart from special order, the service of summonses is made through the sheriff?

A. With regard to that system we want to say that the sheriff generally translates all the original summonses and it causes delay. The English copy ought to be quite sufficient for the purpose. For instance the processes of the small cause court are issued only in English.

Q. You think time might be saved by abolishing that; but can it be done without leading to injustice in so far as Calcutta is concerned?

A. There will be no injustice at all.

Q. I see you say that the rules provide that summonses should be delivered to the sheriff within fourteen days and you think that period should be reduced to seven days as has recently been done in some cases. Will you explain that point to me?

A. After the filing of the plaint the rules provide that the writ of summons should be delivered to the sheriff. These summonses have to go to the sheriff through the registrar or the sub-registrar. That can be done within seven days if the registrar's office is efficient.

Q. Then you consider that the writ of summons should be filed with the plaint and not afterwards as prescribed by the rules.

A. The rules at present provide that after the filing of the plaint the writ of summons should be sent to the registrar. We suggest that instead of waiting till after the plaint is filed the writ of summons should be prepared by the attorney and filed along with the plaint. That will save four or five days.

Q. You make a suggestion that Order 49, Rule 1 of the Code should be amended. Will you please explain the point in that?

A. Under this rule the only process that cannot be served by the attorney is first writ of summons or writ of arrest. All other processes are served by the attorney. We suggest that even for the first writ of summons the power may be given to the High Court to authorise the attorney to serve that process also. That will save some delay.

Q. Is it quite clear that as regards the Original side, having regard to section 129, the High Court cannot do that?

A. There will be doubt about it.

Q. Then you think that as a matter of fact every service of writ of summonses might be made by attorney and that will save time?

A. Yes, lot of time.

Q. Then you further suggest reduction from ten days to seven days of the time allowed by Order 11, Rule 17 of the Code as regards serving notices of inspection?

A. Yes, ten days are too long for Calcutta at least.

Q. In the case of attachment of debts, you have a process by which the alleged debtor is called in and he has to submit to have that question decided in the process of execution. Have you found that work satisfactory in great many cases?

A. Yes.

Q. Speaking generally in the High Court as regards motions, I think it is thoroughly understood by the parties and the court that although motions are brought and answers are made by affidavits, in the first instance, it is always possible to cross-examine.

A. Yes.

Q. As a matter of fact on the Original side in administration cases, I think you sometimes get considerable number of defendants, but probably the litigation on the Original side is not so much concerned with many parties on the other side.

A. No.

Q. I think you probably have had your attention drawn sometime or other to the statistics in connection with the Original side. I see that the number of original suits pending was 5,378. The number instituted during 1922 was 3,707, so that at the end of 1921 there was on the face of it a very large arrear and I see that the number of suits disposed of in 1922 was just a little larger than the number of institutions, 3,763. It would appear from these figures that in spite of the various means set up for expediting cases, there are a large number of suits left over at the end of the year. What do you think is the cause of that and what do you think could be done to remedy that state of affairs?

A. That is due partly to a large number of cases having been filed in 1921 and 1922. Before that it was 2,000 a year. In 1921-22 the number rose to 4,000. That is why there are so many cases pending.

Q. The number of institutions during the last three years has been enormously great, and I think over the bulk of that time you had four Judges sitting on the Original side.

A. Of course, when Judges are busy with sessions or other special matters, it is not possible to keep pace with the work.

Q. Do you think the number of institutions is maintaining still a high level, or is it likely to go down?

A. I think it is going down this year.

Q. I think for 1923, there was not much drop in institution as between 1921 and 1922.

A. No.

Q. What really happens is that a larger amount of business is now down than it used to be. Now what effect has that upon the office as a whole?

A. The office is not able to cope with the work. The staff is very much the same as it was several years ago. The staff was originally intended for a small office, but at present as the work is increasing, the same staff is incapable of coping with the work.

Q. As regards getting orders and decrees drawn up, the practice on the Original side is a good deal more elaborate than it is in a mofussil court.

A. Yes.

Q. That is to say in any complicated case, the order is drawn up by the registrar in the presence of both the parties, and in a few cases is referred to the Judge.

A. Yes.

Q. But it is not a question of the bench clerk or sheristadar drawing it up.

A. No.

Q. I think I am right in saying that you do not get much litigation arising out of the ambiguity of orders.

A. No.

Q. Then the congestion in the registrar's office can only be dealt with by increasing the staff.

A. Yes, that is the only way.

Q. Taking an ordinary case, contested but not commercial, what do you consider to be a reasonable standard to aim at as regards time? If you file your plaint, say, on the 1st of January, what would you regard as a reasonable time within which you ought to get a decree?

A. Under the orders of the court, we must place the time at six months.

Q. Now I take it that in some partition cases, there is a great deal of work to be done and hence there is a lot of delay. Have you got any suggestions to make by which such cases can be satisfactorily and speedily dealt with?

A. I think it is generally fairly quickly done now.

Q. As a matter of fact the registrar is the busiest man.

A. No doubt about it.

Q. But do you feel any grievance for getting short time?

A. No, Sir.

Q. Would you mind telling me whether there is any difference between the habits of clients in Calcutta and clients in the mofussil?

A. Yes, certainly there is a lot of difference between the habits of mofussil and Calcutta clients.

Q. Now of course the client here knows that the attorney has got his office for keeping documents and other papers safe. But the mofussil client does not put in so much faith in his pleader. Now, do you find any difficulty in getting your clients to provide you with full instructions so that you may carry on or you have to wait for some time until the case is ready?

A. We can get them when we want them.

Q. But many clients do not leave documents and other important papers?

A. Many do; but we can get full instructions at the time of written statement. We have got the procedure of discovery, etc., which is availed of almost in every suit.

Q. As regards these powers, do you think that they are exercised on the Original side such as notices to admit facts, notices to admit documents, etc.?

A. They are availed of in most cases.

Q. Sometimes I think they are very little availed of.

A. We have discovery in every case, notice to admit in every case, but with regard to interrogatories they are not necessary.

Q. There is another matter. You know perhaps the Presidency Small Cause Courts Act. It is section 39—cases between Rs. 1,000 and Rs. 2,000 can be removed to the High Court and there is a right of removal. There is also the right of imposing terms.

A. Yes, Sir, that is so.

Q. But do you think that that is a very important matter? At least I do not think it a very important matter because there are very few such cases. There are hardly twenty or thirty cases in a year.

A. Yes, Sir, I also do not consider it an important matter.

Q. Have you any suggestions to make with regard to that?

A. We can leave that matter out.

Q. As far as you are concerned you have no complaint to make with regard to that?

A. No, Sir.

Q. There is on the Original side a right of revision? Do you think that there are many applications about it?

A. No, there are very few applications.

Q. I think that rules as regards appeals from the Original side have after a careful consideration been recently revised. Some new rules have been made in order that subsequent appeals to the privy council may require little reprinting. I do not suppose you have had enough experience of that. Have you any objection to those rules?

A. We had some objections to make when the draft was first circulated. We submitted our observations to the court and some of them were accepted.

Q. The number of appeals from the Original side to the Privy Council is very few. In some year it is only two and in some five, seven or eight. For the purpose of few appeals like that it was thought inadvisable to insist on anything that would be expensive.

A. Yes.

Q. In case of order, which amounts to judgment, under Letters Patent, Clause 15, there is an appeal from the Judge on the Original side in some cases where there is no appeal under the Code. Have you found that that right is in any way abused?

A. No, the number of such appeals is very few.

Q. As a matter of fact interlocutory appeals are very promptly disposed of?

A. Yes, they are given precedence over the original appeals.

Mr. Justice Stuart.—Q. Have you considerable experience of the work in the small cause court?

A. We cannot claim to have much experience.

Q. You serve all witnesses through your own clerk and, I understand, you propose serving original summonses also through that clerk. Is there any difficulty in obtaining identification?

A. The client's man always accompanies the clerk.

Q. You were mentioning just now that on the Original side in the case of a death the rule is that the other side states the name of the heir and then accepts him at his own risk. Is there any reason why the same procedure should not be applied to courts outside the High Court?

A. Yes, I think it might be.

Q. Would it save a considerable time in the mofussil if the same procedure is applied there?

A. Yes.

Q. Do you think there are cases which were instituted as far back as three years but have not come up for hearing as yet?

A. There may be some cases; the number of such cases must be very small.

Q. Another point. In the making of accounts it is your practice to make up your accounts and submit them to the officer checking it. Does this procedure save a good deal of time?

A. Yes.

Sir T. Desikachari.—Q. Have you had anything to do with the mofussil courts?

A. Very little.

Q. With regard to the service of summonses you were saying that service of process was being effected by registered post successfully?

A. In some cases. Ordinarily summonses are served through the sheriff.

Q. You suggested that certain processes should be served through the Attorney's clerk. What do you think of vakils' clerk being asked to do the same work?

A. I do not see why they should not do it.

Q. You think that the vakils' clerks may be allowed to do that.

A. The civil court peons who do the work there cannot be said to be more reliable than the vakils' clerks.

Q. You think vakils' clerks can be trusted to do that work.

A. Yes.

Mr. Justice Stuart.—Q. Do you think they would go the distance in a district? You see in Calcutta it is only a few miles; very often a man has to go hundred miles by road.

A. There may be some expense.

Q. I simply wanted to know if it was possible. You file a copy of the plaint along with the plaint itself, also pay the fee for the issue of summons to defendants.

A. We do not file a copy of the plaint.

Q. In the mofussil if you file a copy of the plaint along with the plaint and also an affidavit that the summons has been sent by registered post to defendant, will that do here?

A. In Calcutta I know of no cases where summonses were served by registered post.

Q. I am speaking of cases where a defendant is living in the mofussil. You prepare a plaint, you also have a copy of the plaint sent by registered post to the defendant, and there is his acknowledgment. How would that procedure answer?

A. With regard to High Court suits, many of the defendants reside in Calcutta itself.

Q. You have not answered my question.

A. I do not think that would work in Calcutta. I would prefer first of all filing a plaint and sending a copy in the usual way.

Q. Do you think the jurisdiction of the presidency small cause court may be enhanced?

A. No.

Q. Why not? Would it not give relief to the High Court?

A. It is not a question of giving relief. We think that suits for amounts more than Rs. 2,000 should be tried in the High Court, because a man may get better justice in High Court than in small cause courts, where things are done in a summary manner. There the defendant has got the right to show that he has got a good defence, then the case goes on.

Q. Do you think that under Section 19 of the Presidency Small Cause Courts Act any suits not within the cognizance of the small cause courts could be included as within the cognizance of small cause courts?

A. We would not suggest any alteration.

Q. I was going to ask whether it would not relieve the High Court in any way if you have a city civil court?

A. The question should be considered by our Society. It is cheaper to have suits in High Court.

Q. As regards substitution, do you think that this charge in law is useful? Rule 5 runs as follows "Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court." Before that the law was different. The new law makes it imperative on the court to decide as to which of the contested legal representatives should be substituted. Don't you think that this change in law leads to unnecessary delay?

A. The question is raised very seldom, and I think there is a very small number of cases in which this point is raised.

Q. Is there no contest between persons who claim to be legal representatives?

A. Very few cases there are in which this question is raised.

Q. Why is it that there is no contest? In the mofussil, I think there is a great deal of contest.



A. We have not met with any difficulty over suits of this nature.

Mr. Ghose.—Because of the fact that notices are not issued?

A. I do not know what is the reason. We have no difficulty over them.

Rai Bahadur K. C. Bose.—Q. In how much time are the *ex parte* cases disposed of?

A. They are disposed of in a month's time after service, not even a month, probably less.

Q. From the institution of the suit what time is taken?

A. 10 to 15 days.

Q. How many cases of small cause nature are decided?

A. We can not give figures.

Q. How much time is taken for the actual hearing in contested suits?

A. The cases of this sort are mostly finished during the day: ordinary suits are disposed of in the course of the day.

Q. How much percentage of suits you get relating to title?

A. We are sorry we can not give figures.

Q. That is apart from mortgage suits. To what percentage the number of title suits come to?

A. The percentage will be one or two.

Q. With regard to easement suits, do you think that the same number of days is taken for the disposal of such cases?

A. These cases generally take longer time; that is two or three days.

Q. And for the suits relating to establishment of title?

A. Probably less.

Q. Have you any idea of mofussil cases?

A. Mofussil cases take a longer time. Title suits here are very simple. Mofussil cases are complicated and so they take longer time.

Q. I should like to gather from you, generally speaking, whether suits which are tried in the mofussil are more complicated than those tried here?

A. Yes we may say that they are more complicated.

Q. So far as the mofussil is concerned, suits in subordinate judges' courts take much time owing to litigants being far far away—about hundreds of miles away, don't you think that difficulties are experienced in following this procedure?

A. Yes, of course.

Q. But can you suggest any remedy?

A. Of course pleaders can do that if they trust them.

Q. Are there here any applications for setting aside *ex parte* decrees?

A. Very very few.

Q. Is there much difficulty in serving summonses in Calcutta?

A. The service of summonses is scrutinized by the judge very carefully.

Q. Do you think that the reason why there are very few such cases is more effective service?

A. Yes, I think so.

Mr. Ghose.—Q. You were talking of the question of substitution without notice. I shall be glad to have your opinion as to whether it will not leave an open door for fraud. Supposing the defendant dies, the plaintiff brings in his own man with whom he can collude. The real man may know of it later and will have to bring in a suit for an adjudication of his right.

A. It is probable. But the chances will be rare.

Q. You say that vakils' clerks could serve summonses and notices. Supposing the vakils have not got any regular offices, would it be possible? I think solicitors keep record of the processes that are issued through their clerks and if necessary such records can be referred to. But if the vakils do

not keep offices and such records, would it be advisable to have the summonses served through them?

A. Unless they choose to be businesslike.

Q. So your suggestion in this respect is that they should keep regular offices.

A. Yes they should keep regular staff.

Q. Then you say that in the mofussil courts parties are unwilling to admit facts. Do you find that in the High Court the defendants admit facts which are contradictory to what they have already said in the written statement?

A. I mean that in the mofussil they are never admitted. If they are obvious facts, then in the High Court they are never contested. We always admit them.

Mr. Basu.—Q. What is the average time that is taken in execution of mortgage decrees?

A. We do not deal with figures. It depends on the circumstances of the case.

Q. Well roughly. For example you get a decree for, say, one thousand rupees on the 1st of January. By what time would you expect generally the execution will be made?

A. About six months.

Q. Is there any considerable number of infructuous applications for execution?

A. I do not think so. We always make proper enquiries before attaching any property as to whether the judgment debtor has got any real property.

Q. Do you find any difficulty in executing mortgage decrees on account of the provision that mortgaged property must be proceeded with before any other property of the judgment-debtor is proceeded with?

A. No we do not find any such difficulty.

Q. Do you think that generally speaking in case of decrees on mortgages the mortgaged property is sufficient to cover the debt?

A. Of course, it is very often the case in Calcutta.

Q. You have made certain suggestions about paper books?

A. Yes; what we suggested is that the attorney should not be made responsible for the preparation of paper books. It should be prepared by the court.

Q. May I ask your opinion about the suggestion that the paper books should be printed?

A. Some kind of paper book might be given. Manuscript books will be more costly for several copies have to be prepared.

Q. That is as regards the expense. What about the time?

A. It all depends upon the bulk of the paper book.

Q. I mean an average case?

A. I do not see why there should be more delay.

Mr. Justice Stuart.—Q. I see there is a very large amount of appellate work against the decisions of the Learned Judges sitting on the Original side. There is an appeal as well on a question of fact as on law. Do you think you could abolish appeals on facts?

A. At present the trend of practice in the High Court is not to grant appeals on points of fact.

Q. But under the law the High Court must hear them?

A. Yes.

Q. In discussing the duration of cases before the High Court, before the filing of the preliminary plaint do you have an elaborate correspondence?

A. Yes.

Q. As to the duration of cases in High Court, we cannot compare that with the delay in the mofussil.

A. I see no reason why there should be a difference in the mofussil.

**The Hon'ble Mr. B. Chakravarty, Representative Bar Library, High Court, Calcutta, called and examined on Friday, the 15th February 1924.**

(No written statement received.)

Chairman.—Q. Will you kindly tell us any points on which some improvement can be made as regards expedition in civil suits?

A. I will very gladly do so. First of all I would like to say something as regards service of summons, service of notices, etc. Now good deal of delay is caused by the defendant pretending that he has not been duly served and asking to have the case, which was tried *ex parte*, to be re-opened, and this is mostly in rent cases. The case is re-opened and much unnecessary delay is in this way caused. This is one cause which causes delay. Another class is with regard to notices in connection with execution proceedings. The execution debtor probably knows far better than the execution creditor that the evil is coming. He knows all about it but he pretends that the notice has not been duly served upon him and therefore the case has to be re-heard. I should be inclined to suggest some method of avoiding delay in connection with service of summonses or service of notices. That is one reason of delay. The other reason is that there is a tendency on the part of judicial officers especially shortly before the 31st of March to strike off cases. Later on they would take up these cases again by saying "restoration of these cases *ex-officio*." That I understand is for the purpose of disposal. That is a pious kind of fraud, showing that their file is clear where in reality the file is not clear. Another fact which causes delay is that there is no insistence, there may be a rule I am not aware, on the part of the judicial officers to attend at regular hours. Some gentlemen come at 12, some at 1 and some at 2. They then go into their chambers and they are doing something there, no one knows what they are doing and poor litigants are waiting. Then if they are inclined to be industrious they may go on working till late hours which causes great inconvenience, especially in the cold weather. Then there is another cause of delay. I hope I am not attacking any class of legal practitioners, when I say that the plaintiff and the defendant are both present, but the two learned pleaders appointed on their behalf put their heads together and the result is adjournment. The judge, where there is no opposition, adjourns the case and the poor litigants do not know why the case has been postponed. I should therefore be inclined to suggest that there must be some reasons shown on the order sheet why the case has been adjourned. I should also be inclined to suggest that as in the High Court the learned judges come at 11 and are free to go away at 4-30 with an interval of  $\frac{1}{2}$  hour in the middle of the day, if it is more convenient to many munsifs they may come at 11 o'clock, but they must put in the same amount of work also. There is another cause and that is that practitioners in the country do not keep any copies of papers filed in court and the litigants have to take attested copies from court which proves very expensive. Then there is a further cause of delay in execution proceedings. There is probably, it may be human nature, some sentiment or consideration shown to the debtor. My experience is that this false sentiment and unjustifiable kindness result in the debtor going more and more into the mire until he is practically ruined. It will be much better if he is saved some portion of his property at an earlier stage without being dragged into courts again and again. I would therefore insist on money being paid in court in cases where something has been awarded.

I would further suggest that as in the High Court there ought to be a daily list of cases made out, with a warning list. I would also suggest

that 3 or 4 classes of lists should be made out. With regard to undefended cases there ought to be a list and they ought to be dealt with as soon as possible; with regard to liquidated claims and mortgage suits, I should certainly insist upon a very short period within which they should be dealt with; rent suits ought to be dealt with in the same way, without any postponement which is called *ex-officio*. With regard to long title suits, more time might be wanted. I remember a case which went on for six years. In those cases, if the papers are looked into, the brief properly prepared, evidence gathered and then put before the court, much time would be saved.

Then, as I have already referred to the question of execution, I think it has become necessary to curtail appeals and revisions with regard to execution cases. Most of the litigation coming from the country is due to delays in execution proceedings, notwithstanding the fact that their Lordships of the Privy Council have so often said that the troubles of an Indian litigant commence when he has got a decree. At present there is first either a claim or some other means of delay.

Then with regard to the sale of property in the execution of a decree, an interminable procedure is resorted to by a litigant who wants to postpone the day, and if the sale has been finished, every possible objection is taken, mostly technical objections, for the purpose of setting aside the whole thing, and the judgment creditor has to begin the proceedings again. In the meantime, there may be an application for revision in the High Court; there may be an appeal; so that often and often you do not realise your money within two years.

I remember a case some little time ago. It was a mortgage suit. A man had lent Rs. 20,000. He got his decree. It took him full 2 years to realise his money. The man appears in court, and then the other man in order to postpone the sale says that he will pay 4,000 or 5,000 rupees, and the judge out of kindness says, "what does it matter, we will postpone it for another 4 months." In that way it hangs on for a long time.

I am sorry I have not prepared a note. But these are my impressions and I request that they may be considered.

Q. To deal with the 3 lakhs and more uncontested rent suits that fill the munsifs' courts after the *tamadi* day, could you suggest any satisfactory way?

A. I have thought over the matter and I moved the Government, not to very much satisfaction. It is open to the Government to allow the certificate procedure to approved landlords. I think with regard to the rent cases, where practically there is no defence, if certificate procedure was allowed, a large volume of these cases which go on for a considerable length of time, with applications to have the decree set aside, would be minimised.

Q. Do you think it would be possible to save any time or make any economy by trying to introduce some form of summary judgment?

A. It would be a desirable improvement provided the court was certain that the service was really effective. If some method of service is devised for the purpose of bringing to the notice of the defendant that there is a claim against him, then I think it would be very desirable to have summary decision with regard to certain classes of cases. That would not of course apply to cases involving title to property.

Q. I understand that a good deal of the munsif's time in these undefended rent suits is taken in hearing formal evidence from the vakils' gomashitas. Do you think anything could be done to save that time?

A. I certainly consider it should be something in the nature of a claim on a promissory note. The summons ought to be in a particular form in order to give him notice that the judgment would go against him unless he came forward with a reasonable defence.

Q. There might be difficulty as to giving interest or damages in such cases. There is room for certain judicial discretion there.

A. Yes; the statute allows 12½ per cent. interest and in some cases the subordinate judge can allow damages to the extent of 25 per cent. If there

were statutory rules made allowing a smaller figure the landlord will get his decree more expeditiously settled.

**Q.** Have you ever thought of any suggestion for improving the process service in Bengal?

**A.** I was thinking only this morning and I spoke to the manager of a large estate. It would be an improvement on the present system to have the service made by registered post acknowledgment due. According to the present practice I think there is a very grave suspicion that although the defendant knows everything the service which is formally placed before the court is open to grave question. I do not believe in many cases, especially in rent cases, that the man who is the identifier goes from the district town to any place which is ten or twenty miles away. I do not believe in that procedure. Although I do not say that service through the post office will not be open to objection, still it will be a great improvement. I was thinking also that the Committee has better means of making enquiries whether it could not be possible to have the service made in a similar manner as in the criminal court. There service is made without the assistance of the complainant. I have not got that amount of faith in the police which is a limb of Government that I should have. If the police be ordinarily free from dishonesty, then of course it will be a very good idea to have the process served through it. One of these two methods or both combined might be adopted. There is a third method also which has suggested itself to me; there are union boards and circle officers and I think it may be possible to take advantage of their existence for the purpose of serving notices and summonses.

**Q.** Now coming away from the particular conditions in Bengal and going to another large matter, could you please tell me whether in your experience there is much by way of champerty or maintenance that accounts for the congestion in the courts?

**A.** There have been a large number of cases extending over the period during which I have had the honour of belonging to the profession. I know the litigant would not have put his case before the court without the assistance of some financier behind him. I have always considered that however justifiable the law against champerty and maintenance may be in England, in India it will not work well because the people are poor. I have, therefore, very great doubt whether the law of champerty can be introduced in this country.

**Q.** I understand that of the so-called title suits about forty per cent. are mortgage suits?

**A.** They rank as title suits but in point of fact they are not title suits.

**Q.** I think you were a member of the Committee that sat to discuss improvements on the Bengal Tenancy Act?

**A.** I was not a member; but I had a great deal to do in connection with that Committee.

**Q.** Can you tell me from your experience whether the proposal of that Committee to increase the non-appealable limit of the munsif up to rupees one hundred is open to objection or should it be extended further?

**A.** I do not think it is open to objection.

**Q.** I think the proposal was to make non-appealable all cases up to rupees hundred. Do you think the limit of rupees one hundred might be usefully raised?

**A.** If it is desirable it should be raised. Most of the claims are below rupees hundred, while there are substantial number of cases, I understand, of value between rupees one hundred and rupees two hundred and fifty. If it appears that there is a considerable number of cases between one hundred and two hundred and fifty rupees by all means raise the non-appealable limit of the munsif to two hundred and fifty.

**Q.** Have you noticed in the mofussil courts the question of pleadings and the question of settlement of issues? Do you think you can make any suggestions for avoiding delay caused in these stages?

A. Yes, there is difficulty over these. I feel there is a time limit given by the statute. There may possibly be some amount of hardship but you cannot devise any rule without some hardship being caused. Therefore, I should be inclined to think that in every case, unless it is an extraordinarily difficult case, ordinarily three weeks time to file a written statement from the time of service will be quite sufficient. When the statement has been filed, issues should be settled after a week or a fortnight.

Q. Has it ever occurred to you in the course of your practice that there is some period of limitation which could usefully be curtailed?

A. I have always thought over it. In the case of appeals with regard to execution matters, I think the period of limitation may be shortened; and in order to give the man relief he may be asked to give security and in money claims I would insist on the money being paid in court.

Mr. Justice Stuart.—Q. You were talking about effective, I mean, original effective service. You were saying that great difficulty is experienced in serving processes in execution matters. In the United Provinces the plaintiff when he files his written petition is asked to put in his registered address on which all subsequent notices are issued. Similarly as soon as we get the defendant served we take from him his registered address and all subsequent notices, in execution, appeals and in everything else, are served at that address by post. Do you think that would be a sort of practical relief?

A. That is an excellent way of serving notices, if you can catch the defendant.

Q. Of course you have got to catch him first. After you have caught him the penalty is that if he does not file his registered address he is liable to have his defence struck off. Would you approve of that method?

A. I think that would be an excellent method.

Q. Then you were talking of delay caused by officers coming late. Perhaps you have not seen the diary kept under the order of the High Court in which all officers have to enter the time of their coming to court and of the rising of court.

A. Yes, I have seen it, but there is no use if it is not kept properly. My point is not so much with regard to the record being kept. What I say is that there should be a fixed rule.

Q. Is there not a fixed rule?

A. But if an officer comes to court at 1 o'clock, I am afraid he falsifies his diary. I am afraid the keeping of this diary will not help much. May I mention one instance. I happen to be the Chairman of the Board of Directors of a Bank and there I have insisted upon every man signing against the column showing time of arrival in office. But I have not succeeded in that. I have known many cases in which people are told that the learned judge will be in court at 11 o'clock and that every body should be ready. But the poor people have to wait long and are put to great inconvenience, and it leads to great delay also in the disposal of cases.

Q. Have you ever come across absolutely blackmailing claims?

A. About ten or fifteen per cent of the big claims in the High Court are of a blackmailing character. These plaints are filed only for the purpose of extorting some money.

Q. Do you think we can find a remedy?

A. Only last year we settled a case. We advised the client that instead of fighting the man, which might last for two, three, four or five years and in which he would have to spend lot of money, it would be better to give him Rs. 5,000 and some property.

Q. Where do you get these cases mainly from?

A. From Bihar.

Q. Have you any experience of Oudh?

A. No.

*Q.* You agree that we should endeavour to do something to meet this evil, while at the same time endeavour to protect the interests of the genuine claimant?

*A.* Certainly.

*Sir T. Desikachari.—Q.* I take it that you have a very large experience of mofussil courts, and you are yourself a very big landlord.

*A.* I have had experience of 38 years: I am a small landlord.

*Q.* Do you think that munsifs can be invested with higher jurisdiction than now—jurisdiction increased to Rs. 5,000.

*A.* In the case of selected officers only. I would not confer that jurisdiction upon every munsif. But out of the cadre if by examining the work of the munsifs you were satisfied that about 25 per cent. or 30 per cent. of the munsifs were particularly smart, clever men, I see no objection to raising the jurisdiction of the munsifs, because the cadre of the subordinate judges is recruited in the same way as munsifs. As a matter of fact a man may be to-day a munsif and to-morrow a sub-judge. I do not see any objection to that.

*Q.* That would in a measure lessen the number of institutions in a subordinate judge's court?

*A.* Yes,—undoubtedly.

*Q.* Do you think there is any agency in the mofussil to take up any small cause cases which come up before the munsifs?

*A.* The munsifs have no doubt to try a large number of rent cases. A subordinate judge who has powers of a small cause court, generally takes the liquidated claims. I see no objection, provided you get the proper sort of man in making over certain number of suits to circle officers—in this part we call them circle officers, *i.e.*, they have a certain amount of jurisdiction which follows the jurisdiction of the munsif. I do not see any objection to that.

*Q.* I see a paragraph in the Retrenchment Committee's report, in which the observation goes:

"The Village Self-Government Act has recognised the principle of honorary civil courts, and we consider it is desirable that it should be put into force. The number of suits for money and moveables not exceeding Rs. 50 in value was 98,589 in the year 1921, and the bulk, if not all, of these suits might well be disposed of by honorary munsifs with considerable relief to the files of stipendiary officers."

*A.* Rather I should prefer honorary munsifs to circle officers, because the honorary munsifs will be drawn mostly from the local bar and they are expected to do much better than circle officers who are not used to civil work at all.

*Q.* Having regard to the evidence of one or two witnesses before, honorary munsifs could be got here and they could take over these suits which are petty.

*A.* I think they could be got.

*Q.* Do you think there is any inconvenience caused by the concentration of too many courts in the same place, particularly in the matter of delay?

*A.* It does, not to a very large extent. I do not however know how that is to be got rid of. The difficulty is—it may be a difficulty of the legal profession—that business gets into the hands of a comparatively small number of practitioners. They have cases in various courts and they are not able to attend to all of them. Some have to be postponed and that causes delay. If there was more distribution of work, of course that would not happen. Concentration of various courts in one place no doubt facilitates a big practitioner, a favourite practitioner taking more work in his hands than he can possibly attend to. Therefore, if you disperse those courts, you would, I think, place physical difficulties in the way of his attending those courts.

*Q.* What do you think of locating a munsif's court in the centre of 70 or 60 villages over which the court has jurisdiction?

A. If you can provide accommodation for residence it would be an excellent thing. It would be an advantage to the litigants who have to trudge now 10 or 15 miles to seek relief.

Q. Is it possible in this province, having regard to the qualification of subordinate judges, to select some and invest them with the powers of assistant sessions judges?

A. Oh yes, undoubtedly.

Q. What percentage would you probably suggest?

A. About 30 per cent.

Q. You spoke of the dilatoriness of the courts. I suppose this is what is happening. I read again from the Retrenchment Committee's report. It says—"A further matter of general complaint which we feel obliged to refer to is the dilatoriness of the courts. We have been told they spend insufficient time in the actual hearing of suits, and too much time in chambers."

A. Yes.

Q. This is your experience?

A. This is correct.

Q. And it is necessary to make the district judge to find time to minimise this evil?

A. Either the district judge or some other higher official must inspect the office and must have supervision.

Q. What is your experience, do the district judges find time for civil cases?

A. District judges have very little time to do civil matters. Their time is mostly taken up in hearing criminal appeals, not so much in original cases.

Q. Do you think whether any improvement could be made in that matter?

A. There again I insist upon the officer being a proper officer. Provided you get a proper officer I think it will relieve the judge.

Q. You mean to say there should be more assistant judges to deal with land acquisition cases and other petty cases?

A. Yes.

Q. And also to do some important civil work?

A. Yes.

Q. That is your view?

A. Yes, certainly.

Q. With regard to the question of limitation, may I ask if it is possible to so amend section 48 of the Civil Procedure Code as to limit the time for execution to six years?

A. It is open to the legislature to do so. Twelve years limitation provided for is the highest amount of time allowed for execution petitions. It may be reduced to six years, that will cause no hardship.

Q. May I also ask you whether Article 182 of the Limitation Act prescribing three years may not be so amended as not to force any decree holder to file any application to keep the decree alive?

A. That Article 182 has been more fruitful of litigation than any other article and it has been more fruitful in giving us precedents which I for one find great difficulty in reconciling. If that were done away with I will part with my old friend with rejoicings.

Q. In execution applications we have to issue a number of notices to judgment debtors. I think one notice at the first instance will be quite enough?

A. I rather think the suggestion which fell from one of the members of the Committee was an excellent one. Once you get your defendant and the duty is cast upon him, as I understand it, to notify to the court if there is any change of address, the notice sent to him, by registered post provided acknowledgment is due, should be deemed to be notice served on him.



**Q.** What do you think about satisfaction of decrees? Number of applications are now filed, when an execution petition is filed; the judgment debtor says that he has satisfied his decree. May I suggest that courts should recognise only payments through the post office or through the vakils of the party.

**A.** I do not think whether it will be wise in the case of pleader to make payment through him. If you want to restrict any payment being made, it may be done through the post office or the honorary magistrate.

**Q.** What is your view as to whether the law of insolvency is properly worked in the case of mofussil courts?

**A.** With great respect to the mofussil courts I may say that I do not think they understand anything of it.

**Q.** What do you think can be done in order to prevent it?

**A.** Well, you may appoint a proper insolvency officer who has been trained in the High Court where the insolvency work is done. District judges even, with great respect to them, do not understand it. In the mofussil courts I have found that the question of partnership is very imperfectly understood and therefore these cases take an enormous time with indifferent results and the judges of the High Court have to do the best they can to set them right.

**Q.** What is the remedy?

**A.** The remedy is more qualified officers. Matters of administration, matters of partnership, these are not matters which arise constantly in the mofussil. These arise mostly in the High Court in the Original side. The machinery of the High Court is much better, therefore the result is very much better. If you can provide the same kind of officers you will have the same results.

**Q.** Do you think any one munsif specially selected may be asked to do such work?

**A.** Provided he is kept as an apprentice in the High Court at least for twelve months. I think the best way will be to select an officer from the present staff of munsifs and give him training in the High Court. You can do that without increasing the number of munsifs.

**Q.** There is no doubt that in insolvency cases considerable amount of delay happens.

**A.** I am not satisfied with the work.

**Q.** What remedy will you suggest to prevent the defence of oral discharge particularly in small cause suits?

**A.** If the money lender takes precaution and pays money in the presence of some reliable person and that reliable person makes a note in his diary that money has been paid in his presence, I think the defendant would be rather reluctant to take that defence and later on find out that he has been telling untruth on oath and the ultimate penalty may fall upon him. Otherwise as long as the money is lent on promissory notes and the law does not require that there should be some attesting witnesses, I think the court is powerless. If the defendant goes and says that he did not receive the money the court is bound to hear him.

**Q.** What do you think of a law which requires that all partitions should be evidenced by documents and by registered instruments?

**A.** I think it will be good provided the estate is of considerable value. I should make it applicable to small estates as well. It would be desirable I should say that the property must be of value of over one thousand rupees. In these cases partitions should be evidenced by registered instruments. I would also apply this in cases of partnership because in many cases when the preliminary decree is passed and further procedure is going to be taken people say we are not partners. This difficulty can only be avoided if partnerships are registered.

**Q.** Do you think that there is any possibility of affording relief in *benami* transactions?

A. I entertain very grave doubts with regard to any relief being effected in connection with *benami* transactions. *Benami* transaction has existed for such a length of time in the country that if it is interfered with by legislation for some time there will be a considerable amount of hardship. The idea of *benami* is inherent in every body. Even the poorest peasant has an idea of the *benami*. I do not think it is desirable, because it will cause a considerable amount of revulsion of feeling in the country. It is quite possible that there is a registered document and every formality has been properly attended to but in reality it is only a paper transaction and in many cases courts have come to the conclusion that notwithstanding all the formalities the transaction was really a paper transaction and it was never intended that it should be effected.

Q. Supposing it is the law that such a plea should not be set up, you think it would help fraud?

A. Yes.

Q. Another question connected with minimising litigation. At present in the mofussil courts, if the parties like they can have a reference to arbitration. How would it be if the court has power to say that a particular suit should be referred to arbitration? Such matters as are peculiarly within the knowledge of local inhabitants or relations or experts.

A. No doubt the legislature can confer such a power. But would it be the proper jurisdiction of a court. The proper jurisdiction of the court is to try the suits of citizens. Can the court say: it is not going to give any assistance with regard to the decision of the matter, but it will throw the burden upon arbitrators.

Q. In some cases is it not advisable? How is the court going to decide whether a bridge is properly constructed or not.

A. It can now be done. The court has the arm of the law sufficiently long to enable it to say that this is a question which should be decided by arbitrators, and name the persons and call them. There is nothing to prevent the court. Their decision would be on the evidence recorded. The decision of the court should not be superseded by that of the arbitrators.

Q. English courts have jurisdiction to refer certain cases to arbitrators. Section 14:—

“ In any cause or matter (other than a criminal proceeding by the crown),—

- (a) if all the parties interested who are not under disability consent; or,
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through the other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account;

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.”

Why should not such a provision be made available to us?

A. I rather think that even there I am not satisfied whether the court is justified in throwing the duty of decision upon somebody else. It is really choosing some other judges.

Q. You think in our country it is not desirable or advisable?

A. Assuming that the court refers it to arbitrators, if the object is expeditious decision of a case, I think the remedy there is worse than the disease, because you will only allow the litigant to proceed from court to court making

frivolous charges against the arbitrators chosen by the court and finding fault if the decision goes against him. If the decision is in his favour, then he will support. The defeated party will always try his best to avoid the decision of the arbitrators and complain to the court that the arbitrators have not done their duty properly.

*Mr. Justice Stuart.*—*Q.* Would there not be great difficulty in procuring arbitrators?

*A.* I think there is a certain amount of difficulty, but not so much in the presidency towns.

*Q.* I mean in the districts?

*A.* Yes.

*Sir T. Desikachari.*—*Q.* Has the multiplication of law reports any effect in the administration of justice?

*A.* What I feel with regard to that is this. Often and often the interference of the High Court is necessary. If you have not a better class (I do not say the present cadre is not fairly good, some of them are very able men, but in a percentage of cases the mistakes made are obvious and foolish) and if there was no court to set them right, there might be grave injustice. That is the reason why I feel whether it is possible to say, after the matter is decided by the munsif, there should be no appeal, or there should be no revision.

*Q.* I was asking you about the multiplication of law reports. A number of reports have sprung up, any decision and any observation is reported.

*A.* It adds a burden to the life of a practitioner. When a man has a bad case, if he can get some expression of opinion from some part of the country, he will refer to that. How is that to be prevented?

*Q.* That is my question. Is it possible?

*A.* Unless the High Court or the legislature lays down that except the authorised report, no other report should be observed in the court, the same condition of things would continue.

*Chairman.*—If there is a report citing a Calcutta case from a "Weekly Notes" or a "Law Journal," I think it should be entertained. But if the decisions of other courts are cited, it ought not to be entertained.

*A.* Yes.

*Q.* Supposing it is pointed out by the Court that only reports which are authorised by the legislature should be quoted and not others, how will it be taken by the profession?

*A.* "In Indian Law Cases" you can find a proposition of law in support of any class of argument you like. I do not know whether it assists the proper administration of justice. Decisions have to be arrived at after all on the facts and on law. Often and often I have seen in the courts a learned gentleman comes in and gives 40 or 50 cases. I remember it was a mortgage suit. The learned gentleman gave me a judgment from a particular page from "Weekly Notes"; it happened to be an authority on adultery. Apparently the page was mistaken and he got somebody to look up the authorities. So I said, "My friend would not seriously suggest that this case was any authority upon the matter being investigated now. It might be some other page." Even then he said there were propositions in it which would assist the judge.

*Sir T. Desikachari.*—*Q.* There is another matter arising out of what you said about processes. What will you think of a proposal like this—the reduction of process serving establishment at the headquarters to half of its strength and the rest being distributed to village panchayats and processes served through that agency which is likely to have the benefit of local knowledge?

*A.* I think I have mentioned three methods:—

- (1) By registered post, acknowledgment due.
- (2) Police and village chowkidars.
- (3) Union boards and circle officers.

Q. It appears in this province identifiers never go with the peons. The general opinion is expressed by witnesses examined that identifiers are perfectly unnecessary and possibly dangerous. What do you think in this matter?

A. I think so. In some big streets in Calcutta there is an officer who is known as the maker of affidavits. His duty is to make affidavits under the orders of the manager or his master, although he has never been with the process server for the purpose of serving summonses.

Dr. DeSouza.—Q. In connection with process serving, what do you think of decentralisation of naib nazirs in a central place covering forty or fifty villages, giving them process serving peons and making them responsible for the return of processes duly served. Would it not be more useful than service through post offices?

A. If the naib nazir does his duty properly I think it might do. But my apprehension is if the naib nazir is appointed on sixty, seventy, or hundred rupees and is asked to serve processes relating to a claim of thirty or forty thousand then it will be extremely difficult to get an honest man to get the service duly made. It is no use having another method of serving processes where the trouble will be the same.

Q. The advantage of the other method will be that the naib nazir's jurisdiction will be limited to a small number of villages. His peons will have knowledge of the locality and identifiers can be abolished.

A. I conceive if you can find honest naib nazirs for the purpose of serving on the right defendant it will be an excellent method. Regard being had to the larger number of cases it will be difficult to secure an honest man.

Q. But if there is effective supervision?

A. Effective supervision will of course minimise chances of fraud. I have a grave suspicion that no clerk, even in the High Court, does any work without being paid something by way of illegal gratification. I think it will be a good arrangement if the naib nazir is paid Rs. 250 a month.

Q. The other method you proposed was the employment of union boards for the purpose of serving summonses. That will be an honorary agency and would not be under the control of the district judge or the sub-judge. In case of neglect of duty they are not liable to be punished by the district judge.

A. They are under magistrates and can be dealt with by them.

Q. With regard to the proposed enhancement of jurisdiction I suppose the jurisdiction of munsif is two thousand rupees so that all suits over two thousand rupees have to go to a court in the sadar. If munsifs are invested with jurisdiction up to five thousand rupees all cases up to that extent can be tried by them. Are you in favour of extending their jurisdiction?

A. I have already said so.

Rai Bahadur K. C. Bose.—Q. Do you not think that the more expeditious way of effecting service would be for the peon to go to the village and get the process served through the panchayat and get his signature?

A. I do not think so because it would be more expensive. So far as my knowledge goes the serving peon would not be satisfied with one visit and the poor litigant will have to pay for more than half a dozen times. I am sorry to say that signature of the head of the village, I mean panchayat, can be obtained very easily by paying him something.

Q. Then you mean that the panchayat may also be mixed up in the conspiracy?

A. No, I do not mean that. My suggestion is that the panchayat should be made responsible direct to the court and these matters should be transferred to the headman. My suspicion regarding signature is that when the panchayat goes to the district headquarters his signatures can be obtained on as many processes as possible. But if he is made directly responsible to the court he will then employ his own men and the service will be effected more expeditiously.

Q. Then that is your idea about panchayats.

A. I am sorry I have to say like this.

Q. Well as regards notices in execution, there are various notices which are to be served on the debtor. Do you think that all these notices are necessary?

A. Some of them are necessary. But as I have already suggested that when one service has been effected you register his address and if notice is to be served, it may be sent at the registered address.

Q. As regards execution cases service of various notices may be effected by the postal agency?

A. That is sufficient.

Q. In regard to attachment, it has been suggested that notices may not be necessary. Do you think that it can be dispensed with?

A. Yes, it can be dispensed with.

Q. With regard to rent execution cases you know that notices have got to be served at many places. Do you think they are of no use?

A. I do not think they are of any use. I think I am convinced that in 99 cases out of 100 the tenant knows that he owes money and he knows that a decree has been made against him and he also knows that attachment will be made. I do not think how he can escape.

Q. Do you think that whenever an application is made for setting aside sale, the man should be asked to deposit money?

A. I have already said that before any application for setting aside sale is entertained the man should be asked to pay the amount of money with interest up to that date.

Q. With regard to sitting of courts in the mofussil, there has been a circular that courts must sit at 11 o'clock?

A. That has not been my experience. In almost every district of Bengal courts generally begin at 11 o'clock.

Mr. Ghose.—Q. In connection with the service of process, who is principally to blame for the non-service of summons?

A. The probable man must be the plaintiff.

Q. What do you say about the postmen being tampered with by the plaintiff or decree-holder, if service in execution cases has to be made through the post office?

A. In some cases I think it will be a case of fraud. At present it is wholesale fraud.

Q. In the mofussil there is a branch post office and there is one branch post master who is usually the *gurumoshay* of the village and one or two postmen attached to that post office. Do you think processes could be served through them duly?

A. Very probably, but not in all cases. At present I do not believe that the serving peon goes anywhere near the man. My suspicion is that he never goes, and the service you get now is no service at all, it is a pretended service. In this mundane world, a perfect method is very difficult to get. Through post offices 50 per cent. of cases you might get, in the other 50 per cent. you might not.

Q. You will have the post office as a substitute for the present agency.

A. I will have all the three, the agency of post office, the agency of police and the agency of union board.

Q. Are civil processes served by the police?

A. I do not know if the police would obey the civil court.

Q. What do you think about the decree being once executed within a year after it is made, and there being no need for a repetition of it after that? How do you like the idea of the period of limitation being curtailed?

A. It might operate as a very great hardship.

Q. But it might be a safeguard so far as the interests of the judgment debtors are concerned. I may tell you in what way. Supposing a decree is obtained *ex parte*, by obtaining the false return of service by the plaintiff in a suit brought on a false claim, he keeps quiet for three years after decree and allows the file of the record to be destroyed. That file only contains information as to how the summons was served. If that is destroyed, then the defendant has no means to prove that there was no service on him.

A. I quite appreciate it. But my difficulty is this. It may be I am looking at it from a point of view which may not be right. But my idea is that the plaintiff never goes into the court on a false claim. In 99 cases out of 100 he has a just claim. It is the defendant who wants either to cause delay or to prevent the payment of the claim. In one per cent. of cases this difficulty may arise. As I have already said, you cannot have a system by which you can ensure any form of relief against any form of fraud, and against any form of dishonesty. It is only a method of finding out which is the least unjust, because absolute justice you cannot expect in this mundane world.

Q. But is it your opinion that in only one per cent. of rent suits and petty money suits there is suppression of the process?

A. Not a question of suppression of process. The claim is unfounded. The rent suits as a rule are just claims.

Q. But is it not within your experience that many landlords claim rents much in excess of what they are entitled to. If I say that about 20 to 30 per cent. of the claims are bolstered up by the landlords in the mofussil, would you be surprised?

A. I would be.

Q. Would you not give some relief to defendants in such cases?

A. On the contrary I think a great deal of delay is caused and a great deal of money is lost on account of false sentiment with regard to defendants.

Q. I am talking of non-service of summons on the defendants.

A. I have already said, at the present moment the service is only an eye-wash. It is no service.

Q. Even then you would not give any protection to the defendant?

A. Change the method of service. But I would not reduce it to one year. Otherwise he may not execute it at all.

Q. It is not necessary to extend.

A. I cannot expect.

Q. You say that cases are frequently struck off. Is your experience limited to sub-judges' courts or munsifs' courts.

A. When I was young, I appeared before munsifs as late as 10 years ago and also before judges in the small cause courts and some of them who have been munsifs have since got appointments in the small cause courts.

Q. Coming to the sub-judges' courts, and coming nearer to the place, *i.e.*, Alipore, how many times did you appear before the subordinate judges during the last 4 years.

A. I have already appeared for nearly six months in one case.

Q. I know that, and I remind you of the fact that you always found the presiding judge present from 10-30 and only under arrangement, the case was taken up sometimes after 11 A.M.

A. With regard to a single officer I cannot remember what the time was.

Q. Do you remember that during the last 4 years you appeared before sub-judges at Alipore on 3 occasions, namely once in connection with the matter in the Jharia case and for some months during the trial of that suit and once in connection with a will case?

A. May be.

Q. You remember perhaps that you first appeared in connection with the Jharia case before me and after I had left the place and come over to the High

Court, Mr. N. K. Basu came; he heard the case and you took six months before him. Did you not find the two judges come to the court at about 10-30?

A. I was not there to see that they came at 10-30.

Q. If they entered 10-30 A.M. in the diary would you believe that?

A. I am not prepared to accept the entry in the diary.

Q. That is your mental condition; you do not believe an Indian Judge?

A. Not because he is an Indian Judge but because these diaries are kept in such a slipshod way that I cannot rely on them.

Q. Do you know that after the publication of the Retrenchment Committee Report there was a chorus of protests from judicial officers and many pleaders who appear before them often in cases against the remarks that the munsifs and the sub-judges devote less time to the hearing of cases and spend more time in their chambers and that Sir Abdul Rahim had to say from his place in the Legislative Council that the munsifs and the sub-judges were hard worked and that the Governor in Council appreciated their work?

A. I do not know of it. I do not take much interest in such matters.

Chairman.—It is rather a mistake to take these matters personally. I do not want to stop anybody but I think it is rather a pity to take these matters personally.

Mr. Justice Stuart.—The diary shows the time when a judge comes into the court precincts and not the time when he actually takes his seat. I have suggested this so that there may be no misapprehension.

Q. You said cases are struck off in munsifs' or sub-judges' courts?

A. I was speaking generally. I have known of cases which were struck off *ex-officio*.

Q. Would you be surprised to hear that not one per cent. of cases are struck off by the judicial officers at Alipore?

A. I cannot say, I am giving you my experience with regard to what generally happens in civil courts in Bengal, including small causes, munsifs, subordinate and district judges courts.

Q. Are your observations with regard to present state of things or what used to happen formerly?

A. My experience is of 38 years. I am not aware whether there has been any improvements within the last two or three years.

Q. Since the introduction of the High Court rules?

A. I do not know when those rules were introduced.

Q. If a judicial officer goes back to the chamber to write out an important order which he has made verbally, would you find fault with him?

A. I have no fault to find with it.

Q. What is your idea about the number of cases that a subordinate judge has to deal with? Is it more than he can dispose of in the course of a year or is it lesser?

A. I have no idea.

Q. Do you think that lists are prepared every day?

A. I have not seen them.

Q. Have you got any idea as to how many cases a subordinate judge can decide in the course of a year?

A. I cannot say. Twelve months may not be sufficient for a big case while 120 cases may be decided within a few days. Of course the number of cases is more than what they can manage.

Q. They have represented to the High Court that they have more work to do and the High Court knows it already, so also the Government; what remedy would you suggest?

A. My remedy is that they should give up the service or put up with it. I understood that it is not within the province of this Committee that there ought to be more judicial officers. If you want me to express that opinion I will say so.

Mr. Basu.—Q. You have in fact approved that the jurisdiction of munsifs should be increased to five thousand rupees. If the jurisdiction is raised it will increase their work?

A. That depends upon the file.

Q. Is it not a fact that judicial officers have got much work now?

A. It may be with some officers, but my complaint is that there is less disciplined work. If you want to work methodically sift out your undefended suits, mortgage suits and other suits every day, then I think you will find that even with the present cadre you can do a great deal of work.

Q. Next point that I want to ascertain from you is what is your general idea about the honorary magistrates. Is their work very satisfactory?

A. Well I do not know. Some of them do very good work.

Q. Having regard to the outturn of work done by the honorary magistrates will you encourage honorary munsifs?

A. I have one reason. Honorary magistrates whose work has come under my notice are the honorary magistrates in the presidency towns. I am aware that in the presidency towns there are good many people who are rather anxious to become honorary magistrates. The position of honorary magistrates adds to prestige. I am speaking of honorary munsifs recruited from the mofussil bar where you have very good material and generally those I have in view have not got too much work to do and therefore they can be called to do useful work.

Q. Do you mean that honorary munsifs should be recruited from the bar?

A. Yes.

Q. You said something about the curtailment of appeals in execution matters?

A. You have Section 47. That is in connection with execution, satisfaction and so on. Now this section enables you to take the matter on appeal from court to court. I say with regard to some of the matters either stop any appeal if you can, otherwise make it less unjust because if the man has to find money he won't go on for any length of time with false claim.

Q. What I was going to say is this. If an honest debtor finds himself in a position where an unjust order has been made against him, would you deprive him of the right of appeal because he makes things dilatory?

A. As I have already said it is rather difficult to get an honest debtor. In most matters the plaintiff goes into court because he cannot get his just claim realized.

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**The Hon'ble Mr. S. R. DAS, Advocate-General, High Court, Calcutta,  
called and examined on Saturday, the 16th February 1924.**

Replying to Chairman, he said:—

I propose to take the subject step by step, from the starting of the suit to the execution.

*Original Side.*

So far as the Original side is concerned, I do not think there is any ground of complaint. Practically every case can be heard within 4 to 6 months, particularly commercial cases, suits for liquidated claims, and ejection suits. There is a rule under which all cases which do not appear in the



prospective list, *i.e.*, list of cases ready for hearing within six months from the date of institution, are placed in a list, generally called by us "the massacre list" and placed before the Judge fairly frequently and unless good cause is shown to the contrary are dismissed for default. This has a very salutary effect. There have been numerous cases in which even an appeal from a decree on the Original side has been decided within a year of the institution of the suit.

There are of course certain cases in which delay is inevitable, such as partition suits where there are numerous parties, and some of them die, or where there is a reference to arbitration, or a case in which there are numerous documents to be inspected and briefed.

Certain amount of complaint has, however, been recently heard with regard to delay in references to take accounts. I believe the complaint of the Marwaries is principally with regard to reference. We have known cases of references lasting nearly two years which should have been finished in 6 months. This, however, is not due to the system followed, but to personnel of the officers. The salary of the referee and assistant referee are so inadequate that it is difficult to get a barrister or solicitor of sufficient experience to accept the posts.

I am unable to speak of the delays on the Original side. There is no delay as regards appeals from the Original side.

#### *Mofussil.*

There is considerable delay in disposing of cases in the court of the subordinate judges. I have no experience of the munsifs courts.

I shall take the causes step by step after the suit is filed and till the decree is executed.

#### *Between the institution and hearing.*

(1) First of all numerous adjournments are granted to file written statement. It is granted more or less as a matter of course for at least a year after the institution. No case is considered ripe for hearing until at least a year has expired from institution.

Even in suits for ejectment of a tenant who continues in possession without paying any rent, it is not possible to get the court to seriously consider an application for hearing, until a year is over. This is from my own experience at Alipore.

(2) Even after the issues are framed, numerous adjournments are granted. In fact, it is only after the issues are framed, that the parties think of getting ready.

#### *Causes.*

All these adjournments are generally for a month at a time. It seems to me that these adjournments are due to the following causes:—

- (a) for every adjournment a pleader gets a fee of Rs. 10 to Rs. 17. This is a considerable addition to the *ad valorem* fee to which he is entitled.
- (b) Pleaders on both sides generally arrange with each other for adjournments and the courts grant them far too readily.

(2) The system of monthly and quarterly returns very often are responsible for these adjournments. The sub-judges are anxious to avoid a bad average of disposals and if the case is at all a long one, they are usually reluctant to take it up. In two of the cases in which I appeared for the Secretary of State in the mofussil, they were ready for hearing and the brief

was actually delivered to me in one case 3 years and in the other 4 years before the cases were actually heard. They were long and heavy cases and lasted some months. No sub-judge could be induced to take them up till at least sub-judges happened to be posted to the district who were about to retire and had no longer any reason to be afraid of returns.

#### *Suggestions for cure.*

I would suggest that delay lists should be made up as on the Original side and that the cases in the list should be disposed of as they appear in the list one after the other, fresh cases being added as the cases are disposed of. Adjournments should be granted only for good reasons to be recorded by the judge. At present it is very usual to find a case in the day's list adjourned for a month, simply because the court is engaged in hearing another case. There should be no adjournment at all; the case should remain on the list and heard in its turn.

I am informed that the practice of adjourning a case for a month is due to the system of returns; it enables the judge to add to the number of cases dealt with during the month.

#### *Hearing.*

When a case at last comes on for hearing, it takes about 3 times as long to dispose of it as a similar case on the Original side.

*There are several causes for this delay:—*

(1) There is no preparation to speak of for the hearing. The chapter relating to Discovery and Inspection is practically unknown. Even the judges do not understand the law relating to interrogatories. There is hardly even an affidavit of documents.

Documents on which parties rely are filed along with the pleadings or shortly thereafter. In some cases a few days before the hearing. These documents are usually brought to the pleader in a bundle by the law agent of the party, usually a layman, a list is made out and the documents are filed in court. No copies are kept and very little attempt is made to sift them to find out which of them are relevant. A junior pleader is then employed to inspect the documents of the other side. Considerable delay takes place, because documents can only be inspected in court and he has to arrange for the pleader on the other side to be present which is not always either convenient or alleged not to be convenient. This inspection is practically valueless. No copies are taken and the junior pleader who has not sufficient experience takes notes of such documents as he thinks are relevant or important. In practically every case in which I have appeared in the mofussil courts, I have had to insist on copies being taken while the case was going on in order to ascertain which of the documents should be put in evidence. I have often found that important documents in the possession of the party had not been filed, because his pleaders have never called for them and he as a layman did not understand them.

No attempt is made until the case actually comes up for hearing to ascertain how a particular document is to be proved and the court has to be kept employed with irrelevant matter while the necessary witnesses are sent for.

One of the reasons, for not taking copies of documents filed, is of course the expense of certified copies. This however can, easily be avoided, if pleaders were made to keep copies of documents filed by them, as is always done by solicitors.

#### *Witnesses.*

No statement from the witnesses taken prior to the hearing of the case. I have very rarely had a statement given to me of what a witness purposes.

Generally when a case is being heard, the client's agent is asked what witnesses he has for the next day and they are taken to the pleader's office or house in the evening or in the morning and I have been simply told the subject on which the witness intends to speak, and it has occurred more than once that the witness when called knows nothing of the point on which he is called to give evidence. In case of important witnesses I have had to insist on statements being taken from them and furnished to me. All this causes unnecessary delay during the hearing.

There is such a thing as notice to admit, but is unknown, I am told that that is not used because in mofussil courts no one will admit anything and the judges have no power to enforce it as we have on the Original side, where there is a rule, if you do not admit, and if it is proved you have to pay the cost, whatever may be the cost of the suit.

I have already spoken of the interrogatories, which is very rarely made use of. All these go to prolong the case. I have a suggestion to make with regard to this, but I do not know how far it will be accepted by the judges.

#### *Suggestion.*

This can only be avoided by a better system of the dual agency which in fact prevails. I do not suggest that the dual system, which prevails on the Original side, should be introduced in the mofussil, it would probably be too expensive. But a form of the dual system in fact exists and must exist in so far as the seniors are principally employed in settling pleadings in heavy cases and in advocacy, while to the juniors are relegated such work of preparation as there is. I would suggest that some sort of training should be given to every junior pleader practising in the original courts in the mofussil in the preparation of cases. Every vakil should be made to pass an examination in practice and procedure particularly with regard to the provisions of the Code as regards discovery. If it is not possible to give every junior pleader a training in preparation work such as is given to attorneys, I think facilities should be provided for such of them as care to undergo the training. I am sure they will be in great demand in all important cases. I should like to see an increasing division of work between the junior and the senior vakils, the junior confining himself principally to preparation work, like attorneys though there is no reason why he should not also plead in cases in which the client cannot afford a senior.

#### *Hearing.*

There is another reason why the hearing of a suit is considerably prolonged.

The sub-judges will not decide questions relating to the admissibility of documents as it arises. Documents are invariably admitted "subject to objection" whatever that means, and it is not until judgment is delivered that the question of admissibility is decided. I have known arguments lasting over a couple of hours on the admissibility of a particular document, and at the end, no decision is given and document is admitted "subject to objection." The result is that the other side who cannot possibly know how the court will eventually decide the matter, is obliged to tender a large number of documents in order to get rid of the effect of the document which has been so admitted, though all these documents may afterwards be found to be irrelevant. Similar indecision is also prevalent with regard to oral evidence.

I am told this is really due to a desire to avoid a remand from the High Court in case documents are wrongly excluded.

Preliminary points in denuner are also not decided. In one case only I succeeded

*Execution—Considerable delay.*

Trouble commences with execution. Too many appeals, too many adjournments at the instance of the judgment-debtors.

*Mr. Justice Stuart.*—*Q.* The law lays down "Either party may call upon the other party to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, after such notice, the costs of proving any such documents shall be paid by the party so neglecting or refusing, whatever the result of the suit may be," and then further "Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing." This is absolutely in the Code. Of course I agree with you that it is never used. But I wish to point out that the court has no initiative in the matter if the parties do not use these provisions. If the parties do not use them the court cannot do it.

*A.* It has happened on the Original side that cases have been disposed of on notices to admit. So far as munsifs courts are concerned they have got very little power.

*Q.* Would you suggest that we might amend Orders 2 and 4 to give the court some initiative?

*A.* I think that will be a very good idea.

*Q.* I think that the rules of the High Court practically require that they should give reasons for adjournments?

*A.* But it is not an easy matter to get the rule obeyed. Munsifs and subordinate judges take small cases and adjourn the rest for months and it is only because they have to show good returns.

*Q.* But what remedy would you suggest?

*A.* I would suggest that instead of this return system the system of supervision may be adopted. Better supervision will be much more effective. Now there are some cases which can be finished in a week but there are also those which may take months.

*Q.* I think more intelligent supervision would be very useful. Now if the judges begin to try old cases they may take months and other cases may be finished in a very short time. The man may be a very good judge and yet arrears may be left by him. The difficulty is that they are judged not by inspection but by returns. It is a very difficult matter.

*A.* I think cases are very often prolonged simply because of the system of returns.

*Q.* Do you find that time spent by parties in examining and cross-examining witnesses is unnecessarily long?

*A.* I do not think so. There are instances of course in which certain pleaders take good deal of time in examining and cross-examining witnesses. On the whole it is not unnecessarily long.

*Q.* I know that counsel of your experience do not take too much time in examining and cross-examining witnesses, but I suggest that others usually take much time. It frequently happens that counsel does not know what the witness is going to say.

*A.* There are some counsel who do take a long time. So far as the Original side is concerned he has got no excuse of that sort because he has got a written statement. In the mofussil of course counsel does not know what the witness is going to say. He has no instructions.

*Sir T. Desikachari.*—*Q.* In the mofussil do you think that cases are generally opened by the plaintiff?

A. It is very rare that the defendant opens his case. In cases in which I have appeared I have always insisted on the other side opening his case.

Q. I see that in the mofussil in many cases neither the plaintiff's vakil nor the defendant's vakil nor even the judge bother very much about the issues before witnesses are heard?

A. Yes; it is very often that some issues may arise afterwards which have not been considered before.

Q. What do you think of the suggestion that the plaintiff and the defendant should be examined briefly just before the settlement of issues so that the plaintiff, defendant, and the court may all know what points are exactly at issue?

A. The difficulty will be this that in many cases I do not think the plaintiff and the defendant themselves understand what the real issues are. They have not sufficient knowledge of law and they do not know anything about this. They may be very good in making statements and telling grievances against each other but they in many cases do not know what points are really at issue.

Q. Nor their vakils?

A. Yes, but the vakils ought to know.

Q. Would you recommend that the court should itself examine parties after reading the pleadings on the points so as to know what exactly the points are?

A. I should not for this reason:—First of all it would not assist the court very much because the parties themselves do not understand the real points at issue and it very often happens that the court in examining one party may give an opportunity to the other party to procure evidence or to create evidence which would not otherwise have been produced. I would however insist that the plaintiff must in the ordinary course open the case before the defendant is called upon to do so.

Q. At present the Code contains the provision by which they can examine the party any time?

A. That provision is only exercised if there is some doubt as to pleadings, or if the court does not understand them.

Q. In your opinion issues are not settled by the court but draft issues are filed by both the parties?

A. If they do not, the court itself settles the issues.

Q. In your opinion the issues might well be settled just about the hearing of the suit?

A. Yes. Now issues are settled on the pleadings without a knowledge of the documents.

Q. The judge after hearing both the parties settles the issues. That is what ought to be done in theory. How are the parties to know they are to be ready with the documents, etc., if issues are not settled?

A. If you have before you the whole of the evidence of the case, the pleadings of each side, the documents of the both sides, it is not very difficult then to know what the issues of the case will be. There is a system also on the Original side of taking advice on the evidence. The counsel advises that these are the issues which arise and this the evidence in the suit.

Q. You referred to too many appeals. I thought you referred to execution proceedings, as also interlocutory orders before hearing.

A. For instance, as I have said the application is made for adjournment. A subordinate judge disallows adjournment. When I said appeal I meant High Court—revision. The application is made to High Court either to disallow the amendment or to disallow the proceedings. When you allow them, the proceedings are brought to the High Court and six months are wasted there.

Q. Have you thought about the appeals provided for in section 104 of the Civil Procedure Code and Order 43, Rule 1 of the Civil Procedure Code. Can you say what classes of cases may be conveniently omitted from the section or the order?

A. I would not interfere with these orders, neither with Section 104, nor with Order 43, Rule 1. The scope of these is considerably enlarged under Section 115 so far as the Calcutta High Court is concerned. I certainly should not extend them in any way by Section 115.

Q. With regard to execution, have you thought about what appeals could be allowed in execution?

A. So far as appeals are concerned, a good deal of delay takes place apart from the right of appeal granted by the court. For instance take the case in which the value of property has to be settled. The subordinate judge goes into the valuation. On his valuation an appeal is made to the High Court. That takes up a lot of time. I suggest that it should not be allowed at all. Giving the valuation is the indication of what the subordinate judge thinks. We do not want appeals on that.

Q. There is one other matter which is a source of delay: in execution proceedings, Order 21, Rules 58, 72, 82, etc., claim proceedings, proceedings to set aside sales, obstruction proceedings and similar things. Could anything be done to minimise the delay caused by the existing procedure?

A. So far as that is concerned, I am not familiar with what is done in the mofussil court. In the High Court, they take very little time. I do not know whether mofussil courts go into evidence.

Q. Do you think that having regard to the decisions of the various High Courts the periods of limitation laid down in Article 182 of the Limitation Act should be abolished?

A. I think time should be fixed in which a decree-holder is to execute his decree. I think that will be useful if it is done.

Q. May discretion be given to the munsif or the sub-judge to extend the period as they may think necessary?

A. I am afraid in that case it will be extended in every case.

Q. In that case a fixed period should be laid down?

A. Yes, I think so, if something could be done to make a sub-judge to execute the decree it will be very much useful. But it is difficult to make a sub-judge to execute a decree.

Q. What is the difficulty?

A. I do not know, perhaps it is half-heartedness.

Q. Sub-judges should be less kind?

A. I do not know what can be done; adjournments given are very very great.

Q. With regard to the execution of decree there is another point that has frequently been the cause of delay. If you have a decree against the property belonging to a Mohammedan family or the joint Hindu family you have a lot of trouble. Is there any method of preventing it?

A. I do not think any satisfactory method could be found. Each execution breeds at least four suits. I have not thought anything yet about it.

Q. There is another point on which I should like to have your opinion and that is with regard to reversion suits; forty or fifty years afterwards the claimant comes up, supported by evidence that is manifestly false. Can you suggest anything which will prevent this? Is it not possible?

A. I don't think so.

Q. Are there many suits under Section 92 of the Code in this part of the country?

A. Not many.

*Dr. DeSouza.*—*Q.* About the delays in subordinate courts are they mainly due to the want of training and experience of pleaders?

*A.* Yes, that is my view, so far as preparation is concerned.

*Q.* Could you give us some suggestion as to the best method of training pleaders so as to enable them to discharge their duties satisfactorily?

*A.* I do not know if any provision can be made for all of them to have that training. I do not know whether facilities exist. I should insist on all of them passing an examination in practice and procedure like the solicitors have to do on the Original side. At present they haven't got to pass an examination in procedure. Such of them as care to have it should be given opportunities to be apprentice to an attorney practising on the Original side or to a senior pleader after becoming vakils, so as to see to the preparation of cases. I am afraid being an apprentice to a senior pleader will not be of much use as he is always busy, but at any rate he will understand relevancy of documents.

*Mr. Liddell.*—*Q.* Would you leave it to the pleader himself?

*A.* I am afraid you will have to leave it to the pleader because there are not sufficient facilities. But I would insist on their passing an examination in procedure.

*Dr. DeSouza.*—*Q.* Does it not form a subject of examination?

*A.* No, I understand, it does not.

*Q.* Would you make it as one of the subjects for the LL.B. degree?

*A.* Yes.

*Q.* Do you think knowledge as to the chapter dealing with discovery, interrogatories, etc., can only be derived from practice in the Original side of the High Court?

*A.* Yes, the best training can be drawn from that only, but it can also be derived by becoming an apprentice to a senior pleader.

*Q.* Do you want to make apprenticeship to a senior pleader compulsory?

*A.* I will not make it compulsory, simply because if you make it compulsory you cannot provide facilities for about 750 graduates who pass every year.

*Q.* What preliminary training would you suggest for munsifs and subordinate judges before they actually take up their duties as judges?

*A.* Of course you cannot give any training to those who are already munsifs and subordinate judges. You know perhaps that in three years you cannot get any practice or experience at all. I would suggest that instead of three years' practice they should be attached to some court and should be left at the disposal of the court and they should do any work that the court may ask them to do.

*Q.* But if you attach them to Government pleaders?

*A.* That would not give them much experience as to how the work is done exactly. A munsif appointed after three years' practice is absolutely useless. He has got no experience at all. He should be attached to a particular subordinate judge as a probationer without any powers. He should learn how the work is done by the court every day. He should be at the service of the judge to assist him in any way he may ask him to. After two or three years when he has got sufficient training he can be appointed as munsif.

*Rai Bahadur K. C. Bose.*—*Q.* Do you think that sections regarding discovery are made use of by the parties and pleaders?

*A.* No, they do not make use of the discovery sections. Pleadings also do not make use of this section. I have seen myself some interrogatories which would not be allowed by the High Court and it is only because they make very little use of it.

*Q.* What I was going to suggest was that these sections are not taken advantage of because litigants very often do not go to their pleaders?

A. Yes: I know that they charge separately for them but it is very rare that they make use of these sections.

Q. And litigants in mofussil are generally too poor to attend to these matters?

A. Yes.

Q. With regard to adjournments I suppose you know that a subordinate judge's file is very often congested and they sometimes welcome petitions for adjournments?

A. I must always have some reason before me why the case is postponed.

Q. The junior pleader before going in for practice should be under the training of a senior lawyer?

A. Yes.

Mr. Ghose.—Q. Do you know if daily lists of cases are prepared in subordinate judges' courts?

A. Daily lists are prepared. But they are prepared a month beforehand practically, i.e., from to-day you postpone a case a month hence. To-morrow you may postpone another case a month hence.

Q. There is a list on the board to inform the public as to which cases are fixed for the day.

A. Yes. My objection is that this order in the list is not followed one after the other.

Q. No, that cannot be. Because it is the practice of all subordinate judges to take up the older cases first.

A. But why cannot the list be made in accordance with the age of the case and proceed from day to day?

Q. As you know some 10 cases are fixed for the day: some for settlement of issues, some for execution, some for disposal after adjournments and some for interlocutory orders and the cases which are ripe for hearing are taken in the first instance.

A. But they can be taken from day to day. I suggest on the lines of the Original side practice that a classified list should be prepared of the cases that are ready for hearing, according to the age of the case. The first case is finished and the second case is proceeding. Instead of postponing it for a month, why not continue it the next day. Take the cases that are ripe for hearing in their order.

Q. Would it not be necessary in that case to retain the witnesses in the other cases from day to day?

A. If you cannot get rid of more than 2 or 3 cases, what is the use of putting in 10 cases.

Q. Possibly he might not find any case ready if there be 2 or 3 cases in the list for a day?

A. But I have suggested the preparation of the list according to the age of the case, i.e., the oldest should be the first in the list if it is ready for hearing. Some old cases may not be ready for hearing.

Q. The High Court practice is not followed because it is not possible in the present state of things.

A. It is the only way of getting rid of old cases first. Go on with the first case. It may take 2 days or 15 days. After that take another case. I would continue the cases in the list till I finished with the list. I want to abolish the system of adjournments.

Q. Many witnesses have to come from very long distances?

A. In cases where witnesses have to come from long distances, we induce the judge to take up that case first. For a particular case you always fix a particular date.

Rai Bahadur K. C. Bose.—Q. There are 4 cases on the list of the sub-judge. In every case would the pleaders ask their parties and witnesses to come?



A. Are not your suits classified according to the places from which they come?

*Mr. Basu.*—The practice that is followed is that the pleaders come and enquire as to whether any of the cases fixed for the following day is likely to be taken up and when they get the assurance, then they send for the witnesses. Otherwise the witnesses do not come.

*Mr. Ghose.*—As regards the opening of the case, is it not your experience that in every case, the pleader or the vakil or the counsel engaged in the case, opens the case in the first instance?

A. In every case I have appeared. The difficulty is more with the pleader for the defence. The plaintiff opens the case, but after he closes his case, the defence pleader has to be insisted on to what his defence is.

Q. As to settlement of issues, you say that they are to be made just at the time of trial, when the court can examine the parties and hear pleaders. But if they are to be settled just after the written statements are filed?

A. Then it would not be fair.

Q. Would it not be waste of time on the part of the presiding judges?

A. It would not be fair to the parties.

Q. As to adjournment in execution cases, do you object to an adjournment being allowed on the ground that the mortgage property on being put up for sale fetches a very inadequate price?

A. No.

Q. Suppose according to the sale proclamation the valuation settled is a lakh of rupees. Now when it is put up for sale, the highest bid that is obtained is only Rs. 20,000.

A. I would adjourn it on the first time. But if the same price is offered for the second time, I would not adjourn it. There is some mistake in the valuation. But if after due notification the property fetches more than 20,000 rupees I can understand that there was some defect, and if it fetches the same price the second time, it is a fair indication that the property is not likely to fetch more.

Q. But if at the same time the judgment-debtor satisfies the court that he has been carrying on negotiations with a party who has to purchase it, would it not be necessary that there should be adjournments?

A. If the judgment-debtor can bring in that party to say that they were only considering the price.

Q. But that will not increase the delay. If not sold straightaway there will be an application that would deter the decree-holder from realising his money for a long time if the decree-holder happens to be the purchaser himself.

A. Of course, in that case he takes the risk. It is for him to consider.

*Mr. Basu.*—Q. You have said that probably the delay in cases might be obviated by better supervision. Do you realise that for the purpose of supervision there is only one officer, the district judge, and do you also realise that if they are junior civilians they are lacking both in the knowledge and the information necessary for the purpose of better supervision?

A. So far as the supervision is concerned the High Court Judge ought to do a good deal more. If necessary, an additional Judge of the High Court should be appointed. I will employ a senior civilian district judge to do the supervision exclusively.

Q. Apart from supervision do you think some system of training should be introduced for district judges?

A. I think a system has been introduced according to which they have to work as munsifs.

*Mr. Liddell.*—Q. As to the question of supervision does it not strike you that there must be something very faulty about the return submitted if, as is

said, they are manipulated so as to show disposals? My point of view is this that while some formal returns are necessary, many of them do not give the information needed for control. For such purposes returns have to be intelligible.

A. I do not think any returns could possibly tell you whether one is capable; statistics are only useful for the purpose of showing the number of cases dealt with.

Q. I note one point on the question of delay which seems to be serious. I found a court unable to take up a heavy contested case because the defence counsel were brought from Calcutta and could attend on Saturdays only and the case had therefore to be adjourned from Saturday to Saturday. Could you suggest if anything could be done to prevent this?

A. I cannot, such cases are very rare.

Chairman.—I think it may be pointed out in connection with the settlement of issues that the scheme seems to be rather bad, that is to say the defendant shall if required by the court present written statement at the first hearing and the court also shall frame issues at the first hearing. So it seems that the absence of discovery and inspection in the lower courts is not entirely due to the habits of the people but that the frame of the section in the Code was rather ill considered?

A. After the issues are settled it is usual that the case comes up for hearing; so there is ample time for discovery and inspection of documents.

Mr. Justice Stuart.—Q. Do you think there should be specialised procedure for complicated cases?

A. As a matter of fact the procedure laid down applies equally to all cases. There is no need applying it in small cases in munsif's court.

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**Mr. N. N. SIRCAR, Bar.-at-Law, Calcutta, called and examined on  
Saturday, the 16th February 1924.**

*(No written statement received.)*

Chairman.—Q. Will you Mr. Sircar tell us what are your suggestions?

A. I will first of all speak in regard to execution matters not so much as a representative of the Bar but from my own experience as a munsif.

Q. May I just take it that you are now one of the senior barristers on the Original side and you have had considerable experience as a munsif?

A. I was munsif for about 3½ years and pleader for four or five years. With regard to execution proceedings in my experience of all the different parts to which I had been posted, and they were not few, during 3½ years, I found that there was really no supervision. The matter is left to the man who is called execution bailiff. Now the munsif is very busy with original cases and this matter is absolutely neglected by him. He cannot find time to supervise this and that I think is responsible for part of the delay which arises in execution proceedings. I secondly think that some delay can be saved if the court does not insist on service of processes at every step of execution proceedings. Once you have to serve a notice at the time of attachment, again at the time of fixing valuation and so on. I have not exactly evolved any constructive idea but if it is possible to have something like order sheet, as we have in cases, in execution proceedings I think the situation may be improved. We know once for all that he is the pleader acting for the judgment-debtor in these execution proceedings and much delay I think may be saved in this way. Then with regard to the system of serving processes, well, the system in itself is not really at fault. We know very often that services are not actually executed but false returns are made. On the other hand cases are very common where service has been properly done, but we very often see that there has been no service and the judgment-debtor comes to the court for the first time and says that notice has not been served

upon him and he gets time. The real trouble is not in the system but in the fact that the litigant and his agent or representative interferes and swears false affidavits and makes the service difficult. That is the real difficulty and the chief reason why notices are not properly served. Then your tinkering with the things will not remove the difficulty. I find that it has been suggested that service may be done by registered post. Of course it should be welcomed, but it is left to the postal peon alone. We all know that there are in villages people who will swear for one side or the other and I am sure we can get as many as possible who will be willing to swear. Therefore before you make any changes in the system of service I would ask you to consider what the root cause is. Now, generally speaking, in mofussil courts the judgment-debtor is given that amount of indulgence to which he is not entitled. It is sometimes backed up in the High Court also but not often. The prevailing idea is that if you put in a petition on stamp paper and engage some vakil to appeal to the emotions of the judge about your being rendered homeless and your house being snatched away you are sure to get some time, and I know of many cases in which sales have been rendered infructuous time after time. Another thing that strikes me is that the unfortunate munsif and the subordinate judge in the matter of disposal of contested cases is very much hampered by a number of miscellaneous proceedings. He has got to dispose of these cases before he can come up to the contested list of cases and I think much of his time is taken away in this way. Now, if some method can be thought of by which he can be relieved of these cases and matters which require very little judicial experience to dispose them of, I think that will expedite matters very much. The only thing that I can suggest is to have an officer corresponding to the registrar to whom these cases may be entrusted. If he is a local man and if he knows that he will not be transferred outside the district I dare say you can get a vakil for reasonable remuneration—his pay may be anything like a munsif's if such a post is created. I think he can take in hand not only undefended cases, but also the execution department, looking into service of processes and so on. That will be a great relief to courts. Well I read yesterday in *The Statesman* that munsifs and subordinate judges do not attend regularly at 10 or say 11. I strongly protest against this because that has not been my experience. I must say that I have always found munsifs and subordinate judges attending courts punctually. It is only the man in charge of the nazarat department that comes late at 1 or 2, but he cannot avoid coming at that time because he has got a lot of work to do before he comes to court, and according to my experience they are very punctual.

Q. Do you wish to make any special representations as regards delays on the Original side?

A. At the present moment we have absolutely no reason for complaining about delay.

Q. You agree that it would probably be more useful to have summons for directions taken out after the written statement is filed rather than before the decree?

A. I would suggest immediately after the defence.

Mr. Justice Stuart.—Q. Do you agree that the difficulty in the execution department is that the matter is not taken up in a businesslike way? I quite agree with the suggestion you put forward. I only want to ask you that in addition to handing over to the execution department any undefended cases, don't you think that the Master in Chambers might also be usefully employed in supervising the work of the process department?

A. Yes.

Q. Not for one court, but for a group of courts.

A. Yes, it is quite possible.

Q. The remuneration would be something of course less than a munsif's?

A. I think it would be an attraction for the post to pay decently.

Q. If that is done, in your experience as a lawyer, don't you think it is possible to get perfectly honourable and efficient gentlemen to take up the job?

A. You would get such gentlemen.

Q. Do you think the introduction of the system of thumb impressions would work in practice? Do you think it is worth a trial?

A. No, I don't think it would work. I find in some parts of the country, especially in East Bengal in 95 cases out of 100, the man would refuse to give any acknowledgment for any summons.

Q. The burden of nearly everything you say is the necessity of better supervision. As a munsif did you not ever find that you were very much in touch with district judges?

A. Not at all. There was a district judge who made it quite clear that munsifs were a nuisance. Some were tolerable and others intolerable.

Q. But is it not a fact that however much a district judge may want to know his munifs, the very large number of his staff makes it impossible to know them?

A. In Bengal that is so.

Q. But don't you think that that is one very great fault in the Bengal system?

A. In some of the districts it is practically impossible. For instance, the East Bengal districts. There the meeting between the munsif and district judge is not practicable.

Q. Mr. S. R. Das was in favour of special supervising officers who would go about inspecting and getting into touch with the people. Don't you think there is something in that idea?

A. It would depend on the class of officers. If you select a junior man it is no use. If you can get a first class man with more experience it is another matter.

Q. Don't you think it would do a good deal of good?

A. If you could get proper officers. The very fact that the inspecting officer may come, would do a lot to improve matters.

Q. As regards the question of training munsifs before they actually sit in the courts under an experienced retired subordinate judge or somebody of the kind who would give them useful tips as to what to do with pleadings, how to prepare issues, how to handle process service and so on, do you think that that would help?

A. Well, Sir, I mean no disrespect to subordinate judges, but there is very little work left in retired subordinate judges.

Q. You would approve of a senior munsif selected for the job? In our province, after the end of a year, or the second year of service, we collect all our young civilians and all our deputy collectors of the same service and send them for two months to a certain district where they are to be under special civil officers who try to teach them.

A. Of course, there is no question that it will do them good.

Q. Have you not found that there is rather an absence of system? You think that that system is worth following up?

A. Yes.

Q. There is another point. In our province we have a system by which once we get hold of a man we make him register his address, so that all processes might be served on him by post, and do not accept any excuses for non-acceptance.

A. I think it is a good idea.

Sir T. Desikachari.—Q. What do you think generally of the work done by district munsifs?

A. I think they are hard working.

Q. They have got more work than they can manage?

A. Yes, I think so.

Q. Do you think that with better system and method we would be able to cope with the work with the existing staff?

A. I think so. I am not complaining against the staff. If you relieve them from miscellaneous work they will be quite competent to cope with the work.

Q. Could not a large number of *ex parte* petty suits be transferred to village panchayat?

A. I think not. My only real objection is that unfortunately in this country there are no village panchayats free from faction and I cannot trust them.

Q. What about the suggestion that junior pleaders should do honorary munsif's work?

A. I am rather against it. My objection is very much the same as in the other case.

Q. They will not command the confidence of the public?

A. I think they will not.

Q. What are the possibilities of the union courts which are being constituted under the Village Self-Government Act?

A. Unfortunately I have no experience of them.

Q. What do you think of enhancing the pecuniary jurisdiction of munsifs up to rupees five thousand?

A. I do not see any objection. After all the cases which a munsif tries are exactly the same as the other cases.

Q. Do you think that Article 182 of the Limitation Act should be so altered as to fix only one period of six years?

A. I think it is desirable. That will be a move in the right direction and I will make a further rule that first step in execution must be taken within one year or six months.

Q. Will you abolish the various stages which are provided for in Article 182 and fix once for all a period of six years for the execution of the decree?

A. What I mean is that the decree holder should take the first step within a reasonable time, whether it is six months or one year.

Q. You think that will minimise the trouble?

A. I think that will help to minimise the trouble.

Q. What do you think of applications for setting aside the sale, applications which are made from the time of attachment to the time of possession? Do you think that those applications should be summarily disposed of on affidavits?

A. What I find fault with is that sales are set aside on very flimsy grounds.

Q. What do you think of the law with regard to *benami* transaction?

A. I think it is very good for the profession.

Q. Is it possible to put down this *benami* system?

A. I thoroughly agree that the system of *benami* causes serious delay. The idea of course is very good but you cannot do it at one stroke of the pen. Thousands of *benami* transactions are now being done and it cannot be put down without having retrospective effect.

Mr. Basu.—Q. What do you think of the multiplicity of law reports?

A. I think the law should be more stringent.

Q. I was asking you something about Indian Law Reports. Could we not get them on the analogy of the English system?

A. If it is made a rule that no report should be referred to unless it is certain that the reporter was present during the hearing of the case.

Q. Unless the reporter is a member of the Bar?

A. That will remove the difficulty to some extent because you can get pleaders for very reasonable remuneration to send their reports.

Q. As a matter of fact in all Indian cases you only get the judgments. Arguments seldom appear.

A. Yes.

Mr. Justice Stuart.—Q. Have you any experience of champertous suits? Do you think that the difficulty can be got over in speculative cases in which the plaintiff is put forward as a stalking horse and the real plaintiff is speculating behind?

A. I think the present law covers the situation. I actually had a case of this sort where we got the real man.

Q. If the court is satisfied that the case is of this nature would it be possible to ask the plaintiff to put in security for the costs of the other side, I mean reasonable costs for defending the action?

A. That seems to be practicable, but the difficulty is in finding the real man.

Q. My experience is that generally the defendant is in a position to say who the real man is even before summons is served; very often he can prove it.

A. If that is so I think it will be a very good idea that the plaintiff should be asked to put in security.

Chairman.—Q. Do you think that it would be advisable to limit in any way the terms of Section 115? Will you welcome any restriction of Section 115 in regard to interlocutory matters?

A. Yes I would because as a matter of fact very few applications under Section 115 ultimately succeed, but great deal of injustice is done.

Q. Do you think that it is possible to make better rules with regard to records being sent for by the High Court when only a couple of documents are sufficient for the purpose?

A. I know that is very often done. It is purposely done. There should be some kind of provision which in proper cases would not necessitate the sending of records.

**Balu SARAT CHANDRA ROY CHAUDHRI, Representative,  
Vakils Association, Calcutta, called and examined on  
Saturday, the 23rd February 1924.**

*(No written statement received.)*

Chairman.—Q. You represent the Vakils Association of the High Court?

A. Yes.

Q. With regard to first appeals, supposing a first appeal is filed on the 1st of January, how much time do you think it should take?

A. It depends upon the volume of the appeal. If you take an appeal of which the paper book is of about 200 pages, I think from the beginning to the end, making every allowance for service of notices, for the time that has to be given to the parties to deposit printing costs, etc., 15 months' time from the date of filing of the appeal to the date of the final disposal is quite sufficient. In some cases where the paper book is over five hundred pages, then it may take two or three years, but generally 15 months' time is quite reasonable and sufficient.

Q. Do you think that 15 months' time is quite sufficient?

A. Yes.

Q. Then with regard to second appeals, how much time do you think is necessary for second appeals?

A. One year from the date of filing.

Q. And with regard to miscellaneous appeals?

A. There are two classes of miscellaneous appeals: first is the appeal arising from original orders and the second arising from appellate orders. I think one year's time is sufficient for the first class and six months' time is sufficient for the second class.

Q. As regards miscellaneous appeals, I take it in these cases there is a danger that cases are being hung up in the lower courts pending their disposal?

A. Yes.

Q. Then with regard to district and sub-courts?

A. So far as original suits are concerned, I think one year is sufficient from the date of filing, but in money suits it should be six months. In miscellaneous matters and small causes three months will be sufficient. Regular appeals are also there and I think six months should be given.

Q. Similarly civil miscellaneous appeals against orders of the lower courts?

A. I think these ought to be disposed of in three months' time.

Q. As a matter of fact in subordinate judges' courts contested small cause cases take much time.

A. They can be disposed of in three months, but I know of instances in which they have been going on for more than six months and the reason is that there is defect in the procedure about service of notices and also there are irregularities in hearing of cases. There is no particular method as is adopted in the High Court as regards these cases. If a list of ready cases is prepared and the judge takes the cases in order, I do not think there will be many applications for adjournment. Cases will be disposed of regularly and more quickly than at present.

Q. You mean there should be more method and system as regards the arrangement of judges' work?

A. Yes.

Q. Then as regards district munsifs' courts?

A. The same time as I have told in the case of original suits and miscellaneous matters, will be sufficient in regard to these cases.

Q. As regards claim proceedings in execution in lower courts?

A. I think they can be disposed of as quickly as possible.

Q. Then as regards suits in the presidency small cause courts?

A. No. I cannot give any opinion on these cases.

Q. Then the next question is whether the period actually taken now for the disposal of those proceedings exceeds the reasonable limit in many cases?

A. If more attention is paid, I think, cases can be disposed of more quickly. Ministerial officers make great delay in the preparation of the case. If they are directed to make cases ready as soon as practicable much delay will be saved. If the list of ready cases is prepared in the presence of pleaders then I think there will not be any postponement. I have also thought of another matter. Orders relating to *ex parte* dismissal of suits or proceedings and orders passing *ex parte* decrees are responsible for delays in many cases. If the judge or the subordinate judge gives one day's time probably the matter may be disposed of the next day. The appeal against summary order for dismissal comes up to the High Court and the case again goes back for hearing. Recently I had an instance, where an appeal was filed against a person and the respondent was to appear on the 19th January. He could not arrive in time and an *ex parte* decree was passed. The respondent came in the same day and filed an application that he was ill and could not arrive before 2 o'clock. The application was rejected and then there was an appeal. I argued only for two minutes and the order was set aside. Had the judge waited the appeal would have been heard the next day, that

is on the 20th January. There are many cases where orders for dismissal are made indiscriminately.

*Q.* Of course if you want to put down undue delays it is necessary to be fairly firm on insisting on reasonable grounds; but you say that infinite damage can be done by not accepting reasonable grounds?

*A.* Yes.

*Q.* Have you any other suggestion to make in connection with delays in the disposal of suits.

*A.* Yes, there is another question about service of notices. Service of notices through court peons is very much responsible for delays in the hearing of many cases and appeals. I would suggest the adoption of a particular mode, namely, service through the post office. I do not say that there should be only one service through the post office, but as we have it already court peons should also be sent with a copy of the notice. The notice through the registered post will not cost more than three annas. If this simultaneous service by post and through the court peon is adopted probably in many cases the complaint about the non-service of notices would disappear.

*Q.* Are you suggesting that the identifier or the identifier's affidavit should remain as at present?

*A.* As I told you I am inclined to retain the service of notices through the court peon. In that case the identifier's affidavit should remain. The party should be asked to pay the additional cost of sending notices through the post office.

*Q.* If you are keeping the present system of identifier's affidavit would you make it a point that the notice should be registered?

*A.* Yes. If you send a notice by registered post it may come back as 'refused.' The peon also goes and if he comes back with a return that notice has been served and along with that you get the registered notice as refused, then there is no necessity of further service.

*Q.* You use it as an additional check?

*A.* Yes.

*Q.* Have you considered this question of identifier? We are told that in many cases the identifier never goes with the peon and yet he swears the affidavit. Do you not think that an identifier really introduces means of interrupting the peon rather than helping him?

*A.* I cannot deny that. This has occurred in many cases where the decree holder or the plaintiff wants to delay the service or wants a false return being presented.

*Q.* As regards that, something is to be considered. First of all in other provinces they have no system of identifier's affidavit. The peon goes to the village and he gets somebody who knows the man and makes the service. Then there is the question as to whether it could be possible to use either the union boards or the panchayats for the purpose of identification and to get rid of identifiers.

*A.* I have very little faith in these panchayats and the union boards. I would rather leave this matter to the court peon than to the president of the panchayat who will set up people for jobbery. Moreover if you do not give an identifier, the plaintiff whose duty it is to see that the notices are served will refuse to have any responsibility.

*Q.* Do you think that the main thing is that the plaintiff or decree holder should bear the responsibility of seeing that the right man has been served on? Is it your opinion, as has been suggested to us, that as a matter of fact non-service of process is not merely much of a difficulty in subordinate judges' courts but that it is a real difficulty in cases of rent suits and money suits?



A. I do not know much about this, because I have very little experience.

Q. If that is so, the ultimate fault is not so much with the peon as with the plaintiff or other persons?

A. From the two classes of cases I hear from you, in that case one naturally thinks that the responsibility lies with the plaintiff rather than with the peon. I think you are right in this that supervision of notice and summons, etc., ought to be hard in connection with rent suits.

Q. In the case of title suits, in your experience, do you often find much difficulty in serving processes?

A. No. In title suits, it takes considerable time for disposal. To-day the notice comes and he suppresses the notice. Considering the time the judge will take in disposing of the matter, he will be particularly anxious to see that the parties appear on the fixed date. If there has been any suppression the party will somehow or other get notice of it. Therefore, in those cases, you will find very few instances in which a decree is passed *ex parte*, or the matter is disposed of *ex parte* on account of suppression of notices.

Q. On this question do you see any way by which either in cases under the Bengal Tenancy Act or generally under ordinary litigation, something could be done to limit the number of defendants, when individual service has to be made?

A. I do not see how that can be done.

Q. Take a case under the Bengal Tenancy Act. Would you be in favour of allowing a landlord to sue for rent so as to get the right to sell the property in full?

A. So far as that is concerned, you are aware that under the Bengal Tenancy Act, a landlord can institute a suit for rent against the tenant whose name is registered in his books, and if he obtains a decree against the tenant, he can proceed against the tenure. But these difficulties arise in cases of rights. It was decided that the landlord not only will be satisfied by seeing a person whose name is registered in his books, but he must also ascertain whether he is the person whom his brother tenants regard as their representative. If that is so then probably some rule can be made.

Q. Do you think it would be possible to require all persons to put forward somebody as their representative? Do you think that might be done?

A. That can be done simply. In the Bengal Tenancy Act there is a provision in regard to tenure holders and others that every person should have his name registered, but there is no such provision with regard to ryots. If this is made, when there is a transfer of the ryot's holding, that person should get his name registered also, and it will be very easy for the landlord to see that there are so many persons. It is very difficult for him to deal with so many tenants, hence they must give somebody as their representative, and for all purposes he will be considered as their representative.

Q. I think you have probably seen the draft bill in the local Council for making certain amendments. Do you think that the effect of these amendments as regards transfer of holdings will do something to do away with the difficulty of impleading defendants?

A. Probably. The change in the law in regard to transfer of holdings, will not. So far as expedition of justice is concerned, that will be of very little assistance in these matters. No doubt, if there is this change in the law, whenever there is a tenure owned by several tenants, it must always be settled between landlord and tenant as to who will be the representative and whose name will be registered. Then all these difficulties will be removed.

Q. Now with regard to suits of very small value, do you think that something ought not to be done to curtail the right of appeal, particularly the right of second appeal, in these suits?

A. Considering the nature and habits of the people of this country, I will not be inclined to think that this right should be curtailed.

Q. Don't you think that this right of appeal is at present abused?

A. In second appeals the judge ought to interfere in every case involving a question of law. The suit may be of very small value, it may be a small bit of land and owing to its being situated in a village its value may be Rs. 10 or Rs. 15, but there can be a question of law involved in it by which the man has a right of appeal and can go up to the High Court. If there is a decision of a subordinate judge or of district judge involving a question of fact I do not consider that the man can ask the High Court to interfere, but when a question of law is involved I do not think that he will get correct decision in the lower court. In a large percentage of cases it will depend upon the nature of class of persons appointed as judges. Therefore I am not inclined to feel that this right should be curtailed. As regards the question of public importance I do not think that it arises in any case between one party and the other party. I think that the present provisions allow appeals to the High Court only in some classes of cases and to curtail that right of appeal to the High Court would not be desirable, as people would think that they have not obtained justice and got a correct decision in the lower courts.

Q. Perhaps you know that in any case of small cause type there is no second appeal under Rs. 500, but there are certain exceptions made in Schedule II, Provincial Small Cause Courts Act. Now have you ever gone through the second schedule with a view to seeing whether some of these exempted items could be struck off or done away with?

A. I have certainly gone through the schedule but not with this view.

Q. For instance do you see any reason why simple mortgage suits should not be dealt with as of small cause type? Is there any reason why this exemption should continue in mortgage suits?

A. Yes I think so. In mortgage suits many questions are likely to arise and I am not inclined to make over these suits for disposal to the small cause court. For instance, I have noticed a question in your questionnaire whether it is desirable to do away with the provision of preliminary decree and final decree in mortgage suits. I have thought over that matter very anxiously. No doubt the number of cases in which the mortgagor takes any advantage of the delay is very few but it depends upon the judge who disposes of these cases. He can fix a time limit for the payment of the money. If the mortgagor does not pay the money, then the property may be sold and there is no reason why more time should be given. The judge should not give as much time as the mortgagor likes. The discretion of the judge to give as much time as he thinks proper should be taken away and after the decree is made only three months time should be given and no more.

Q. Would you maintain the present system of barring the mortgagor from getting a personal decree until he has exhausted the security?

A. I think that ought to be the case. Under the old law it was provided in the decree itself that if the mortgagee could not execute by the sale of the mortgaged property then for the balance he could proceed with the other property. In the new Code provision has been made which takes a good deal of time.

Q. Would it not be possible to have it stated in the decree that the property should not be sold until after the time fixed in the decree has expired?

A. If in the first decree it is provided that so much time is given.

Q. Do you not think that it would save time and simplify the process if one of the decrees was made conditional, that is, not to be executed for a certain time but that if that time had elapsed and money was not paid the decree should become executable?

A. I considered this matter and I do not see much difference between that and the present system, because if the money was not paid within the time the decree holder comes in for execution of decree, and the matter is brought before the court.

Q. Can you tell me if there is any point of principle behind the provision of law that debar the small cause courts from having anything to do with the immovable property?

A. I do not know. Probably the intention was that the small cause courts are intended for disposal of petty matters in which complications are not likely to arise.

Q. Would you object to cases of small partitions being dealt with by the small cause court procedure?

A. I have very little experience in partition matters. I do not see any objection to small partnership matters being left to the small cause courts.

Q. Of course ejectment suits come before the small cause courts?

A. Yes; not in the mofussil.

Q. Is there any objection to ejectment suits going before the small cause judge?

A. There are two different classes of ejectment suits. Here the tenants reside on monthly rents and tenancy is terminable by only fifteen days' notice. In the mofussil the ejectment cases are of two kinds. Ejectment from a spot of land may involve the question of right to the land. And then there are houses let out on monthly rent. In such cases there is no objection to give jurisdiction to a small cause judge. Ejectment suits relating to land should not be left to small cause judges.

Q. Even in case of a house, I think you may get a case where it may form part of a holding?

A. Yes, there may be.

Mr. Justice Stuart.—Q. Have you reason to believe that in certain cases the identifier deliberately makes false affidavits?

A. I have seen some instances.

Q. Have you seen a case in which subsequently the person on whom the notice was to be served has established absolutely that notice was not served on him?

A. There have been some instances.

Q. Has any identifier been prosecuted for such a crime?

A. I do not know of that. I have never heard of it.

Q. Though these things go on daily, yet not a single identifier has been punished. Is the identifier system of any value. Is it any check?

A. I take exception to the expression that these things go on daily. It sometimes has been the case, no doubt, but not daily. The law makes ample provision for the punishment of identifiers but that is not done.

Q. We are told that in the small cause court in Calcutta there are professional identifiers who are ready to identify anybody whom they have never seen before.

A. I have no experience of small cause courts in Calcutta. Of course there may be some.

Q. I do not impute any discredit to the town of Calcutta. I was given to understand some years ago that there were professional affidavit framers in London. After that they gave up the affidavit system. Now in the service of process, have you come across a case in which there has been a delay of as much as two years before a person was served?

A. I do not know of one.

Q. I know instances of that kind in my own province.

A. Probably in our province you will not find an instance of that description.

Q. Do you think that there would be any gain in such a judgeship as Alipore where there are a large number of subordinate judges at the sadar, if instead of giving them territorial jurisdiction, the judges distributed the cases amongst themselves to suit the convenience of the public?

A. I think that may save time.

Q. After all this system is nothing new, it would only follow that of the High Courts.

A. Yes.

Q. Do you think there would be any advantage gained, if, where you have many subordinate judges in the sadar, one subordinate judge only was given small cause court powers and did the whole small cause court work?

A. If there are enough small cause court cases.

Q. He will have other work also. One subordinate judge does 8 days small cause court work in the year. Would it not be better if one man did the whole lot, and then the public would know whom to go to and there will be less delay.

A. I think it would be more convenient.

Q. I think that system could be extended even to munsifs. In regard to small cause courts, could not powers be given to senior munsifs only?

A. Yes.

Q. I take it you had a very large experience not only in the Original side and Appellate side of the High Court, but also in dealing with subordinate judges and munsifs courts. Do you think there is anything to complain of in the qualifications of subordinate judges and munsifs in Bengal?

A. I think if the selection of the different grades of judges is made partly from practising lawyers and partly from munsifs, appointed and promoted to these positions, the disposal of cases may be expected to be done in a much better way and more expeditiously.

Fifty per cent. of the munsifs may be promoted in due course to the subordinate judgeship and another 50 per cent. of the judges or subordinate judges are to be taken from the practising lawyers of different grades, who have studied law and have experience in law. In that case you will be doing a great improvement to the service for this reason. You are in a case involving some questions of law. So far as decision and facts are concerned, whether this story is to be believed or that story is to be believed, that depends upon commonsense and a subordinate judge may possess a greater commonsense than a lawyer. But there are cases where questions of law are involved and if practising lawyers are taken there who know the law on the subject and who do not depend upon the lawyers appearing before them and telling them: "this is the law and here is the report," and another telling them: "this is the law, and here is the report," then reading their report creates difficulty and delays the hearing of the case.

Q. But I take it that many of the subordinate judges are well qualified lawyers.

A. They could be if they kept up the habit of reading the law. But they do not. I cannot say positively whether they do not. But the general run of the judges do their work in the courts and hardly keep themselves acquainted with the law.

Q. Perhaps the reason might be that at the end of the day they are too tired to read anything.

A. Yes.

Q. In these circumstances it may be considered whether they should not be given a little opportunity of reading.

A. To my mind there are several grades of judges, but no judge is more hard worked than a High Court Judge. He gets very tired at the end of the day, but still he has got to keep himself acquainted with the law.

Q. But High Court Judges work under more comfortable conditions than subordinate judges. Are you satisfied with the amount of supervision exercised over the subordinates in the offices?

A. I am not.

Q. Do you think that the ineffective supervision bulks rather large as a cause of delay?

A. I think so. I can tell you also that I know it. Many subordinate judges with whom I talked over the subject told me that the supervision is made, in many cases, by the sharistadar instead of by the judge.

Q. Could you suggest any remedy for the delay caused in large cases—in taking up interlocutory matters either on appeal or on rule to the High Court? Could you suggest any method by which the delay might be minimised?

A. That delay can be minimised only if the High Court Judges, as they have recently done, make it a rule to take up and dispose of these orders from interlocutory matters, as soon as they are entered. I know 10 or 15 years ago an order on interlocutory matter took up one to one and a half years to dispose of. Nowadays, under the present rule, an order for revision, a rule, or order in miscellaneous matters is disposed of in 3 or 4 months time. But I am not in favour of curtailing the power of interference.

Q. In your opinion the remedy lies in more prompt disposal?

A. Yes.

Q. You find that it has worked quite well in Calcutta. It is possible to make a peremptory list of such matters so as not to delay the work of the original court unduly?

A. Yes. In the High Court, Calcutta, I see Judges refuse to allow adjournments in these matters. That is good. Because these matters should be disposed of as quickly as possible, so that a case in the lower court may not be tied down.

Q. Do you think greater care should be taken over the original admission of appeals, so that they may be examined more closely before they are admitted under Order 41, Rule 11?

A. I think the way in which some judges examine the admission of appeals is the best—only just to see whether there is any *prima facie* question of law for admission of appeal. If that method is adopted in all the courts, the business may be conducted more quickly. 50 or 60 appeals may be decided—admitted or rejected—in the course of the day. But I know of instances in which 20 rulings were cited before the Bench sitting to hear these appeals. The Judge does not agree with some of them, and he cannot agree with some of them.

Sir T. Desikachari.—Q. What is the rule that is being adopted for the selection of district munsifs?

A. The rule that is now adopted is this. After three years' practice a person is appointed as munsif, and a person is usually appointed who gets some words from the judge before whose court he was practising and probably without the judge knowing whether the person has learnt anything or not and there are other things which I do not want to enter into. I think the best thing would be that after a candidate passes his final B.L. examination he should appear in a competitive examination and if he comes out successful in the examination he should be kept as a probationer in some court, it may be munsifs' court or subordinate judges' court, for six months or one year and then sent to a mofussil court to work as munsif.

Q. In what manner should this competitive examination take place?

A. It should deal with court's procedure and law.

Q. But he has already passed an examination of law?

A. The B.L. examination does not give you any idea as to whether he knows anything of the practice of the court. Unless he practises before a court and learns the procedure of the court he won't prove a successful munsif.

Q. If the best candidates after passing the examination are selected will that remove all favouritism?

A. Yes that will remove all favouritism.

Q. And that in this way those people who do not deserve will not be appointed? That is, I think, your suggestion.

A. Yes that is my suggestion.

Q. I have read a long article to-day in the *Englishman* that there are some people called sarishtedars to whom all ministerial work is left by munsifs and subordinate judges and that these sarishtedars exercise a considerable amount of influence upon peshkars and therefore there is a good deal of room for delay.

A. So far as Bengal is concerned I tell you that sarishtedars and peshkars have different kinds of influence which they exercise. The sarishtedar does most of the duties of the judge in *ex parte* matters, succession certificate, etc. If one closely enquires into it, it will appear that the sarishtedar generally writes the order and the judge signs it. Now as regards inspection work, the sarishtedar goes round and his note is the note of the district judge. Now as regards the peshkar, the fixing of dates is entirely left to him and he fixes dates as he pleases. It should be the duty of the judge to fix dates, but it is not in practice in Bengal and in other parts of the country also. If the system is introduced that every application for adjournment should be made before the court and after hearing the parties the judge fixes a date, that will avoid much inconvenience and delay that is caused under the existing arrangements. Order fixing the date must be made by the judge himself and not by the peshkar. There must be a rule to the effect that it should be the duty of the judge to fix dates after hearing the parties or their pleaders.

Q. You mean to say that the judge should fix dates in the presence of pleaders?

A. Yes. I have already replied to a question of Mr. Justice Rankin that if a list of ready cases is prepared on Friday and the judge devotes about an hour or two on Saturday in the morning and tells the pleaders that such and such cases will be taken up next week it will save much delay and avoid great inconvenience to the parties which is otherwise caused.

Q. Then the present complaint is that the peshkar does a lot of things which should be done by the judge?

A. Yes.

Q. Then about the nazarat department. This too I read in one of the papers that the nazarat department is thoroughly demoralised and so far as peons are concerned there is much corruption prevalent among them. Is that true?

A. Yes that is true, I know of many instances in which peons have accepted bribes and the nazir is the head of that department.

Q. But how would you rectify the evil—by stricter supervision?

A. Yes by stricter supervision and by simultaneous service through post.

Q. It is said in some quarters that it is due to the poor pay that these peons are receiving?

A. My idea of civil courts in Bengal and other parts of the country is that the increase of pay will not affect the present situation. Now peons get Rs. 15 a month and nazirs get Rs. 50 a month, and if you increase their pay to Rs. 20 or 25 and Rs. 100 respectively that won't make any difference. Only stricter supervision is the solution of this problem. Munsifs should supervise over these matters in their courts and subordinate judges should supervise over these matters in their courts. I know of instances in which

judges themselves know that their peshkars are taking bribes and still they do not take any action against them.

Q. Why is that?

A. Because nothing is done in his presence. If he is strict he can do it. There was a district judge at Jessore and he heard from some source that a *nazir* who used to issue *parwanas* was taking bribe. He went round but could not get any information. His informant told him that if he would pour down the ink from inkstands of the *nazir* he would find two annas and four annas pieces coming out of them. The district judge took one of these inkstands and all these things came out. He ought to keep all these ministerial officers in check.

Q. You mean that district judges hardly exercise the supervision which is necessary?

A. I think so.

Q. There is another matter about delay in procedure. In insolvency proceedings at present after adjudication is made things are left without any further attempt to have any discharge by the court.

A. You have got clear provisions in the law itself. Supposing the insolvency jurisdiction is given to the district judge, he is responsible for it.

Q. I see from two statements that in one case at the close of the year 2,188 cases were placed in charge of the receiver and 372 were discharged and in the other case orders for discharge were passed in 164 cases out of 2,367. Do you not think that disproportionate number of cases remain pending at the close of the year?

A. You can set it right by making it a rule that the district judge should inspect the records of subordinate judges. There is a rule but that is hardly observed. When we were first enrolled, at least one of the High Court Judges used to go round once in a year, but that system is not observed now. I have not heard any High Court Judge going out for the last ten years. It is lack of supervision that is responsible.

Q. What do you think of the time that a district judge can give to such work? We are told that they do not get sufficient time.

A. I have very little faith in that. The district judge may have to do a lot of administrative work. If he would come at 11 and work till 4-30 he can devote one hour in the morning to miscellaneous and administrative work. And then if he works from 12 to 4-30 he can do a good deal of his work.

Q. Then there is a possibility for the district judge to exercise strict supervision?

A. Yes, there should be a strict rule about the attendance of judges.

Q. I was looking up a diary of one of the judges and I found that he went invariably at 11 to his court and he left at 5 in the evening.

A. He must be one of the best types of judges.

Q. There are certain matters which are referred to in our questionnaire. I shall first take the question of attesting the mortgage deeds by two witnesses. Do you have registered documents?

A. I consulted many of my friends and they all had different opinions. Personally I consider when a deed of sale can be done by registration only, why should there be any different system for a mortgage deed.

Q. Is it in your experience that contentions are put forward by mortgagors that they did not sign the mortgage deed in the presence of attesting witnesses?

A. Almost every day.

Q. Is there any possibility of checking the *benami* system?

A. From the earliest time the *benami* system is going on. You have got under the law sufficient check: you cannot extend it any further.

Q. With regard to reference to arbitration do you think that courts should be given powers to refer matters to arbitration? At present it is left to the parties to have recourse to arbitration.

A. It will be taking away the right of parties. If you give powers to a court it may transfer cases to arbitrators against the wishes of parties.

Q. But there are cases, for instance, the maintenance of a widow. I think the relations are better judges than court for assessing the amount of maintenance that is to be given to her.

A. If the relations are better judges, that case should not have come to court. When they have come to court, it proves that the relations have failed to induce the widow. But after coming to court, if there are persons who think that this thing ought not to be debated in a court, and can induce the widow that they shall look to the interest of both parties and decide to her satisfaction, then they can come to the court and say: "Please refer the case to arbitration."

Q. Supposing there are technical matters which the court cannot ordinarily decide, why should not the court have the power of selecting arbitrators?

A. Have you not provision in the Civil Procedure Code for the appointment of commissioners, etc. You have got enough powers. In engineering matters, a matter which is not within the knowledge of a judge, he can appoint an engineer. He has got enough powers to appoint an engineer commissioner.

Q. With regard to the law of limitation, do you think the period of limitation for execution of decrees could in any way be lessened?

A. I do not think so. But I approve of some suggestion in the questionnaire: Instead of keeping it pending for 12 years, you can curtail it to six years. One has to make application to keep his decree alive, although he knows he cannot execute his decree successfully. In that case the party may be given the opportunity of executing his decree at any time within the six years. But I am not in favour of reducing the period of 3 years to 1 year.

Q. These frequent steps-in-aid of execution might be avoided?

A. Yes.

Q. In cases of immovable property, sought to be recovered by a reversioner by setting aside the alienation of a Hindu widow—the alienation having taken place half a century ago. What would you suggest to avoid the possibility of a very very stale case being agitated before a court?

A. There is a provision in the law which provides, however, that a person, who is a reversioner now and before any alienation is made by the widow, can sue for a declaration that the widow has no right to make such and such alienation. He cannot enjoy the property until after the date of the death of the widow. The widow dies 50 years after. Then the suit is instituted. It would be impossible after that to produce evidence that the widow sold the property. Those are cases of hardship. If you can insist upon the declaratory suits, which are provided by the law, which should be instituted within a particular date from the date of alienation, so that the evidence may be produced by the purchaser within a short time after the alienation that may be done. The person who institutes the suit that the alienation is bad, never lives to enjoy the property.

Q. To-day X is the reversioner. He institutes a suit for declaration and he succeeds. When the widow dies, that gentleman or any body in his line might not be benefited, but somebody else?

A. That is so.

Q. I suppose it is not possible to suggest any period of limitation or any method to prevent this sort of litigation.

A. The difficulty will remain there. You may fix a rule of limitation; that rule of limitation will induce or compel the reversioner for the time



being to institute a suit. Although he institutes a suit and succeeds, then ultimately he or anybody else in his line would not benefit by the suit.

Q. With regard to the law of registration, are you not in favour of insisting upon the registration of all partition deeds and all partition being evidenced by written instruments and those written instruments being registered?

A. I am inclined in favour of it.

Q. Your view would be the same with reference to partnership?

A. Yes.

Dr. DeSouza.—I do not quite understand your scheme for the selection of munsifs and sub-judges. I think you said that 50 per cent. should be selected from among practising lawyers.

A. Yes. Not about the munsifs. Of the subordinate judges and district judges 50 per cent. should be selected from practising lawyers of different grades of course, and the other 50 per cent. will be by promoting the munsifs.

Q. These are your suggestions for the appointment of sub-judges and district judges. And your scheme for the appointment of munsifs is that they should be selected by open competitive examination from among persons who passed the B. L. examination and practised for two years in any court. Would that two years' practice be sufficient?

A. It would not. I know it. Your present system is for three years. I reduced it to two years, because I asked you to hold an open examination. If there is a fear that they have no chance of getting an appointment of munsifs by any other way except by passing a competition, then these two years will be the time in which they will be able to learn something.

Q. And after passing the examination would you give them any training, if so, of what sort?

A. I would make them work as probationers for six months or one year. As a probationer, he will sit in the court of a subordinate judge, see the trial of cases for one year, and then send him away to any particular place to act individually.

Q. What sort of duties would you make him perform when sitting with the judge? Would you not give him any judicial duties of an inferior character?

A. I think it should be left to the discretion of the judge. In smaller matters, the judge may give him instructions as to how to dispose of them and he may dispose of them. As a probationer, he ought to learn something and ought to be taught something. The judge under whom the junior is working should teach him something. He can even ask him to take down the evidence of witnesses, sitting by his side.

Q. You say that 50 per cent. of subordinate judges should be taken from the bar and in that case I think you would require men of considerable standing?

A. Yes, they would be men of considerable standing. At present I think a munsif does not become subordinate judge until he has got over 15 years' service as munsif.

Mr. Ghose.—Munsifs become subordinate judges after 10 or 20 years' service.

A. Then in that case you will have to take a practising lawyer who has practised at least for 12 years.

Dr. DeSouza.—Q. But what sort of test would you adopt in selecting such men?

A. These difficulties do not generally arise in regard to persons practising before the High Court, but in regard to persons practising before district courts, it will depend on the district judge.

Q. Do you think that a man with good practice in mofussil courts would accept the post of subordinate judge having regard to pay and prospects of the post?

A. Of course in these days you can get many practising lawyers who would accept it if you give them Rs. 750 a month. I think that is the pay of subordinate judges at present.

Q. Don't you think that by reducing the number of subordinate judges by 50 per cent., the prospects of munsifs would be impaired?

A. Prospects of munsifs will be impaired to a certain extent no doubt, but we were just talking about judging the merits of judges' work. If a munsif possesses qualifications of being a subordinate judge he may rise to that post very soon, and may even become district judge.

Q. But surely these appointments are now made on merits alone, I mean appointments on promotion are made on reports about the merits of the individual officer concerned?

A. Yes. Supposing you have got 100 munsifs and if all of these munsifs prove to be equally meritorious, then of course there will be hardship or injustice, but if all of them do not possess the quality of being subordinate judge the case would be otherwise. Some of them may rise to the post of judgeship and some of them may only rise to the position of senior munsifs.

Q. A very senior district judge who has appeared before us has told us that in several districts in which work is very heavy and judges have to do heavy criminal work, it is almost impossible for district judges to exercise efficient supervision over civil courts. He has told us that it is impossible to hear a large number of appeals by which a definite opinion can be formed about the judicial capacity of lower courts and it is practically impossible to make personal inspections of the subordinate judges' courts and of outlying chowkis or places where munsifs are located.

A. Yes, it is true but an hour is quite sufficient to decide several appeals of the district. After the judge has disposed of his criminal work he can have plenty of time to devote to judicial work. In certain cases district judges can be relieved by handing over certain matters to subordinate judges which are at present done by them and I do not think there is any harm in that. But in many matters subordinate judges cannot relieve district judges, i.e., certificate matters, etc. But matters which are not contested can be safely made over to subordinate judges provided they have got time enough to do that work.

Q. You said that you objected to the quality of inspection which district judges make. May I know that quality of inspection?

A. I know that district judges spend about a month in inspecting lower courts, two weeks they spend in the first half of the year and two weeks in the second half but generally these lower courts are judged by their returns. Every munsif has to send a return to the judge showing how many cases he has disposed of; similarly subordinate judges have to submit returns and these returns are responsible for the large number of *ex parte* orders that are made by these courts. When the month is approaching its end they have got to dispose of many cases by passing *ex parte* decrees in order to show that they have disposed of a large number of cases in the month. Now I am not in favour of that kind of judging the lower courts' judicial capacity. Supposing there is a complicated case and it takes away ten or fifteen days, and it is certain that the number of cases disposed of in that month will not be large. Now instead of looking at the number of cases disposed of the judge should see the quality of work and form an opinion about the judicial capacity of that court.

Q. As regards service of processes I think you said that ultimately the responsibility of service should be thrown upon the plaintiff and he should furnish identifiers for the purpose?

A. Yes.

Q. I think it is also generally admitted that the suppression of service is due to the dishonest plaintiff who is interested in the suppression of service?

A. Unless the peon is induced he cannot do anything himself.

Q. In spite of all that you will insist on the necessity of an identifier?

A. Yes, an identifier is necessary. If you leave it entirely to the peon he cannot be sure about the person who is to be served. Peon will make enquiries and he will not be able to recognise the man. In a village there may be three persons of one name and you cannot leave it to the decision of the peon as to the identity of the three persons. It is always desirable that the plaintiff or the decree-holder should be held responsible for identification.

Q. Supposing the chowkidars in a village are detailed for the purpose of identification of a person?

A. The same jobbery will remain. The chowkidar will do the same thing as the peon but you will remove the responsibility of the decree-holder or the plaintiff.

Mr. Liddell.—Q. One of your strong points is that there ought to be more supervision from top to bottom, from the High Court Judge to the district judge and you also consider that the district judge, if he likes, can find time for administrative work and supervision. You say that if he tries to give one hour a day and then take up the hearing that will be quite sufficient. When he is hearing sessions case do you still think that he can devote one hour to miscellaneous work?

A. That depends upon the urgency of the case.

Q. You cannot know the urgency of a case unless you take it up. The point is this. In the course of inspection of administrative work in the morning you often come across things which demand instant attention and which show that very serious things are going on, such as very gross misconduct on the part of a peon. You put a judge for an hour in the morning to deal with such matters and have his temper tried by lying excuses and then he has to see whether a man is going to be hanged. Do you think it will be fair on the judge or on the accused?

A. The district judge can transfer such matters to a subordinate judge. There is nothing to prevent him from doing that.

Q. It is remarked that inspection of judicial officers' work is done by sharishtedar. You say that some judges have complicate of this. The district judge is a highly-paid officer and you may take his salary as Rs. 2,000 per mensem. Sharishtedar is a man getting only Rs. 200 per mensem. So ten minutes of sharishtedar's time are equal to one minute of the district judge. By working ten minutes the sharishtedar can save the district judge one minute?

A. No, because sharishtedar is not the judge.

Q. I mean that complaint is apt to be made. It may be right, it may be wrong. I just wanted to show you it may be quite possible that it may be unjustified. The sharishtedar may examine the diary and note whether the presiding officer is regular in his attendance, and takes his seat in the court at the appointed hour and when he rises. Such facts can very well be verified by a sharishtedar. There are other things which a sharishtedar may be competent to note down, before the judge commences his examination. It is quite possible that the judge might send the sharishtedar down in advance asking him to pay attention to certain things, and then sitting with the officer, the judge might decide everything. The opinion may be that the sharishtedar has done everything.

A. In regard to formal matters, if the sharishtedar, after examining the attendance register, etc., sends his report, and the district judge is himself satisfied on the matter, after making such enquiries as are necessary from the judge himself, then there remains no cause for grievance. But one cause for grievance is this. Should you have a ministerial officer drawing a salary of Rs. 150 or Rs. 200 to inspect the attendance, etc., of a subordinate judge drawing a salary of Rs. 1,000—whether he works regularly, whether he sits

from 11 A.M., etc.? That is bad in this respect that it exercises a very unhealthy influence over the judiciary.

Q. There was another point you were making regarding the subordinate judges neglecting the law. Well, law is a subject which is very wide. At the bar you generally have various groups of pleaders who might be called specialists in each particular group of law.

A. Lawyers generally have to know law, but there are others who have devoted themselves to Mohammedan Law, Hindu Law. If you are practising in a High Court, you should be in touch with all the laws.

Q. How do you keep in touch?

A. It is said that the subordinate judge has got more work. High Court Judges are very hard worked. But I daily find that they work from 11 A.M. to 4 P.M., still they find time to read reports and decisions of the High Court. We find always that whatever ruling we have read, they have also read.

Q. Dr. Rash Behari Ghosh told me once that there was much ruling, but not much law. Though you get through all these rulings, you may not find very much law.

A. In almost all the High Courts, excepting the recognised reports, permission ought not to be given for publications of different classes. Unnecessary rulings are published, and so long as they are published, we have got to look into them. If I find a subordinate judge, without caring for the rulings which are quoted, who devotes his attention to the language of the law itself, and discusses what the meaning of the language of the law is, and arrives at a decision, I have nothing to say against him.

Mr. Basu.—You say that you would not have the right to prefer second appeals curtailed in any way. Are you aware that of the second appeals preferred in the High Court, quite 33 per cent. are dismissed under Order 41, Rule 11, and of the rest a large percentage, say as much as 77 per cent., are eventually dismissed? Would you still think, after having these figures before you, that the right of second appeals is not abused and should not be curtailed in any way?

A. I still think it is not abused. Although I entirely agree with you that out of the appeals that are filed, 33 per cent. are dismissed, still I would not, for this reason. I have known of a case in which an appeal was dismissed under Order 41, Rule 11. The Judges held that it was a frivolous appeal and there was nothing in it. When an appeal came before the Judges on an application for review, I myself argued the case, it was decreed in 3 minutes. Therefore, one is not certain which appeal will be decreed and which will be dismissed. One appeal will be decreed if I enter the High Court by one door, and another may be dismissed if I enter the High Court by another door. Instead of being very strict, which only takes the time of the court, you can dispose of these matters by satisfying yourself whether there is an arguable question of law or not. That will not take much time. Then give an opportunity to the parties.

Q. What do you think of the effect of curtailing the right of second appeal upon the subordinate judiciary? If the right of second appeal is curtailed, do you think that would have, in itself, any effect upon the subordinate judiciary in their judicial work?

A. They work really under some fear. They know that when they decide cases and that there are judges over them who will see whether they decided them rightly. If you take away the right of appeal, that fear will go.

Q. You think the quality of the work of subordinate judges will suffer?

A. Yes.

Q. Regarding the provisions of the Civil Procedure Code as to pleadings, do you think that these provisions are generally followed in the lower courts in your experience?

A. All the provisions are not generally followed. In regard to pleadings, I have noticed some questions. There is a provision in the Civil Procedure

Code which provides for laxity, etc. If the judges exercise their powers, they may put them in proper order. So far as written statements are concerned, I think the present rules give sufficient powers for the judge to know whether they are correct or not. It only requires a careful treatment of them by the judges who have got to decide whether they have got it properly done or not.

*Q.* Coming back to the High Court for a moment, you have stated that so far as regular appeals are concerned, you would allow 15 months as the maximum time and 12 months for second appeals. We all know that the time taken is much longer. To what do you attribute this?

*A.* Much time is taken in the office in the preparation of paper books. Supposing an appeal is filed to-day, I think 6 weeks would be quite sufficient for the service of notice. Then some 2 weeks are necessary for the estimates to be put into the court. Then amounts are deposited in two instalments and considering the general conditions of the people of this country, I am inclined to give them 3 months for the first instalment and 2 months for the second instalment, because during this time, the translation of the paper books will be going on. After this, the printing of these books will take 2 months' time, and in other big cases at the most a period of 3 months is necessary. I find 6 to 7 months are required. That ought not to be allowed. Then some time ought to be allowed to the parties for preparation. Two months should at least be allowed so far as regular cases are concerned. But in cases of regular appeals, where the people have got to find money to instruct proper lawyers to argue the case before the court you have to give them two months. Totalling all these things, I think 15 months as quite enough.

*Q.* That includes translation?

*A.* Yes. When first deposit has been made, then two months' time is given for the second deposit. As soon as the first deposit is made translation should be undertaken.

*Q.* In the present state of file of the High Court do you consider that delay is greater before the case is made ready or delay is greater after the case is made ready before it can be taken up?

*A.* I think delay is greater after the case is ready.

*Q.* Then you mean that the number of Judges is small?

*A.* Yes, I was going to tell you that there is great congestion in the High Court and it comes to the same thing that the number of Judges is small. I see that there are appeals of 1922 or 1923 ready but they have not yet been disposed of.

*Q.* Is it any use making your cases ready if you cannot have the Judges to read them?

*A.* No, certainly not.

*Q.* Do you think that in subordinate judges' courts also cases are ready and the judges have no time to hear them?

*A.* Yes. One word about the High Court. Nowadays the High Court is managing these matters in such a way that they are taking up regularly appeals of 1922.

*Chairman.*—We are getting on better now.

*A.* Much better.

*Mr. Basu.*—*Q.* You said something about the inspection of subordinate courts by district judges and you suggested something about better recruitment of munsifs and subordinate judges. You said that the quality of subordinate judiciary could be improved by better inspection of the nature of their work as judicial officers by competent district judges.

*A.* My remarks apply to those district judges who are qualified to act as such, to exercise better supervision and to examine the nature of the work done by judicial officers subordinate to them.

Q. About recruitment of district judges and subordinate judges, you said that 50 per cent. of them ought to be appointed from practising lawyers. About civilian district judges, would you give them any preliminary training before they are appointed as district judges? The only training they now get is in magisterial work and not in civil cases.

A. That is why they do not take up civil cases at all. I should like the idea of some sort of arrangement being made for preliminary training in civil law.

Mr. Ghose.—Q. In respect of title suits in subordinate judges' courts and in munsifs' court you have said that one year will be quite sufficient. Do you include in that category partition suits and account suits also?

A. No, I do not include them because there are two stages of these suits.

Q. Then you suggested that in subordinate judges' courts and munsifs' courts a list of ready cases should be prepared every Friday in consultation with the pleaders?

A. No, my idea was that the *peshkar* should prepare a list of ready cases on Friday and the court should decide in the morning on Saturday in the presence of pleaders whether any adjournments are required, etc. If this procedure is followed I think there will be no delay which is at present caused. The court will tell the pleaders that the cases will be taken up in the next week and much inconvenience will be thus saved. There will be no difficulty with regard to *peshkar* in this matter. He has only to see whether notice has been duly served or not. The advantage of this procedure will be this that there will be very few applications for adjournment. At present the difficulty is that on the fixed date one party appears before the court with say 12 witnesses and the other party comes in and makes an application that he cannot bring his witnesses and that a further date may be given and so on.

Q. But can that practice be followed in the mofussil courts? The clients have to come from long distances and pleaders can only report about the readiness of the cases after hearing from their clients.

A. Yes, there is that difficulty in mofussil courts but the list can be arranged on Friday and cases may be taken up two weeks after.

Q. You mean to say that at least fifteen days' notice should be given?

A. Yes, before the case is taken up the party must be given intimation of it some fourteen days previously.

Q. You are not for curtailment of the right of second appeal because you doubt whether questions of law are correctly decided by lower courts?

A. Yes.

Q. Do you know the percentage of appeals from sub-judges in which the High Court interfered in 1922? Out of 1,730 second appeals there was interference by the High Court only in 206 cases. In 108 cases the judgments were reversed, in 17 cases they were varied and 81 cases were remanded. I quote from the administration report of 1922 and the percentage of cases in which High Court interfered comes up to 11 per cent. Is it still your view that the subordinate judges are unable to grasp the law?

A. I have nothing to complain against the subordinate judges. If you give me statistics of those cases where there was interference on question of law you will find that it would be nothing less than 70 per cent.

Q. In cases which go up to the Privy Council the judgments of the High Court are interfered with in 50 per cent. of them and they are appeals on questions of law only. Then out of those 50 per cent. in 25 per cent. of the cases the judgments of the subordinate judges are restored. Do not different judges put different interpretation on a point of law and is the efficiency of a judge to be judged by such a standard?

A. It is on the question of law that there has been much difference. Different judges do put different interpretations.

*Chairman.*—Law in India is very difficult and very complicated and there is a very great room for difference of opinion. It does not follow that subordinate judges are incompetent.

A. That does not follow necessarily. But I am not inclined to curtail the right of second appeal.

Q. Now you are going to give 50 per cent. of judgeships and sub-judgeships to members of your bar. Would not that affect the munsifs injuriously? At present there are munsifs of 20 to 22 years standing who cannot expect to be made subordinate judges even in another two or three years. Munsifs generally are confirmed after 30 and they have to retire at 55. Now under the present system chances are that many would not get sub-judgeships and if 50 per cent. of these appointments are to go to the members of the bar what will be their position?

A. If you introduce the system of appointing munsifs in a way as I have suggested you will find that their promotion will depend upon the quality of work.

Q. As you know the scale of pay runs up to Rs. 700, and then there is a stop. Then there is special selection and those only who are considered efficient by the High Court are made subordinate judges when there are vacancies. Thus there is a great delay in a munsif being appointed as a sub-judge.

A. I was not aware of selection and efficiency bar. I am obliged to you for that information. Then I am wrong.

*Mr. Ghose.*—Q. Do you practise in district courts, or your practice is confined to the High Court only?

A. I am a vakil of the High Court, and there is no district in Bengal where I have not practised. I have got very much practice in the mofussil. In these days I do not go out often.

Q. For how many years you did not go out?

A. No, no, not how many years. Even two months ago I went to a case at Faridpur. I used to take very big cases in the mofussil, the value of the suits being 2 or 3 lakhs. I am in my 24th year of my practice.

Q. You say that the men who are recruited directly from the bar would be better, because they are better lawyers. But do good lawyers always make good judges?

A. Not necessarily but from those persons the selection must be made. Practising lawyers must be better lawyers, must be accustomed with the procedure of the country, their nature, habits, temperaments, etc. A judge requires many qualifications.

Q. Would not such men, who have practised as lawyers, and always represented one side of the case, require special training as judges?

A. No. I do not think so.

Q. Not as appellate court judges, but as judges who try original suits?

A. I do not think so. About a lawyer, or a practising lawyer, the remark that he represents one side of the case generally, and therefore he is incapable of looking into the two sides of the case, is unfounded, and I do not agree with you there. Up till now a practising barrister or practising vakil, who has been elevated to the Bench of the High Court, has not been found anywhere, or by any party or by any litigant, wanting in any of the qualities that go to make a good Judge. No one has come forward to say anything about the quality of his work or that he is not capable of looking into both sides of business, or that he required any training as a High Court Judge.

Q. You say that the sub-judges and munsifs do not keep up the habit of studying law reports. Now would the new recruits from amongst practising lawyers be able to continue that habit when they are put into the harness?

A. I expect them to do so. I do not think a subordinate judge who works in the court from 11 A.M. to 4 P.M. works harder than I do. When the

High Court Judge and a vakil can find time to do that, they can also get time to read.

Q. I think you know that the subordinate judges write judgments at home. They work at home for 3 hours almost daily.

A. Yes. My idea is that they can very well avoid that.

Q. Do you know that every district judge has to examine certain records from each sub-judge and each munsif every quarter? Such are the High Court rules.

A. Does he do it, that is the question.

Q. The question of efficiency is not determined merely on the returns. They have to examine records, and have to hear appeals from the judgment of officers before they can report to High Court about their efficiency.

A. Yes. If that is done then there will be no reason for complaint.

Q. But if the work that the subordinate judge has to do is more than what he can manage, apart from supervision, some suggestion has to be made to relieve him of a portion of his work.

A. Certainly. If you find congestion, if you find him burdened with work, something must be done to relieve him of his duties.

Q. How can he be relieved?

A. Increase the number of officers.

Q. That the Government is not going to do.

A. Then there is no use appointing a Committee and enquiring into these things.

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### **Mr. DURGA CHARAN BANERJEE, Representative of the Bengal National Chamber of Commerce, Calcutta.**

#### *Written Statement of the Bengal National Chamber of Commerce.*

1. (ii) *District and sub-courts.*—In sub-courts, the duration of Original title suits and money suits depends upon the nature of the case and the evidence to be adduced by the parties. In title suits the time taken for the cases is longer than that required for the money suits. In title suits the average time taken is five or six months from the date of the institution of the suits, and in money suits the time taken is four months. Regular appeals take 3 months, and miscellaneous appeals 2 months, provided notices are served promptly. Small causes take 3 months.

2. In our opinion the period actually taken for the disposal of the civil proceedings exceeds the reasonable limit in many cases. The main causes of the delay are due to the service of summonses and notices, the dilatory habits of some of the litigants, sometimes the conduct of pleaders in protracting cases in examination of witnesses. Above all the judicial officers find their work to be more than they can cope with: sometimes they scarcely find time to take up cases even if they be ready for hearing. The cadre of judicial officers should be increased; the judicial officers often become embarrassed which of the old cases to take up first, all being of equal importance and all having become old, for which explanation should be given at the end of the quarter: this circumstance affects justice sometimes, as the desire to dispose of the cases in haste interferes with the due consideration to be given to the evidence and law involved in them.

5. No pleader can be a munsif unless, according to the rules, he has practised for 3 years in courts. This rule is no doubt good, but we would suggest that those who are to be selected as munsifs should be required to sit with the munsifs and sub-judges of the district for a certain period, say three months, to see how they work and how they handle different cases, so that they may not get embarrassed in dealing with cases when they are



actually appointed as munsifs, because they do not actually see all the aspects of cases when they practise as pleaders.

6. Judicial officers should not be transferred from a station before they have served for three years. But in unhealthy stations the period may be fixed for two years. Frequent transfers impede justice.

8. We do not think that the present delay is partly due to the concentration of many civil courts in one place, and the consequent waiting for the pleaders, as the judicial officers have so many cases at hand that they can afford to wait in a particular case for a short time if a pleader be engaged in another court. Moreover, the pleader engaged, if he is engaged elsewhere, often himself makes arrangement for conducting his case during his absence, if he has got a junior pleader under him, and a junior pleader is often, though not always, engaged with a senior pleader.

10 and 11. We would suggest the enhancement of jurisdiction of experienced munsifs of certain years' standing to Rs. 2,500 in original suits, and in small cases up to Rs. 1,000.

13. We would suggest that sub-judges and district munsifs should be invested with power to try probate and succession certificate cases, as may be made over to them by the district judge, and land acquisition cases may be made over to the sub-judges only, but these officers should be selected, and the powers should not be extended generally to all sub-judges and munsifs. The public will appreciate such investments. But it should be borne in mind that these officers are overworked, so that when they are invested with these special powers, the number of cases, title, etc., should also be taken into consideration, so that they can consequently cope with their work.

15. Small cause courts should not be invested with powers to try simple mortgage suits.

17. Qualified sub-registrars may be selected and invested with powers to try uncontested money suits up to the value of Rs. 50. The provisions of Order 37, Rule 2 may conveniently be applied to rent suits and money suits up to a certain value say Rs. 100.

28. We think that the more extensive use of the post office for the service of notices and summonses would be effective, provided that the processes are sent by registered post, and any collusion between a litigant and a post office peon is severely dealt with. Village officials, such as president panchayats, should be used for the service of processes; only precaution is to be taken against collusion.

30. This is a good suggestion: the process-server should report himself to the pleader of the party to enable him to assist him in finding out the person to be served with the process.

33. It is not necessary that both the plaintiff and the defendant should be examined as a part of the trial: the existing procedure is good: it will not minimise the calling in of irrelevant evidence. If it be made a rule that the parties should be examined before their evidence is taken, they should be unnecessarily harassed and an astute party should not be allowed to take advantage of the weakness, goodness or ignorance of the other party. Both the parties have pleaders to state their own cases.

34. Unnecessary and avoidable oral evidence is sometimes resorted to for the protraction of cases. This cannot be helped always, because there would be a hue and cry that courts refuse to debar legitimate evidence on the pretext of checking of unnecessary evidence.

37. The courts cannot have discretion to fix time-limits for the examination and cross-examination of witnesses, yet something should be done to prevent irrelevant questions being asked by the pleaders, which sometimes become the main cause of delay in the disposal of a suit. If the courts endeavour to check such questions the pleader makes a *long* argument for the justification of such questions, so that the courts think it more prudent to allow such irrelevant questions to go on than waste their time in hearing arguments of the pleader.

47. We do not think that trials are unduly delayed by the examination of witnesses on commission.

49. Suits as a matter of fact are tried continuously day by day. This is a matter for inspection.

72. If the mortgage deed be registered, then it should be presumed to be valid, and the mortgagor defendant should make out a *prima facie* case that the mortgage deed is invalid before the plaintiff should be called upon to prove the mortgage deed by attesting witnesses. This suggestion we approve.

83. The present law regarding mortgage documents and sale deeds and leases should be retained.

The main object of enquiry by the Committee is to devise means for minimising the delay in the disposal of civil cases without raising the cadre of judicial officers. It must be admitted that one of the principal causes of unnecessary delay is that judicial officers have so many cases on their daily board for disposal which they cannot possibly take up. The other causes are mainly the imperfect form of pleadings, non-compliance with the provisions of the Code which refers to the production of documents and their inspection, the absence of any time-limit for summoning of witnesses and production of documents, and granting of unnecessary adjournments. In the Civil Procedure Code as it stands, forms of pleadings are given in the appendices, but they are not at all observed. These should be strictly observed. In the Code it is provided that parties may at any time after the institution of the suit apply for summons against witnesses and the parties must produce all documents at the first hearing of the suit. Some time-limit must be fixed for these things so that the parties will be ready soon and the legal advisers will know the parties' cases more fully. Many adjournments are granted for summoning of witnesses and production of documents. These will also be avoided. Several adjournments are granted for want of time of the presiding officers. This of course cannot be remedied without increasing the number of judicial officers. The provisions of the Code as regards discovery and inspection of documents and interrogatories should be strictly followed. Unnecessary issue of commissions should be avoided.

If the pleadings are in form and parties are compelled to cite their witnesses and produce documents within a time-limit and issues are settled after hearing both parties' pleaders and the evidence is adduced, there cannot be so many adjournments in cases and that will facilitate the disposal of cases.

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**Mr. DURGA CHARAN BANERJEE, Representative of the Bengal National Chamber of Commerce, called and examined on Monday, the 25th February 1924.**

*Chairman.*—Q. You have given the written statement on behalf of the Bengal Chamber of Commerce?

A. Yes.

Q. I take it that you have come to speak on their behalf.

A. Yes.

Q. As to the time taken for the disposal of the different classes of suits, you consider that for commercial cases, 6 months, would be high?

A. Yes. I consider so.

Q. In suits for ejectment and rent you think that we ought to dispose of them in 3 months?

A. Yes. In 3 months.

Q. But that in Original suits the time may go twice?

A. Yes.

Q. Then you think a year for first appeals and 6 months for second appeals and three months for miscellaneous appeals is enough?

A. Yes.

Q. The Chamber is of opinion that the time now taken for commercial cases on the Original side, in suits on the small cause side, exceeds the reasonable period in all cases?

A. Yes.

Q. You take a good deal of objection to the insufficiency of the number of judges?

A. Yes.

Q. Have you considered in detail the holidays in the civil courts?

A. Yes.

Q. You think that there are a large number of miscellaneous holidays and the annual vacation is very long in the lower courts of Bengal?

A. In my opinion the annual vacation ought not to exceed a fortnight.

Q. A great many of the courts below are sitting in very unhealthy places. Is not a fortnight rather a little holiday when they are doing heavy work?

A. That is not considered insufficient by the magistrates.

Q. Which magistrates?

A. The criminal courts and the magisterial officers. They do not get longer than 12 days.

Q. You mean the collector, district magistrate and people of that sort?

A. Yes.

Q. I take it that the district magistrate does not spend all the day long sitting on the bench?

A. He is as heavily engaged as the judges.

Q. He is not sitting as the judge all the time from half past ten or eleven till five?

A. No.

Q. A fortnight is rather little. The climate is very damp.

A. In the secretariat the officers are so tagged down to their desks from 11 to 6. They also enjoy 12 days.

Q. Do you think that a clerk of the secretariat is in the same position as judges on the bench?

A. Yes. To some extent.

Q. As regards the casual holidays are these not necessarily connected with Hindu-Muhammadian religious question?

A. Yes. They are.

Q. Those, I think, have been curtailed during this year?

A. Not to an appreciable extent.

Q. Do you not think that these holidays are generally spent by judges in doing work in fact?

A. Sometimes they employ their holidays for writing judgments.

Q. What I may call these casual holidays, how many more days would you want to curtail?

A. I think these should be cut down so as to bring them to the same level as the ordinary gazetted holidays.

Q. You say that there is want of proper division of the work. The judges have to do all classes of work and you think that something might be done to reorganise it?

A. Yes.

Q. Then again you say that in the present disposal of miscellaneous matters the judge has got to do all sorts of work from the highest to the

lowest in theory with the result that questions of details and so on are left to the *peshkars* which is very dangerous.

A. Yes.

Q. You say that the provisions of the Code requiring the parties to file their documents in the initial stages are not enforced by the courts and the option is left with the parties and you would have an alteration that the courts should insist on it.

A. Yes.

Q. Connected with this question is the question of interlocutory applications. You say that at present these applications are disposed of in a very inconvenient and haphazard fashion.

A. Yes.

Q. You comment upon the fact that the system of successive adjournments gives opportunity for the ministerial officers of the court to make small amounts of money at every time.

A. Yes.

Q. The judges are too apt to admit all evidence that is offered and not take the responsibility of rejecting irrelevant evidence.

A. Yes.

Q. The courts will sometimes propose to reject evidence; but that generally results in a long argument.

A. It does.

Q. And unless the local bar is perhaps better than the average it may result in a very long argument.

A. But I think once the system is introduced the bar will improve.

Q. Of course it will take a certain amount of time.

A. Yes.

Q. May I take it it cannot be dealt with by rule. It must be left to the discretion of the judges.

A. Yes.

Q. I see you say that judicial officers are timid in exercising their powers?

A. Yes.

Q. You say that recruitment should be made by competitive examination from amongst legal practitioners of not less than five years' standing.

A. Yes.

Q. And that the examination should be both theoretical and practical.

A. Yes.

Q. Then you say that there should be a probationary period during which each officer selected should be required to serve with a district judge or subordinate judge.

A. Yes.

Q. Then you say that the initial pay of the lowest rank of the service should be fixed at not less than Rs. 400 per mensem, and that at least two seats in the High Court should be thrown open to the subordinate judiciary service to improve their prospects.

A. Yes.

Q. Then I see that you are in favour of extension of the practice of recruiting certain number of district judges from practising pleaders of standing.

A. Yes.

Q. Then you say that at least one responsible judicial officer should be appointed in every district headquarter and sub-division to organise and supervise the details of work in the courts of such district and sub-division and that his functions should be similar to those of the registrar of the Original side of the High Court.

A. Yes.

Q. As regards that, of course, there might be more difficulty in the sub-division than at sadar.

A. Yes.

Q. You say that the practice now prevailing in the lower courts of fixing periodic dates for hearing with a view to further postponements afterwards should be discontinued and in lieu thereof the practice prevailing in the Original side for the preparation of prospective and daily cause lists should be adopted.

A. Yes.

Q. You say that the responsibility attaching to attorneys on the Original side facilitates quick disposal of work and similar responsibility should be thrown on pleaders in the mofussil courts to secure despatch of business.

A. On the Original side attorneys are required to take necessary steps to bring the suit for hearing and when he does not do so after some time the case is brought on the list for summary disposal, but in the mofussil pleaders are not required to take these steps and they secure their instructions from their clients and they have no responsibility of their own.

Q. At present a pleader may be changed at any time without notice to any body.

A. Yes.

Q. You say that prospects and pay of subordinate ministerial officers are not good at present.

A. Yes.

Q. That instead of allotting local jurisdiction over certain specified area a more equal division of work should be introduced.

A. Yes.

Q. Have you had any experience in the mofussil courts of insolvency work? What is your opinion about that?

A. I have not got much experience of insolvency work, but I think they have dragged it too much and there is always some difficulty in collecting assets of the insolvent in the mofussil.

Q. Do you think that this work should be done by the district judge himself, and, if so, do you think it is possible for him really to see that the estate is properly administered?

A. There is no fixed receiver in mofussil as we have in Calcutta.

Q. In a big station do you think it will be an improvement if a receiver is put in charge of the work?

A. Yes.

*Mr. Justice Stuart.*—Q. Do you know that most subordinate judges and munsifs employ a greater part of their holidays in writing judgments?

A. No, they do not do so, I mean they do not spend a greater part of their holidays in writing judgments.

Q. Some people think they do so?

A. Might be, but I am not aware of it.

Q. With regard to deputy magistrates, does it strike you that their work is healthier than the work of subordinate judges and munsifs?

A. No I do not think it is healthier.

Q. Deputy magistrates are expected to be in camp for at least 90 days in the year, would that not be healthier than sitting in court for the period?

A. Yes in that case it might be healthier.

Q. Are you aware that subordinate judges and munsifs can get leave only on half pay, but not on full pay because they get vacation?

A. No I did not know that.

Q. Now if they are deprived of these vacations they will have to be given full pay when on leave?

A. Surely that will be the case, but there will be gain in time, if not in money.

Q. Would not this increase the amount of money already spent?

A. Yes.

Q. As I understand from your note you take it that the great defect in the present system is that the presiding officer of the subordinate court is not strong enough to handle the bar. What do you propose to be the remedy?

A. By changing the method of recruitment. If the service is recruited from men with experience then they will not be so intimidated as the present subordinate judge is.

Q. You would have competitive examination for the recruitment of munsifs?

A. Yes.

Q. How would a competitive examination be a test of a man's strength of character?

A. Well, it would prove the candidates' knowledge.

Q. It has been put to me by people who are in a position to know that if the presiding officer of a mofussil court endeavours to take a strong attitude towards the bar, his position becomes extremely difficult.

A. I do not think so.

Q. I was told that in some cases he would not be able to get a house.

A. I think it is very much exaggerated.

Dr. DeSouza.—Q. Would you be surprised to hear that the mortality table shows that, whereas the average duration during which a retired subordinate judge enjoys his pension is one or two years, that of a deputy magistrate is more than five years?

A. I think the deputy magistrates live longer than the subordinate judges.

Q. I suppose on the analogy of your reasoning, you would be in favour of curtailing the holidays of the High Court Judges?

A. Yes.

Q. You will make a High Court Judge work in the same manner as the secretariat officer?

A. Yes.

Q. That will also involve all the solicitors and barristers having to work without any break in the year. You would not be opposed to it?

A. No, I would not be opposed to it.

Q. You mention that for better disposal of work in the sadar stations you would appoint responsible judicial officers more or less on the same line as the registrars on the Original side of the High Court. Have you considered what functions you will assign to these responsible officers?

A. He would hear chamber applications and applications which are disposed of by motions in the High Court.

Q. That would involve the disposal of judicial work?

A. Yes.

Q. And you would make that responsible officer to do also the execution work?

A. Yes.

Q. To whom would you leave the preparation of various cases?

A. That officer will be in charge of all the cases which are to be heard by all the judges located in that particular station.

Q. You would also give him control over administration and supervision?

A. Yes, of the office.

Q. Have you considered that that officer in a fairly large station would have very heavy responsible work which he may not be able to cope with?

A. In heavy districts two officers may be appointed.

*Rai Bahadur K. C. Bose.*—Your firm has to deal with title suits in the Alipore court?

A. Yes.

Q. And these suits are of much more complicated nature?

A. Yes, than on the Original side.

Q. And the delay which is caused in the disposal of these suits is due mainly to local investigation and examination of witnesses on commission?

A. In some cases local investigation delays the hearing but the percentage of these cases is lower than where the delay is due to other causes.

Q. What are the other causes of delay?

A. Generally the delay is due to a certain amount of laxity and general practice in the court and also to there being not efficient organisation to handle the preliminary work.

Q. As a matter of fact the subordinate judges are very hard working because if a case is postponed they go on with other cases. Have you thought over the question as to how this delay can be avoided, other than by appointing registrars?

A. By increasing the number of officers.

Q. Do you think there is much delay in the actual hearing of a case?

A. Yes, the officers in the mofussil courts take longer time than in the High Court.

Q. Is it due to the subordinate judge writing depositions and translating them from vernacular to English?

A. To some extent it is due to that and it is also due to the fact that in the districts the cross-examination is needlessly prolonged.

Q. Have you got experience of other districts?

A. Yes, I have got experience of other districts also.

Q. Have you been a litigant there or had your firm to do business there?

A. My firm had to do business there.

Q. In cases where your firm has been a litigant have you followed the procedure of discovery of documents? That I think facilitates the trial of a case.

A. Yes, but I should mention that even when an application for discovery is made sometimes the subordinate judges are not willing to give us facilities.

Q. This is very rare?

A. Lately I applied in one district for discovery of documents against the other side, and the subordinate judge asked us to file a petition showing how the discovery of documents would help us and what we wanted to discover.

Q. Did you follow his advice?

A. Yes, but he allowed the discovery to a limited number of issues.

*Mr. Basu.*—Q. You seem to think that the ministerial officers in the subordinate courts are not properly supervised, and you think that an officer of the rank of registrar ought to be appointed to supervise. Would you make the selection of registrar from the judicial service staff, as at present constituted, or have them as a separate service altogether?

A. From the judicial service. They should be recruited in the same way as judicial officers.

Q. Their posts should be interchangeable?

A. Yes.

Q. A senior registrar will be made a munsif afterwards?

A. Well, a senior munsif should be appointed as a supervising officer.

Q. Who will supervise his work?

A. He will be generally subordinate to the courts.

Q. I do not understand. Supposing, as at Alipore, there is one district judge, several additional district judges, 4 or 5 subordinate judges and 4 munsifs. You will have one man as registrar for all these courts. Who will supervise his work?

A. I do not think any supervision will be needed. He will be generally subordinate to the district judge, but I would make him responsible for the whole department.

Q. But the district judge has to supervise his work.

A. Not close supervision.

Q. Do you think that a district judge, who is now the head of the ministerial establishment in his district, does exercise any official supervision over his staff nowadays?

A. I do not think it is possible for him to do so.

Q. Do you think that if the district judge were to be relieved of a part of his criminal business, that would facilitate his supervising the judicial officers, as well as the ministerial staff?

A. No, I do not think so.

Q. Why not?

A. Because the district judge, except in a heavy district, does not hear many criminal cases. It is only in sessions cases that his services are required, and in districts like Alipore, there is more than one district judge.

Q. But then if the district judge has got to do criminal work for the most part of the year, he cannot supervise the office?

A. No. I mean the supervision of the office is not so important as the disposal of criminal work.

Q. You said something about the recruitment of munsifs. Do you or does your Chamber think that the present system of recruitment of district judges is quite satisfactory?

A. At present the district judges are recruited mainly from the Indian Civil Service.

Q. Does your Chamber approve of the present system?

A. I personally do not. I did not consult this particular point with the Chamber.

Q. Personally speaking have you any suggestions for the alternate system of recruitment?

A. I would prefer all the district judges to be recruited, if possible, from the profession, i.e., barristers, vakils and pleaders.

Q. In fixed proportion?

A. Not in fixed proportion.

Q. You have of course ample experience of the Original side of the High Court. You think cases there are delayed longer than they should be?

A. In commercial cases there is not much delay, but in other suits there is a certain amount of delay. That, I think, is mainly due to the insufficiency of the number of judges.

Q. That applies not only to the Original side, but also to the other courts of Bengal.

A. Yes. That is the primary cause.



**Mr. C. G. COOPER, Representative of the Bengal Chamber of  
Commerce, Calcutta.**

*Written Statement.*

*As to delay in mofussil Courts.*

The following instances are typical of the delay to which litigants are subjected in the mofussil civil courts:—

1. In 1918 a jute mill company purchased certain lands in the district of 24-Parganahs from a person who held the same on permanent mokurari tenure. After their purchase the company went into possession of the lands and used the same for some time for their cooly sheds. Early in 1920 the company demolished these sheds and proceeded to erect pucca buildings for their mill extension. Thereupon the zemindars instituted a suit in the sub-judge's court at Alipore to eject the company on the ground that they were not entitled to construct any pucca structures or buildings on the lands. Simultaneously with the institution of the suit the zemindars obtained a rule on the defendant company to show cause why they should not be restrained from proceeding with their buildings pending the disposal of the suit, and by such rule the defendant company were restrained from continuing their building operations pending the hearing of the rule. The rule was served on the defendant company in June 1920 and the defendant company's affidavit and petition in reply thereto were filed within the time prescribed by the rule. Notwithstanding special efforts on the part of the defendant company for an early hearing the rule was postponed from time to time at the instance of the plaintiff, and on every occasion frivolous grounds such as, illness or absence of his witnesses, were put forward in support of the adjournment. The hearing of the rule was delayed in this way for close upon a year; and to avoid the loss to which the company were being put through stoppage of their building operations, the company ultimately compromised the case by paying the plaintiff a large sum of money as salami.

2. In February 1905 a jute mill company acquired certain lands on permanent tenure from certain persons claiming title thereto in zemindary right. Shortly after their acquisition the company erected expensive pucca buildings on these lands; and whilst they were in possession thereof, the owner of the adjoining zemindary instituted a suit in the subordinate judge's court of Alipore in 1918 for recovery of possession of these lands on the allegation that they appertained to his zemindary and not to the zemindary of the person from whom the company had acquired the same. In March 1919, a commissioner was appointed by the court to determine the boundaries of the plaintiff's zemindary with reference to the old Government survey maps. After numerous sittings, the commissioner submitted the report to the court in November 1922. Objections were then filed against his report by the defendant company as well as their zemindar. These objections have not yet been heard, as older suits are still awaiting disposal.

3. In 1911 a jute company obtained a decree from the Hooghly court against their landlords for compensation for the latter's failure to carry out the terms of a lease which the company held under them. In execution of this decree the company attached the interest of their landlords in the lands comprised in such lease. Certain persons thereupon preferred a claim to the attached property on the allegation that the same belonged to a joint family of which they as well as the judgment-debtors were the members. On the claimants' own statement made in certain previous proceedings it was abundantly clear that their allegation of joint ownership was unfounded. Notwithstanding this, however, the claim case dragged on for over a year and was postponed from time to time to enable the claimants to adduce evidence in support of their allegations.

**Mr. C. G. COOPER, called and examined on Tuesday, the  
26th February 1924.**

*Chairman.*—*Q.* You, I think, have considered some matters to put before us on behalf of the Bengal Chamber of Commerce?

*A.* I have comparatively very little to say. Yesterday legal points of view were put in by another gentleman on behalf of the Chamber. I have rather some ideas as a layman only.

*Q.* I understand you have got other engagements to-day. Will you let us have your views now?

*A.* We have come across trouble as to the purchase of lands. When buying land you must be very careful and so far as you are able you should require the ryots concerned to sign the lease or documents, for when you try to erect a building suddenly some person, whom you have never known, shoots in and brings a case. The case goes to Alipore and there it is stuck; adjournments after adjournments are granted. I have had three particular instances.

*Q.* Will you give us these instances?

*A.* Early in 1918 we bought some lands in the district of 24-Parganahs from a person who held the same on permanent mokurari tenure. After their purchase we went into possession of the lands and used the same for some time for cooly sheds. Early in 1920 we demolished these sheds and proceeded to erect pucca buildings. Thereupon the zemindars instituted a suit in the subordinate judge's court at Alipore to eject us on the ground that we were not entitled to construct any pucca structures or buildings on the lands. Simultaneously with the institution of the suit the zemindars obtained rule on us to show cause why we should not be restrained from proceeding with our building pending disposal of the suit. The rule was served on us in June 1920 and we filed our petition in reply thereto within the time prescribed by the rule. We did everything in our power to expedite the hearing but every time at the instance of the plaintiff it was postponed. Several times I went there myself and found frivolous grounds were put in that somebody was ill or the witnesses were not present. The hearing of the rule was delayed in this way and it went on till the end of the year.

*Q.* What happened at the end of the year?

*A.* In order to avoid loss to which we were being put through stoppage of our building operation we ultimately compromised by paying the plaintiff a large sum of money as salami.

*Q.* You have had more than one experience of that sort?

*A.* Yes, more than one.

Then in February 1905 we acquired certain lands on permanent tenure from certain persons claiming title thereto in zemindari right. Shortly after their acquisition we erected expensive pucca buildings on these lands; and whilst we were in possession thereof, the owner of the adjoining zemindari instituted a suit in the subordinate judge's court of Alipore in 1918 for recovery of possession of these lands on the allegation that they appertained to his zemindari and not to the zemindari of the person from whom the company had acquired the same. In March 1919, a commissioner was appointed by the court to determine the boundaries of the respective zemindaries, with reference to the old Government survey maps. Three years afterwards the commissioner put in his report. The other side then objected to his report and the case is still going on. I do not know when it will be finished.

Apart from that, other people have started this game, and four or five cases are going on. That is No. 2.

In 1911, we obtained a decree from the Hooghly court against the landlords for compensation for the latter's failure to carry out the terms of a lease which we held under them. In execution of this decree, we attached the interest of the landlords in the lands comprised in that lease. Certain persons thereupon preferred a claim to the attached property on the allegation

that the same belonged to a joint family of which they as well as the judgment-debtors were the members. On the claimants' own statement made in certain previous proceedings it was abundantly clear that their allegation of joint ownership was unfounded. Notwithstanding this, however, the claim case dragged on for over a year and was postponed from time to time to enable the claimants to adduce evidence in support of their allegations. In this case, the court allowed them the delay to go on, so that they may adduce evidence. This is the trouble in these landed matters.

*Q.* So far as these cases are concerned, you cannot safely buy save under the Land Acquisition Act?

*A.* It is impossible to get these cases expedited. The small cause courts are uncertain of themselves and uncertain of the law they are going to administer.

*Q.* It is difficult to make certain changes in the Hindu or Muhammadan Law. When there is an injunction you cannot get proper expedition?

*A.* Yes.

*Q.* Any other points on which you would like to speak with special reference?

*A.* The whole point is this. Something really ought to be done in the munsif's courts to stop these consistent delays. Apparently it seems impossible that they cannot go on without adjourning and adjourning on the same excuse every time. That is the disagreeable impression I have got.

*Q.* As regards the small cause court in Calcutta itself, have you had any particular experience?

*A.* No.

*Q.* I take it in Bengal a large part of this delay is due to the fact that the courts have got congested with all sorts of cases?

*A.* That is my impression.

*Q.* The best remedy is that there should be more classification?

*A.* Yes.

*Mr. Justice Stuart.—Q.* Could you let me have a detailed list of these cases?

*A.* There should be no difficulty about them. I shall certainly let you have the papers.

*Mr. Ghose.—Q.* Was the judge at the time engaged in other cases?

*A.* Presumably.

*Q.* So you think that in consequence of congestion in these courts, there is delay in the disposal of cases, or in the disposal of interlocutory matters?

*A.* Yes. There is far too much delay in not going through the files quick enough.

*Q.* If there are more judges then they can manage. What is your suggestion? How would you remedy it?

*A.* I do not know. It is rather outside my province really.

*Mr. Basu.—Q.* Have you ever been a defendant in a civil case?

*A.* We are always defendants.

*Q.* You think that these cases have not come up because the other side was taking unnecessary postponements and that the judge was unduly lenient in granting them?

*A.* That is my impression.

*Mr. Liddell.—Q.* In each case where judges grant adjournments, you press for security?

*A.* Yes. I think we find they could not give security.

*Q.* What happened to your cooly sheds?

*A.* We demolished them and started the big buildings. In the end we paid.

*Q.* What happened to your buildings in the meantime?

*A.* We stopped construction.

Q. Did you suffer any loss?

A. Yes.

Q. Is it your experience that in a case like that injunctions are granted by the court and that you consider yourself very unfairly treated?

A. Undoubtedly.

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**Mr. CECIL H. MOSS, nominated by His Majesty's Trade  
Commissioner in India, called and examined on  
Wednesday, the 5th March 1924.**

*(No written statement received.)*

Chairman.—Q. You are Mr. Cecil H. Moss?

A. Yes.

Q. I think you represented the firm a good many years—the Manchester firm of Messrs. Frank and Lander?

A. Yes.

Q. I think Mr. Lander is the present chairman of the Indian Executive of the Manchester Chamber of Commerce?

A. He was in the Chamber last year.

Q. Now I understand that during the last 2 or 3 years you have been looking after certain proceedings upon bills of exchange in Delhi and elsewhere?

A. Delhi only.

Q. Is that on behalf of your firm or on behalf of other firms in connection with that Chamber?

A. Only on behalf of my own firm.

Q. How many cases in Delhi did you have?

A. I had some cases which dropped off very quickly. There were 3 serious cases of substantial matter.

Q. Do I take it that these 3 cases you are thinking of were cases where the Manchester firm was suing upon accepted drafts, not a question of dishonour of acceptance but a question of dishonour of non-payment?

A. In each case there were accepted drafts as the basis. In some of them towards the end they refused to accept the bills and as we were suing for the total amount of the goods they had taken up, in some cases there were non-accepted bills also.

Q. As regards the actual suits upon accepted drafts, at the time that the suits were started, shall I be right in thinking that the goods in question would be in the godowns of the Delhi banks?

A. Yes.

Q. Can you tell me in your own way what happened when you started the suits, as to how the suits got on?

A. In the first instance I had difficulty in instituting the suit in regard to the delivery of the plaint to the parties. I mean the service of the summons with the plaint. That occupied some little time and various difficulties occurred then which made me believe that some delay was going on which I should have difficulty in encountering later on.

Q. What sort of delay? Was the process returned unserved?

A. Yes in one case. All the while I knew that the man was in Delhi. After great delay the process was served by advertisement in paper.

Q. What was the reason given for non-service?

A. The man was away.

Q. Had he a house or any place of business in Delhi?

A. Yes. In one case the process was put upon the door of his house.

Q. How long did it take in effecting the service? For what time they kept the suit hanging for service of process?

A. One to two months.

Q. Then what happened?

A. When the case was heard the great difficulty was that they refused to admit any other papers. First of all I should say that in suing on an accepted bill we do not anticipate that we should have to produce the documents relating to the prior transaction. We considered that the man having admitted his liability by accepting the bill, the case would merely be on that bill. However the question of consideration was allowed to be raised and the case was heard from the very start. He denied everything in *toto*. Then I had to telegraph home for 4 copies of the whole correspondence relating to the whole transaction. These copies were sent out and were certified by the Manchester Chamber of Commerce as being true records from our books. They were denied by the defendants. But the defendants were not called on to produce their books which were in Delhi and the whole documents were in Delhi and could have been verified there on the spot. After that, a commission was appointed.

Q. Did you apply to have the documents produced by the defendant or to make him answer interrogatories or to make him disclose them?

A. I only know that my lawyer did everything he could possibly do to avoid delay.

Q. Can you recollect any reason given by the court for rejecting any application for the production of any such document?

A. The reason given to me was that a man cannot be compelled to produce evidence against him.

Q. A commission was ordered home?

A. Yes. This commission was in addition to the certifying of the correspondence by the Chamber of Commerce. More than one commission was sent out in the same case. The defendants got up and asserted that my firm consisted of more partners than Mr. Frank and Mr. Lander and they asked me. There is my power of attorney and we have no other powers. Nevertheless a commission was ordered home to find out whether there were any more partners. What that had to do with the case I do not understand.

Q. When the Manchester Chamber of Commerce sent the certified copies, notebooks and correspondence, did the judge admit them or reject them and did you have the commission because of the delay?

A. Yes. The defendants refused to admit them. That was the difficulty. Nothing except admitted documents were ever taken under the file. He would not accept unless we prove it. With regard to the admitted documents on the file a commission was issued.

Q. Was that commission issued at your request?

A. Yes. We had to make that request.

Q. More than one commission was issued for England in the same case?

A. Yes. Further actions were brought up when the first commission had come home. There was a commission ordered at the instance of the defendant for the purpose of finding out who the partners were.

Q. Do you remember how exactly the suit was brought? Was it brought on behalf of the firm?

A. Yes, on behalf of the firm. Another suit was brought as a partner of the firm.

Q. How many times did you go to Delhi? How many adjournments were given?

A. I am sure I attended 50 times in Delhi. There were as many as 3 suits.

Q. What is the time granted in each adjournment you used to attend?

A. From 4 days up to 3 months.

Q. And on these occasions, did anything happen, did any discussion take place?

A. On many occasions the case was adjourned without being touched at all, but on some occasions some minor points were settled and that was considered sufficient work for the day. The judge then took up older cases pending in his court.

Q. In the end before you threw up your case did you get any discovery from the defendant? Was he made to produce any document?

A. Of course he produced some documents, but those only which he thought might suit him. He produced what suited him. I never saw that the documents produced were really relevant to the case.

Q. How long have you been doing business with them?

A. We have been doing business with them for thirty years and they were a firm of long standing.

Q. I understand that at that time for various reasons there was a tremendous slump in market?

A. Yes.

Q. I take it that the khaddar movement and other similar movements of political character were responsible for all this? There was a good deal of Gandhi influence?

A. Yes.

Q. And in these circumstances I take it that the people who were buying in India were probably fighting for time?

A. Yes. Certain firms which were in a weaker position than ours started a very bad system, hitherto unknown, of concession. I am right, I think, in saying that all firms realizing the position adopted the principle of concession with greater hesitation because they were afraid of forming a precedent. Therefore these people saw, the longer the time, the greater the concession.

Q. So it means that they had a chance of getting concession by fighting for time?

A. Yes.

Q. Then under these circumstances, the best thing would be, I think, to have a receiver appointed and the goods sold, so that they might not deteriorate or the market value might not fall?

A. Yes.

Q. And what is your experience as to that? Did you apply in any case to have a receiver appointed and the goods sold?

A. The judge seemed very strongly against disposing of the goods. He seemed to think that it would alter the nature of the case and would bring in complications. The only case where I applied for the appointment of a receiver was the case against one Kanhiya Lal.

Q. Did the defendant object?

A. Yes.

Q. On what grounds did he object?

A. He objected on the ground that if the goods were sold by the order of the court they would fetch no price at all and therefore his loss would be greatly accentuated supposing he had lost the case?

Q. In point of fact did the market value of the goods go down further?

A. No it never went down further from the time I applied.

Q. Then if the case had been fought out to the end, would there have been any deterioration of goods?

A. Yes the goods would indisputably have gone rotten.

Q. Have you got any experience of cases where you got a judgment and then discovered that the debtor had made over his property to some body else?

A. I never got a judgment.

Q. Can you tell me in these cases, after waiting how long, you threw up your cases?

- A. From the time of the institution of the case, you mean?
- Q. Yes.
- A. The longest case that I had was one instituted in August 1921 and I threw it out in March last year.
- Q. And what did you do in these cases?
- A. Compromise.
- Q. You mean compromise in the form of concession?
- A. Yes. And in these cases concession which we were making to others was always open to those firms whom we were suing.
- Q. It means that ordinary concession they might have taken at any time?
- A. Yes.
- Q. In these cases did the defendant deny documents filed with the plaint?
- A. In some cases they denied the signature on the draft. They would put forward every possible objection, whether relevant or irrelevant.
- Q. Did you have settlement of issues in all these cases?
- A. Yes.
- Q. Did you see that issues were settled by the judge?
- A. Yes.
- Q. Were they all relevant and reasonable?
- A. From the business point of view some of them were very unreasonable; from the legal point of view they might be reasonable.
- Q. Is there any other place apart from Delhi where you had experience?
- A. No, not at all.
- Q. In the ordinary way did your firm, during the war for example, sell goods in Calcutta?
- A. We have been trading in Calcutta for big number of years.
- Q. As regards the cases in this locality have you any complaint to put forward?
- A. No, we never had any case.
- Mr. Justice Stuart.—Q. How many suits did you have in Delhi?
- A. I cannot say exactly.
- Q. About six?
- A. Six or seven.
- Q. In every case, the men were carrying on business in Delhi?
- A. Yes.
- Q. Were they solvent?
- A. They were all solvent and big men.
- Q. What was the value of your claims, roughly in each case? Was it a lakh of rupees?
- A. In some cases it was more than a lakh of rupees. There were two or three big cases of twelve to fourteen thousand pounds each.
- Q. I may take it roughly that it was a matter of ten lakhs of rupees?
- A. About five lakhs altogether.
- Q. Where they actually on bills of exchange?
- A. Yes. They were actually on bills of exchange to which Order 37 would apply if in force.
- Q. What became of the goods finally, did you get them back from the bank?
- A. In some cases we took them ourselves and sold them and in other cases men took them, when we had made settlement with them out of the court.
- Q. What was the nature of the concession that you offered them?
- A. We offered them allowance of 25 per cent.

Q. You allowed them substantial reduction?

A. Yes.

Q. Your experience is that courts are absolutely useless?

A. Yes. I shall never have another law case in Delhi in the present circumstances.

Q. Yours of course was a firm carrying on business in British India?

A. It was argued that we were carrying on business in England.

*Sir T. Desikachari.*—Q. All this happened in September 1920, at a time when there was a slump and fall in prices?

A. Yes, there was a great deal of fall in prices at that time

Q. I understand from what I know of this matter that from September 1920 to January 1921 there was considerable fall in prices. There were no persons willing to take over goods.

A. Yes.

Q. Have you had any cases of your customers refusing to honour accepted drafts afterwards, in 1921, 1922 or 1923?

A. One or two.

Q. But generally they behaved all right?

A. Yes.

Q. The suits that you had were suits of exceptionally difficult time in the piece goods market?

A. Yes.

Q. You spoke of every possible objection being taken by the defendants' counsel. You were represented by competent counsel?

A. Yes, I was told that I had very good counsel.

Q. The goods that you had, were they lying in the customs house or in the bank?

A. In the bank.

Q. When they were sold what did they realise?

A. They realised about 25 per cent. of the original price, that was after allowing the accumulated interest and bank charges which were very heavy.

Q. In these cases you have lost enormously?

A. Tremendously.

Q. Am I right in saying that some firms gave concessions to the extent of 50 to 60 per cent.?

A. 25 per cent. is the general concession when the trouble has been going on for a few months.

Q. You said there was some trouble in serving summons on the defendants. How?

A. Summons had to be served on a man in Rawalpindi, and it was served only after much delay. In one case the notice was pasted on the door and in another case it was advertised in the paper. Though the notice was advertised in the paper, still no defendant appeared and I attended the court. The judge was asking "where is this man." The judge remarked that as the defendant did not turn up, the judgment must go by default. As I turned round, I suddenly saw the head of the man and I told the judge "there is the man." Then he was called in and the case went on. The judge reprimanded him severely.

Q. May I know how long after the institution of the suit did the man peep into the court?

A. After about 3 months.

*Dr. DeSouza.*—Did you not ask your lawyer to expedite the matter?

A. I did ask him and he pressed very hard, and the judge also allowed me to explain my difficulty. The judge always gave me a courteous hearing.

Q. Have you ever had to go to court before, either in Delhi or Calcutta?



A. No. Litigation has been practically unknown to us before.

Q. Did you have any litigation in any other court except in Delhi court, in connection with the slump in 1920?

A. No.

**Mr. R. M. DOWNIE, nominated by His Majesty's Trade  
Commissioner in India, called and examined on  
Wednesday, the 5th March 1924.**

(No written statement received.)

Chairman.—Q. I think I am right in saying that after the armistice the price of piece goods slacked in India somewhat. Did it not?

A. After the armistice there was a slump. Then there was a boom. In both the price of cotton and the rate of exchange there was a slump in 1920. Then the trouble began.

Q. That trouble was about the September of 1920?

A. That is right.

Q. Did you have some cases where you shipped the goods on the ordinary c.i.f. terms?

A. Yes.

Q. Did you have any difficulty in realising your amount?

A. I tried to keep out of litigation. In 2 cases in Delhi I could not make any reasonable arrangement and so I filed suits against two parties.

Q. I understand that before you took to litigation at all, you offered a reduction of rate in the invoice price?

A. Yes.

Q. Those reductions are not 3 or 4 per cent?

A. Yes. In cases where the party would not pay I offered less. In cases where I knew the man was making a loss, which would probably ruin him, I gave a larger allowance. In the case that I am going to refer to here I offered 25 per cent. There was a dead loss to us of 25 per cent. They would not listen to anything less than 50 per cent. and knowing that they could pay—well-off people—I decided to file the suit.

Q. Taking this particular case, can you give us the names of the parties or shall we keep names out of it? You can give us the number of the suit, if you like and we will send for the actual records.

A. If it is to be published I do not think I can give the names. The matter is not yet finally disposed of.

Q. They have appealed?

A. Yes.

Q. Taking the broad facts please give me your experience in this case.

A. I had no time to look up to the number of the suit. It is against a firm in Delhi and Calcutta. I shipped goods in August, September or October 1920. From that date onwards there was a slump. We tried all during the period from November 1920 when the goods arrived till that date in 1921. Correspondence was going on. There was a heavy loss. I went up to Delhi in November 1921. I could not come to any conclusion. I instructed the pleader there to file a suit. But that suit was not filed till I went a second time. Ultimately he filed the suit in November 1921. The suit came on for hearing in February 1922 and I do not know why it took so long a time. There is no reason that I know of. I went in February 1922 to give evidence. I found there were 2 pleaders on the other side and they would raise all sorts of questions which never had been raised before and try every expedient to delay. I went from Calcutta to Delhi to give evidence and these pleaders would not cross-examine me. I do not know what their idea was.

I was examined in February 1922. When I went Home in the month of May, they sent a commission Home to get evidence in the month of July.

Q. Evidence about what?

A. On the whole question from the goods being shipped. They sent down a solicitor to London. He took my evidence, just the same as I gave. The only thing was that there was another 6 months delay.

Mr. Justice Stuart.—Q. Were you the only witness examined on commission?

A. Yes.

Q. You gave the same evidence?

A. Yes. After that evidence was sent out I got a decree in March 1923. Then they gave notice of appeal to the High Court. A curious thing happened then. I always understood that if you get a decree and an appeal was made, the party who appealed had to deposit the amount of the decree. Well, they deposited nothing. On the other hand we were asked to give security for their costs if they win the appeal. It is a sort of reversal of the ordinary course of things, so far as I know. This appeal has not yet come on. I got a letter from my pleader the other day that he wanted some money to go on and to defend the appeal.

Q. I suppose the appeal is to come on shortly?

A. Yes. There was no doubt about this case from the beginning, because the bills were accepted. I wanted the pleader in Delhi to allow me to sell the goods and sue for the loss. He said:—"Oh, No. You have got acceptance. You have got a fair case. Simply sue on the acceptance." The result is that the goods have been lying from November 1920 to 1924.

Q. You have not got your money yet?

A. No.

Q. Are the goods still in the godowns?

A. Yes.

Chairman.—Q. That was the advice given to you by your pleader?

A. Yes.

Q. You did not ask the court to appoint a receiver to sell the goods?

A. We asked the court each season. He said that it would spoil our case on the bills. So, I had to take the advice.

Q. I take it that they are lying from November 1920 till March 1924?

A. Yes.

Q. Until November 1921 you did not come to court?

A. No. The court was not responsible till then.

Q. Have you any other experience of any other case?

A. I have another case which I started at the same time. I got a decree there. The bank, when the season came round for the goods, took it in their own hands and sold the goods. Then there was a dispute as to whether I was entitled to the decree. I got what is called a temporary decree. It has not been made a permanent decree.

Q. You probably got a decree on the bill and got a stay of execution until that is settled?

A. Yes.

Q. Have they applied to set aside the decree?

A. Yes. Now, that case has taken some time. As to the other one, it is still going on.

Q. In these two cases if you will give us the number and date of the suits, we will call for records?

A. Very well I will try to furnish you with the number and date of these two cases.

**Q.** When you went to Delhi, did you find that practitioners and courts there were accustomed to commercial litigation?

**A.** Yes, there were good many cases there. There was a good deal of commercial litigation.

**Q.** Have you got any experience of commercial litigation in High Courts?

**A.** Yes, I had a case here in Calcutta over a matter of seven thousand pounds. It went on quite satisfactorily and took only six or seven months. We got a decree in that case.

**Q.** Have you got any experience of Amritsar or Bombay?

**A.** I settled everything in Amritsar long ago. I have no more cases there.

**Q.** As far as you are concerned about the matter of appointing receivers to sell goods in these commercial cases, do you think that they would minimise damages or losses?

**A.** The quicker the goods are sold, the better. Of course there was a period in which the Gandhi influence was so very great that we could not sell goods at all. Not only there was loss in interest, but in godown rent and all the other charges that are often incurred in these matters.

**Q.** So far as your firm is concerned when you sell goods in India, do you sell them merely on the reliance of merchants?

**A.** Well up to this time we have been selling our goods merely on reliance, but now we have stopped. We now sell on credit. The bill of exchange is attached to the shipping document. We have to pay the cost of freight and insurance and the only thing that we can keep back is the return commission. Sometimes part of the price is not paid till the end of the journey.

**Q.** So there is no complication in that way?

**A.** No, there is no complication at all and it is perfectly clear.

**Q.** I notice that you filed one suit in November 1921 and got a decree in February 1923.

**A.** Yes, I was examined in February 1922 and got a decree in March 1923.

**Q.** What was the delay due to? I think what happened was that the pleader for the defence refused to cross-examine you because he had not got his papers with him?

**A.** The only thing I know is that I was examined in February 1922.

**Mr. Justice Stuart.—Q.** Who was the judge?

**A.** Mr. Coldstream.

**Q.** In both the cases?

**A.** In the other case the judge was an Indian.

**Q.** What was the amount of your decree?

**A.** In the first case it was forty thousand and in the other about twenty thousand.

**Dr. DeSouza.—**Have these cases in any way influenced your dealings with Indian merchants?

**A.** Yes. But if we know the buyer very well, we do not insist on credit. We want some sort of guarantee, *i.e.*, if they go to the bank and guarantee that they will pay the draft on due date.

**Q.** So you want some sort of guarantee or security?

**A.** There are some exceptions. There are some people from whom we do not want any security. There was another point which I think I should mention here. I think an English or an European judge is apt to allow these people to extend time because he does not want to give the impression that he is at all partial to Europeans.

**Q.** But if you have an Indian judge?

**A.** The Indian judge would not go the other way and favour Europeans.

**ASSAM.****Evidence recorded at Calcutta.****PRESENT :**

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.	
The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.	} Mr. R. E. Jack, I.C.S., District and Sessions Judge, Assam Valley District, Gauhati.
Dr. F. X. DeSouza, I.C.S., Bar.- at-Law.	
} Co-opted Members.	
Mr. C. V. Krishnaswami Ayyar—Secretary.	

**List of witnesses examined from the Province of Assam.****Wednesday, 27th February 1924.**

1. Babu Rajendra Kumar Gupta . Munsif, Sylhet.
- \*2. Babu Upendra Nath Sen . . Pleader, Gauhati, also Representative,  
Gauhati Bar Association.
3. Babu Basant Kumar Das . Secretary, Bar Library, Sylhet.

**Friday, 29th February 1924.**

- \*4. Rai Bahadur Radha Nath Subordinate Judge and Assistant  
Phukan, M.A., B.L. Sessions Judge Gauhati.
5. Srijut Jogendra Nath Barua, Extra Assistant Commissioner, Tezpur.  
M.A., B.L.

**Babu UPENDRA NATH SEN, Pleader, Gauhati, and Representative, Gauhati Bar Association.***Written Statement.**Civil suits.*

(i) Rule 3, Order 5, should be used in as many cases as possible, to bring up the defendant before the court as early as possible. He may appear in person or by pleader. His movables should be attached, if necessary, to make him appear.

This will do away with a large number of miscellaneous cases for setting aside *ex parte* decrees and their appeals. Defendant thus will find himself

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\* Written statement and oral evidence printed.

compelled to take steps in the case at once and the case will move more speedily.

This will be found beneficial also in executing decrees; many judgment-debtors sit idle when the case is going on and then after decree, come to set aside judgments and decrees on the ground that they know nothing about the cases.

Amicable settlements may also take place in many cases in the early stage instead of at the close of a suit. In many cases it takes long to serve summons on the defendants, as they evade service.

(ii) Prosecution against witnesses for non-attendance after summons and fining them for same, should be resorted to. This is now seldom done in civil cases.

Warrants of arrests and issue of proclamations generally do no good. Attachment of moveables is the better remedy, but this now is seldom done.

(iii) Improvement in the process-serving staff—necessary. Much delay can be avoided by prompt service. The peons (the process-servers) should be under the direct control of the munsif and the civil court. The civil court should have its own process serving staff. This is not the case here.

(iv) The process-servers should be taught taking of thumb impressions and necessary implements should be supplied to them. Most of the defendants and witnesses are illiterate. This will ensure proper service of the summonses and notices in many cases.

(v) Officers for judicial work should be recruited from lawyers of some experience. They will be able to grasp the points in dispute and the legal aspects of the questions more easily and dispose of cases more speedily.

(vi) Delay is often experienced in getting copies from the copyists.

(vii) *Ex parte* rent suits and claims on contracts in writing, up to Rs. 100 may be disposed of by the civil sharishtedar and he may be empowered to do so.

#### *Delay in the execution of decrees.*

(i) Often owing to objections about out of court payments, no other out of court payments should be allowed by court except postal money orders (suitable forms for sending decretal amounts should be introduced) and through recognized banks.

(ii) Objections about outside adjustments and compromises. No such thing should be allowed except in writing, signed by both the decree-holder and the judgment-debtor and filed by them jointly in court.

(iii) More use of the provisions under Rules 1 and 5, Order 38, and of Rule 1, Order 39, Criminal Procedure Code.

A decree-holder is seldom deprived of his decretal amounts when there was a previous attachment before judgment under the above orders.

(iv) Simultaneous execution against both person and property if done will compel the judgment-debtors to arrange payment. This is rarely done now.

(v) A judgment-debtor should be liable to be imprisoned more than once (after reasonable intervals) for the non-payment of the decretal amount. The present rules about civil imprisonment are too lenient for the judgment-debtors.

(vi) The technicalities regarding execution within every 3 years, notices before arrest, notices under Rule 22, 1 (a) frustrate execution proceedings and are too favourable for the debtors.

(vii) Some select and approved peons should be set apart for the execution of decrees.

(viii) Filing of appeal is one mode of delaying payment after decree. In money appeals, a deposit of half the decretal amount in cash in case of above Rs. 50 decree and full amount up to Rs. 50 at the time of the lodging of the appeal, should be made a condition precedent to the entertainment of the appeal. This will enable the decree-holder to get at least some portion of the decree at once without trouble.

(ix) Order 21, Rules 21, 22, 1 (a) and 2, 23, 37, and final decrees in mortgage suits, sale and foreclosure should be abolished.

(x) Small cause courts should have power to attach and sell lands in execution of their decrees. The present state of the law also gives opportunities to unscrupulous persons to increase litigation by false and unfounded actions. Sometimes with the help of tutored witnesses they succeed also, thereby the people lose faith in the administration of civil justice in our courts. The following may be suggested under this head towards improvement. A large number of suits which are now brought will then disappear and cease to exist.

- (1) All transfers of land should be by registered deeds, of whatever value.
- (2) All wills should be made compulsorily registrable.
- (3) Registered documents should operate from the date of registration.
- (4) Allowing suits under allegations of *benami* purchase (except by illiterate persons and females).

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**Babu UPENDRA NATH SEN called and examined on  
Wednesday, the 27th February 1924.**

*Mr. Justice Stuart.*—Q. In your place is not civil judicial work done by executive officials? Are you satisfied that the quality of their work is as good as that of district munsifs?

A. No.

Q. Would you like that the civil judicial work should be transferred to regular district munsifs?

A. That is the view of the public. These extra assistant commissioners do criminal work, revenue work as well as civil work. The civil work should be handed over to regular munsifs.

Q. Has it ever happened that an extra assistant commissioner was suddenly asked to take over charge of the treasury work on a day when he had civil cases fixed?

A. Formerly I used to see that munsifs were also in charge of treasury work, but later on that work was given over to an extra assistant commissioner and the whole file is in his hands now.

Q. Do you think that the system of process serving is working satisfactorily?

A. No, it is not working satisfactorily.

Q. What are the main defects?

A. One particular defect is that the civil court has not got any separate set of peons.

Q. If the civil court has not got a separate set of peons, then what are these peons employed for?

A. There are some persons under the nazir who is under the deputy commissioner and these peons serve processes in revenue work, criminal work and in civil work. So the munsif has got no direct control over peons.

Q. Do identifiers accompany peons when they go out for serving processes?

A. No identifiers were employed formerly, but from some years past identifiers are being supplied by the parties.

Q. I am very much interested in that answer. Have you found any improvement as a result?

A. Not much improvement.

Q. So there has been no improvement but a considerable amount of extra expenditure?

A. Yes and the number of suits has also increased.

Q. It is stated by a gentleman, who has written a note for us, and who, I believe, is a leading lawyer in your courts, that the system of employment of identifiers is a positive preventive of justice being done in many cases. I think you are familiar with cases against contractors.

A. No, we are not so much familiar at Gauhati with these matters.

Q. He has illustrated it by a case. He says that a man receives an advance of Rs. 500 or more to bring labour to a tea estate but does nothing. He usually resides in another district. The tea estate brings a suit against him for recovery of the advance and has to send a clerk over a very long distance as an identifier to accompany the peon. When the clerk arrives at the destination, he has to wait until the peon is ready to accompany him. In the meantime the contractor comes to know of it and goes away to some other place. When the peon arrives at the village he does not find the contractor. Now if the peon had gone directly without waiting for the identifier he would have got the process served. Do you consider that a reasonable state of things?

A. No.

Q. Now about the headman of the village, what do you call him?

A. We call him *gaonburra*.

Q. Do you look on him as a responsible officer?

A. Yes, he is in a sense a responsible officer.

Q. I take it he is more honest than the identifier?

A. Yes sir, he is an honest man.

Q. Would there be any objection to the *gaonburra* being made responsible for identification in his own village?

A. I think, sir, that suggestion is likely to be useful.

Q. If the *gaonburra* gets some fee for his trouble, would not that be an incentive?

A. Yes, it will be an incentive.

Q. Do you think that there would be a reasonable improvement in the Assam valley if the village headman is made responsible for this purpose?

A. Yes sir, I think there will be great improvement.

Q. Do you think that the provisions of Order 1, Rule 8, are sufficiently employed? Rule 8 says:—

“Where there are numerous persons having the same interest in one suit, one or more such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service, or where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.”

Do you think that there will be a good deal of saving of time if these provisions are utilized more?

A. Yes. Then, sir, as regards Rule 3, Order 5, if the man does not appear the court has not sufficient power to enforce his attendance.

Q. You suggest that the law should be strengthened to increase the powers of the court in enforcing attendance?

A. Yes.

Q. The next point you have taken in your note is that the courts should use more freely their powers of punishing persons who do not obey their orders such as witnesses. I think, your experience is that it is very seldom done.

A. Yes, very seldom.

Q. Have you ever known of the non-appearance of witnesses sued in the interest of the man who calls him?

A. No, I have never come across such a case.

Q. Now in regard to improvement in process service you want to have a separate staff of process-servers for the civil courts and proper supervision over it. At present you are not satisfied with the supervision which they receive.

A. If the same peon is entrusted with the service of criminal process and revenue process he takes more care to serve the criminal process.

Q. You suggest taking of thumb impression on processes. Would you not have to alter the law to do that?

A. I think the law will have to be altered.

Q. As the law at present stands you cannot compel a man even to sign. Would you not have a great difficulty in compelling him to fix his thumb impression?

A. That is not the reason. What led me to write that is that if a man is unwilling to acknowledge he will equally be unwilling to write but there are some who acknowledge but they cannot write.

Q. Of course, I take it, that you say that process-servers should be trained in taking thumb impressions.

A. That is not a very difficult thing.

Q. But surely it is difficult. I have found that in sub-registrar's offices you have to give them training before they can take a good thumb impression.

Then in the Assam valley you are strongly in favour of appointment of munsifs and not extra assistant commissioners. Now the law in Assam is the ordinary law and they are bound by the Civil Procedure Code and the cases finally come up to the High Court.

A. Extra assistant commissioner is empowered to try several cases. He begins to try them without any experience and one gentleman actually complained against an extra assistant commissioner. He takes a long time to understand the relevancy of points.

Q. You say that there is considerable trouble in getting copies. What is the period in which you expect to get a copy?

A. We expect generally in ten or twelve days.

Q. Do you use typewriters in the copying department?

A. Yes.

Q. In regard to execution, you put forward that certain methods of payment should be recognised by the court and not others and you put down payment by money order?

A. Yes; I think we shall have to make special money order forms.

Q. We are already taking that into account. We shall have to get special money order forms containing particulars which will enable the court to trace payments. One part shall be kept in the post office, one returned to the remitter and one retained by the court. And you would also admit a cheque on a recognised bank. Do you think any hardship will result if you restrict the adjustment to these two?

A. As regards banks, in Presidency towns, it would be a good thing. In the mofussil, it would not be so.

Q. Has every body got a post office reasonably at hand in the Assam valley?

A. The number is not very great, still there are some post offices.

Q. Do you think there will be any hardship in asking a man to go to a post office?

A. No. At least much less hardship than to deposit in court.

Q. Whenever there has been a promise or an adjustment, it should be recognised.

A. It should be signed by both parties and filed in court.



Q. You think that more use should be made of arrest and attachment before judgment.

A. Yes.

Q. And also of temporary injunctions. Don't you think that temporary injunctions are sometimes issued a little freely?

A. No. Not there. But temporary injunctions have failed to secure the desired result.

Q. Would you be in favour, in money suits, of making a man lodge at least a portion of the decretal amount before filing an appeal?

A. Yes.

Q. Do you get many *champerty* suits in Assam?

A. No.

Q. You suggest that all wills should be compulsorily registered. Don't you think that would be rather difficult to effect?

A. No, I do not think so. Now-a-days we find that when a man dies, not only one but several wills are brought forward by several parties.

Q. As an experienced pleader, you really think that that is a practical suggestion.

A. Yes.

Q. And would you make *benami* transactions illegal?

A. Considering illiteracy and helplessness of the female landholders, I would expect only these two classes of persons from disputing *benami* in sales, the illiterate persons and those likely to be deceived.

Dr. DeSouza.—Q. I see from the civil list here that all the subordinate judges and district munsifs are all graduates in law?

A. Yes.

Q. What is the class of officers that are entrusted with munsifs' duties in Assam?

A. First of all they are revenue officers appointed as extra assistant commissioners and then they are gazetted with the powers of a munsif.

Q. After how many years of service in the revenue department are they posted to do munsifs' duties?

A. There is no fixed rule. In some cases very soon after they are appointed and in some cases of course after they have done a certain amount of criminal and revenue work.

Q. But generally are they whole-time munsifs or part-time munsifs.

A. In a few places they are whole-time.

Q. For what purposes are they under the district judge and for what purposes are they under the deputy commissioner?

A. For purposes of appeal and transfer of cases from one file to another they are under the district judge.

Q. In all other respects?

A. They are subordinate to the deputy commissioner.

Q. Now what about their establishment?

A. In their establishments they have got a *peshkar*.

Q. Are they interchangeable with the establishments of the revenue officers?

A. Yes.

Q. They have no training in civil work at all.

A. No.

*Q.* The result is that you have got an untrained munsif and an untrained establishment.

*A.* That is throughout the case. Even inspections by the district judge seldom have any effect upon them.

*Q.* You are familiar both with Assam valley and Surma valley?

*A.* I am familiar with Assam valley. I am not so familiar with the Surma valley.

*Q.* Is there any marked difference in the civilization in the two provinces as to necessitate this difference in judicial cadre?

*A.* I cannot say.

*Mr. Sen.*—You say that all wills should be registered. Do you think that all dispositions of landed property should also be registered?

*A.* As regards that when I sent my note I did not get the set of questions.

*Mr. Justice Stuart.*—*Q.* You could give us a written note after you had time to study the questions. My experience is to the effect that the delay and difficulty in deciding title suits arise partly on account of the long period of limitation allowed by law to file these land suits—12 years. Therefore, by this time the thing goes on and becomes more and more complicated. The land is let out or leased and houses are constructed. Various things happen and transfers take place. That is one reason why land cases take more time and ultimately they are difficult in deciding. Another reason which strikes me is that the state of the present law is very defective. The law takes many things to oral arrangements and does not insist on transactions regarding lands to be registered. If all transactions regarding lands had been by registered deeds, then to decide land cases it will not be a very difficult thing, because the deeds will show the transfers and everything will be quite clear. But now there are so many things against the decision. There is oral sale against registered sale. There is unregistered sale against registered sale. These complications create great difficulty. Then the remedy you suggest is that all transfers of interest in land must be by registered deed?

*A.* Yes.

*Q.* You would over-rule all personal law in that matter?

*A.* Yes, because ultimately we find unregistered deeds are not advantageous to purchasers. They get into some trouble. The partition deeds referred to in one of these questions, deeds of surrender, deeds of sale and mortgages—all these should be registered deeds.

*Q.* Do you think there is any object in getting attestations to the mortgage deeds?

*A.* I do not see any necessity unless it be to create difficulties.

*Q.* As regards the registration law the question should also be considered as to whether effect should be given from the date of the registration and not from the date of execution?

*A.* In my experience I have got several cases where fabricated documents came to exist between these 4 months. It was registered after being antedated. I do not see anything on that point. Unless there is a period prescribed by law to bring it up for registration (a short period of 2 months), it will not be conducive to public good. I am submitting that the deed should operate from the date of registration. As regards limitation, Gauhati Pleaders Association is of opinion that Sections 19 and 20 extending the period of limitation by payment of interest or by part payment of principal is a source of great difficulty.

*Rai Bahadur K. C. Sen.*—*Q.* So you are not in favour of extending limitation by payment of interest?

*A.* No, I am not.

*Mr. Justice Stuart.*—*Q.* Are you in favour of reducing the period of limitation for redemption? At present, I think, it is 60 years. Would you reduce that?

*A.* Of course 60 years seem to be a very long period.

*Q.* Would you reduce it to 30 years, *i.e.*, to one generation?

*A.* Yes.

*Q.* In certain circumstances it may be longer?

*A.* Yes.

*Q.* Then about execution of money decrees, what do you think of the suggestion that it shall not be necessary for a decree holder to apply every three years and that he should be allowed to execute the decree at any time he finds it convenient to do so, provided he does not exceed the 6 or 12 years limit?

*A.* Well Gauhati Pleaders Association is of opinion that the execution should be left to the decree holder without the necessity of repeating it after every three years.

*Q.* So you are of opinion that a decree should be executed after six years, no more and no less, and it is not necessary to keep it alive. Is that your suggestion?

*A.* But six years according to our Association is not sufficient as the decree holder gets very little facilities for execution.

*Q.* Then you would have 12 years?

*A.* Yes. One or two suggestions more which may be taken into consideration. Small cause courts should have powers to attach and sell lands and the other point is that as soon as a decree for money is passed, it should operate automatically as a charge on the debtor's immoveable property until it is paid or until it is set aside.

*Q.* To prevent subsequent alienation?

*A.* Yes.

*Q.* But it will be difficult if no notice is given to the transferee?

*A.* If he is a transferee without notice he is always expected.

*Q.* I cannot see your point. Supposing the man has a house and nothing else and a money decree is passed against him on a promissory note for about Rs. 1,300 or Rs. 1,400. Now he knows that his house is going to be attached and he may sell it or mortgage it. The transferee may be perfectly honest and may not know that a decree has been passed against the man.

*A.* He comes to know of it.

*Q.* Not always?

*A.* But I think that it becomes known that a decree has been passed against the man. Then as regards peons' work I wish to suggest that promotion of peons should depend upon personal service of processes entrusted to them, and if it is entered in their service books quarterly or half-yearly, I think that would be an incentive to them.

*Mr. Jack.*—*Q.* Do you think that more use could be made of Order 41, Rule 11, in dismissing appeals summarily?

*A.* So far as Assam valley is concerned the number of appeals is very small. From three munsifs we have got only 125 appeals. As regards land acquisition cases, the opinion of the Gauhati Pleaders Association is that they should be left in the hands of the judge.

*Q.* What about insolvency work?

*A.* It is now done by the sub-judge.

*Q.* And probate cases?

*A.* They are done by the judge.

**Rai Bahadur RADHANATH PHUKAN, Sub-Judge and Assistant Sessions Judge, Assam Valley District.**

*Written Statement.*

The average duration of an ordinary suit in the munsif's court in the Assam valley is about 5 months. This is somewhat less than the average duration of such a suit in Bengal. But conditions in Assam are quite different. Here, our cases are mostly of a simple character; the litigants are less dilatory; the pleaders who do not get daily fees as a rule are not only not obstructive but are anxious to help the court. (Daily fees are now being charged by some pleaders at Gauhati and Dhubri.) Under such favourable circumstances civil cases in the Assam Valley should have been much more speedily disposed of.

But the system under which the work is done is faulty. Formerly in all districts civil work used to be done by executive officers in addition to their ordinary duties. Naturally enough, they used to take the least interest in the civil work and there was very great delay in disposal.

In 1907, however, in some of the more important districts, extra assistant commissioners in charge of the munsifs were relieved of all other work. But the old system still continues in the outlying sub-divisions. Most of the officers appointed as munsifs have no aptitude for civil work. The judge has no administrative control over them and they themselves have no administrative control over their own office and process-servers. Under such circumstances we cannot expect them to do work expeditiously. It is true that civil cases cannot be as speedily disposed of as criminal cases. It is neither possible nor expedient to do so. But even with the existing law and procedure, there is a great room for improvement, only if we have a trained judiciary.

I do not write in disparagement of the extra assistant commissioners. I am myself one of them. But speaking of the average munsif in the Assam valley, I am bound to say that he has no legal training and there is no method in his work. It is true that he works hard but it is entirely his fault if he is overworked. Suits which he could dismiss on preliminary points are allowed to drag on; unnecessary adjournments are granted; parties know that they have great latitude in protracting their cases; long adjournments are granted to file written statements; cases are dismissed for default only to be revived afterwards; it is left to the pleaders to frame issues; parties are not encouraged to make use of Rule 2, Order XII, which relates to the admission of documents; dates are fixed without regard to the state of the file; during trial, irrelevant matters are allowed to go on; judgments are written long after the arguments were heard (I know of one or two instances in which judgments were written 6 months after the arguments).

I am decidedly of opinion that unless we have a separate judicial service things are not likely to improve. I am prepared to show that a separate judicial service will not involve any extra expenditure to Government but will lead to economy in the long run.

When such a service is created, it will be possible to try most of the suits under small cause court procedure and the administration of civil justice will be greatly expedited.

As matters stand at present, I don't think it possible to extend the powers of the munsifs, more particularly when (except at some of the headquarters stations) they do not get any material assistance from the bar.

If it had been possible for the judge to inspect the civil offices more frequently, things might improve to some extent, but under the existing system this is not possible.

I welcome the suggestion contained in question No. 33 of the questionnaire about the examination of the parties before settlement of issues. It should

be enacted that unless a party offers himself for examination either in court or by commission at this stage, he shall be debarred from citing himself as a witness afterwards.

When a party appears by pleader, the pleader must have full instructions to admit or deny the documents filed by the opposite party at the time of settlement of issues. No pleader should be allowed to appear unless he has such instructions. I think Rule 11, Order XVIII, may conveniently be repealed.

In certain classes of petty suits when tried under the ordinary procedure by experienced munsifs it is hardly necessary to record evidence at length. In criminal courts, first class magistrates need not record evidence at length in summons cases tried under the ordinary procedure. I would suggest that Order XVIII of the Civil Procedure Code be amended and the analogy of the Criminal Procedure Code be followed in civil courts also.

2. During my inspection of some of the civil courts, I found good many instances of cases being adjourned on the application of both parties. This makes it probable at first sight that the litigants themselves are dilatory. But when the litigants know that their cases will not be heard, they do not bring their witnesses and apply for time. This is not their dilatoriness. The idea seems to have gained ground that the civil suits are very leisurely tried and that any excuse is good for an adjournment. My experience is that when the parties know that their cases are sure to be taken up, they bring their witnesses whether summonses had been personally served or not.

This will be borne out by the fact that in places where the work is light (e.g. Tezpur) the average duration of contested suits falls far short of the provincial average (70 days for contested suits).

There are however cases in which one party deliberately wants to harass the other by prolonging the litigation. But such cases are rare and to meet them, the existing prohibition against what has been called piece-meal trial should be relaxed. I am aware of the evils of piece-meal trial and I had myself condemned it on more than one occasion. But it is a lesser evil than the detention of witnesses and the intentional harassment of one party by the other. I think that when the party on whom the burden of proof lies is ready with witnesses, the trial may begin and another date may be fixed for the examination of witnesses on the opposite side, if necessary.

3. As I have said before, the munsif has no control over his process serving department. He can only report to the deputy commissioner or the sub-divisional officer but cannot take any action himself against the nazarat. The nazarat probably thinks civil processes to be the least important ones.

The large jungly area in Assam makes service difficult. Summonses on defendants may perhaps be sent by registered post with advantage in districts where the postal arrangements are satisfactory. The munsifs have discretion in the matter.

The suggestion contained in Question 25 may also be adopted as an additional precaution.

The service of summonses on witnesses is not really an important matter—because in majority of cases parties can bring their own witnesses, if they like, without any process whatever. They however invariably apply for summonses and warrants lest the credit of the witnesses be impeached on the ground of their attending without summonses. Moreover, non-service of summonses furnishes them with a ready excuse for an adjournment. If the parties are encouraged to summon their own witnesses, the process serving establishment may be reduced. While I was a munsif I used in several cases to give the summonses to the parties themselves to serve and the result was satisfactory.

4. I am aware of the very great delay in execution proceedings. I know that munsifs generally leave these cases to the office. But there would be

no great improvement even if they were to do the work themselves. Delay is inevitable where the only object of the decree holder is to keep the decree alive.

Probably if the law were amended on some points execution cases may be more speedily disposed of and their number reduced.

I propose the following changes:—

- (1) The three years' rule of limitation should be entirely dispensed with. There should be no law of limitation except section 48, Civil Procedure Code. The decree-holder may come at any time within 12 years of the decree. If in the meantime the judgment debtor had paid any money out of court and omitted to have the payment certified in court, he did so at his own risk.
- (2) No payment out of court will be recognised by the court of execution unless made through post office or through the pleader.
- (3) No application by the judgment debtor to set aside a sale should be entertained unless he had appeared and stated his case in the enquiry under Rule 66, Order XXI, provided that he had notice of the said enquiry.
- (4) In the investigation of claims and objections under Rule 58, Order XXI, the court should have discretion to award compensatory and exemplary costs against the party at fault. This will check malicious attachment as well as frivolous claims.

5. As regards the original and appellate work in my own court, it is not for me to say how far the delay is due to my dilatoriness. All I know is that there is delay. I have to tour about in 6 districts and some time is certainly wasted in travelling.

Under existing orders, I have to try the original suits and hear the appeals at the headquarters stations of each district. The cases are made ready for me by the deputy commissioners (except at Gauhati) and when they are ready, they are transferred to my file. The orders of transfer are communicated to me but the records remain in the office of the deputy commissioner concerned.

When I proposed to visit any particular district, I sent a draft tour programme to the judge. If it is approved, I send a copy to the deputy commissioner concerned and his sharishtedar then fixes dates for trial of the cases pending for me in his district and issues notices to the parties and summons to witnesses. Sometimes too many cases are fixed for one day and sometimes I do not get sufficient work to do. When I have to adjourn a case I have to adjourn it *sine die* because I have no free hand in arranging my own tours and I do not know when I may be allowed to visit that place again. When I leave the district all my pending cases there are adjourned *sine die*, witnesses are not bound down under Rule 16, Order XVI, and the records are left behind with the deputy commissioner's sharishtedar.

It is needless to say that under such an arrangement civil cases cannot be disposed of promptly.

The best thing probably will be to let me have a free hand in arranging my tours. In lieu of my ordinary travelling allowance, I may be given a fixed travelling allowance. This will obviate the necessity of the judge watching my tours—or in the alternative, a certain sum may be budgetted as my travelling allowance and if I exceed it, I travel at my own cost. This has been done in the case of some sub-divisional officers.

When criminal cases are transferred to my file, they should be transferred before the dates are fixed, so that I can fix my own dates having regard to the state of my civil file. I should be supplied with a copy of the jurors list.

There is no objection to my being invested with powers to try probate, land acquisition and guardianship proceedings—but such cases are not too

many. What is really necessary is that the judge should be relieved of a portion of his criminal work so as to enable him to do more inspection. But this is not possible unless we have two sub-judges for this valley.

**Rai Bahadur RADHANATH PHUKAN called and examined on  
Friday, the 29th February 1924.**

*Chairman.*—*Q.* Is there only one assistant sessions and sub-judge for the Assam valley apart from *ex-officio* sub-judges?

*A.* Yes.

*Q.* Then it means that you are the only legal officer acting as sub-judge?

*A.* Yes.

*Q.* At what place do you sit?

*A.* There are six districts and I have to tour about among these districts.

*Q.* Am I right in thinking that *ex-officio* sub-judges practically dispose of all uncontested cases, and that, practically speaking, they do no contested work?

*A.* They do not do contested work, but make cases ready for me. They frame issues and the cases are transferred to my court.

*Q.* How much of your time is taken up by criminal work and how much by civil work? Is it half and half?

*A.* No Sir, less than that. Last year I tried 60 criminal cases and they took me about 80 days.

*Q.* That means you devote two days to civil work and one day to criminal work?

*A.* Yes.

*Q.* How long, at one time, do you sit at each district headquarters?

*A.* That depends upon the state of the file.

*Q.* How many times do you visit each district?

*A.* I have to visit frequently Dhobri, Jorhat and Gauhati. I have to spend most of my time in these places. At present I am not taking Dibrugarh; that is a special arrangement between Mr. Jack and myself. I have not to visit more than twice a year.

*Q.* Do you do small cause court cases?

*A.* No Sir.

*Q.* So your work consists of original contested suits, civil appeals and criminal work?

*A.* Yes.

*Q.* As regards original suits, up to how much value do you try them?

*A.* Over one thousand.

*Q.* And in these cases the preliminary work is done for you by the deputy commissioner?

*A.* Yes.

*Q.* When you commence the trial of contested cases, do you find that, in general, preliminary work has been done properly?

*A.* Issues are not very carefully framed sometimes.

*Q.* Is any use made of discovery sections of the Code?

*A.* I do that after the cases are transferred to my court.

*Q.* When you commence the trial of original suits do you find that pleaders on either side have inspected the documents?

*A.* Yes.

Q. And do you frequently find parties making admissions?

A. Yes. In most cases.

Q. What are pleadings like in the Assam valley?

A. They are not very concise.

Q. If they are not concise, do you not find that long pleadings confuse the case?

A. That does not matter because cases are not very complicated.

Q. Is it possible to settle issues simply by reading pleadings?

A. I think so.

Q. What are your cases about?

A. Mostly mortgage suits.

Q. Cases of simple mortgage?

A. Yes and cases relating to promissory notes and bonds. There are some cases under the Indian Contract Act also.

Q. Have you got any work to do in connection with rent?

A. No.

Q. Then what about title suits apart from mortgage suits? Are there many questions of boundaries?

A. I have not got many title suits to deal with, but I do not think that they are very complicated.

Q. As regards your work, generally speaking, are you able to dispose of your file with reasonable expedition?

A. I think I am. I think I can do better than I have been doing. At present cases have to be adjourned *sine die*. If that can be avoided I can try more expeditiously.

Q. I think you were on leave for some time in 1922?

A. Yes in 1922 I was on two months leave—July and August.

Q. And that made your file a little more congested?

A. Yes.

Q. You just now said that you would be able to dispose of your cases with greater expedition if the system of adjournment of cases *sine die* could be avoided?

A. Yes.

Q. Then how do you manage your present file?

A. At present the system works like this. Cases are made ready for me by the deputy commissioners (except at Gauhati) and when they are ready they are transferred to my file. Orders of transfer are communicated to me but the records remain in the office of the deputy commissioner concerned. When I propose to visit any particular district, I send a draft tour programme to the judge, and if it is approved I send a copy to the deputy commissioner concerned. The sarishtedar then fixes dates for trial of the cases pending for me in his district and issues notices to the parties and summons to witnesses. Sometimes too many cases are fixed for one date and sometimes I do not get sufficient work to do. When I have to adjourn a case I have to adjourn it *sine die* because I have no free hand in arranging my own tour programmes and I do not know when I may be allowed to visit that place again.

Q. Now that list is the list of contested cases. How does he fix the day's work, does he put down a couple or three cases for each day?

A. He does it in his own way. I do not know anything of the nature of the work. Sometimes he keeps too many cases for one day, sometimes I do not get sufficient work.

Q. He endeavours to put cases down for separate days upon which they may be reached?



A. I think he does it in his own way and that is his idea.

Q. But what steps are taken, you think, by sharishtedar to find out how long a case is likely to last, whether it is three days' case or one day's case?

A. He consults the pleaders.

Q. When you take your seat how many cases, as a rule, you find put down for that day?

A. Generally one case a day.

Q. As regards your appellate work, I understand, you do appeals from the munsifs and the munsifs, in fact, are extra assistant commissioners with munsif's power. Have you many civil appeals?

A. Yes. I think last year I got over five hundred.

Q. Speaking of your experience of munsifs' court, I gather from your note, you do not think that there is very great delay in the disposal of suits?

A. That is quite true but the cases are so simple that they should take less time.

Q. You think they might be more rapidly disposed of?

A. Yes.

Q. I understand that in munsif's court pleaders do not get daily fee?

A. Except some places like Gauhati and Dhubri they do not get daily fee.

Q. Whether they take a daily fee or not, have you noticed any exceptional prolongation of cases attributable to the system of taking a daily fee?

A. No.

Q. You do not think that fee system is doing any harm?

A. No.

Q. As regards the actual quality of judicial work you find the munsifs satisfactory?

A. Some of them are, others require more experience.

Q. I take it that they are not generally men who have devoted their lives to law?

A. No.

Q. Considering their circumstances they do fair work?

A. Yes.

Q. Some of these gentlemen I understand in fact are entirely employed in munsif's work. How many?

A. Five.

Q. As regards them the district judge has no administrative control over them and I understand that in any case has no administrative control over nazarat?

A. No; and this is the reason why our processes are not served.

Q. First of all in the munsifs' courts and then in your own court have you got great difficulty in process service?

A. There is avoidable delay.

Q. What is that due to?

A. In the first place service itself is difficult; and in the second place the peon or nazarat probably thinks that civil processes are of least importance. In the third place more supervision is necessary over peons.

Q. That is your nazarat should be more efficient?

A. Yes.

Q. Does he fix organised beats for peons?

A. I do not know, I never had to do anything with the process serving.

Q. In any case you think there is some avoidable delay?

A. Yes.

Q. Do you have any trouble or do the munsifs have any trouble with applications to set aside *ex-parte* decrees by reason of non-service of processes?

A. There are not too many cases of that sort, but still there are some.

Q. Have you noticed whether in munsif's court unnecessary adjournments are granted?

A. Yes.

Q. Why are they granted?

A. I have assigned the reasons in my written statement. I think if we have a trained judicial service probably there would be no adjournments like this.

Q. Do you think that these munsifs—extra assistant commissioners—are not firm enough?

A. They are not very strict.

Q. Then you find that too long time is given to file written statement?

A. Yes.

Q. You think that pleaders frame their own issues?

A. Yes, and the worse of it is that when the munsif begins to record evidence he does not know the case and it is delayed.

Q. Is it the practice in a munsif's court for the pleader to open the case?

A. I think not; that had never been the case when I acted as extra assistant commissioner.

Q. Then your practice was to read the pleadings and the issues?

A. Yes.

Q. And you think that some of these munsifs record evidence quite mechanically without getting a grip of the case?

A. I think so.

Q. And so the irrelevant matters come in?

A. Yes, irrelevant matters creep in.

Q. As regards the ordinary diary of one of these munsifs, his daily listed work, you think that is not very well managed?

A. In some courts; I am not making remarks which apply to all courts, there are exceptions. My impression is that in some courts cases are very indiscriminately fixed.

Q. And probably in that case you will find that the dates are not fixed by munsif himself but left to the bench clerk?

A. I cannot say for certain but that is my impression.

Q. Then as regards the small cause court procedure does not that obtain in Assam at all?

A. No, some of the munsifs have got small cause court powers up to rupees hundred and some up to rupees fifty.

Q. Have you been given small cause court power?

A. I have not been.

Q. I understand you are not in favour of increasing the munsif's powers above Rs. 100.

A. I am not.

Q. Do you find that appeals from munsifs' decisions are brought to you in an undue number of cases? Is the right of appeal abused?

A. I do not think the right of appeal is abused and this may also appear from the fact that in more than 20 per cent. of cases, the appeals are successful.

Q. Then, as regards appeals, are they properly brought on for hearing? How long does an appeal take from beginning to end?

A. When we have time, we hear the appeals promptly, otherwise they drag on. For instance I have got four appeals pending in Jorhat. They are one year old.

Q. How long is it since you had been to Jorhat?

A. I cannot say. I had been there in connection with criminal work.

Q. When you go to a district headquarters, do you do a certain amount of civil work, and also civil and criminal cases at the same time, or are there different kinds of work apportioned for different periods?

A. I do not apportion. Sometimes, if the case drags on, I have to adjourn all the civil appeals, but sometimes I can finish the sessions cases just in half a day and then take up civil appeals. They are always kept ready, and whenever there is time, I take them.

Q. Do you do much inspection work, or you have not time?

A. Formerly it was thought that I was not to inspect. Last year the district judge asked me to inspect the offices and I inspected 4 offices.

Q. What was your general impression from the inspections you have made lately? Did you find them more or less satisfactory?

A. In Gauhati the work of the office improved. In Nowgong and Tezpur, it was not very satisfactory.

Q. I see that a good many cases are adjourned on the application of both the parties. Is that because the judge has got too much work for the day down on the list?

A. I think that is the reason. If you go through my note, you will find it stated that if the parties know when their cases will be taken up, they would bring their witnesses on that day.

Q. Do you think that registered post could be used as an additional safeguard?

A. Yes, in districts where the postal arrangements are satisfactory.

Q. As regards summons to witnesses, you think that the parties might bring their own witnesses?

A. Yes.

Q. Instead of sending out a serving peon and an identifier for long distances, do you think it would be possible to have a system by which processes could be sent to a *mandal* and served under his supervision?

A. You cannot get the *mandal* always. Sometimes he goes to headquarters. As regards *gaonburras*, it is likely that their services may be available always. But as a class they are only on a level with the peons themselves. It will not improve matters.

Q. How often is the *mandal* away from his neighbourhood?

A. For four months in the year. Under the rules he is required to be at the headquarters of the deputy collector for a month in a year.

Q. But apart from that month, is he on the spot all the time?

A. Yes.

Q. Is there any reason why he should not keep a register of processes?

A. That will be giving him too much work, probably.

Q. Is there a good many processes for the *mandal* to issue?

A. Not many. But he has to keep the register.

Q. Don't you think that he will be pleased to do the work for some more remuneration?

A. That will make litigation very expensive.

Q. At present you have got the identifier. Is he not expensive?

A. I do not think, Sir. The identifier is their own man.

Q. The great thing is to get good proof of the service?

A. Yes.

Q. Is there any other officer superior to the *gaonburra* who might be entrusted with the duty of keeping his eye on process service?

A. There is the *mouzadar*.

Q. The *mouzadar* cannot probably exercise any effective check?

A. Yes. The *mandal* will be communicated.

Q. You cannot always get the *mandal*?

A. Only in the rainy season you cannot get for 4 months.

Mr. Sen.—Q. Only for a short time?

A. Only for 4 months.

Dr. DeSouza.—Q. For 4 months he has to be at headquarters?

A. Yes.

Q. How many *mandals* are there at one time?

A. All the *mandals* of the circle.

Q. Are there great many, or only two or three?

A. Forty or fifty in a circle.

Chairman.—Q. Do you find great delay in execution proceedings?

A. Yes.

Q. What do you suggest to get over that?

A. In the first place certain rules of limitation are to be abolished. You should do away with the applications filed in order to keep the decree alive. Then half the number will go.

Q. If you do not keep that system of keeping the decree alive would you reduce the period of limitation from 12 to 6 years?

A. There is no use Sir.

Q. I understand that the D file is destroyed at the end of three years?

A. The blue D file is kept for 12 years in *ex parte* cases.

Q. Will there not be some trouble?

A. There will be some trouble.

Q. I gather from what you say that munsif leaves all execution proceedings to the office?

A. Yes. He does. If he does not do the duty himself, there will be no improvement.

Q. What is it that you want to improve?

A. In the first place this limitation under the 1 year and the 3 years ought to be abolished. In the second place I say, Sir, that all payments need not be recognized. Payments made to pleaders or through the post office should only be recognized.

Q. As regards that you have got a great many illiterate judgment-debtors?

A. Yes.

Q. Will it not be a hardship to them, if you want the payments to be made through the post office or to the pleader?

A. It may be a hardship. But, it is a greater hardship for them to come to court and otherwise prove the payments made by them.

Q. Then you would not allow them to pay the plaintiff direct if he does not send it by money order or pay it to the pleader?

A. Yes.

Q. Then you say that a judgment-debtor who does not appear under rule 66 of Order XXI should not be allowed to object or to set aside the sale if he had notice of the enquiry under the rule?

A. I say so, Sir. My object is to secure his attendance. If he be present at the enquiry, much of the subsequent trouble will be saved.

Q. Would you be in favour of saying that a judge should always put down the plaintiff's and the defendant's valuation to get rid of deciding any questions about the validity of the sale? If he puts down that value do you think it will be enough?

A. If the decree-holder gives a certain valuation and the judgment-debtor says, "The value of my property is this" then you fix the judgment-debtor's value, because the court is selling on behalf of the judgment-debtor.

Q. If he values the property highly?

A. If he does it and if it subsequently affects the sale, he has himself to lose.

Q. Then you say that under rule 58 the court should have discretion to award exemplary costs against the party in fault?

A. I say so, Sir. It will be a very good thing to my mind.

Q. Then you think in your own particular instance, that, if you could arrange your own tour, it would not be necessary to adjourn cases *sine die*?

A. It would not be necessary, if I can arrange my own tours; but the difficulty is that the judge has to approve them first. That is why I do not know when I will visit the district next and that is why I adjourn.

Q. You say that unfortunately the district judge has got too much criminal and other work which does not enable him to do any inspection work?

A. I think he has no time really.

Q. I understand that the extra assistant commissioner's courts are inspected by the commissioner or deputy commissioner?

A. The deputy commissioners inspect.

Q. Have you any suggestions to make as regards the district courts—any special difficulty, anything you want to be considered about the district courts?

A. I have nothing to say.

Q. You think that the subordinate judge should be given jurisdiction to try probate and guardianship and land acquisition proceedings?

A. I think that the subordinate judge has got time to look after that. But I think that it will be no relief to the district judge.

Q. You do not get much land acquisition work in Assam?

A. Not much.

Q. The only relief you suggest as regards the district judge is to take off some of his criminal cases or to assist him in hearing criminal appeals. As far as you are concerned you do more criminal work?

A. Criminal appeals, I cannot hear.

Q. Have you time to try criminal appeals?

A. I think that I have time. If you see my diary you will see that I do not always remain at court till 5 o'clock. I rise early always, though I sit punctually at 11 o'clock.

Q. You think that if your powers are extended you will relieve the district judge of some criminal work?

A. I think I can.

Rai Bahadur K. C. Sen.—Q. In that case you say you can arrange your own tour?

A. I have to arrange my own tour.

Mr. Jack.—Q. Will that not lead to delay in the disposal of civil suits?

A. There may be delay in one or two cases. But important cases will be promptly taken up. I will fix it at my own convenience with regard to the state of my file.

*Chairman.*—*Q.* Do you have many commissions to take evidence?

*A.* Most of the witnesses come to court. Of course in some cases commissions have to be issued.

*Q.* Do you find that commissioners take evidence satisfactorily? Do they do their work satisfactorily?

*A.* They do not have the witnesses examined satisfactorily. I have made it a point now to issue commission only to meet the ends of justice. I discourage commissions now-a-days.

*Q.* But if the commissioner were a satisfactory instrument, will you be more ready to grant an open commission?

*A.* Probably.

*Q.* Why is it that so much delay is caused in these matters? Is it because the commissioner is usually a junior pleader?

*A.* I do not know that, but commissioners do not exclude irrelevant questions and write down every thing the parties ask.

*Q.* Do you think that it would improve matters if commissioners were told to read the pleadings first and then to exclude all irrelevant matter?

*A.* Yes, that will surely be an improvement.

*Q.* Have you had a chance to go through our questionnaire?

*A.* I received it only a day before I had to leave for Calcutta, but I have gone through it once.

*Q.* Are there any questions there on which you would like to say something? For instance take the question of *ex parte* injunctions. Supposing a man asks for an *ex parte* injunction, does the extra assistant commissioner give it himself or does he send it to you?

*A.* We have not got many cases of *ex parte* injunctions. It is very rare that we get a case of this sort.

*Q.* Do you know anything about the demand for increasing the jurisdiction of district judges as regards appeals? For instance, there is a case for Rs. 5,000, now would you like to have an appeal to the district judge or, as at present, to the High Court?

*A.* I think the public would prefer to have it done by the district judge. No one would like to go to the High Court as it is very expensive. We have not got many cases of second appeals. Parties do not care to go to the High Court and many of them would prefer to go to the district judge. You will find, Sir, that the number of second appeals is very small.

*Q.* And I think the number of first appeals is also not very large?

*A.* No, it is not large.

*Q.* In a case for Rs. 5,000 or more, would you like to have an appeal to the judge or to have a direct appeal to the High Court once for all?

*A.* An appeal to the judge would be better.

*Q.* Because of the fact that the expenses of the second appeal in the High Court are comparatively small?

*A.* Yes.

*Rai Bahadur K. C. Sen.*—*Q.* Have you anything to suggest with regard to the appointment of munsifs?

*A.* I have said in my written statement that they are usually not men possessed of very high legal training. I would suggest, as I suggested to the judge last year, that we should have a separate judicial service. You may alter the law, you may alter procedure, but things would not improve to an appreciable extent unless you have a separate judicial service.

*Mr. Jack.*—*Q.* Do you think that some improvement might be made by lessening the number of transfers? Do you think that any delay is caused by frequent transfers?

*A.* No, I do not think so.

*Q.* Do you think that some delay might be saved in execution work by having stricter supervision over the nazarat?

*A.* Yes, a little delay might be saved, but most of the delay is caused in the disposal of claim cases. Under Rule 58, Order 21, the court should have discretion to award compensatory and exemplary costs against the party at fault. This will, I think, check malicious attachment as well as frivolous claims.

*Q.* As regards tour programmes, do you not arrange your tour programmes yourself?

*A.* Yes, I draw up tour programmes myself, but I have to send them to the district judge for approval. I cannot visit any place unless the tour programme is first approved by him. I have no free hand in arranging my own tour and I do not know when I may be allowed to visit the place again where I have been once.

*Q.* But it is merely a matter of approval and I do not think the district judge has altered your tour programmes?

*A.* They have many times been altered by him. They are not always approved. I cannot go to any place of my own accord, because it depends upon his approval. He has refused me on several occasions permission to visit a place again.

*Q.* But only when there is some special reason against it.

*A.* Yes.

*Rai Bahadur K. C. Sen.*—*Q.* You say that without any expense to Government you suggest means how the judicial munsifs and the extra assistant commissioners are to be appointed?

*A.* Yes.

*Q.* How many munsifs are in the either valleys?

*A.* Eleven in Sylhet and two at Cachar.

*Q.* And how many in Assam valley?

*A.* Five or six.

*Q.* You think that a cadre can be formed?

*A.* Yes, it will be a small cadre.

*Dr. DeSouza.*—*Q.* You say the quality of work suffers because you have not got a special judicial service and you prefer to have a special cadre of judicial officers. Would not the same object be served if care is taken to appoint law graduates as extra assistant commissioners?

*A.* Yes, that will do.

*Q.* Then it will meet your argument if care is taken to select those only who are law graduates?

*A.* But that is not always possible.

*Q.* Why is it not always possible?

*A.* Because executive work is to be done also and some of the law graduates would not like executive duty.

*Q.* Then your impression is that only those who are failures as executive officers are posted as munsifs?

*A.* I do not go so far: Government has its own way of appointing munsifs.

*Q.* If it is insisted upon that only those extra assistant commissioners who are law graduates should be posted to munsif's work your objection will be met?

A. In the first place you have not got so many law graduates in the service. Some of them will probably themselves wish to do executive work. Then in outlying sub-divisions where the work is very light you might have to send a senior officer to do the civil work.

Q. It is merely a question of posting a suitable man to a suitable place assuming that there are sufficient number of law graduates.

A. I cannot understand what the good is of assuming a thing when you cannot do it.

Q. No, take it that law graduates are appointed by proper selection to dumsif's work. Would that meet your argument that the work is not satisfactory?

A. Yes.

Q. In other provinces where there is a combination of revenue work and judicial work care is taken always to select law graduates for this combined work—as for instance in some places in Madras. It is generally the practice where the two functions are combined that law graduates are appointed.

Now you say that there are twelve officers who have to do civil work in Assam and six or seven of them have to do criminal work in addition, others have to do some executive work?

A. We have no munsif in each sub-division.

Q. Then speaking from the point of view of delays, the fact that half the time munsifs have to do criminal work in addition to civil work interferes with despatch of cases, because he gives preference to criminal work. Is there much complaint on that score?

A. Well, the work in these places is so light that in spite of all that the civil work is done rather promptly and delay is not very great.

Q. Now with regard to appeals against munsif's decrees, they are filed. I suppose, in the first instance in the courts of district judges?

A. In Gauhati and Jorhat they are filed in the courts of the district judges and in other places they are filed in the courts of *ex-officio* sub-judges.

Q. Do these *ex-officio* sub-judges dispose of appeals under Order 41, Rule 11?

A. No, invariably notices are issued. When the party does not enter appearance then appeals are decided *ex parte*.

Q. In that case the provisions of Order 41, Rule 11, are never used. If they were to be used they could be used by the *ex-officio* sub-judges?

A. Yes.

Q. What is the nature of appeals that come before you? Is there considerable percentage of them that can be disposed of under Order 41, Rule 11?

A. Some of them, it would not save much time because appeals are not complicated.

Q. What is the percentage of successful appeals?

A. Provincial average of successful and partly successful appeals is less than thirty per cent. but in Assam it is much more than thirty per cent.

Q. You were a practising lawyer and also extra assistant commissioner?

A. Yes, I was.

Q. Are practising lawyers selected for the posts of extra assistant commissioners?

A. Very rarely.

Q. So you have special qualifications that you were a law graduate and practising lawyer? There is no other law graduate with similar qualifications.

A. There are.



## THE UNITED PROVINCES.

### Evidence recorded at Allahabad.

#### PRESENT :

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.	
The Hon'ble Mr. Justice L. Stuart. C.I.E., I.C.S.	} Co-opted Mem- bers.
Dr. F. X. DeSouza, I.C.S., Bar.- at-Law.	
Diwan Bahadur Sir T. Desika Achariyar, Kt.	
Mr. L. S. White, I.C.S., Additional District and Sessions Judge, Lucknow. Dr. Sir Tej Bahadur Sapru, K.C.S.I., Advocate, Alla- habad. Syed Nabi Ullah Khan, Bar.-at-Law, Lucknow.	
Mr. C. V. Krishnaswami Ayyar—Secretary.	

### List of United Provinces Witnesses examined at Allahabad.

#### Monday, 10th March 1924.

- \*1. The Hon'ble Mr. Justice S. R. Judge, High Court, Allahabad.  
Daniels, I.C.S.

#### Tuesday, 11th March 1924.

- \*2. The Hon'ble Mr. Justice L. G. Judge, High Court, Allahabad.  
Mukerjee.

#### Wednesday, 12th March 1924.

- \*3. Dr. Kailas Nath Katju . . . Vakil, High Court, and Editor,  
Allahabad Law Journal.  
4. Mr. Nihal Chand . . . Bar.-at-Law, Allahabad.

#### Thursday, 13th March 1924.

5. Mr. Kauleshar Nath Rai . . . Small Cause Court Judge, Benares.  
6. Mr. Sheo Darshan Dial . . . Small Cause Court Judge, Agra.  
7. Mr. Tirloki Nath . . . Formerly Small Cause Court Judge,  
Allahabad.  
8. Mr. Jitendra Nath Roy . . . Additional Small Cause Court Judge,  
Lucknow.

#### Friday, 14th March 1924.

- \*9. Mr. James Mos . . . Representative in India of certain  
Mercantile Manchester Firms.  
10. Rai Bahadur Gopal Das Mukerji District Judge, Mainpuri.  
11. Syed Agha Haidar . . . Bar.-at-Law, Allahabad.  
12. Mr. Satkari Mukarji . . . Bench Reader (Privy Council), Allaha-  
bad.

**Saturday, 15th March 1924.**

13. Mr. Alakh Murari Lal . . . Sub-Judge, Agra.  
 14. Mr. Banwari Lal . . . Personal Assistant to Legal Remem-  
 brancer.

**Monday, 17th March 1924.**

- \*15. Mr. Wazir Hassan . . . Judicial Commissioner, Lucknow.  
 \*16. Mr. Peare Lal Bannerji . . . } Representatives, Vakils' Association,  
 \*17. Mr. Iqbal Ahmed . . . } High Court, Allahabad.

**Tuesday, 18th March 1924.**

- \*18. Dr. M. L. Agarwala . . . } Representatives, Bar Library, High  
 \*19. Mr. B. E. O'Connor . . . } Court, Allahabad.

**Wednesday, 19th March 1924.**

20. Mr. Ladli Parasad Zutshi . . . Representative, District Bar Associa-  
 tion, Allahabad.  
 21. Mr. Dwarka Parshad . . . : Munsarim, District Judge's Court,  
 Allahabad.

**Thursday, 20th March 1924.**

22. Mr. O. M. Chiene . . . Official Receiver, Allahabad.  
 23. Mr. Narain Parshad Asthana . . . Vakil, High Court, Allahabad.  
 24. Mr. Izhar Hussain . . . . . Honorary Munsif, Allahabad.

**Friday, 21st March 1924.**

25. Mr. Ahmad Hussain, Bar.-at-  
 Law. . . . . } Representatives, Bar Association,  
 26. Mr. Leikh Raj, Vakil . . . } Bareilly.

**Monday, 24th March 1924.**

27. Mr. E. M. Nanavutty . . . District Judge, Fyzabad.  
 28. Rai Bahadur Shankar Dyal . . . District Judge, Lucknow.  
 29. Mr. Gokal Das . . . . . } Representatives, Gorakhpur Bar Asso-  
 30. Mr. Jugal Kishore . . . } ciation.

**Tuesday, 25th March 1924.**

31. Mr. Fateh Bahadur Varma . . . 3rd Additional Judge, Sitapur.  
 \*32. Mr. Abdul Haq Sahib . . . Sub-Judge, Lucknow.  
 \*33. Rai Bahadur Vikramjit Singh,  
 President. . . . . } Representatives, Bar Association,  
 \*31. Hafiz Hadayat Husan, Secre-  
 tary. . . . . } Cawnpore.

**Wednesday, 26th March 1924.**

35. Mr. Bhagwat Parshad . . . Munsif, Sitapur.  
 36. Maulvi Ahmad Karim . . . Munsif, Fyzabad.  
 \*37. Mr. J. C. Weir . . . Professor of Law, Allahabad University.

**Thursday, 27th March 1924.**

38. Mr. Hari Kishan Dhaun . . . Representative, Oudh Bar Association, Lucknow.

**Friday, 28th March 1924.**

39. Mr. Bipin Chandra Chatterjee }  
 40. Mr. Nripendro Nath Datt . } Representatives, Fyzabad Bar Association.

**Saturday, 29th March 1924.**

- \*41. Mr. A. G. P. Pullan, I.C.S. . . Legal Romembrancer, United Provinces.  
 \*42. Mr. C. H. B. Kendall, I.C.S. . District Judge, Lucknow.  
 \*43. The Hon'ble Mr. Justice B. J. Dalal, I.C.S. . Judge, High Court, Allahabad.

**Monday, 31st March 1924.**

44. The Hon'ble Mr. Justice Kanhaiya Lal . . . Judge, High Court, Allahabad.

**Tuesday, 1st April 1924.**

- \*45. Mr. Jai Ram Das . . . }  
 \*46. Mr. Dwarka Parshad Singh . } Representatives, United Provinces  
 Chamber of Commerce, Cawnpore.  
 47. Mr. Bal Ram Das . . . Representative, Benares Bank.

**Wednesday, 2nd April 1924.**

48. Maulvi Mahammad Abdul Ghani . . . Retired District Judge, Lucknow.  
 49. Mr. Chhail Behari Lal . . . Advocate, Sitapur.

**Thursday, 3rd April 1924.**

- \*50. Mr. R. Burn, I.C.S. . . . Member, Board of Revenue, United Provinces.  
 51. Rai Ratanchand . . . Special Manager, Court of Wards, Nanpara. Oudh.

**The Hon'ble Mr. Justice S. R. DANIELS, I.C.S., Judge, Allahabad High Court.**

*Written Statements.*

**L**

In preparing a note of the principal causes of unnecessary delay in the disposal of suits together with suggestions for their removal, I have classified them under three heads.

1. Causes of delay which can only be removed by legislation.
2. Causes requiring for their removal an amendment of the rules or an executive order.
3. Causes due to neglect of existing rules which can only be remedied by greater supervision.

*(I) Proposals involving legislation.*

1. Provision of a period of limitation for revisions both civil and criminal. It is highly anomalous that while strict provision of limitation is applied in the case of appeals revisions which are often appeals in disguise can be brought after any length of time. The result is that much time is occupied in disposing of a large number of frivolous applications and the absence of a period of limitation enables counsel to save up applications which they know are bad in order to lay them before a particular Judge who has the reputation of being lenient in admitting them.

2. Abolition of letters patent appeals. It seems absurd that a High Court Judge cannot be trusted to decide a case of the valuation of under Rs. 500 without an appeal to a Bench of two Judges when subordinate judges in the exercise of small cause court jurisdiction can be empowered to try cases up to Rs. 1,000 without appeal. There is no doubt that letters patent appeals add considerably to the congestion of the court, both directly by the time which they occupy in hearing and by prolonging litigation and indirectly by requiring the Judge hearing the appeal in the first instance to write a much more elaborate judgment than he would otherwise find it necessary to do. Cases can always be referred to a Bench and in practice a Judge rarely if ever refuses a request of this nature. A Letters Patent appeal not infrequently keeps a case pending in the High Court for between five and six years, say 2½ years for the second appeal and a further 2½ years for the Letters Patent appeal.

3. Another suggestion which has been made to me by many officers of the Provincial Service is that a provision should be inserted in the Evidence Act or in the Code of Civil Procedure giving the courts power to put a time limit to cross-examination when they are satisfied that it is being unnecessarily prolonged. There is a common agreement that in the aggregate a very large amount of time is wasted in cross-examination which, though it is difficult to stop it on the ground that the questions are not legally relevant, yet adds nothing to what has gone before and is mere waste of the court's time. Under the Evidence Act as it stands they feel that they have no power to prevent this. It was objected by a pleader to whom I repeated the proposal for criticism that very lengthy cross-examination is in most cases the fault of the court. Some officers do not trouble to follow the case or understand what the cross-examination is about but merely record the evidence mechanically and only begin to take an intelligent interest in the case at the time of arguments. His view was that if an officer really follows the case while it is going on there is no danger of irrelevant cross-examination. On the other hand, some vakils and nearly all judicial officers whom I have consulted agree that some provision of this nature is needed. Such a provision would obviously be liable to abuse in

the hands of an incompetent officer and might need some safeguarding but I think something should be done to strengthen the hands of the subordinate courts in this matter.

4. The law of limitation regarding execution, Article 182 of the Limitation Act, requires amendment. It is the experience of all courts that numerous applications for execution are made, and then allowed to be dismissed for default, simply for the purpose of keeping the decree alive. Further limitation under clause 5 of the article runs not from the last order passed by the court on a prior execution but from the last application by a party. I would suggest that a limitation should run from the last order passed by the court on the previous application and that an application dismissed for default without any process having issued should not be allowed to save limitation.

5. Limitation for pre-emption suits should be reduced to six months. Pre-emption is originally based on Mohammedan Law and under Mohammedan Law the person claiming to pre-empt is bound to declare his intention to purchase the very moment he hears of the transaction. There is no adequate ground for allowing him a whole year within which to bring a suit.

6 Sections 19 and 20 of the Limitation Act produce undesirable results in the case of suits under Articles 148 and 149 where the period of limitation is sixty years. An acknowledgment made (frequently in ignorance of its legal effect) in the sixtieth year after the mortgage has the effect of allowing redemption up to nearly 120 years after the original mortgage. I have frequently seen suits brought more than a hundred years after the date of the alleged mortgage. Such cases are very difficult to decide and the danger of a miscarriage of justice is great. I would add a proviso to these sections that no acknowledgment or part payment should have the effect of extending limitation by more than twelve years.

7. A frequent and serious cause of delay is the necessity of effecting service on all the numerous members of a joint Hindu family including minors. I would suggest—

(a) that service on the head of the joint family should be declared by law to be sufficient except in cases where the other members may have an adverse interest, *e.g.*, where a mortgage or sale of joint family property has been effected by the manager,

(b) that where all the adult members of the family have been served, minor members should be considered to be represented by them. The difficulty and delay in serving minors is much greater than in the case of adults owing to the difficulty of finding a guardian to represent them and where all the adult members of the family are parties to a suit there is in practice no danger that the interest of the minors will not be represented.

8. I am in favour of allowing no second appeal in cases of a valuation of Rs. 100 or less whatever the nature of the suit. I have seen second appeals to the High Court of the value of only Rs. 5 or Rs. 6. Frequently a petty claim in which no second appeal would ordinarily lie is taken out of the jurisdiction of the small cause court by adding a prayer for injunction. A case recently came before me of a claim for damages for cutting down a kikar tree worth only Rs. 6 in which the plaintiff also asked for an injunction to prevent the defendant cutting down any more trees. The result was that the case had to be tried as a regular suit and an appeal lay right up to the High Court.

## (II)

1. Delays in service account for a great deal of the delay in litigation. If the rules regarding registered address which have been framed by this Court are rigorously applied—which is only now beginning to be done—litigation will be very much shortened. Wherever summonses have to be served in the Bengal Presidency the rule applied by the High Court at Calcutta of requiring that someone should be sent with the serving officer to identify

the person on whom notice has to be served is a fruitful source of delay and the abolition of this rule is very much to be recommended.

It has been suggested to me by many officers that service by registered post acknowledgment due might be permitted in all cases as an alternative to or in substitution for service through a process-server. I am sure that service in this form might with advantage be permitted much more freely than is now the case.

2. In the High Court a great deal of time is occupied in the aggregate with reading out written judgments *in extenso*. No useful purpose is served by this. It is never done in subordinate courts where merely the purport of the judgment and the operative order are announced. If the pleaders wish to see the full judgment it is handed over to them for perusal in court. In Oudh also the entire text of the judgment is not read. No legislation is needed on this point. All that the law, Order XX, Rule 1, Civil Procedure Code, requires is that the judgment shall be "pronounced" in open court. To pronounce a judgment is not necessarily to read the whole of it, but if it is considered necessary I would be prepared to add an explanation to Order XX, Rule 1, to this effect.

3. Use of unauthorised law reports, especially "Indian Cases" which include cases of all degrees of authority from all sorts of courts. Indeed this publication boasts that it includes every case reported in any other publication as well as many not reported at all. The result is—

- (a) Much time is occupied in arguing in citing and reading extracts from judgments not really authoritative.
- (b) The time of the courts is occupied in analysing and distinguishing between these numerous judgments and trying to extract some principle of law from cases that were really decided on the facts.
- (c) The practice tends to produce a habit of mind which seeks always some authority instead of deciding on the merits.

The High Courts are much to blame in this matter. Notwithstanding the express prohibition contained in section 2 of the Indian Law Reports Act of 1875 they constantly treat as binding authorities cases not included in the official reports. In Oudh a strict rule has been adopted not to allow citation from "Indian Cases" and there is a judicial pronouncement on the subject in 23 Oudh Cases, p. 320, and another in 44 Mad., p. 417, at p. 420.

4. In this Court appellants frequently fail to deposit process fees for service on the respondents within the three days allowed by the rules and by successive applications to the Court obtain delays sometimes amounting to four months. I suggest an amendment of the rules requiring process fee to be deposited along with the appeal. The appeal should be treated as not properly presented unless this is done.

5. The conditions imposed by Rules 5 and 6 of Order XLI, Civil Procedure Code, on stay of execution being granted pending appeal are not strictly observed. Where a decree is for the payment of money the appellant might well be required to deposit the money in Court before his application is entertained. The delay is most serious where stays are applied for, pending the sale of immovable property for which a date has been fixed. If stay is allowed thirty days' notice has to be given before a fresh date can be fixed and bidders have to be collected all over again. The rule should be that the sale should take place as if no application had been presented but confirmation of sale should be delayed till the appeal is decided.

6. I need not enlarge on the delay caused in this Court by the slip system by which a counsel has a right to get his case postponed if he is engaged before another Court as the modification of this system is at present engaging the attention of the Court.

7. Subordinate judges complain, and with reason, of the great physical strain imposed on them in having to write out all their judgments in full by hand as well as having to record evidence. This strain might be relieved

and work considerably quickened by a more extended employment of stenographers. They should certainly be allowed to sessions and subordinate judges and they might well be allowed to selected subordinate judges also. If they were employed only in taking down judgments their time would not be fully occupied and some arrangement will have to be devised to make use of them at other times. In this connection it might be worth considering whether in the case of district and sessions judges evidence might not under proper safeguards be recorded in this way. Whenever a special tribunal is constituted this procedure is adopted.

8. *Excessive holidays.*—The fact that there are too many holidays is admitted on all hands, but I am afraid nothing is likely to be done to remedy it except by legislation. I have, however, two suggestions which could be adopted at once, one affecting the High Court and the other affecting subordinate courts.

In the High Court Saturday is nominally a working day but the Court does not sit. My suggestion is that when there are two or more holidays earlier in the week and Saturday is not a holiday the Court should save one of these days by sitting on Saturday. It should surely be no great hardship to sit for four days in the week instead of the usual five. Thus if Tuesday and Wednesday were holidays and Saturday was not, the Court would sit on Monday, Thursday, Friday and Saturday.

I do not think that the authorities fully realise to what an extent parties are inconvenienced and the disposal of the cases delayed when the courts are closed unexpectedly at short notice on account of the death of some prominent man or other special cause. Parties and their witnesses come to court, find the doors closed and go away without any date of further hearing having been fixed. The result is that witnesses who may have been served with summons with much difficulty and after great delay have to be served all over again. I would like it to be the rule that in such cases the court should be closed from 11 o'clock so as to allow an opportunity for fresh dates of hearing to be fixed and the parties to be informed of them.

9. *Registrar's powers.*—I am much attracted by the rules of the Patna High Court but these would involve the appointment of a senior officer with judicial experience as Registrar.

In the meantime there are a number of matters which take up the time of the application Judge which are mainly if not entirely of a routine character and which might be transferred to the Registrar.

That officer should be empowered—

- (1) To appoint or discharge a next friend or guardian of a minor except in Privy Council cases.
- (2) To receive applications for substitution of names and dispose of such applications where uncontested.
- (3) To deal with applications for extension of time for payment of printing charges. He need only lay them before the Court when he considered that no more time should be given and that the appeal should be struck for default. Indeed I would go further and so amend the rules that an appeal should be automatically struck off on the expiry of the time without compliance unless before the time expired an application for extension was made to and allowed by the Court. The Court would merely pass a formal order recording the fact that the appeal had lapsed.
- (4) To pass orders on applications that the parties be excused from printing the record or any part of it.

The above list is not exhaustive.

## (III)

In addition to causes of delay which can be removed by amendment of the law or rules or by executive order there are many sources of delay which are due to neglect of rules already in force and can only be remedied by increased supervision. Some of these causes are enumerated below:—

1. Failure to try suits *de die in diem* and the granting of unnecessary adjournments to suit the convenience of counsel.
2. Trying a big suit for one or two hours each day and spending the rest of the day doing other work.
3. Postponing the writing of the judgment after the hearing is and arguments are concluded. In this connection I may note that it is very difficult to convince Subordinate Judges that the High Court will not object to their sitting in chambers for a day or two to write their judgments at the conclusion of a heavy suit. They seem to think that they must go on with current work to prevent arrears accumulating and must write the judgment on holidays or whenever they can find spare time. The result is that they have to study the case all over again, having forgotten all the facts in the meantime.
4. Leaving it to the office to report on the sufficiency of service especially under Rules 15 and 17 of Order V, Civil Procedure Code. Some courts seem invariably to treat service by affixation as insufficient even when the women of the defendant's family are present in the house.
5. Leaving execution work to the office.
6. Striking off cases just before the end of the quarter to prevent their being shown in the statements of delay, and afterwards re-admitting them. Circular No. 3020/19-0-20, was issued by the High Court to all district judges on 4th September 1923 on the subject.
7. Failure to examine the parties under Order X, Rule 1.

## II.

*Note regarding Village Munsifs and Panchayats.*

This note is intended to supply certain information regarding the above which I was unable to give in full in my oral examination.

The United Provinces Village Panchayat Act (VI of 1920) only comes into operation when specially applied by the Local Government to any district or part of a district (section 1). In any local area to which it is applied the Village Courts Act, 1892, automatically ceases to be in force. The jurisdiction of village panchayats extends by section 16 to certain simple cases of claims for money and movable property not exceeding Rs. 25 in value. Partnership cases, suits against a public officer or against Government, suits against a minor, revenue suits and claims under a will or intestacy are excluded.

Wherever a panchayat is established it has by section 32 exclusive jurisdiction over cases of which it is empowered to take cognizance, but the collector is given power under section 71 to cancel the jurisdiction of a panchayat in respect of any suit or case or to quash its proceedings or cancel any order or decree passed by it. No appeal or revision from any order of a panchayat lies to a civil court (sections 52 and 53).

Village munsifs are a dying institution. They are appointed under the Village Courts Act (Local Act III of 1892) above referred to. It is intended that they shall gradually be replaced by panchayats. They deal with the same class of case as the village panchayat up to a limit of Rs. 20, or with



the written consent of both parties, up to a limit of Rs. 200 (sections 9 and 10). They have no exclusive jurisdiction (sections 17 and 18). Village munsifs are appointed by the collector (section 5). The Code of Civil Procedure does not apply to their proceedings (section 80). No appeal lies from their decision but the district judge may revise an order of a district munsif and set it aside on the ground of corruption or misconduct or for any cause which should be ground of revision under section 115 of the Code of Civil Procedure (section 73).

Honorary munsifs appointed under Local Act II of 1896 are far more important from the point of view of relieving the regular courts than either Village munsifs or panchayats. Honorary munsifs have jurisdiction in all suits of a small cause court nature, though they do not try them by small cause court procedure, up to a pecuniary limit of Rs. 200. They have concurrent jurisdiction with the regular munsifs and an appeal lies from their decisions to the district court as from the regular courts. The civil statements issued by this Court for 1922, page 12, show that in the year 1922 honorary munsifs disposed of nearly 8,000 suits.

### III.

#### *Replies to certain questions in the Questionnaire.*

(Supplementary to the special note I.)

9 to 11. I would let munsifs start with jurisdiction up to Rs. 1,000, to be increased after three months to Rs. 1,500 which should be the normal limit with power to extend up to Rs. 3,000.

13. I would give this jurisdiction both to subordinate judges and munsifs according to the pecuniary limit. These cases are no more difficult to try than many others which they already try. All subordinate judges should also be invested with powers under section 92 of the Code of Civil Procedure.

15. I would certainly not allow mortgage suits to be tried as small cause court suits. Very difficult questions of priority arise in such suits. I have examined the schedule to the Provincial Small Cause Court Act and come to the conclusion that it admits of very little extension. The only Articles in which it struck me that small cause court jurisdiction might be extended are Articles 11, 20 and 43A. Under Article 11 there seems no reason why a suit for ejectment of a tenant of a house or shop might not be so tried.

The exception in Article 20 as regards suits under Order 21, Rule 63, should I think be limited to suits relating to immovable property. Under Article 43A where a property is claimed from an agent or servant it is often difficult to decide *prima facie* whether the act amounts to a criminal breach of trust or not and I see no reason why small cause court procedure should not be applicable.

17. Sub-registrars could not be safely invested with judicial powers.

19. As I have said in my note I strongly favour the abolition of Letters Patent appeals. If such appeals are retained the period of limitation for filing them should be cut down to thirty days.

21. This suggestion goes too far but I think the Court might be empowered to require security or deposit of the decretal amount under Order 41, Rule 10, wherever the appeal appears on the face of the judgment unlikely to succeed.

23. (1) Yes.

(2) This is already the law in this province.

25. I do not think the procedure of section 106, Transfer of Property Act, practicable in the case of civil suits.

33. This is an excellent idea but I would not lay down that no steps should be taken to summon witnesses till after the examination of the parties.

The examination of the parties or their pleaders is compulsory under the present law under Order 10, Rule 1, but this provision is constantly overlooked. I agree that the statement made under this rule should be treated as evidence in the case.

36. Affidavits are generally prepared so carelessly and with so little regard for truth or accuracy that I should be reluctant to agree to any extension of evidence by affidavit. I would certainly not agree to a rule that no oral evidence should be allowed except by special leave. The only advantage of an affidavit is that it enables the person making it to be prosecuted for perjury if the statements contained in it are false. An application duly verified according to rule has the same effect and in *ex parte* proceedings a verified application might be accepted as *prima facie* evidence of the facts contained in it where they are verified on the personal knowledge of the person making the application.

37. Yes; see separate note.

40. I do not think that it is possible to make any general rule of the kind suggested but where a party has been served with notice and has not appeared and proceedings against him are taken *ex parte* I think the proceedings against him might be allowed to bind his legal representatives without their being formally brought on the record unless they themselves come forward and ask to be joined as parties. This would apply even more strongly to appellate proceedings. Similarly in appeals in which the person who dies is represented by counsel and such counsel desires to continue to act on the instructions of person claiming to be the legal representatives I see no reason why the decision should not be held to bind the estate of the deceased. Of course counsel in such cases could not be allowed to compromise the appeal without the person's legal representatives being formally brought on the record.

Proceedings for bringing legal representatives on the record are undoubtedly a very serious cause of delay. From a note recently prepared by the Deputy Registrar of twelve oldest appeals pending in this Court I find that seven out of the twelve were pending on account of proceedings to implead legal representatives.

41. The plaintiff might be given the option of naming more than one possible guardian but I would not make it compulsory. It is not always easy for him in the first instance to find out the names of all the possible guardians.

53. Yes.

54. Yes.

55. Yes.

56. A period of six years should be sufficient except where execution is sought against immovable property in cases not affecting immovable property. In the latter case it would not be enough unless time occupied in deciding objections filed by the judgment-debtor and in deciding objections and suits filed by third parties claiming the property is excluded. In cases where execution is very much delayed it is usually on account of successive objections by the judgment-debtor or by persons put up by the judgment-debtor to prefer claims to the property and it would not be fair to penalise the decree-holder on account of objections of this kind. If the limit is cut down the three years' rule might well be abolished. It certainly leads to the time of the court being taken up with applications put in purely for the purposes of saving limitation. I agree that the starting point under the three years' rule, if retained, should be the last order on the last application and not as at present.

57. Yes.

58. Yes.

59. I agree to the first suggestion. I am more doubtful about the second suggestion. A judgment-debtor who purchases the rights of the decree-

holder should certainly not be allowed to execute the entire decree against his co-judgment-debtors.

61. (a) I do not understand the suggestion made in the second sentence of this question. Except in cases covered by Order 21, Rule 22, no notice of the application for execution is required to be given to the judgment-debtor. The court proceeds to issue process under Rule 24.

(b) Notice is in my opinion necessary where application is made for the first time against the legal representative.

64. This is a good suggestion, but if it is adopted care will have to be taken that dates are fixed in presence of the parties and not by the office in their absence as is often the case at present. Much time is at present occupied in execution proceedings against immovable property in the preparation of the sale statement, and in deciding objections to its terms and subsequent applications to set aside sales on the ground of it having been improperly prepared. Why should not the decree-holder prepare a draft sale proclamation without any formal proceeding by the court? A copy of this would then be sent to the judgment-debtor by registered post or otherwise and he would be at liberty to object to the correctness of any of its items and to substitute correct particulars for any particulars to which he took exception. The judgment-debtor's corrections and objections could then be treated as part of the sale proclamation which intending bidders could inspect. There would then be no need to entertain objections to the sale on the ground that the proclamation was wrongly prepared except as to the specification of the property to be sold. If some procedure on these lines could be adopted proceedings would frequently be shortened by many months.

I am of opinion also that the purchaser at auction sale should have a statutory right to the refund of his purchase money in all cases in which he is deprived of the property by subsequent suit or objection.

65. No.

66. Most of these suggestions in my opinion go too far but I see no reason why the court should be debarred from deciding in the suit a question of title paramount put forward by a party who is impleaded. I also agree that there is no necessity for a separate final decree.

67. I agree that stay orders are granted much too freely. Parties constantly come up for stay of execution within a few days before the date fixed for sale of immovable property. A fresh proclamation has then to be issued and another thirty days' notice allowed, even if the stay order is removed immediately the opposite party has heard it. The rule should be that the sale should take place but should not be confirmed pending the decision of the appeal.

A broad distinction is to be made between—

- (1) claims to money, and
- (2) claims of other kinds, e.g., claims for possession of a house, or for partition, or for specific performance, or for restitution of conjugal rights and so on.

In the first class stay should ordinarily be conditional on the decretal amount being deposited with power to the court to order it to remain in deposit till the appellate decision. In the latter class stay may often legitimately be granted, as in many cases irreparable damage would be done by allowing the decree to be executed pending appeal.

68. Yes.

72. The court should be empowered to presume a registered document to be duly executed. I should like to see the introduction of a provision allowing documents to be executed as well as registered in presence of the sub-registrar whose certificate would be *prima facie* evidence of due execution. Section 33 of the Indian Registration Act already contains such a provision.

in reference to certain powers of attorney and this provision might well be extended to other documents.

73. Yes.

74. I suggest the following provisions of the law of limitation as requiring amendment:—

Sections 6 and 7 should not apply to applications.

Sections 19 and 20 should in no case operate to extend limitation for more than twelve years (*vide* separate note).

Article 10. Limitation should be six months (*vide* separate note).

Article 11A. Where the property claimed is moveable property limitation should not exceed six months.

Article 25. Six months would be ample.

Article 120. Suits for an injunction are treated as coming under this Article. Three years should be sufficient for suits of this nature.

Article 156. I would cut down limitation to sixty days and in the case of appeals under the Letters Patent, if retained, to thirty days. A person who comes up under the Letters Patent has usually had his appeal pending for from one to two years in the High Court and has had ample opportunity to make up his mind whether he wishes to take the case further if the decision goes against him. As, moreover, there are no court-fees to be paid there is no reason why he should have another three months within which to file a Letters Patent appeal.

76. I think such a provision will do more harm than good; it would certainly lead to a great deal of fraud.

79. No, for the same reason.

80. No.

81. I am inclined to agree, though the proposal wants careful consideration with reference to possible hard cases.

82. No, but I do think that the court-fees in declaratory suits ought to bear some relation to the subject-matter in dispute.

83. No necessity.

87. A codification of the provisions of the Hindü Law relating to the alienation of Joint Hindu family is urgently needed and I trust that the attempts which have been made in this behalf by Dr. Gour and others will eventually succeed.

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**The Hon'ble Mr. Justice S. R. DANIELS called and examined  
on Monday, the 10th March 1924.**

*Chairman.*—I understand that you are at present in charge of the English Department in this province.

A. Yes.

Q. I want you, if you please, to teach me as an ignorant outsider and to give me some elementary information to enable me to get a bird's eye view of the position in this province. Roughly speaking how many munsifs have you altogether?

A. Munsifs including officiating munsifs run up to 107.

Q. That is for the province of Agra alone?

A. Yes.

Q. And sub-judges?

A. There are thirty sub-judges, three in the selection grade.

Q. The number of districts in Agra?

A. There are thirty-three districts not including the hill tract.

Q. Apart from the district judges, sub-judges and the munsifs, have you village munsifs and honorary munsifs in this province?

A. Yes.

Q. Would you just tell me what are village munsifs, under what Act they exist and what work they do?

A. There is a Village Munsifs Act, I think, under which they are appointed and I think the limit of their jurisdiction is rupees two hundred.

Q. Are they paid officers?

A. No.

Q. What sort of personnel are they, are they headmen of the village?

A. I think they are generally zemindars. I have not been in contact with them very much. They are appointed by the Government and the High Court sees nothing of their work.

Q. Could you tell me, as far as your knowledge goes, do they dispose of a substantial amount of business under rupees two hundred?

A. I do not think, as a rule, they dispose of great deal of work. We have got some figures in the annual report.

Q. Then this system has been in existence since 1892?

A. Yes.

Q. Could you just tell me who criticises their work?

A. I should say district judges.

Q. Are you able to give us information as to whether they might be used more frequently than at present to relieve other courts that are congested?

A. I am afraid they cannot be.

Q. Is that by reason of the work they do or because there is general opinion that they should not be entrusted with this work?

A. I think the second.

Q. I see also there is a reference to honorary munsifs. Who are they?

A. They are just land owners who are given powers of munsifs.

Q. For the purpose of relieving ordinary judicial officers, I think?

A. Yes.

Q. Then these powers are given by the local Government up to the limit of Rs. 50 in the case of one man and up to the limit of Rs. 100 in the case of the other.

A. I am not prepared to answer this question off-hand.

Q. Then I come to courts which are immediately under your supervision. I think courts of ordinary munsifs are under your control.

A. Yes.

Q. Then as regards this, apart from munsifs and subordinate judges exercising small cause court powers, have you any small cause courts in this province?

A. Yes, one at Allahabad, one at Agra, at Meerut, at Benares and at Dehra Dun.

Q. Are these courts with more than one judge?

A. No there is only one judge.

Q. Is there any great problem as regards legal delays in these five courts?

A. No.

Q. Coming then to munsifs, what is your practice in this province as regards giving of small cause court powers?

A. We do not, as a rule, give small cause court powers till the man is confirmed.

Q. Up to what limit do you give powers to these munsifs? Four hundred or five hundred?

A. As a rule we start with powers up to Rs. 100, but in the case of experienced munsifs, we raise them to Rs. 250. I think powers above Rs. 250 are given to subordinate judges only.

Q. In the case of munsifs do you find that the practice is to give a special day in the week to small cause court work?

A. Yes I think they do that, but they are pressed with other work.

Q. What is the condition, broadly speaking, of the file of munsifs in this province? Are they congested?

A. Yes. We are under-staffed at present and we have got a promise of more courts being given to us. I just had a report that the amount of work in munsifs' courts is more than they can cope with, but there are munsifs who are not overworked and they can dispose of their cases quite expeditiously.

Q. Can this congestion be removed by redistribution of district jurisdiction between munsifs?

A. I do not think so. What we propose to do, when we get the promised extra staff, is to post additional munsifs with jurisdiction throughout the district to relieve those munsifs who are at present very much congested. In one or two cases we are proposing to re-open munsifs which were abolished.

Q. Then in the case of those munsifs who have got more work at present than they can cope with, there can be no question of giving extension of small cause court powers?

A. No, but I am not sure whether that would save a lot of time. I think they can dispose of small cause cases as well.

Q. You think that something might be done by increasing small cause court powers of munsifs even though their present file is congested?

A. Yes.

Q. Apart from small cause court powers of munsifs, I take it that all munsifs have powers under the ordinary procedure up to Rs. 1,000.

A. Yes.

Q. And some of them up to Rs. 2,000.

A. Yes.

Q. How many of them are entrusted with greater powers?

A. Not very many. I am not carrying statistics in my head, but I think not more than half a dozen.

Q. In this province, I understand, you do not have any rent suits to deal with in munsifs' courts.

A. No.

Q. And probably the inflow of work in the munsifs' court may be fairly regular throughout the year?

A. I should say that the bulk comes in after the harvest.

Q. What is the reason for that?

A. Because before that people are busy in cutting their crops and they do not get sufficient time to come to courts.

Q. As regards your personnel, I take it that munsifs are appointed from among junior pleaders in the first instance?

A. Yes.

Q. Are they kept on probation for some time?

A. Yes. They are appointed as soon as a vacancy occurs either officiating or permanent. What is actually done is this. When we select a candidate he continues to do his ordinary practice. When a vacancy occurs, he is employed and gets his pay from the date of his appointment. When a

man goes on deputation and his post falls vacant, then we select a candidate from the list and post him there. When we get extra staff we will appoint additional munsifs to give relief to those courts which are at present congested.

*Q.* Is it your impression that during the last 10 years and more in the munsifs' courts the work had been increasing in volume?

*A.* Certainly.

*Q.* When a man first becomes a munsif, how old is he?

*A.* He must, I think, be 27 years under the rules. The old rules said 30.

*Q.* He is a junior pleader with perhaps 4 or 5 years practice?

*A.* Usually less; not more than 2 or 3 years.

*Q.* When you first appoint him is he put straight into court to carry on his work as best as he can?

*A.* Yes. If it is possible to do it, we prefer to put him as an additional munsif in places where there are munsifs, where he can get help and the assistance of the staff.

*Q.* But he gets no training. There is no means making provision that to begin with he should get the simpler class of cases. He has to do whatever comes to him.

*A.* Yes. If he is an additional munsif he gets such cases as are made over to him; but I do not think that any particular care is taken to send simple cases.

*Q.* Have you ever considered the question of getting some sort of special training, only for a few months, to the people before they commence to work as a munsif?

*A.* I have never seen any suggestions for that. I sometimes think that if a man works for a month under the district judge or some such sort, he will get some training.

*Q.* I take it that such a person can hardly be expected to have more than rudimentary notions of pleading. He has had only very little practice, 2 or 3 years in addition to what he learnt for the B. L. degree. Now pleading as a practice may not probably be very great.

*A.* No.

*Q.* Now in your headquarter stations, I suppose you have altogether a good many courts. Have you 4 or 5 courts?

*A.* Yes.

*Q.* I suppose you have the system of each judge or judicial officer having an office of his own.

*A.* Yes.

*Q.* I suppose he will have a munsarim and reader.

*A.* He will have his own office and clerks. There is the copying department and there is also the record room with its own staff.

*Q.* At the headquarter stations I think there is only one nazir.

*A.* Yes.

*Q.* Has each judge a copying department of his own or is there one copying department for all the courts in one station?

*A.* In most places we have got a central department.

*Q.* Assuming that the department is central, the munsif then will have a separate clerk for execution work, a munsarim and a separate reader.

*A.* Yes.

*Q.* Have you ever considered whether it is desirable to have one office at each headquarter station serving all the judicial officials and placing them under an officer, at any rate not less than the grade of a munsif, something like a registrar whose duty it is to see that the office is run properly?

A. I think it is a good idea.

Q. What is the largest number of courts at any rate at the headquarter districts of this province?

A. They might have a district judge, a small cause court judge, possibly an additional judge, a subordinate judge and an additional subordinate judge and something like 6 munsifs.

Q. Each of them, to use the expression as regards the office, has a little hell of his own.

A. It is only the subordinate courts that have got about 3 or 4 separate men belonging to them. The record room is common; the copying room is common. The subordinate judge has not got separate English officers. He will have a reader, a munsarim and a couple of clerks, one for regular work and one for execution.

Q. That small office is doing all classes of work within a certain territorial jurisdiction?

A. Yes.

Q. That is to say within the pecuniary powers the munsif's jurisdiction is territorial?

A. Yes.

Q. It goes by thanas?

A. It is necessarily by thanas. They usually correspond to sub-divisions.

Q. If all are to have 3 clerks, that will rather increase the number of nazirs and it may be that in one particular munsif the actual execution work might not be enough for a wholetime clerk.

A. Yes.

Q. My suggestion is:—Do you think it would be possible to have the places better classified and have greater expedition in this system of territorial jurisdiction and whether you consider it advisable to have a system of placing practically all the officers under the immediate control of a gazetted officer?

A. I think it would probably be an improvement. The munsifs might object that they have not got sufficient control; that is to say, supposing that in their cases they went properly prepared and the work in their office was not promptly done, then they have got no control over the men doing their work. I find this complaint made very frequently in regard to the process service. "The process serving is now unsatisfactory. I used to have my own process-serving staff. Now if anything goes wrong I have to report to the judge and get his orders." I do not know that is a valid objection; but it is certainly an objection and a good many officers expressed it to me.

Q. Is it the practice in this province that one subordinate judge has to be in charge of staff and one subordinate judge in charge of accounts?

A. No.

Q. Then whose duty is it to look into the accounts?

A. I believe each officer checks his own deposit register. Otherwise the accounts are always under the district judge.

Q. Then the headquarters staff in this province, with the nazarat, is supposed to be directly under the control of the district judge?

A. Yes.

Q. I suppose the district judge is very hard worked, as a rule.

A. Yes.

Q. Did you find in your experience that it is possible to arrange to give the attention that is desirable to the nazarat and other office matters?

A. It is very difficult to find time to do it. It is essential that the nazarat should be examined now and again. But I know some judges find hardly any time.



Q. As a rule a good judicial officer is not quite good in managing the office work.

A. Generally the man who does one work well, does the other work equally well.

Q. If an officer is appointed separately to attend to these things exclusively, would it improve matters?

A. It would be a good thing, if we can have a gazetted officer on whom we can place absolute reliance on the management of the office work.

Q. As regards your subordinate judges, are they, on the whole, more hard worked than munsifs?

A. Yes, they are.

Q. I suppose you get out special statistics about the average duration under the small cause court procedure and under regular procedure. Taking contested cases under the ordinary procedure in subordinate judges' courts, I see the figure on page 4 of the Administration Report is put down as 255 days. Now subordinate judges have a certain amount of short cases and the 255 days average is probably much under the number, if you have taken a typical type of suit.

A. Yes. Though subordinate judges do not have so many cases (if you are excluding small cause court jurisdiction), because all their cases are over the value of Rs. 1,000, still they have a good number of title suits.

Q. I do not know if that figure excludes small cause court cases or not. At any rate the tendency is that the heavier files are rather left over. It may be that the average duration of a substantial type of suit is a great deal more than 200 days.

A. Yes.

Q. Have you had to inspect the diaries of munsifs and subordinate judges?

A. No. Are you referring to the new diary that was introduced last year?

Q. Well, I am not so much concerned with the details and form of a diary. You take it now as established that a substantial type of suit lasts for 255 days and it may be a great deal longer. Now does that case keep on appearing at intervals of a month or six weeks in the diary of the subordinate judge?

A. It depends upon the method of the subordinate judges. I am afraid, however, that the parties have to bring their witnesses more than once.

Q. We have had some instances in Bengal of a tremendously long string of cases being put down for each day. Have you ever had your attention called to the way in which that could be avoided?

A. Well, an endeavour has been made to avoid it in this province by prescribing that the subordinate judge or munsif shall fix the date and note the date with his own hand, and get from the pleaders concerned an estimate of the time that the case will take. It has been found in recent inspections that perhaps the diary prescribed is a little too elaborate.

Q. In this province do you have files pending for as much as a year?

A. I should think it is very very rare.

Q. First two or three adjournments might serve useful purpose as regards settling issues and granting interlocutory orders, provided people are told that they ought not to bring witnesses.

A. More than one stage is taken in settling issues and evidence. Then there are some other stages which contribute for delay. In some cases where there is a number of defendants, a hundred days will be taken in getting the parties served.

Q. What I was suggesting is that in cases where the file is congested will it be possible to work on the system of a prospective list; that is to say, instead of working on your diary—when a case intervenes giving it another

date without knowing if it would be taken up—whether it will be possible to keep a list of cases as they become ready and take that list from the top and when a particular case is likely to come up to have the notices issued and it will be the duty of the pleaders to prevent intermediary appointments in the diary?

A. Well, I should like that. But the difficulty is that some parties are not represented by pleaders, particularly in the original trial.

Q. In your court are issues settled by the judge after reading the pleading or does he accept the issues handed by the parties?

A. I do not think that parties hand over any issues.

Q. You think the sub-judges read the pleadings and settle the issues for themselves?

A. I think so.

Q. Do you find much use made in the mofussil of the Order relating to discovery and inspection?

A. Not very much.

Q. Have you ever thought of any way in which the law might be stiffened as regards that?

A. I should like that generally. As far as I know that law does at present provide some remedy in that respect, but it is not observed.

Q. I suppose that under the present Code the matter is left, as it would be in England, to parties to compel discovery from the other side and it is not left under the present Code to the judge in particular. The provision is that the plaintiff should get the discovery from the defendant and that it is not the business of the court. Perhaps the courts might be given initiative in the matter?

A. I should not like to express definite opinion, but I would certainly have a proposal to penalise the man who denies the discovery of the documents and who knows that they are genuine.

Q. Are cases opened in this province?

A. No.

Q. I suppose the case begins with the persons being called in?

A. Yes.

Q. If any question of irrelevancy arises is not the judge in a very good position to deal with it?

A. I think so. When a point arises it is left till the judgment.

Q. That is to say it is admitted subject to objection.

A. Yes, theoretically it must be decided then and there and in some cases it is.

Q. Do you find that the district judges are able to take a proper share in the civil work in the province or do you find them occupied too much with the criminal work?

A. They cannot do very much of the civil work. Some judges occupy a very long time in criminal work, others decide good many of civil cases. The judge at Ghazipur, for instance, decided 741 civil appeals whereas the district judge at Shahjahanpur decided only 135 civil appeals.

Q. In this province are sub-judges given the powers of assistant sessions judge?

A. Many of them have these powers.

Q. Then do you think that the civil work will improve if it could be arranged to give to the district judge more time to the hearing of civil work?

A. Yes.

Q. What I mean is if in any way district judge is relieved of some of his criminal work and if he gives more time to civil work, do you not think that will improve the disposal of civil work?

A. Certainly.

*Sir Tej Bahadur Sapru.*—*Q.* You probably would like some provision made in the statute book regarding applications for revision. Is it not really a fact that stale applications for revision are usually not admitted by the judges of the High Court? Suppose I present an application to you for revision in a case disposed of three months ago. Have I any chance of getting that application admitted? I put it to you generally. Mr. Justice Daniels—the judges differ very much.

*Q.* I think your suggestion is both as regards the revision under the Civil Procedure Code and under the Small Cause Court Act.

*A.* Yes.

*Q.* Do you not think that the law relating to the revision requires more careful amendment? Take for instance the Civil Procedure Code, section 115. We know that applications for revision are not admitted which do not raise question of jurisdiction.

*A.* No.

*Q.* I have known judges admitting applications for revision merely on ground of justice. You think that there is room for amending section 115 so as to make it more certain?

*A.* Certainly.

*Q.* Perhaps you will like the law to be stiffened by proper amendment?

*A.* Section 115 as interpreted by the Privy Council is already fairly strict. It is rather difficult to provide a remedy.

*Q.* With regard to your suggestion regarding abolition of Letters Patent appeals, do you want to abolish all Letters Patent appeals, or only to impose certain restrictions?

*A.* I would be willing to have a Letters Patent appeal, if the judge certifies it to be a fit case. I think the same result might be arrived at in another way, i.e., if a case comes up before a judge and counsel on either side suggest that the case is suitable for hearing by the bench, I think the judge will never raise any objection.

*Q.* As a matter of fact your suggestion is on the same lines as that of Letters Patent appeals in the Burma High Court?

*A.* Yes, because if an appeal remains pending for about two years, then the Letters Patent appeal may be filed and kept pending for another two years.

*Q.* Roughly speaking what is the number of Letters Patent appeals in this High Court? I think it has considerably increased during the last ten years, if so, what is the reason?

*A.* I am not prepared with statistics. I think the number is given in one of the statements in the Administration Report.

*Q.* In the olden days, I am talking of 20 years ago, I do not think the number was more than 75 to 80.

*A.* If I am right I think there was a ruling given sometime back that Letters Patent appeals did not require court fee.

*Q.* That was, I think, set right by the legislature in a short time, but I say that in the last year according to this statement there were 329 Letters Patent appeals, which is really a very startling number.

*A.* Yes.

*Q.* Are you in favour of increasing the pecuniary jurisdiction of a single judge, or of reducing it?

*A.* If any change is made, I should certainly increase it.

*Q.* To Rs. 1,000?

*A.* Yes.

*Q.* As a matter of fact what is your experience in this Court, do the members of the bar generally prefer their cases being taken before a bench of two Judges or before a single Judge?

A. Perhaps if you ask them they would say a bench of two Judges.

Q. There is some suggestion regarding the time wasted in cross-examination. What is your opinion about that?

A. Well you will see that I have mentioned that in my note.

Q. So far as my experience is concerned except one subordinate judge, I have known no other judge who has persisted in seeing at the beginning whether the documents filed are relevant or not. They are admitted subject to objection at the time of hearing, but the mischief is done and the cross-examination prolonged, on that point. Do you think that much time could be saved if the cases were opened and issues settled properly?

A. Yes.

Q. In point of fact subordinate courts in Oudh attach far greater importance to settlement of issues.

A. Yes.

Q. Perhaps you will agree with me that in many cases in this province issues are not settled as they should be or they might be with the result that much evidence is admitted which ought not to be admitted.

A. Yes.

Q. As regards cross-examination do you not think that if counsel put a question which is not relevant the judge has got the right to disallow that question?

A. Yes he has got the right, but the trouble is that many subordinate judges are rather afraid of the bar. They are afraid especially of the senior counsel who appear before them.

Q. Why should that be?

A. They are afraid that a complaint might not be made against them in the High Court that they are hasty and arbitrary. I do not know whether the feeling is right or wrong, but in fact it exists.

Q. Have any complaints actually been made?

A. Yes, not against district judges, but against subordinate judges and munsifs.

Q. But you as a judge would not tolerate these complaints?

A. When a complaint is made you have to make some enquiry as to which of the parties is wrong.

Q. But the party who makes the complaint must take the consequences?

A. I have asked a large number of subordinate judges and munsifs and they say that much time is wasted in cross-examination. They say while knowing that the question is irrelevant and useless they cannot stop it and that they have not got the power to stop it.

Q. With regard to tendering of evidence, I think that if the courts were more careful much of the evidence could be ruled out which is not relevant to the case. I have known of cases in subordinate courts where very important documents have been produced almost at the last stage and it has led to the prolongation of the case.

A. Yes, but it applies to documentary evidence.

Q. Quite a large number of officers do not apply their mind in time when it comes for arguments.

A. It is not true of all.

Q. I am not saying of all subordinate judges. I say some.

A. Yes.

Q. I have known cases in which documentary evidence tendered in civil courts is really exhibited after the argument is over.

A. I do not know of such a case.

Q. I know one case in which Justice Sir William Tudball strongly condemned the practice.

A. Yes. Officers differ so much; some Judges are very stiff and others are very lenient.

Q. Your next suggestion is with regard to Article 182 of the Limitation Act.

A. Yes.

Q. Perhaps you agree with me that having regard to the modern conditions a great deal of the schedules of Limitation Act should be revised and long periods cut down.

A. Yes.

Q. Would you reduce the period of limitation for a suit for redemption which gives about 60 years?

A. Yes.

Q. In any case would you welcome if the period of limitation for these suits is reduced substantially?

A. Yes.

Q. With regard to execution matters don't you think that a good deal of trouble arises because of those words "step-in-aid of execution"?

A. Yes.

Q. Perhaps your experience has been the same as mine that in quite a number of cases it is as much the interest of the decree-holder as the interest of the judgment-debtor to prolong the execution?

A. Yes. The judgment-debtor is more often likely to prolong, so that the decree-holder cannot get hold of any property. The 3 years rule operates if I do not put in an execution petition. So, I will put it in.

Q. Would you rather prescribe an absolute period of 3 or 4 years within which the decree-holder should execute his decree and if the decree is not executed within that period owing to any fraud on the part of the judgment-debtor or owing to any circumstance for which the decree-holder is not responsible, do you think that the court should be able to grant extension of time?

A. Yes. I will go much further; I would exclude all the time occupied not only by the fraud of the judgment-debtor but also suits brought in by third parties.

Q. You would exclude that in favour of the decree-holder?

A. Yes.

Q. Do you agree that so far as limitation is concerned, for a simple money decree and a mortgage decree and a decree for immovable property, where execution is not taken out promptly, the law might be stiffened?

A. Yes.

Q. Do you find much fault with regard to the manner in which the arrest of the judgment-debtors is made in this province?

A. The court has got discretion to allow it in the first place. In the second place as soon as the man comes he applies to be declared an insolvent and gets released. I should think it is only one of the points certainly that if you send a man notice asking him to show cause why he should not be arrested, he naturally evades arrest.

Q. In regard to partition decrees in your province with regard to revenue paying Mahals do you suggest some modification?

A. I have not known any and I should know something about it before I can criticise it.

Q. You do not think that it is absolutely necessary for the purpose of execution of a civil decree that civil court execution should be transferred to the revenue court?

A. I do not think I would interfere with it.

Q. You do not think that it is absolutely necessary?.

A. No.

Q. If the decree-holder claims property which was paying revenue or for which he got his name entered in the revenue papers, on the basis of that the civil court is only bound to give him a decree for title.

A. Yes. To make it clear it must be made a rule that when a civil court has given a decree for title the court must dispose of that.

Q. With regard to your suggestion as to pre-emption suits perhaps you would give this Committee some idea of the nature of the pre-emption suits in this province. There are some gentlemen who do not belong to this province.

A. We have just got the law codified by the Pre-emption Act. The present village administration papers prescribe usually a custom and if the sale is to a man of an inferior class of pre-emptors or to a stranger, any one whose name is in the village records will come and pre-empt. He may be a person who only recently bought the estate but it does not matter.

Q. Don't you think that the whole law of pre-emption is an archaic law and that it is not really wanted in this province? I should like to know what is your opinion.

A. I think it would be a good thing if it is done away with.

Q. Do you really think that this Pre-emption Act is going to end litigation or to further litigation?

A. I think it would reduce it. I doubt very much that it would further litigation. It is a very difficult question. At any rate it would put an end to all those cases that arise as to the interpretation of the Wajibularis.

Q. Will you please tell the Committee how the rule of law laid down by Sir Henry Richard and Sir William Tudball is working in regard to pre-emption cases? Do you think it has led to satisfactory results or to any diminution in regard to pre-emption cases?

A. There are a good many cases.

Q. And so long as the law of pre-emption is on the Statute Book and so long as you recognise the law of pre-emption, you cannot stop litigation?

A. No.

Q. Therefore, perhaps you will agree, that the best thing to do is to abolish the law of pre-emption in this province?

A. I think there would be opposition.

Q. You do not get many cases of pre-emption under Mohammedan Law?

A. No. There is one very great safeguard under Mohammedan Law: the pre-emptor must claim his right immediately he hears of the sale.

Q. Have you got a very large number of cases coming up in this Court where alienations arise in regard to the management of a joint Hindu family. I do not think the Law is in a very happy position even after the decision of the Privy Council. Don't you think there should be legislation on this point?

A. I agree.

Q. If mere service effected on the head of the family was considered sufficient, I venture to think that there would be many loop-holes.

A. Yes.

Q. And unless suits such as are now filed are barred on account of public policy, there does not seem to be any prospect of stopping litigation, whatever be the law.

A. Well, I am not much concerned with stopping litigation as with preventing delays which occur. Not only litigation is delayed, but a decree is set aside on the ground that minor's property has been alienated.

Q. In paragraph 8, you suggest that there should be no second appeal in cases of a valuation of Rs. 100 or less, whatever the nature of the suit.

When a substantial question of law arises in a case valued at Rs. 100 would you not allow a second appeal?

A. I would not object to that.

Q. You would perhaps relax the rule where any substantial question of law is involved or where a question of title is involved in a big property suit?

A. Yes.

Q. With regard to delays in service, don't you think that you could frame rules requiring plaintiffs to deposit all process fees along with the plaint, and suppose you are to frame a rule and enforce it rigorously that witnesses in an action should be summoned within a limited time and if they are not summoned, the parties shall not be allowed to do so? Don't you think much of the delay could be avoided in that way?

A. Yes.

Q. I do not think that there is a rule on that point at present.

A. No.

Q. As regards the citation of cases, why is it that rulings in the Indian Cases are still allowed to be cited?

A. It is partly because a counsel gets strength to his own case. The second point is that our regular law reports are not brought out as promptly as they ought to be. Sometimes they wait for the Calcutta Law Report.

Q. You think the only way to improve the position is by improving the law reports?

A. Yes.

Q. Could you kindly tell me whether any action has been taken on the report of the Indian Law Committee which was appointed by the Government of India about a year and a half ago?

A. I do not know.

Q. I want to know whether the local governments have taken any action on that?

A. I have no idea.

Q. Well, as regards the stenographers, the district judges have now got their shorthand writers.

A. Yes.

Q. And not the sub-judges?

A. No.

Q. And you would like that stenographers should be given to the sub-judges.

A. I am not sure whether all the sub-judges can use them, only the selected sub-judges may be given shorthand writers.

Q. With regard to the excessive holidays, don't you think that Saturday is very much necessary both for the judge and for the counsel to prepare themselves for next week?

A. They get leisure.

Q. That will rather introduce an element of uncertainty?

A. It has happened that Courts had been closed for two days in a week and as they did not sit on Saturday there were only three working days. I have limited my suggestion to two holidays.

Q. What about the long vacation? Once you suggest about the curtailment of holidays probably the suggestion may be made that vacation is too long.

A. That seems to me quite an independent question. I do not see why the question of holidays should involve the question of vacation. Long vacations are useful because a man can go away and have a change.

Q. With regard to the powers of Registrars in the High Court, I will read to you from the Letters Patent constituting the Rangoon High Court, which says—"The High Court of Judicature at Rangoon may, from time to time, make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any Judicial, Quasi-Judicial and non-Judicial duties." This goes perhaps further than the Patna High Court Letters Patent. Would you like to have something like that?

A. Yes.

Q. You said that the rent suits are not filed in the munsifs' courts here, but in fact rent suits come up to the district judge and in some cases second appeals lie in the High Court.

A. Yes.

Q. Are you in favour of the present system?

A. In what respect?

Q. Would you like the present system to continue that the rent suits should be dealt with by the district judge and the second appeal should be to the High Court or would you rather abolish this system and give jurisdiction to the Board of Revenue?

A. The Board of Revenue has now been relieved of much of its executive work. It may be possible to transfer the rent cases to them.

Q. What was really the basis of the appeal in rent suits to the district judge and not to the revenue officer?

A. I think it was that rent suits might involve decision in the title.

Q. The decision in the title is involved in very many rent cases.

A. It is not involved in cases where the appeal comes to revenue officer.

Q. You also say that one of the causes of delay is the postponement of the writing of the judgment after the hearing of arguments is concluded. What exactly happens in this province?

A. Here again I do not want to generalise. The common practice is that the pleaders ask for fifteen days' time to prepare their arguments, perhaps in a month's time they get copies of deposition and then the judge hears the arguments. He writes the judgment when he gets leisure or holidays and of course by that time he forgets all about evidence.

Q. I suppose generally the difficulty arises because the copies of deposition of witnesses are not very freely available at the time when the evidence is closed. Probably no brief is prepared and after the evidence is over the counsel get hold of the documents to prepare their case.

A. Some pleaders do get clerks to take down evidence. Some senior pleaders get junior pleaders.

Q. Do you not think that there should be adjustment of relation between the junior and the senior pleaders?

A. The Bar must adjust itself to it.

Q. And further if the case is to be argued out just at the close of the evidence the junior counsel must see to it that the brief is really ready for the leader who wants to argue the case and it is a practice which is not generally followed.

A. Yes.

Sir T. Desikachari.—Q. Could you kindly tell me whether I understood you aright that the work has been increasing in the munsifs' courts and the sub-judges' courts?

A. Yes.

Q. Is the work such as can be managed by them without the addition of the cadre?

A. No it requires addition of the cadre. We have been promised addition of the cadre.



**Q.** Without an addition to the cadre would you suggest any devolution of the power to other agencies which will make for the speedy disposal of the judicial work?

**A.** I should like to know what is in your mind.

**Q.** The suggestion is, in the Madras Presidency we have got village panchayats courts. These are successors of village munsif courts. These courts try suits up to rupees twenty and a large number of suits are disposed of in that manner. Could such a thing be done in this province?

**A.** I think it has been done under the recent Village Panchayat Act. The Act is very new and only beginning.

**Q.** The object of my question was to know whether their jurisdiction is concurrent with that of the munsifs?

**A.** It is concurrent.

**Q.** Supposing it is suggested that these courts should exercise powers up to rupees fifty and they should have exclusive jurisdiction?

**A.** They are so new that I would like to give them a little more chance to work before making any change.

**Q.** Are you in favour of increasing the jurisdiction of ordinary munsifs?

**A.** I am, they might start with one thousand or with fifteen hundred and their powers may be extended to three thousand.

**Q.** I was going to suggest with reference to your answer to Questions 9 and 11 that in the Madras Presidency the munsifs try suits up to Rs. 3,000. Why should not that be done here in this province? Why should they be so cautious to start them with power of Rs. 1,500 and then increase that to Rs. 3,000?

**A.** Do you start at Rs. 3,000 straightaway?

**Q.** Yes.

**A.** I will be quite willing to give experienced munsifs this power.

**Q.** Surely Rs. 3,000 now are equal to Rs. 1,000 of five years ago.

**A.** Yes.

**Q.** I think your munsifs are Bachelor of Laws and they are appointed after three or four years' practice?

**A.** They need not have any practice.

**Q.** You will agree that after a particular time they should be given powers up to Rs. 3,000?

**A.** Yes.

**Q.** What do you think to be the period after which their jurisdiction should be extended?

**A.** Five years.

**Q.** So after five years munsifs might be entrusted with jurisdiction up to Rs. 3,000.

**A.** Yes. I may mention here also that I would be in favour of small cause court power of a sub-judge being increased to Rs. 750.

**Q.** Should not the small cause court power of a munsif be increased to Rs. 350 or Rs. 500?

**A.** Yes, that might be increased to Rs. 500.

**Q.** You said that certain district judges have no time to give to civil work, as a substantial amount of their time is occupied by criminal work. In this province do you appoint senior district munsifs as assistant sessions judges?

**A.** No: only sub-judges.

**Q.** In this province you make senior district munsifs as district judges?

**A.** Not munsifs, but subordinate judges.

*Q.* What is the time when you make subordinate judges as district judges? I am told that when they become district judges they are very old and they are put to great inconvenience as they have not been doing criminal work before and have to learn it then. After how many years standing you make them district judges?

*A.* Yes; that is quite true. They are usually appointed as district judges after 14 years standing and they are then about 40 years of age.

*Q.* But if you give them some criminal work to do along with civil work, would not that be a good thing?

*A.* No, because there is a complaint that in some cases the tendency is to give preference to criminal work and to allow civil work to accumulate and this means another serious delay.

*Q.* Could you not find any other agency to take over munsifs' civil work up to Rs. 50 or Rs. 100? Can't sub-registrars be given some of the civil work?

*A.* No, they are not well educated and there is a general opinion that they should not be entrusted with civil work.

*Q.* Then you think that it is not possible, as it was contemplated once in other provinces, to invest sub-registrars with civil powers?

*A.* I do not think so.

*Q.* Supposing it was possible to employ people of higher educational qualifications as sub-registrars, would you consent to have them invested with civil powers?

*A.* I do not think that the system would be popular or would work well in this province.

*Q.* What do you think of the work of honorary magistrates in this province?

*A.* The work of honorary magistrates varies very much. Some are said to be rendering useful help, but some simply waste time.

*Q.* Is there no means of checking them?

*A.* The district magistrate can check them to some extent.

*Q.* I read from the administration report that the record of honorary munsifs is good.

*A.* I have no personal experience myself, but a question was raised by Government as to whether we could do more in the way of appointing honorary munsifs and Mr. Justice Lindsay said that the work of honorary munsifs was not satisfactory and that they did not command the confidence of the public.

*Q.* Then you said something about the control of establishment under munsifs and subordinate judges. Could the clerks and other people employed in the various courts at headquarters be controlled by registrars? There is a notion among the subordinate judiciary that the central nazarat system is not working properly.

*A.* Yes.

*Q.* Is that a correct notion?

*A.* I would say that the notion exists.

*Q.* Is it true that munsifs have got no direct control over the copying department or the process serving department?

*A.* They have got no direct control, they can only complain to the district judge.

*Q.* And the result is that they are not in a position to do anything with regard to these matters?

*A.* I think if a munsif makes a complaint the district judge would certainly back him up.

*Q.* Do you think that there is great advantage in keeping the central nazarat department?

A. Well I think it ought to prove advantageous, but I know of many cases where the nazarat system has not worked well. There are some drawbacks which are difficult to get over. How can you prevent the process server being bribed?

Q. Will you just look at Question 76? Do you think that if partitions of immoveable property are evidenced by registered documents, it would prevent a lot of litigation which otherwise follows if they are not evidenced?

A. Yes, I think if it is tried, it would save litigation.

Q. I know that in other provinces partitions need not be evidenced by registered documents under the Hindu Law?

A. Partitions of land are all done by revenue courts and not by civil courts.

Q. But I think partitions of houses are done by civil courts?

A. Yes.

Q. Then if there is a document in these partitions, it should be registered?

A. Yes.

Q. Then in the case of partnerships, do you think that all partnerships started with a capital of one hundred rupees and more should be registered?

A. I think the limit of one hundred rupees is too low.

Q. To how much would you increase it?

A. Not less than five hundred.

Q. Do you think that in the case of persons not educated, their thumb marks are sufficient? What is your experience of thumb marks? My experience has been very sad. It is not possible to say after sometime that the thumb mark is of the same person.

A. Yes.

Q. It seems to me rather hard for a poor person to register every document he executes. Having regard to the habits of this country is it not correct to insist upon such documents being registered?

A. That is my view.

Q. What is your view with reference to the plea that is often set up that a document which has been executed and registered is merely intended to evidence a sham transaction? Should such a plea be permitted?

A. I would be inclined to favour a provision to stop it.

Q. With regard to a large number of transactions which are called *benami* transactions in this country, what would you do to prevent a person from pleading that such a particular transaction was a sham transaction?

A. Your suggestion is to amend the Code of Civil Procedure?

Q. We could do that.

A. Yes.

Q. I understand that in the Mysore province if a case is not contested a particular court-fee is allowed. If a case is contested additional court fee is demanded.

A. You are speaking of pleader's fees?

Q. Court fees also.

A. You say in the Mysore State?

Q. That was I am told the measure recommended by a similar Committee in the Mysore province.

A. Yes.

Q. What do you think of the suggestion in order to put down vexatious defence?

A. Then the court fee is not paid by the defendant but by the plaintiff.

Q. But you can ask the other man to pay the court fee or mulct him with costs at the end of the trial.

A. That is to say, if it is defended unsuccessfully. Supposing the court fee is paid in the first instance and the plaintiff wins then the defendant has to repay the court fee to the plaintiff as part of the costs.

Q. But the defendant has to pay an additional fee as a sort of punishment for having set up a frivolous contention.

A. You could not allow that to every case which the plaintiff wins but only limit it to such cases where the defence is vexatious.

Q. Your idea is that in addition to the ordinary court fee the defendant who puts in a false defence should be required to pay an additional fee?

A. Yes. No objection.

*Mr. Justice Stuart.*—Q. Do you think, Mr. Justice Daniels, that the services of patwaris could be utilized to any advantage for the service of processes?

A. Yes.

Q. What do you think of the suggestion that in outlying parts of the district the processes should be distributed to patwaris who would serve them and bring them back and put in their certification at their next visit to the tahsil? The patwaris to receive a fee for their trouble.

A. I would like to see it tried as an experimental measure in some districts.

Q. Do you see at first sight any radical defect in the suggestion?

A. No.

Q. Do you think a patwari can be trusted?

A. Well, generally he is a responsible official.

Q. At any rate he will be much more trustworthy than the present process-serving peon?

A. Yes.

Q. In respect of selection of munsifs are you quite satisfied with the recent changes adopted by this High Court as to selection?

A. I know that we have a selection committee which interviews the candidates exhaustively.

Q. Are they tested before they are appointed?

A. Yes.

Q. Do you think any further improvements necessary?

A. I cannot think of any better method of selection.

Q. In your opinion would there be any advantage in a competitive examination?

A. No.

Q. Do you think that would be a test for a man's fitness?

A. No. As far as educational qualifications are concerned every candidate munshif has got an educational qualification. He must be a B.A., LL.B. He must undergo two years training. One other aspect of competitive examination would be that you might have the whole cadre flooded with a particular caste or section of the community. That particular caste is a very admirable caste and a well qualified caste but they are well represented.

Q. On the question of training do you think it might be possible to have something of the nature of the executive officer's training for judicial officers?

A. Yes.

Q. Do you think it might be possible to have senior retired district judges who would be perfectly qualified to give a 2 or 3 months' course to probationary munsifs, teaching them what to avoid and what to do?

- Q. And allowing them to come to courts and study and criticise?
- A. Yes.
- Q. I think you go back to the period in the Civil Service when we were compelled to report cases?
- A. Yes.
- Q. Did you not find that a very good training?
- A. Yes.
- Q. Could not something similar be done for munsifs?
- A. Yes.
- Q. As to central offices apart from the expense of giving each officer his own staff, is it not a fact that such offices are usually inefficient?
- A. It is certainly so in the copying department. I have not much experience of other offices.
- Q. Is it not a fact that long delays in this province are a rarity?
- A. Yes.
- Q. Do you think that there is really very much gross delay in this province?
- A. They do not happen very often.
- Q. As to case diaries, if the judge does not make the entry in his own hand, can you suggest any method by which you might be certain that he looks into it?
- A. I do not think I can.
- Q. With regard to the criminal work by subordinate judges, has there not been a considerable number of complaints that their civil work is interfered with by their criminal work?
- A. Yes.
- Q. Do you not think that in this province the district judges do a reasonable amount of civil work?
- A. Practically they all do a reasonable amount of civil work.
- Q. Do you think that there was any serious cause of complaint in the very large powers held by the Judicial Commissioner's Court of Oudh in respect of jurisdiction in appeals? Do you think the people had very much to complain of the fact that a civil appeal up to Rs. 10,000 was decided by one judge without any appeal against his decision?
- A. It is very difficult to say what the opinion of the outside public is. One generally hears the opinion of the Bar and that is supported in the Legislative Council. However, I think that Rs. 10,000 is a high limit.
- Q. Do you think that daily fee system is largely responsible for the delay of cases? Can you suggest any remedy?
- A. It is responsible. I cannot suggest any remedy.
- Q. I think it is much more common in Oudh than in Agra.
- A. Yes.
- Q. Do you think there is any necessity nowadays to retain the provision that the sale of ancestral property in execution of the decree should be carried out by the collector?
- A. It certainly results in a very great delay in execution.
- Q. Have you had experience of some very bad delays in that?
- A. Yes.
- Q. Extending to seven or eight years?
- A. Certainly.
- Q. Do you think there is any chance of getting the Act of Pre-emption reconsidered?
- A. I do not think so because the Act was passed very recently.
- Q. Does pre-emption lead to black-mailing?

A. Yes.

Q. Do you think that it will be possible or feasible to do something in the nature of editing the record in the first appeal before the High Court before it is printed? My suggestion is that an enormous amount of evidence is printed and this causes very much delay. Can there be not some sort of editing?

A. I should be glad to see any such proposal carried out. I agree that a great deal of unnecessary matter is printed.

Q. You have considerable experience of the big taluqdari cases. I think it must be in your experience that nine-tenths of the printed stuff is not even referred to?

A. Quite so but I cannot suggest a scheme off-hand.

Q. That will save a considerable amount of delay in putting up the appeals before the court?

A. I think so.

Q. You know the champertous taluqdari case. Have you ever thought whether it is possible to get any remedy for that? What lines will you take?

A. Some provision making it more expensive and more difficult.

Q. Do you think, if it is possible, when the case is merely speculative, to call upon the plaintiff to deposit security for the actual costs of the other side?

A. May I ask at what stage the cost will be deposited?

Q. At the very beginning.

A. I think that would be possible.

Q. Will not that have very good effect?

A. Yes. There is another method which was actually adopted and that is prosecuting the lying plaintiff afterwards.

Q. I understand that in the only case where that was done the man was imprisoned for four years but was released after three months?

A. Yes, when His Royal Highness the Duke of Connaught came he was released.

*Dr. DeSouza.*—Q. I believe in this province the courts in mofussil are regularly inspected by a High Court Judge?

A. Yes, the district judge is supposed to inspect all sub-judges' courts.

Q. I am speaking of inspection by a High Court Judge.

A. In Allahabad they have all been inspected in the last three years.

Q. How many in a year the district judge inspects lower courts?

A. It cannot be said exactly for how many times the district judge makes inspection of lower courts, but we always call his attention to this important work, when we see that he has not done reasonable amount of inspection.

Q. Then it means that the district judge has a good deal of time to devote to inspection work as well as to civil work, which is not, I think, the case in other provinces.

A. Inspection work is considered to be very important in this province.

Q. And the result of the inspection is communicated to the High Court?

A. Yes.

Q. And action is taken by the High Court?

A. In most cases action is taken by the district judge himself. He is the head of his own office and he asks the High Court if he wants any thing or if he has to suggest any alteration in the rules.

Q. Is there any complaint in this province regarding the method of recruitment of district judges?

A. I do not know anything about it.

Q. I mean to say that majority of district judges are men of Civil Service and as they have no training of civil work usually complaints are made against them?

A. There was a proposal just before the war to give them some training, but as the war broke out, the proposal could not be developed. Of course they are not absolutely ignorant of civil procedure. It is applicable to sent. suits and every district judge tries rent suits.

Q. In any case have you heard any complaint that they are not well versed in civil procedure?

A. Yes.

Q. Do you like a change in the method of recruitment of district judges in your province?

A. I am not opposed to the system of giving them a training, but I would like to see the definite scheme before I criticise it.

Q. With regard to the selection of munsifs, you have mentioned that junior pleaders are selected as munsifs by a committee of the High Court Judges?

A. Yes, after an interview of course. They are appointed when a vacancy occurs without any preliminary training.

Q. In the revenue department, I believe, it is the practice in this province to select one or two officers every year by open competition.

A. I am not quite familiar with the regulations. I do not think competition is open to every body. I am not sure that competition will give us good, experienced and efficient men and there is also one thing more which is rather more important than the first. Supposing you have an open competition and not a single Mohammedan comes out successful. It is certain that there will be an outcry among Mohammedans.

Q. Your objection to competition then is to safeguard the interests of minor communities?

A. There are two things. I do not think in this country it is necessary that the man who is successful will be the best man and also there will be danger of over-running certain communities.

Q. Then so far as you are aware there is no complaint about the method of recruiting munsifs.

A. No I have heard of none.

Q. Your impression is that the most fitted for the appointment of munsifs are those appointed and selected by this committee.

A. Yes.

Q. Would it improve the committee in any way if in addition to the three Judges of the High Court two senior advocates are taken in the committee?

A. The present committee is working extremely well. I do not think there is any reason for making an alteration.

Q. So you are not in favour of having two senior advocates?

A. I have not very strong opinion either way. My idea simply is that the present committee is working well. I have heard no complaint both as regards the method of selection and the constitution of the committee.

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**Note by the Hon'ble Mr. Justice S. R. DANIELS, dated the 28th March 1924, on the suggestion of allowing an immediate appeal to the High Court when a question of jurisdiction is raised.**

A question was asked me by a Member of the Committee as to whether an immediate appeal to the High Court should be allowed when a question

of jurisdiction was raised. My answer is, No. In these provinces a question of jurisdiction may arise in four different ways—

- I. A question of local jurisdiction.
- II. A question of pecuniary jurisdiction.
- III. A question whether a suit is cognisable by a Court or Small Causes.
- IV. A question whether a suit is cognisable by the Civil or the Revenue Court.

Case I is fully covered by section 21 of the Code of Civil Procedure. It can very seldom happen that there is a failure of justice because a suit is tried in a wrong local area.

I regret, however, that there has been a tendency in some courts to whittle down the effect of the section—see, for instance, *Lachha Ram v. Virji*, 19 A. L. J., p. 305. The Madras High Court, however, has given it its full scope—see 43 Mad., p. 675 (F. B.).

In case II also no difficulty is likely to arise. If the defendant does not contest the valuation put on the suit by the plaintiff he is deemed to have accepted it. If he does dispute it and the question is decided the matter becomes *res judicata* between the parties. (*Khudaijatul Kubra v. Amina Khatun*, 22 A. L. J., p. 122.)

In case III, if a defendant who has unsuccessfully contended that the case is not within the jurisdiction of the Small Cause Court files a revision to the High Court no difficulty arises. The High Court's decision on the question of jurisdiction is final. The danger lies in a party coming in afterwards and alleging in a subsequent suit that the decree was a nullity and not binding on him. The courts sometimes apply the principle that consent of parties cannot give jurisdiction. In my view a party who has submitted to the jurisdiction of the court and has not availed himself of the remedy which the law gave him ought not afterwards to be heard to object to the binding force of the decree.

A power of reference on a question whether a suit is cognisable by a Small Cause Court or not is provided by order XLVI, rule 7, Civil Procedure Code, but it is very rarely used.

Case IV is partially provided for by sections 195 to 197 of the Tenancy Act. Section 195 allows a power of reference in case of doubt. This power, like that contained in Order XLVI of the Code of Civil Procedure, is rarely used and for the same reasons. Sections 196 and 197 provide wherever an appeal lies to the District Judge or the High Court

- (a) that no objection as to the suit having been instituted in the wrong court shall be entertained unless it was made before the court of first instance, and
- (b) that if such objection was made the appellate court may either dispose of the case on the materials on the record or if this is not possible it may remand the case either to the trial court or to any court competent to try it.

The section further provides that no objection shall be taken to any such order either in appeal or otherwise on the ground that the court to which the suit is remanded is not competent to try it.

These sections however do not apply where the appeal lies to the Revenue Court and they leave open the possibility that the Civil Court may return the plaint for presentation to the Revenue Court and that the Revenue Court may subsequently return it for presentation to the Civil Court. This difficulty might be met by the omission of the words "when an appeal lies to the District Judge or the High Court" in section 196 and by providing that subject to these provisions no decree shall be treated as a nullity on the ground that the suit was cognisable by the Civil and the Revenue Court respectively. There is at least one case on record in which a final decree of the Board of Revenue passed on a second appeal has been afterwards treated



as a nullity on the ground that the appeal should have been preferred to the Civil Court although no question of jurisdiction was raised by the parties in the proceedings. (*Sundar Kunwar v Dina Nath*, 13 A. L. J., p. 326).

**The Honourable Mr. Justice L. G. MUKERJEE, Judge, Allahabad  
High Court.**

*Written Statement.*

*High Court.*

**1 A.**

Original.—Have no idea.

First appeals.—One year.

Second appeals.—9 months.

Miscellaneous appeals.—6 months.

*District Courts.*

Original.—9 months.

Regular appeals.—4 to 6 months.

Miscellaneous appeals.—3 months.

Small causes.—There are no such cases, in the United Provinces, in district judges' courts.

*Munsifs' Courts.*

Original suits. { Title.—3 to 6 months.  
Money.—2 to 4 months.  
Rent.—2 to 4 months.

Small Causes.—1 to 2 months.

B. (i) Claim proceedings.—1 to 3 months.

C. Have no idea.

2. There is a delay. The main causes are:—

1. The delay in the service of summons, and

2. The congestion of work, in most courts.

3. This is a vast question, and I will answer this, after answering the rest.

4. I can speak only of the province of Agra.

*Munsifs.*—The recruitment of the munsifs used to be satisfactory till of late. I would not appoint a man for the post of a munsif who has not, *bond fide*, practised as a vakil or pleader for at least 3 years. Under the present rules, a man, who has not put in even a day's practice, may be appointed. I would raise the initial pay and would thereby attract right men.

*Sub-Judges.*—I have no fault to find with the selection and appointment of subordinate judges.

*District Judges.*—There is much to be desired among the I. C. S. district judges. When these officers are appointed, they come without any previous civil training, and naturally, those among them who are anxious to do justice must take time over the arguments and disposal by a suitable judgment. If the disposal be satisfactory, there would be fewer second appeals. Further, of the appeals, most would be summarily dismissed under the provisions of Order 41, Rule 11, C. P. C.

*High Court Judges.*—I would increase the number of Judges who have first-hand knowledge of the civil suits and other proceedings.

5. I do not consider any training than has been already mentioned would be necessary.

6. I am not aware if the transfers are too frequent. If in any province they are, the frequency should be decreased.

7. I will take the several officers separately.

*Munsifs.*—These have  $5\frac{1}{2}$  hours of court day.  $\frac{1}{4}$  hour should be left out for rest and refreshments (lunch). Out of the remaining 5 hours, 1 hour should be set apart for the passing of orders on the applications and for the disposal of execution cases. Saturday, as usual will be set apart for the trial of contested miscellaneous and execution cases. We are thus left with 20 hours a week for regular cases. Supposing that, the smaller money cases are disposed of by the munsif in his small cause court jurisdiction, or by a judge of small cause court, a munsif should not be expected to do more than 5 contested cases a week of full 6 days. This of course is the average. It is not an infrequent thing in a court of munsif that a case takes several days. The average will be different in different places, e.g., it would be too much to expect a munsif of Meerut city to show this average.

*Subordinate Judges.*—As in the case of munsifs, there will be but 4 working hours per day. On the average, a subordinate judge should have 2 days for a contested *suit*. This should leave him sufficient time for looking after the execution proceedings as well.

*District Judges.*—These officers require on the average  $1\frac{1}{2}$  hours a day for looking into the administrative matters, answering letters and disposing of applications. They cannot therefore be expected to hear and decide more than 2 sub-judges' appeals, or 3 munsifs' appeals or 4 revenue appeals. Of course there are the sessions cases and the criminal appeals and the applications in revision. Ordinarily one day in the week is sufficient for the disposal of criminal appeals, in a normal district. One day would be taken up in disposing of miscellaneous cases (guardianship, disposal of property of minors, registration, etc.) This will leave 4 days in the week for either sessions cases or civil appeals. For sessions cases, having regard to the fact that, dacoity cases have become so frequent, on the average 2 days should be allowed for sessions cases.

If the statement of the year should show that, the outturn has fallen below the standard, the officer may be asked to explain, and he will probably be able to show that in a particular jurisdiction, the standard is too high. I would *deprecate asking for explanations every quarter or earlier*.

8. Sometimes, the delay is due to the fact that, the practitioners are not forthcoming. But this may be remedied by insisting on a case being taken up, without waiting for the practitioner, and in the strict order of institution, except for part heard cases. Then, the practitioner will know where he is expected to be and when, and if he is unable to arrange, he will hand over his brief to others. This will ensure the employment of more legal practitioners and will prevent the concentration of work in only a few hands while the others starve.

9. No.

10. It is all a question of cadre of the officers, and unfortunately this very point has been excluded from the inquiry. Ordinarily, a munsif would take as much time over a case of higher value as a subordinate judge. I see therefore no point in the increase of the jurisdiction (pecuniary) of a munsif. Of course, if anywhere the work be too small, the jurisdiction may be extended. As to costs, the court fee and the pleader's fees would be the same.

11. Same as under 10.

12 and 13. The administrative work which a district judge is expected to do should be done by himself. Where some lazy officers leave this to their munsarim or the head of the office, there is always trouble. I see no harm in transferring all the miscellaneous duties of the district judge in the matters of probate, succession, guardianship, registration and land acquisition to a subordinate judge. The public have full confidence in a subordinate judge. In some cases, a subordinate judge or munsif does exercise some of the juris-

dictions. I do not think that selection would be necessary. These may be the ordinary jurisdiction of a subordinate judge.

14. I am emphatic on this point. I will give no person, who is not in the pay of the State, any judicial work to do. The appointment of honorary munsifs and magistrates is to be entirely deprecated, especially the grant of magisterial powers to a landholder to be exercised within his own estate.

The new system of village panchayets may however be given a fair trial. There the justice will be administered not by one man but by several.

15. I will not give the small cause courts any jurisdiction over matter in which they do not now enjoy jurisdiction. I will keep the mortgage suits out of their jurisdiction. Nay, I will not invest officers with small cause jurisdiction till they have put in at least 5 years service, and then only up to Rs. 50. An officer, unless he is exceptionally noted for his patience, should not have larger jurisdiction before he has put in 10 years' service. The remedy lies in giving one of the subordinate judges jurisdiction as a court of small causes.

16. Summary procedure is unsuited to this country, where the majority of the people are illiterate.

17. For the good name and stability of the government, it is essential that the administration of justice should not be in the hands of unpaid or ill-paid or insufficiently trained officers. I would therefore not give the sub-registrars any judicial powers.

18 and 19. I would curtail the Letters Patent appeals from the decisions of a single judge disposing of second appeals. If this cannot be done, I would suggest that no single judge of the High Court should hear any appeal with respect to which a further appeal is to be provided. In other cases, I will maintain all rights of appeals which are not too many.

Many appeals are filed only for the purposes of obtaining a stay of execution. I would make it compulsory for the appellate court to see the judgment appealed from before granting a stay. A stay should be only an exception even if the party be willing to furnish security.

I would not extend the jurisdiction of a single judge of the High Court beyond its present limit, if there is going to be a Letters Patent appeal. Otherwise I would extend it to Rs. 2,000.

20. As I have already stated, I will not cut down the present rights of appeal. Much time would be saved, if the second appeals would not be lightly admitted.

My suggestion on this point is that in all second appeals, as soon as it is filed, the record should be sent for and where they are to be heard by two judges, two paper books should be at once prepared. The case will then be carefully examined before a notice is issued and the decision of the case is hung up for a long time.

21. I do not approve of the idea, so long as our I. C. S. district judges are not better trained.

22. See my answer to Questions 18 and 19.

23. Personally speaking, I do not admit an application in revision except for very good grounds, and I consider the present rules sufficient.

24 and 25. The present rules are not at all bad. Only they require to be properly administered. The service of summons is a difficult matter owing to various causes. The country is vast, and a process server travels at least 100 miles, at each trip. He is not allowed anything over and above his meagre pay. He accepts the job, simply because he can make something out of it. It is difficult to check his movements, especially if one of the parties is prepared to shield him. I can think of nothing better except providing some means of checking his doings. This can be done if the courts have time to devote themselves to the inquiry. They generally think that, during the time they would devote to the inquiry, they would be able to do a portion of their judicial work. The remedy I will suggest is the appointment of supervising

officers, in the shape of an extra but well-paid nazir, better pay to the peons, and a thorough inquiry by one of the officers at the headquarters, or by the officer himself of the outlying courts.

Section 106 of the T. P. Act permits of the notice being left with a servant of the house or on the premises. But the main question is, whether the peon goes to the spot or not, and whether his report that the house was found shut up is correct or not. A service howsoever done may be accepted. But the moment the decree is sought to be executed, the defendant will come and prove that he had no information.

It is only in particular districts like Azamgarh, where many people go to distant parts of the country for a living that the service is really difficult. Otherwise service does not present in most cases with any serious difficulty. Then, there is the rule for substituted service. It can be resorted to where desirable. I will let the present rules stand, but will ensure its better working by *better supervision* and *better remuneration*.

26. I have no adequate idea of English pleadings. But the forms given in the C. P. C. are adhered to in simple cases. It is impossible to provide forms for all cases. I would insist on the munsarims reporting in cases of prolix and argumentative complaints and grounds of appeal and if the courts get time to look into these and return the plaint in a few cases from time to time for amendment, the pleading would improve. The same remarks apply to written statements. Where an adjournment is involved, the opposite party not being in fault himself may be awarded costs.

27. No, but they are not as fully utilised as may be desirable. The reason is want of sufficient time. Where an officer knows that, he has to turn out a large number of cases, by the end of the month, he will naturally try to dispose of a case, and will neglect the details. An improvement can be effected only by inspections by the Judges of the High Court, from time to time.

28. If the post office be utilised, the same trouble would arise as now. The postal peons would become corrupt. I know a case in which a fictitious notice was manufactured with the aid or connivance of postal officials. The service through the village officials will not improve matter. They cannot be expected to serve the summons themselves. If they employ peons the same trouble would arise. Further these officials, not being under the control of the officers of the civil courts, a sort of dual control would arise with frequent friction between officers of the different departments.

29. Yes, such as has been adopted in the Allahabad High Court.

30. This will be of little avail, unless we make it a rule, as in Bengal and Bihar, that, there will be no service, unless the server himself knows the man to be served or there is some one on behalf of the party requiring the service, to point out the party to be served.

As a matter of practice, the parties who are careful do wait for the service to issue and then accompany the peon for service.

31. The present ones are quite sufficient, if they are *bonâ fide* followed.

32. The provisions of Order X are not neglected. The procedure laid down in Orders XI and XII are taken advantage of in certain districts and not in others. This depends on the leaders of the bar. Where these came from Bengal (where there is more frequent use of these provisions) they brought in vogue these rules.

The remedy lies in grounding the future vakils in these rules of procedure.

33. The suggestion would be useful only when there is but one plaintiff and one defendant. It is only as to facts essential for the clearing of the pleadings that a pleader can be questioned. His answer would be on behalf of all the persons constituting a party. But if a particular plaintiff be examined, and if he should make a damaging statement, the other plaintiffs may say that they are not bound by the statement. They may adduce evi-

dence to show that that statement is really wrong. I do not therefore accept the suggestion.

34. The provision is not resorted to as frequently as is desirable. The attention of the courts to this provision should be drawn from time to time and the district judges may be asked to note at the annual inspections whether the rule is observed.

35. I would not at all interfere in the matter. It is beyond the legitimate duty of a court to make any suggestion as to the curtailment of the evidence. The court cannot often come to a right conclusion till it has heard the entire evidence *for the parties* and then the arguments of pleaders. I have sometimes found that I have not noted down in my memorandum of evidence a certain matter as unnecessary and then have discovered that it had an important bearing and had to look to the vernacular record for that piece of evidence.

36. Affidavits, if properly drawn up and sworn to by proper parties may do in non-contested cases and in simple cases. I am, therefore, for a rule requiring a petitioner to file an affidavit, a copy of which, however must be served on all the opposite parties interested in the proceedings. But in cases of contest, evidence will have to be taken, and this will involve an adjournment.

The court may in such cases direct a certain party to examine witnesses but only on condition of payment in court of security for costs of the opposite party.

37. I cannot accept this suggestion. The court has ample power to stop examination and cross-examination on irrelevant matters, and so long as the questions are relevant, how can a court be justified in putting an artificial limit to the examination or cross examination?

38. I do not see any classes of cases to which I would suggest the application of summary procedure.

39. These are really questions of facts. In each case the question arises whether a particular party represents any one besides himself and whom. Where he does represent, the parties represented are bound. We cannot adopt the cumbrous procedure laid down in Order 1, Rule 8, C. P. C.

40. I cannot accept the idea underlying the question.

41. Undoubtedly there is caused a considerable amount of delay, in cases where there are minor defendants and the adult defendants want to delay the disposal of the suit. But the question does not go to the root of the trouble. The trouble is this:

The court, under the law, cannot appoint a person a guardian for the suit, except by his consent. This consent is seldom given, unless the party is desirous of at once contesting the suit. Where the idea is to cause a delay, the person proposed as the guardian (he may be the best man of all the persons suggested by the plaintiff, and he may have been selected by the court itself) if served, would not appear till at a late stage in the suit, and would then come and say that he did not propose to act. He would say that he did not receive the notice or that he was too ill to have appeared before that date. The court cannot force him to act. A fresh guardian has to be proposed, or a fresh person out of the several names given has to be chosen and then a fresh notice has to go. If the service of an earlier notice (as the question suggests) be taken as sufficient, a fresh summons must go to the new guardian to give him notice of his appointment, and then probably, he would come and say 'no.' It often happens that, when, as a matter of last resource, a court appoints one of its officers, a relation of the minor comes and offers to act. The remedy proposed, then, is of no benefit.

Further, it is not safe for a court to take the whole responsibility of the appointment of the guardian for the suit. For, later on the minor may come and show that his guardian was not a fit and proper person to act. The plaintiff then may find his decree set aside, because the court appointed a

person as the guardian whom, if he had not been required to give several names, he would not have nominated.

I really see no remedy for the evil except this that where a person knowingly had delayed to express his unwillingness to act, the court may be empowered to saddle him with the costs to be incurred by the plaintiff and the co-defendants (if necessary) owing to the delay.

42. I do not think that there is an abuse of the rule. The law itself provides the check; *vide* Section 95, C. P. C.

45. The practice is not uniform. I would ask all judges to fix the dates themselves.

43. No.

44. The practice is not uniform. The law on the point is clear;—*See* Order 14, Rule 2.

46. The pleaders are consulted, but they can seldom give any definite idea of the amount of time the hearing would take. Another practice is, which is more useful, to give the parties a time within which to file the list of witnesses to be summoned. The number of the witnesses does give the court some idea of the time required for trial. But all this can apply to the larger suits in the court of the subordinate judge and even this is not always sufficient for the parties to summon more witnesses later on. I do not think the court can very well refuse to summon fresh witnesses if there be time enough for this purpose and cannot confine a party to the examination of witnesses first summoned.

In my opinion, much can be done in the matter by insisting on the parties (by law) filing a list of their witnesses, within a time, and not to issue summons for fresh witnesses, *except for good cause*.

47. I have not found that commissions for the examination of witnesses have unduly delayed the disposal of suits. A court has the right to refuse the issue of commission if the application be unnecessarily delayed. It is not safe to multiply rules and to fetter the discretion of the court.

48. There is usually no affidavit, but these are called for in suitable cases and costs are awarded.

49. They are. I would enforce such a rule.

50. Yes.

51. No.

52. It should come after the other questions on execution have been exhausted. It will be answered after these.

53. I agree.

54. I do not agree. A decree may be sent for execution to more courts than one, and different courts may bring different persons on the record.

55. The case of a stranger purchaser may be brought within the rule of Section 47. But this will mean a second appeal being permitted to him.

56. The execution is sought to be defeated only by the indigent judgment-debtors and those who though able to pay, would not pay. The case of the former class is by far the larger. *This is the reason why executions are often unsuccessful.* This fact is often lost sight of. The decree holder would suffer if the period of 12 years be cut down. Again if the decree be not allowed to be executed once at least in 3 years, a dishonest decree holder, whose decree has been satisfied out of court, may wait and execute the decree at the 11th year. Then the judgment-debtor may find it impossible to prove that he has paid and to recover the money paid by suit. I would leave these provisions untouched.

57. There is no justification for extending the provisions of Section 66, C. P. C., as suggested.

58. The present rule is stiff enough, and it need not be made stiffer.

59. The last proviso to Rule 16, Order 21, must stand, being based on very sound principle. The equities existing among the co-judgment-debtors cannot be adjusted in the execution department.

I see no objection to the execution of a decree by the assignee pending the objection by the judgment debtor. I would add a sub-rule like No. 2 in rule 22.

60. The matter is discretionary, and the rule may and should stand.

61. A notice would be necessary seeing that, in most cases, the judgment-debtors are not literate persons. But this fact does not stand in the way of execution, *vide* sub-rule 2.

62. The addition of the proviso suggested would work hardship. The power is discretionary, on good cause being shown, it may be exercised. Then security may be taken. Nothing further is needed.

63. I do not think that any of the notices required by the law is unnecessary. In the suit, every date is fixed in the presence of the parties or his pleader. In the execution department, there is no pleader for the judgment-debtor, and in the interest of fair play on the part of the decree-holder, notices would be necessary, for all important steps. I have examined the several provisions and I do not find that at any stage any unnecessary notice has been allowed to be issued. Where a judgment-debtor is represented, there is nothing in the law which says that a notice to the pleader will not do.

64. I do not agree with any of the suggestions in this question.

65. No.

#### 52. Execution generally.

*Firstly.*—I will do away with the execution of decrees by the collector. In my experience of 28 years, I have not come across a single case, in which the execution by the collector has done any good either to the judgment-debtor or to the decree-holder. It only serves to complicate matters and causes delay. The subordinate officers of the revenue department are not fully acquainted with law, and they by their illegal orders only complicate matters.

*Secondly.*—I will call upon the decree-holder to deposit all the expenses for the various stages of execution all at once. I will make a rule by which a note will be made in the register of all the costs paid, and in case of such costs or any portion of the same not being necessary for a particular execution, the costs should be refunded at once. Most of the execution cases are struck off the pending file, because the decree-holder does not pay the costs. In many cases the clerks of pleaders realise the costs, but do not deposit with the court, when asked, probably because they spend the money, and it is not forthcoming when wanted.

*Thirdly.*—When the costs have been paid, the notice to show cause against execution (and attachment or any other order, in case of urgency, along with such notice) will issue. Of course where no notice to show cause is necessary, none will issue.

On the date fixed where an attachment is necessary, an order for the purpose will be made. Where the property to be sold is mortgaged, a date will be fixed for the settlement of the sale proclamation. Where there has issued a previous notice to show cause against execution it will not be necessary to issue a notice to the judgment-debtor telling him of the date fixed for the settlement of the terms of the sale proclamation. Otherwise a notice will go, telling him of the date fixed.

The decree-holder, with his application for execution will file a statement of all the particulars that are necessary for the settlement of the terms of the sale proclamation, in the cases of a mortgage decree. In the case of attachment, when the attachment report has been received, a date will be fixed for the settlement of the terms of sale.

The decree-holder may be given a right to bid, without a notice to the judgment-debtor and certainly the sale should not be postponed in order that the decree-holder may be permitted to bid after notice.

My opinion is that the rules for the execution are *not defective*, only they are not worked with proper attention either by the courts or by the pleaders of the decree-holders. These matters are left by both the courts and the pleaders to the mercy of the clerks with the result we all know.

One suggestion is that there should be separate officers for the execution work. This may be done at the headquarters and in that case a subordinate judge may be put in charge of all the execution cases. But this idea has not my approval. It will be difficult to keep the officer fully occupied and if he be given some original work, the same trouble will arise and the execution cases will be neglected.

I would insist on a copy of the decree being filed with an execution application.

66. I am unable to accept the suggestions contained in this question except the one contained in the last paragraph. We cannot go back to the days of the case of *Matadin Kasodha v. Kazim Husain*, and the cases which were decided on foot of it. No other High Court followed that case and that case and all the subsequent cases had to be overruled later on.

But I do agree that in the case of simple mortgages, only one decree may be granted and this will also contain a decree under Order 34, Rule 6, C. P. C. 6 months may be allowed to pay up. If the money is not paid, the decree may be executed and where the sale does not satisfy the decree, the personal decree may be executed. Where no personal decree can be passed, the decree will *expressly* say so.

67. I will suggest that the courts should not stay execution without going into the merits of the case. If the courts do not do their duty a party cannot be punished because a court accepted his prayer.

68. No, the order granting injunction is appealable and that is sufficient remedy. Then there is the penalty provided by the law for grant of compensation.

69. Whoever may be the officer hearing insolvency cases, he should have time to look into the cases. It is all a case of over-work and congestion. If officers can get time to dispose of the insolvency cases quickly, it is immaterial whether a district judge hears these or subordinate judge.

70. No.

71. I am not aware of any.

72. I will do away with the law, which makes the attestation of mortgage deeds compulsory. If the law be amended, all will go well. There can be no presumption as to any private document being valid unless the same is proved to be so.

73. If both or where there are more than two, all the parties agree, there is no bar to any sort of secondary evidence being accepted.

74. In suits for the setting aside of the alienations of a Mitakshara father, and in suits for the setting aside of alienations made by Hindu females, in their life-time, the period of limitation may be reduced to 6 years. For pre-emption suit the period of limitation should be 6 months.

75. I would make all adoptions to be evidenced by registered documents, and all wills compulsorily registrable. In the cases of non-registered wills, these must be deposited with district registrars.

76. I agree that all partitions must be evidenced by a registered document, and any other mode should not be effective.

78. I am entirely opposed to the doctrine of part performance giving validity to a transaction, which must under the law be completed only by registered documents. The law should be always simple.

77. I agree that all partnership contracts must be registered.

79. This will not be desirable. The law is such as has been suggested in the case of immoveable property, except with a slight exception.



80. This will affect many small transactions. I will put a limit of Rs. 50 and upwards. Otherwise I agree.

81. I think that a rule like the one suggested will cause more fraud than will prevent the commission of it.

82. My experience is that more suits are decreed, either wholly or in part, than are dismissed totally. This means that if the court fee be increased, it will cause real hardship and will not stop dishonest litigation.

83. I am decidedly of opinion that the rule as to attestation in the case of mortgages should go.

84. I have no suggestions on the point.

85. I do not quite follow the question. Many things are referred to experts and commissioners in suit.

86. Multiplication of law reports cannot be put a stop to. As human ideas expand, arguments would be finer and subtler. We cannot go back to the days of rough and ready justice. I would therefore not suggest putting a stop to the publications.

87. Codification of law is certainly desirable. Hindu and Mohammedan Laws are fit subjects for codification. But, there is bound to be opposition. The law of pre-emption requires to be codified, and this has been done in the several provinces. There are several subjects which have codified law, but it requires overhauling.

**The Hon'ble Mr. JUSTICE L. G. MUKERJI called and examined on  
Tuesday, the 11th March 1924.**

*Chairman.*—*Q.* I think you presided over all classes of courts in Agra.

*A.* Yes, except revenue courts. I had appeals from revenue courts.

*Q.* So you have considerable knowledge as to the workability of the various suggestions that have been made in the questionnaire?

*A.* I suppose so.

*Q.* Do you think any expedition could be achieved by an increase in the ordinary powers of munsifs?

*A.* I do not think. I have already answered that question in my note.

*Q.* You think that as the main trouble in munsifs' courts is that they already have too much to do, not much could be done by increasing their jurisdiction?

*A.* Yes. My idea further is that the time taken depends upon the valuation of a suit, whether it is decided by a munsif or a subordinate judge. If the value is large, there will be very keen contest. If the value is small, the contest will not be so keen.

*Q.* Do you think any expedition could be achieved by increasing the small cause court powers?

*A.* Yes. It is possible.

*Q.* As regards munsifs, in your opinion, would they be quite competent to dispose of small cause cases up to a substantial sum?

*A.* Yes. In this province we have given power up to Rs. 250.

*Q.* What is your opinion as regards the general power of the munsifs being increased?

*A.* It would depend upon particular men. They should be chosen. Every body is not fit to use that power.

*Q.* Of course, if to some extent cases now tried under the ordinary procedure could be tried under a small cause court procedure, there might be a

saving of some time. In that way, one could facilitate business to a small extent.

A. Yes. If there be no appeal, the notes would be smaller and the judge may hear the witness, but he need not take down all he says. That would shorten time.

Q. Do you think there would be a saving of some time in subordinate judges' courts?

A. Yes, because there would be no first appeals.

Q. Do you think the village courts and honorary munsifs could be invested with exclusive jurisdiction?

A. I am entirely opposed to that. My idea is that nobody who is not paid by the State and who has had no training, should be allowed to try cases. The village courts have proved a failure and the honorary munsifs are not much better.

Q. What about the establishment of panchayats?

A. They may be given a trial, because at least 3 to 5 men sit and there is more chance of justice than a single man dispensing justice.

Q. As regards village courts and honorary munsifs, you say they were utter failure. Will you give me your reasons?

A. For an impartial justice, there should be training. People who have been appointed come from the same surroundings, they have prejudices, they are influenced, and sometimes they themselves have hostilities with somebody connected with the parties. They can seldom rise above their petty environments in the village.

Q. I suppose in this province, as in other provinces, there is a good deal of cliquery?

A. Oh, yes.

Q. Do you think that this is an accepted view in this province?

A. Yes. I am quite certain.

Q. You do not think there would be any public support for an extension?

A. No.

Q. Some munsifs have 11,000 cases on their file. Don't you think some of these cases can be transferred to village courts?

A. Such relief would be at the expense of the litigants.

Q. Do you think honorary munsifs are the same as village munsifs?

A. Honorary munsifs may be a little better than village munsifs, but still they have no training.

Q. Are there any kinds of cases excluded from their jurisdiction?

A. They try cases of small cause court nature.

Q. Anyhow you are entirely against the honorary munsif system?

A. Yes.

Q. I see you would not delete any of the items in the Small Cause Court Act. Have you gone through it recently?

A. Well, I myself was a judge on the small cause court side.

Q. What is your opinion with regard to simple mortgages?

A. It is difficult to decide beforehand what is a simple case. The Madras ruling says that no date should be fixed for final hearing. First there should be the determination of issues. At first it may seem a plain looking case. When the parties turn up, it may become a complicated case.

Q. When there is a question of priority, how would you deal with it?

A. When a question of priority, or other complication arises, then the plaint should be presented to the court having jurisdiction.

Q. You mean that there would be no written statement in such cases by which you can determine in advance the question of priority?

A. Yes.

Q. Then there is a suit for injunction. I understand, in most cases where injunction is asked for, it is a small matter and it raises no difficulty. But it excludes small cause court jurisdiction altogether. Mr. Justice Daniels told us of a case the value of which was Rs. 5. The suit was over a tree.

A. I think we can devise a means by which cases in which the prayer is not *bonâ fide* may be removed. Sometimes the prayer for injunction is resorted to to avoid payment of court fee. My practice used to be to insist upon the party coming out with his entire claim. But if we give the court power to see whether the injunction has been asked for merely to oust the jurisdiction of the small cause court that would be salutary, otherwise the small cause court would not have jurisdiction. But where the prayer is *bonâ fide* the question of title often arises.

Q. Do you think that in very small cases of dissolution of partnership small cause court powers might be exercised?

A. Yes, they may be exercised provided special officers are given jurisdiction. In the Presidency small cause courts the judges have larger jurisdiction than the provincial judges. The reason is probably that they are better fitted and they know and do cases more carefully. If special officers are given powers, I do not mind.

Q. A good deal of trouble arises about the exclusion of all suits for account, many suits are involved in account. That might perhaps be reconsidered.

A. Jurisdiction will probably depend on the allegation in the plaint. If the plaint shows that what was really wanted was that the defendant should render the account, then alone the jurisdiction will be ousted and not otherwise.

Q. What is the objection to a small cause court deciding whether the account should be granted or not?

A. These are complicated cases requiring more time and probably raising questions which might be brought before the court of appeal.

Q. You are not troubled in this province much with suits in munsifs' courts for rents?

A. No, they go to revenue court except the house-rent.

Q. As regards house-rent will there be any objection to summary procedure?

A. No.

Q. Now may I come to the question of Letters Patent appeal. I understand that in this court a single Judge in civil cases disposes of second appeal up to the value of Rs. 500. In Calcutta it is only up to Rs. 50. What you suggest is that it will be waste of time if there is a Letters Patent appeal from the decisions of a single Judge disposing of second appeal?

A. Yes.

Q. What you say as regards the possibility of depriving people of their right under the Letters Patent under a certain value is that you would like to see, for example, that in all cases disposed of by a single Judge under the value of Rs. 500 or Rs. 200, there should be no Letters Patent appeal?

A. We have got cases of second appeal to the value of more than Rs. 500 coming before the Judges and there is no further appeal and if any further appeal is intended then it is better to abolish it altogether. It happens that in a very small case which has got no merit but there is to be a further appeal the judge has to take more time in writing judgment than he otherwise would do.

Q. Would you like to see Letters Patent appeal abolished under certain value?

A. Yes.

Q. What value do you suggest?

A. In fact I would say that there should be no appeal. If there must be an appeal it may be in cases of value of more than Rs. 250, otherwise there should be no appeal at all.

Q. I see apart from that your general opinion is that right of second appeal should not be curtailed?

A. Yes.

Q. Have you considered the injustice done in a case of a very small value where the second appeal is brought, the case is hung up for over a year with possibility of remand and then appeal from the remand order? Could you suggest us as regards the small cause court cases, whatever their complication, any way to make an end of the matter in a reasonable time?

A. You cut off certain amount of cases by not allowing a second appeal at all. In small cause court cases up to Rs. 500 there is no second appeal. Then you do not allow second appeal on facts and cases up to Rs. 5,000 are cut off like that. Only in very small number of cases second appeal is allowed. In fact our number is somewhere about fifteen hundred for 1920.

Q. Has it not gone up rather lately to two thousand? Take it roughly at two thousand. What do you say about the number?

A. It was 1,666 in 1920.

Q. What is your view about second appeals under small value, say, Rs. 50 or Rs. 100?

A. I think it won't be an undesirable thing. We can after all say that up to a certain limit there should be one appeal only. I agree with that idea.

Q. As regards the abolition of Letters Patent appeals I take it that in this court, as in the Calcutta High Court, if the parties, before the appeal is heard, ask that it should go to a bench that is never refused.

A. No.

Q. And that probably in itself will be a sufficient protection without making any exception to the abolition of Letters Patent appeals?

A. Yes.

Q. People think it of sufficient importance that they can ask for it?

A. Yes, otherwise it should be final. That will be a complete safeguard.

Q. And if you are considering the abolition of the right of second appeal to suits under Rs. 50 or Rs. 100, I think you would allow it in the case of suits which are of very great public importance. Apart from points of law and public importance there might possibly be cases where decision in a small case might prejudice the title and have effect under the *res-judicata* doctrine.

A. Yes. Apart from public importance the case may be important to one of the parties as well. For example, we have sometimes cases between tenants and zemindars, in which the zemindar claims a small amount of rent, which is not exactly part of the rent but under custom and the tenant denies it. Now this is a question which affects the whole body of tenants and they would not rest without having a decision from the highest court in the land.

Q. Now could you give me a suggestion on that point? How would you meet that necessity without at the same time throwing open the High Court to appeals in a vast number of cases?

A. If the appellate court thinks that the question raised is of such general importance as to require a division of the High Court, it may certify.

Q. What is your experience in this Court as regards the working of Order 41, Rule 11.

A. My experience in this Court is very small and personally I have not admitted a single appeal unless I am satisfied that there is something really

to be done in the matter. My opinion is that unless I am prepared to allow the appeal it is no use admitting it and issuing notice to the respondent.

Q. In that case you probably have to spend much time in hearing the party filing appeal. I think much time is not saved in this way, but you do it only to prevent the respondent not to incur unnecessary expenses.

A. Yes, I spend some time in hearing so that if there be a Letters Patent appeal, the judges may know what are my exact views. If we make the thing a little more straight and see that the appeal is not likely to succeed, no notice should be given to the respondent, I think that will have a very salutary effect.

Q. Probably the main objection to Order 41, Rule 11, is that there is great variation from judge to judge in the way it is worked.

A. Possibly.

Q. But do you think that it is on the whole useful?

A. Yes.

Q. There is another matter on which I like to have your opinion, and that is with regard to serving of processes. How many district courts are there at a sadar station at one time in this province?

A. Sometimes there are five or six courts. For example, at Meerut there are three munsifs and three subordinate judges and one district judge, but that is the maximum number. Ordinarily there are only one munsif, one subordinate judge and one district judge.

Q. Then as a rule courts are grouped in one compound?

A. Yes.

Q. And each of the munsif and each of the subordinate judge has his own little office at the back of the court?

A. Yes.

Q. What do you think of the suggestion that where there are several courts, there might be one combined office with a judicial officer at its head to assist the district judge in matters of classification of cause lists and so on?

A. The practice at present is that the district judge himself is in charge of the offices at the headquarters, but if the idea is to transfer the responsibility to one of the subordinate officers, I have nothing to say against it.

Q. The suggestion is that just as you have a nazarat in common the courts should have an office in common.

A. For officers of the same class.

Q. A separate department for munsifs and another for subordinate judges and so on.

A. It would depend upon the volume of work.

Q. Don't you think that if you could have sharishtedars, you can get better and more constant supervision over the office?

A. It was tried at Meerut while I was stationed there and the experiment failed. It went on for one year. As it is, the supervision is divided so that every officer has got full control over his own office and I think the supervision is better. The work is very smooth, otherwise, if there is a complaint, an officer has to write to his brother officer and he has to do his own work and he has to look into the complaints in the other courts.

Q. Where you have got 5 or 6 courts, don't you think that, if you have got a special officer really looking after the office work, there would be less likelihood of corruption and dilatoriness?

A. Yes. I think it will be a nice arrangement. All that depends upon the amount of supervision he can give. If the officer is a man with some education and good salary I think the experiment ought to prove a success.

Q. I understand in the criminal courts there is one joint office?

A. No, office is more mismanaged than the criminal and revenue courts.

Q. If you could have him, such an officer may be called a registrar; he may be a trained lawyer; may try some *ex parte* cases and so on. You would be willing to approve of it.

A. Yes. That will relieve the judicial officers much of their work.

Q. As regards the nazir in this province, has the nazarat in general good reputation?

A. Not much.

Q. There is a good deal of dissatisfaction?

A. There is.

Q. Is the difficulty of service a difficulty caused by the dishonest defendant or is it a difficulty caused by the dishonest plaintiff anxious to snatch an *ex parte* decree?

A. The dishonest claims in which the plaintiff wants an *ex parte* decree are not many. It is mostly the defendants who want to have more time and avoid service so that they may get a month or two more. If it is a money suit they will have more chance of paying it. If it is a losing case he thinks that he will have more time.

Q. That is to say, the difficulty is caused either by the defendants who have been served denying it or else by tampering with the court officers and getting them to return the processes. That, you think, is the main difficulty?

A. Yes.

Q. I understand you do not have an affidavit filed by the identifier in this province?

A. No.

Q. Do you find that the business of that department leads to any difficulty?

A. No.

Q. You find it possible for the peon, if he wants, to get the patwari also to serve?

A. Yes. They do find people and service can be effected.

Q. In cases where the service is attested all you have got is a return of the defendant's summons by the process peon that he identified the defendant and that he served the man. How do you get on?

A. The peon gets down 2 persons to certify that he came.

Q. What does he certify to?

A. That the peon came and handed over the copy of the summons to such and such a party or that he affixed the summons at such and such a place.

Q. Then in fact the identifier does put his name to this statement?

A. It is not the identifier himself. These are generally the men of the village. The peon goes to the village. He hands over the copy of the summons to the man. If he is literate he gets his signature. If he is illiterate he gets it attested.

Q. Then does that simply go to show that the peon did go to the village or does it go to show that the peon served it in their presence?

A. On the back of the summons you have got some sort of certificate by the people that the peon did serve the right man. We do not insist on that. It is usually there.

Q. Then you do not get the process returned unserved simply because there is no identifier?

A. No.

Q. The peon will, I suppose, find the defendant and serve him?

A. Yes.

Q. Does he usually go to the plaintiff's pleader for anything else?

A. Sometimes he does. As a matter of fact they get something extra out of the pleader or the party and if something is forthcoming then the service is generally good. Otherwise, there may be some trouble.

Q. Does it often happen that the peon has to walk a number of miles whereas everybody knows he gets his railway fare from the pleader?

A. He may get some *bakhshish*. He may get some railway fare too. But there are not many places that could be reached by rail.

Q. What is the theory as regards the office? The office assumes that the peon walks the whole way. It maps out the district into beats all of them radiating from the court-house.

A. It depends upon the judge. In outlying munsifs, he takes a man, fixes the beats and after working for 6 months the peons are changed from one beat to another.

Q. Supposing the plaint is filed and summonses have to be served, what exactly would happen?

A. He is supposed to walk the whole way. Where the summons is to be served in an outlying munsifi the summons would be sent to that munsifi and the peons would take it from there.

Q. They never serve except from the nearest nazir?

A. Yes.

Q. As regards beats, I suppose that practically every place has got a beat system.

A. Yes.

Q. In your experience do you find it well organised? You might send one after another to serve in the same beat.

A. I think the organization is not bad. It is based on local experience.

Q. Do you think that the nazir in course of time gets to know?

A. Yes.

Q. On the other hand, the nazir has got no particular interest in keeping down the staff of peons. What is the check in your province?

A. The amount of work. We have got statements showing how many services have been performed by each peon. The number is 700 to 800 processes per peon every year.

Q. I suppose the Government has got a certain standard according to which the number of peons are sanctioned.

A. Yes.

Q. You do not think a lot of unnecessary expense is incurred?

A. No. In fact I would suggest an increase in the number.

Q. Do you think a peon should be better paid?

A. Yes.

Q. What would be the effect?

A. There would be less temptation. We employ peons for Rs. 9 and Rs. 10-8-0. On that rate we cannot expect to get even private servants. Taking into account the long distance a man has to cover in all sorts of weather, he wants to be compensated. If he is better paid, he would not do that.

Q. If a man's pay is raised from Rs. 9 to Rs. 14, won't he expect more *kakhshish*, suitable to his dignity?

A. No. In fact we can get a peon for nothing. But we cannot punish him for doing mischief when we know that he is ill-paid. I have made two suggestions: better pay and better supervision. Mere increase of pay won't do.

Q. Then you are not in favour of giving a court power to curtail cross-examination.

A. I think the court has already got ample powers.

Q. Have you found that this question is more important in cases where commissions are appointed to take evidence? Don't you find, when a commissioner is appointed to take evidence, he takes down all kinds of matter?

A. That happens. The fault is in the appointment of the commissioner. A junior pleader is appointed and he does not know what is relevant and what is irrelevant.

Q. Could you make any suggestion to get over this difficulty?

A. Trained lawyers or pleaders with better experience should be appointed as commissioners and they ought to be acquainted with the facts of the case too. That would mean more remuneration.

Q. You would give him in general a copy of the pleadings and give him power to exclude irrelevant questions?

A. I think he has that power under the present law. The commissioner is entitled to shut out irrelevant evidence. I am in favour of supplying him with copies of pleadings and if there is any doubtful point, he may take it down. He may record his decision too.

Q. In England curiously enough there is an express ruling forbidding a commissioner taking irrelevant evidence.

A. I have seen commissions issued from all the districts, but they have been given express powers to exclude irrelevant matters.

Q. Is there anything in the Code giving power to the commissioner to exclude irrelevant matter?

A. No.

Q. Does a commissioner in practice get a copy of the pleadings?

A. I do not think he does.

Q. He certainly should.

A. Yes.

Q. Are commissions of local enquiry a source of delay?

A. No. It is usually done by amins. I have appointed retired overseers.

Q. I understand that in some places a good deal of dissatisfaction has been caused by the comparatively recent amendments to law as regards the appointment of guardian *ad litem*. The principle now, I understand, is that no body can be appointed guardian except on his consent. Under the present Code, you can appoint the nearest friend as guardian unless he objects.

A. Yes.

Q. Do you think the present practice is the better one?

A. It is better. But there is one thing. We ought to insist on the man appearing and giving his consent. Unless he comes and opposes the application, we presume he gives his consent. Our form contains something like this: "Unless you appear and say you are not agreeable, your consent will be presumed."

Q. At any rate, do you think that that is a very good way of doing it?

A. That is the only practicable way.

Q. Don't you find people waiting for a long time without taking any objection, and then appearing suddenly and saying that they are not willing?

A. Yes. Sometimes they do.

Q. But beyond that it would be dangerous to go?

A. Yes.

Q. Have you ever thought whether it will be possible to deal with certain class of cases—that is to say, the co-sharers entitled on the death of the



member of a Mohammedan or Mitakshara family—by holding one person as representing the suit?

A. We had in our High Court before a full bench a case in which it was held that the man was substantially representing the case and the decree passed against him was held to be binding on the whole family.

Q. That applies to Mitakshara family: has that theory been extended in the case of Mohammedan family?

A. Recently I and Mr. Justice Stuart had a case and I held that a man was sufficiently representing the family but Mr. Justice Stuart had his doubts. I think we can decide a question on representation.

Q. That is to say, to make representation in fact?

A. Yes, in fact and not in law.

Q. What about the Mohammedan family, do you think there is any method of getting representation in their case?

A. It will depend on the entire circumstances of the family. These facts have to be brought on the record.

Q. The last thing is the question of execution. I suppose that many applications are made merely to keep the decree alive. Can you suggest anything to get rid of this incubus?

A. There is one way and that is to insist on the applicant paying the full amount. For example, if he asks for attachment I will insist on his paying his fee for attachment and if he does not execute his case properly I will not allow him the cost. So he will find something at stake and will take proper steps. A large number of cases are also due to the fact that nobody looks into these cases. Pleaders sign with folded eyes. We used to insist on the deposit of the cost but we now have got a circular from our High Court saying that no court has the right of asking for the cost. I do not think if that is salutary, because if a man has been going on *bond fide* he will have his fee refunded.

Q. What would you say to this—supposing you cut down the twelve years' maximum period in which the decree should be kept alive and fix six years and abolish the doctrine of various steps within six years?

A. The difficulty will be this. Cases in which the decree is realised do not come before the court. It is only when the judgment-debtor is unable to pay that the decree-holder comes up before the court. About thirty per cent. of the decrees passed are executed and it is only when the judgment-debtor is unwilling to pay or is not able to pay that the trouble arises. To cut down the period will be to deprive the decree-holder of the benefit which he now enjoys.

Q. Do you not think that to prevent execution matters getting out of hand six years' period will be quite sufficient?

A. That may be sufficient about money decree but the difficulty arises in the case of mortgage decree.

Q. Why, a mortgage decree-holder can enforce his decree within a reasonable time?

A. I must say that there is a good deal to be said for the view which you have taken.

Q. In the Code there is a provision borrowed from the English Code that you have to wait for a year after the decree and then for taking execution you have to give notices to the judgment-debtor. In the case of *ex-parte* decree where there is a doubt whether there was proper service do you think it would be necessary to maintain this system of issuing notices?

A. I think we can do away with that notice.

Q. You do not think that the number of notices in execution is too many. What do you say about valuation in case of sale proclamation? In practice do you find that process of assessing value causes a good deal of trouble?

A. Valuation is put entirely arbitrarily and it leads to trouble. What I used to do was not to put any valuation at all. Order 21 does not insist on the valuation of property being put in the proclamation at all.

Q. You give those particulars which ought to be given to enable the purchaser to judge the value and in a temporarily settled province you have always got the revenue as a guide?

A. Yes.

Q. Then you think that the question of valuation is a source of trouble?

A. Yes, it is a source of very great trouble. In one case the Privy Council said that it was not necessary for the court to give valuation.

Q. Would you necessitate on a copy of the decree being filed with the application for execution which is, I think, not done at present?

A. That is done in Bengal, perhaps, but in our province that is not done.

Q. But if a copy is filed, do you think that it would save much trouble which is otherwise experienced?

A. Yes, it seems very convenient. We have got a register but it is not prepared rightly and so we find discrepancies arising which cause trouble in execution. If a copy be filed, much trouble will be saved.

Q. I understand that it is possible to get only one decree in simple mortgage suits.

A. Yes. We can also say, if the proceeds of sale are insufficient, whether there will be any personal decree or not.

Q. In your province have you any reason to think that there is a legitimate complaint on the part of mortgagees against the courts allowing sales to be cancelled or postponed from time to time in order to give the mortgagor more time and chance?

A. Well, that depends on the judge himself, some are very lenient, others are not.

*Mr. Justice Stuart.*—Q. Do you think that we can accelerate the service of summons by trying to approach the Revenue Department to utilize the services of patwaris?

A. The trouble will be this. The patwaris are not under our control. Supposing we approach the Revenue Department and they allow us to utilize their services, the difficulty will be that they will not be entirely into our hands. You cannot punish them in any way, if they misbehave.

Q. I do not suggest the services of patwaris to be utilized everywhere. But will not this ensure the service? Now what we do at present is that we send a process-server with a process on the other side of the district to a place about 70 miles away. It will certainly take a week for him to reach that place and when he reaches there he finds that the man on whom the process was to be served has gone away. He comes back with the process unserved. What I suggest is that instead of handing over the summons to the process-server, if we send that to the patwari of that village, or if we hand him over the summons when he comes on his fortnightly visit, he will, I am sure, probably be able to serve in a month's time. That will not save any time but it will ensure service.

A. There is nothing to be said against this idea. It is an excellent idea. The trouble will be that if we send the process to the tahsildar, it may not be served properly. This suggestion, I think, came from the Retrenchment Committee.

Q. No, no, I am not talking of the suggestions of the Retrenchment Committee. What I suggest is the utilization of patwaris in those villages only which are situated at a very great distance. In respect to the process-serving staff, do you find that their work is altogether unsatisfactory? You have worked as district judge in many districts and I want to know what has been your experience of the process-serving staff.

A. It is not altogether unsatisfactory. Some cases would crop up in which it would be necessary to punish the man or dismiss him. We should try to improve our present lot and in future appointments should be made from among educated people. There are some peons who cannot write their names even. They are very badly paid. I would not give up the present system but improve it.

Q. Perhaps you will agree with me that the nazir has not got sufficient time to attend to process-serving staff. He has multifarious duties to discharge and is perhaps the man who has the hardest work to do. He is also an honest man and respectable too?

A. Yes.

Q. He is usually excellent and the remedy will be to give him sufficient assistance to carry out his duties of supervision and to improve the status of peons?

A. Yes.

Q. In the province of Bengal there is considerable trouble in the Provincial Judicial Service owing to the long time that it takes for a probationary or a newly appointed munsif to get a permanent job. He is kept for years and years. I think I am right in saying that it is not the case in this province.

A. Not now.

Q. In some cases men have been reverted about 5 to 10 times but never for more than a short period.

A. No.

Q. As a district judge how long did it take you to get through the ministerial work every morning?

A. It took me on the average about an hour and a half. That was mostly because the munsarim was an incompetent man.

Q. That is an absolute waste of time from the point of view of the judicial officers?

A. Yes.

Q. Then you will be strongly in favour of the appointment of some officer of the nature of a registrar and taking all that work from the district judge?

A. Yes.

Q. With regard to the centralisation of the offices, is there any reason why it should fail in the districts?

A. In the districts we have no competent men.

Q. That is your only objection. If you have a better paid man the system would work well?

A. Yes.

Q. Did you find yourself as a subordinate judge very much held up by difficulty in serving processes?

A. Not much, except in cases where summonses used to be sent to Bengal?

Q. Don't you think the figure of duration of contested suits in the subordinate judges' courts is fallacious?

A. Those figures are certainly fallacious.

Q. You will have one case which will take you 2 years to get the summons served. 730 days go down on your list. That might be no fault of the subordinate judge?

A. Yes.

Q. Don't you think we can save a very good deal of time, say some months, by improving the machinery in the service of processes?

A. Certainly.

Q. Now, in framing the issues yourself, how long you think will it take?

A. What people mostly do is to take the plaint and written statement home, frame the issues there and hand it over to the reader next morning.

Q. There is no harm in this?

A. No. In some places the readers frame the issues.

Q. In fixing dates did you have very much difficulty in arranging what you could do on a particular day?

A. Not at all. I insisted on every judge fixing his own dates. Otherwise it is bound to be a muddle.

Q. When you were a munsif and even at the beginning, did you find any very great difficulty in taking your work on the particular dates?

A. I did not find any difficulty.

Q. Or even as a subordinate judge?

A. No. For that purpose the judge should be allowed to have ample time. When I went to Assamgarh I found a great deal of congestion. I suggested that judges should not keep more work than they could do and if he could not try a particular case on a fixed date he should not fix a date to postpone the case again. I said 4 months' time is necessary. But somebody in the High Court said that such long dates should not have been given. I would prefer having long dates and no postponement.

Q. And do you think that in this province, if a judge really employs his mind, there should be no real necessity to bring witnesses to court over and over again?

A. No. There should not be more than one postponement.

Q. What is your opinion of our system of amins?

A. I find that altogether satisfactory.

Q. Do you think it a good system?

A. Yes.

Q. Would you keep amins, or rather make over their work to members of the bar?

A. I would keep amins.

Q. Do you see any particular reason in present times why the sale of ancestral land in execution of decree should be conducted by commission?

A. In fact I have deprecated the system.

Q. Would there not be an enormous saving of time?

A. Yes, and good many suits too.

Q. Have you got any general idea of speeding up proceedings in cases relating to mortgages? Can you suggest anything in general?

A. Well, I have not given my thoughts over that point, and if you will let me, I would send you my suggestions later on.

Q. As regards second appeals, your view is that it is only fair to give the parties a really good trial, however small the valuation may be. Have you ever thought of a scheme of benches to hear appeals up to Rs. 5,000, instead of the ordinary district judge or subordinate judge? Do you think that would be likely to work in practice?

A. Yes, if two district judges sit together. In that case you can do away with second appeals.

*Sir T. Desikachari.*—Q. Unless we increase the cadre, is it that there appears to be no hope of relieving the congestion of courts?

A. Yes.

Q. Is it not possible, by the constitution of village panchayats under the new Act, to have a portion of the civil work done by them?

A. They have been given powers up to Rs. 20.

Q. Could we not give them higher powers?

- A. It is an entirely new experiment.
- Q. Then much would depend upon how that experiment fares?
- A. Yes.
- Q. How are munsifs selected?
- A. Munsifs are selected now from people who have passed the LL.B. examination, and who have had a few years' practice.
- Q. Is it your decided opinion that only people who have had some practice should be selected?
- A. I have said that in my statement. They should have at least 3 years' practice. I would insist on their having at least 3 years' practice.
- Q. How would you take this suggestion? In addition to 3 years' practice, they should also undergo a competitive examination?
- A. I suggested it before the Lee Commission.
- Q. I thought you said that Order 37 should not be extended.
- A. Yes, to small cause court cases or summary cases.
- Q. In my province, the Madras Presidency, under the old sections 532 to 539, powers had been given to all courts—munisifs and subordinate judges—to try suits under the summary procedure. Has not that been the practice here?
- A. Only under the Negotiable Instruments Act.
- Q. Why should not the powers be given to munsifs under section 128?
- A. First, these cases under Negotiable Instruments Act are very few and they won't make any appreciable difference. Consequently they come generally under the Small Cause Court Act. I think a good slice is taken away by the small cause court itself, and after that it will not be necessary to give powers to munsifs.
- Q. I wish to ask you whether the report that the process-servers in this province are very corrupt and very unsatisfactory, is correct?
- A. I will say it is hyperbole. We cannot say that they are entirely unsatisfactory. The number of complaints one gets at the head of the district is not many to justify that statement. There is no doubt room for improvement.
- Q. As a matter of fact if the defendant wishes to evade service he can do it with the aid of the process-server and the process-server is amenable to influence of that kind?
- A. Yes, I will not say that he is absolutely honest.
- Q. Apart from the central nazarat the judicial officers in my Presidency complain that central nazarat has not been satisfactory in its working. What will be your view having regard to your long experience?
- A. Well, sometimes it happens that judges send complaint to the district judge but he does not listen. While I was a district judge I told my officers that in case they had to suspect the peon they should hold the enquiry themselves and let me have the result of it. It all depends upon the personnel of the court.
- Q. Is it not a fact that sub-judges and munsifs would prefer to have their own nazarat and copying department?
- A. We have got separate copying departments but the nazarat and amins are joint.
- Q. Prevailing opinion among munsifs and sub-judges is that they are not satisfied with the central nazarat and their complaint is that they are entirely at the mercy of the nazir and the district munsif has no control over it?
- A. It is only at the headquarters that there is a central nazarat and that I think was introduced as a matter of economy many years ago. There is

also a suggestion that an officer should be deputed to look after such things as for instance registration of appeals, complaints, etc.

Q. Some responsible officer to take over the routine work of the judicial officers in each court perhaps would lighten the work of munsifs and sub-judges, but do you not think they would be at the mercy of the new officer?

A. Why do you call mercy?

Q. Because they have to appeal to him.

A. It is a joint establishment. I do not know what the law is in Madras. In Bengal, Assam and the United Provinces every process-server is a part of the joint establishment and the munsifs and sub-judges can punish him without referring the matter to the judge. He has got control over him.

Q. As far as I was able to follow the procedure in my Presidency, it was the district judge who was to control and not the district munsifs.

A. No, in the Act there is a provision by which a man of the joint establishment can be punished by a munsif or a sub-judge.

Q. In answer to Question 75 you say that you would make all adoptions to be evidenced by registered documents and wills compulsorily registrable. Will that satisfy the general public or will it be popular?

A. It may be a little unpopular because people who speak on behalf of the public have little experience themselves.

Q. You are of opinion that every adoption must be endorsed by a registered deed?

A. Yes.

Q. This is against the Hindu Law?

A. Hindu Law has been abrogated in many points.

Q. You think that without any serious criticism or inconvenience you can have it done?

A. I am speaking in the best interests of the country. It will avoid litigation and make the estate safe.

Q. Will it not be undue interference with the provisions of the Hindu Law?

A. I am myself a Hindu and a Brahmin and I will not object.

Q. You think if the adoption is registered it would minimise the work of the courts?

A. Yes.

Q. What procedure is being followed in this province in insolvency cases? Are official receivers appointed to take charge of these cases?

A. Yes, there are official receivers, but we have not got them everywhere. At some places where these cases are frequent we have official receivers.

Q. Are munsif and subordinate judges responsible for these cases?

A. Here we have got only the district judge who is the judge in insolvency cases and sometimes at some places one of the subordinate judges deals with these matters up to the value of Rs. 5,000.

Q. How is the work of insolvency done in the mofussil?

A. A receiver is appointed, but if the estate is considerable one of the pleaders takes the matter in hand and realizes the money and then the order of discharge is obtained.

Q. Are orders of discharge often made? How long do they take? My own idea is that once an order of adjudication is passed very little is heard of the estate of insolvency.

A. I am not in a position to tell. I have got no experience of these cases.

Q. Do you think that the law in regard to insolvency in this province is working satisfactorily?

A. I should think so. I know of Aligarh that it is working quite satisfactorily there. At other places I had very few cases to do. There were not more than four or five cases.

Q. With regard to Question 74, what is your opinion about the time of limitation in suits for setting aside alienation of properties?

A. I am of opinion that the period in the case of alienations of a Mitakshara father and in suits for the setting aside of alienations made by Hindu families should be reduced to six years.

Q. And what is your opinion about pre-emption suits?

A. I agree with what Mr. Justice Daniels has suggested. I think the period of limitation should be reduced to 6 months.

Q. The Madras Law Journal says "I would suggest in the present connection the introduction of a procedure by way of originating summons to consider and decide upon the *prima facie* propriety of proposed alienations by limited owners or persons with qualified powers. At the outset I would make it only permissive but the resort to it can be made fairly certain, if the law is changed so as to cast on the subsequent plaintiff the onus of displacing the presumption of validity arising from the court's sanction. This will help considerably to reduce speculative litigation by reversioners, minors, junior members in joint families or tarwards, trustees or *mataāhi-pathis*, etc."

A. I think there is no way of minimising it unless we can make it compulsory for the reversioners for the time being to bring a suit within twelve years. The suggestion given by the Law Journal of Madras is a good one.

Q. Then with regard to Question 85?

A. I did not follow the question exactly and therefore I have not been able to give any opinion in my written note. Here we do not call them referees.

Q. The idea is that in certain class of cases courts may have the power to refer the parties to arbitrators, say in cases of maintenance, relationship, etc., there are very many questions in which parties can be referred to arbitrators.

A. It is only in that case when the parties settle among themselves out of court.

Q. But the court should have the power to compel the parties to have the matter decided by arbitration. Supposing there is a case regarding engineering matters, would it not be better if the parties are referred to arbitrators who are experts in engineering matters?

A. Yes. I have not got much experience of such cases, but the idea seems to be good. I cannot speak anything out of experience. The real difficulty would be about the selection of arbitrators. If the parties do not agree, the judge takes down the thing upon himself to select arbitrators.

Q. But do you think that power could be given to the court?

A. Yes, there might be suitable cases.

Q. What is your opinion on the system of allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon, that the apparent owner of property in whose name the title deed stands, is not the real owner?

A. These cases are not many and sometimes we do find that if you insist on technicalities pure and simple you do more harm than good. I do not think we have reached at such a stage that we should bind down the parties. We have already bound them down under section 92, in respect of consideration and fraud, etc., fraud may be pleaded but it shall have to be proved. The party who says that it is a sham must prove it. As far as I know there are not many cases as to require legislation.

*Sir Tej Bahadur Sapru.*—*Q.* About the blame for delays in civil litigation, I suppose you will agree with me that it rests with judges, lawyers and litigants, not on any particular class of persons?

*A.* You want me to say that one single party is not to blame.

*Q.* I think that the responsibility must be shared by judges, lawyers and litigants.

*A.* Yes, by all concerned.

*Q.* I suppose your recollection, so far as this Court is concerned, will go back to the time when certain well-known rulings were in operation in regard to mortgage suits. You will agree with me that for 15 years at least there was a large number of cases and a large amount of delay owing to these rulings.

*A.* I have referred to *Matadin Kasodha vs. Kazim Hussain* case in my written statement.

*Q.* If you trace the history of rulings of this Court in regard to mortgage suits, I think you will agree with me that the rulings which have had full operation for about 12 or 15 years had to be changed.

*A.* Yes.

*Q.* Take again the rulings with regard to section 85 of the Transfer of Property Act. You will agree with me that much of the litigation for at least 15 years was due to these rulings.

*A.* Yes.

*Q.* Take the rulings about non-joinder of parties. You will agree with me that in 1895 that ruling was given by a bench of this Court and up to 1902 many suits were dismissed on the ground of non-joinder leading to appeals in this Court and further litigation and various attempts were made to get over them.

*A.* Yes.

*Q.* Perhaps it will be interesting to look at statistics of those times showing the amount of litigation arising out of these disastrous rulings. So far as pre-emption is concerned I can at least point out half a dozen cross-currents and separately for each district.

*A.* Yes.

*Q.* In certain cases in which they come up to the High Court you will agree with me that there is a certain amount of responsibility for delays and multiplicity of litigation which the judiciary must be prepared to accept.

*A.* Yes.

*Q.* Now, I come to the bar. You have had considerable experience of some districts in this province where there is particularly heavy litigation. Take for instance, Lucknow, Ghazipur, Azamgarh and Gorakhpur. In any one of these districts that I have mentioned to you, have you come across with anything like the habit of opening a case on the part of lawyers?

*A.* No.

*Q.* Do they have the slightest conception of what the opening of a case implies?

*A.* The practice does not exist.

*Q.* I desire to know from you whether that is due to want of knowledge or experience on the part of the bar or whether it is due to a feeling among the judges that it is a mere waste of time to open a case?

*A.* I cannot tell that; because I never found from the start anybody opening a case. I cannot say whether any lawyer wanted to open a case and he was snubbed by the court or how it happened.

*Q.* As a matter of practice what happens is that when a counsel or a pleader appears in a case he starts off by producing the first witness. Some courts then enquire what the cause is about.



A. He is told in a very summary manner what the suit is about and others probably go through the plaint and form some idea.

Q. But the pleader who is in charge of the case gives no idea at all to the court as to the number of witnesses he is going to produce or how he is going to establish a particular fact.

A. Not at all. Generally about pleadings he gives some idea.

Q. You have come across with cases in which the whole trend of evidence has been changed during the course of the trial without the judge realising it at the trial—new cases being made out after certain days.

A. Yes.

Q. As regards the settlement of issues, I suppose you will agree with me that there is not very much seriousness attached to it either by the subordinate judges or by the pleaders?

A. Not generally.

Q. With the result that sometimes right issues are settled in the High Court in remand?

A. Sometimes. In the course of the trial issues are altered and added.

Q. As regards the documentary evidence, probably you will agree with me that they are not always filed in the right time and not always filed with any intimation to the court as to what use is going to be made of that documentary evidence. There is a list filed which is very perfunctorily filed.

A. The documents are filed first with the plaint and then at the date of the first hearing at the time of issues. That is often done. Later on the parties bring in more documents with an application that they may be taken and they generally assign some reason for not filing them before.

Q. Is there any proper affidavit filed with them?

A. There is generally an affidavit, without which no judge would accept these documents.

Q. The affidavits do not say that these documents were not available?

A. Many judges won't accept that. In the case of certified copies of public records like the khewat and other things much fuss is not done in accepting the documents. But in the case of purely private documents, not registered, they are often rejected and not accepted.

Q. Then may I ask you what is your experience with regard to the use which lawyers make in district courts of the provisions relating to discovery and inspection?

A. Practically none. It is only in one district that I have seen it used and that is in Ghazipur.

Q. Take, for instance, a typical district like Aligarh?

A. Not many cases. Probably a few.

Q. Take again a district like Cawnpore where discovery and inspection should be very useful?

A. I have no real idea. I have not tried original suits. I have tried only sessions cases. As I told you, except at Ghazipur and a few cases in Aligarh those provisions are taken as entirely non-existent. They are not used.

Q. You will agree with me that, if they are properly used, they will be of much benefit?

A. Yes.

Q. They would reduce the amount of work in courts?

A. Yes.

Q. Would you please tell me why it is not so? Is it because the bar in the mofussil is not quite familiar with these provisions or that they do not appreciate their importance?

A. They do not appreciate their importance. I have suggested in my answers that the procedure may be started in colleges.

Q. So far as the admission of the documents tendered by one party is concerned, I suppose your experience has been that invariably the impulse of the other party is to deny them?

A. Yes.

Q. Although those documents may be registered and harmless too?

A. Yes.

Q. What is it that the courts do to put a stop to that practice?

A. I think the courts are powerless.

Q. Can they not do anything in the matter of costs, as the law stands at present?

A. Yes. If the party has given no notice to the other side, then the cost of proving that document may be disallowed by the court. If a party improperly refuses to admit a document, the cost of proving that document cannot be saddled on that party.

Q. I suppose you will agree with me that a good deal of litigation in this province is caused by the unsatisfactory character of the entries in revenue papers which are always relied upon in civil litigation. You must have come across with words which may be interpreted either way and those are the entries which are relied upon by either party.

A. They sometimes are responsible for a good deal of litigation or prolongation of the case.

Q. You will tell us what is the usual practice observed in the subordinate courts with regard to compromises on behalf of minors.

A. An application is made. It is submitted with the compromise stating that it is for the benefit of the minors.

Q. In how many cases which you have disposed of, have parties or their pleaders put the courts in full possession of all the facts bearing on the fact that the compromise is beneficial to the minor?

A. That depends upon the judges.

Q. What is your experience in other courts?

A. I can say that in some cases it has been mechanical.

Q. I suggest that in a vast majority of cases that come up to this court one's experience is that they are very perfunctory applications put in before the subordinate judges or munsifs simply stating that a compromise has been arrived at, that the compromise is for the benefit of the minors and the reader notes on it "The compromise is for the benefit of the minor" and the judge simply writes on it "Recorded."

A. No. A vast improvement has been made in the Civil Procedure Code in respect of that matter.

Q. Is there anything like the junior counsels taking the case?

A. No, in a Madras case, the judges suggested that the counsel might be consulted. There is no such case in this High Court.

Q. In how many cases the judge applies his mind intelligently whether the compromise is to the benefit of the minor?

A. In cases which have arisen out of suits relating to compromise, there have been flagrant cases in which the rules have been neglected by courts. I do not think the courts neglect this rule. Well, some courts are happy to get rid of a suit on compromise. That is a different matter.

Q. In a number of litigations in this province, where questions of custom, religion, caste, etc., have arisen, what sort of evidence is given in those cases?

A. Concrete instances are given.

Q. Is there any tendency to multiply evidence unnecessarily?

A. Well, big cases always bring in unnecessary witnesses.

Q. With regard to service of process, what has been your experience of the application of the provision of the Civil Procedure Code relating to substituted service? Are they much availed of?

A. They are.

Q. Then again you said with regard to second appeals, that you would favour the appointment of benches in district courts consisting of district judges, or additional judges or subordinate judges to hear appeals up to Rs. 5,000. If that is done would there not be a substantial reduction of second appeals in High Courts? Would you propose any qualifications on the judges sitting on those benches? There might be a district judge who has been a criminal judge throughout his life. He may be called upon to sit in judgment over the decision of a subordinate judge who has been a civil judge for 15 years.

A. I have suggested that the district judges should be trained in civil work.

Q. With regard to representative suits, I suppose, you know recently that the Privy Council have made some sort of observation. Do you think it would really mean outraging Hindu sentiment if the legislation is made? (No reply.)

May I remind you that one very learned retired judge of the High Court, Madras, has been very busy for the last three years in introducing legislation about Hindu Law?

A. Yes.

Q. Would you generally favour the codification of Hindu Law?

A. Personally I would favour codification, because that would settle the law a good deal.

Q. But in any case, whether there was a conflict of judicial decisions or whether the law was in an unsatisfactory state, would you not object as a pious Hindu to any legislation on the subject?

A. I would prefer a good many *Sastris* brought together and have a good many points settled.

Q. Perhaps you would find it extremely difficult about the Mohammedan Law?

A. I cannot speak of the Mohammedans. But Hindus should be more reasonable, in my opinion.

Mr. Justice Stuart.—Q. About this codification of Hindu Law, you would not suggest a complete codification.

A. It is difficult.

Dr. DeSouza.—Q. Did you, as district judge, make much use of Order 41, Rule 11?

A. No. Because all the appeals were first appeals. Even in High Court, much use is not made of Order 41, Rule 11.

There may be extreme cases where I would not hesitate to use Order 41, Rule 11. But it is a matter of evidence. If the appellant says that the evidence was not appreciated, I would give him another chance of the same evidence being examined by another court.

Q. Don't you think a freer use may be made of Order 41, Rule 11?

A. Personally I would not do it.

Q. With regard to process-serving staff, do you keep such a register as 'occupation register?' Can you tell us what is the average number of days in a month in which a process-serving peon is out of duty?

A. I think he works almost every day. Only when he comes back to the headquarters that he is unemployed for a day or two to wait accumulation of processes.

Q. Is it not a fact that the process-server is away from headquarters for at least 20 or 25 days in a month, with processes?

A. Yes.

Q. I think you are going to introduce the system of process-serving peons having to keep diaries?

A. Yes, but the difficulty would be that they will have to get some body else to write the diary.

Q. What is the percentage of literate peons?

A. About half of them will be able to keep diaries.

Q. They execute also execution processes or only the summonses of witnesses?

A. They take out all the summonses and notices.

Q. In cases for setting aside the *ex parte* decree on the ground of insufficient service, do you find that processes have not been served or a false return has been made?

A. Deliberate false cases have not been many and decrees have been set aside when it has been established that the man was away from the place.

Q. Are such cases very common in which the peon has never visited the village and made a false return?

A. Very few.

Q. We have a suggestion made in this printed note that the process serving peon should have his diary signed in the village by a responsible village official.

A. If we can get men who can keep diaries there is no harm in that.

Q. Then there is one question about the central nazarat and the suggestion is that an officer should be appointed—a judicial officer—who may be called a registrar with central office. Then complaints would be made, no doubt, as has been pointed out by Sir T. Desika Achariyar, that munsifs and sub-judges have no proper control over process-servers and so forth. How many clerks has each of these munsifs got now?

A. There are four clerks and one reader.

Q. What are the functions of a reader? Is he the bench clerk?

A. Yes.

Q. Now at present each munsif has got five clerks and there are generally two or three copying clerks. Now if you have a centralised office how many officers will a sub-judge have left with him?

A. I have heard the scheme just now from Mr. Justice Stuart. Probably the idea is that that judge will have only the bench clerk, and no body else.

Q. Would it be possible for the registrar to arrange for the case list for all judicial officers in a sadar station?

A. The scheme requires examination and I cannot give any opinion.

Q. If an officer is appointed he will arrange for sufficient work in the courts and at the same time have general control over the execution of all the courts and in addition he will be the head of the central nazarat.

A. It is a very difficult matter to give any opinion off hand.

Q. If this is done it would relieve the district judge of a great deal of his routine work, which will fall upon the central nazarat. You have best experience and the Committee will be obliged if you would let us have your views on the scheme.

A. I will send in my answer later on.

Q. That is what I mean.

I think in this province a practice has lately been introduced that both the plaintiff and the defendant have to register their addresses and that service made at that address must be considered as sufficient service.

A. The practice is this that in the plaint the address is given and then there is a registered address. If a notice has to go, ordinarily it goes by the address which is given in the plaint and if the defendant is not found then another notice is sent by registered address. This is supposed to be a sufficient service. Registered address is not resorted to till the original address has failed.

Q. Has that system worked satisfactorily?

A. Yes.

Q. And no complaint has been made?

A. The system has been in vogue only for a short time, perhaps for about three years.

Q. And defendant's registered address is considered sufficient for execution also?

A. No.

Q. Would you be in favour of extending it to the execution?

A. I would.

Mr. Nabiullah.—Q. With regard to the appointment of munsifs, I think, you said that you would like to make it a rule that they should have at least three years' practice before appointment. What is the real criterion? How will you know that they have got three years' practice?

A. There will be the date of their enrolment and then they should file certificates from all courts in which they have practised.

Q. After you make selection, don't you think that some sort of training should be given to them with regard to pleadings and the opening of cases, etc.?

A. Yes, that is a very good idea. Some sort of training if given would help them in doing their court work more efficiently, but how will you do it.

Q. I want your suggestion.

A. The more training the judge has the better, but you should not insist on too much when you begin with Rs. 250. You begin deputy collectors with Rs. 250 but when they get training they get pay at the same time.

Q. Do you think that three years' practice would be sufficient to give him an idea as to the importance of pleadings, etc.? Would it be necessary to ask him to attend chambers?

A. The more you can have the better.

Q. Do you think that some sort of arrangement can be made as is done in the case of deputy collectors?

A. I do not think it is necessary at all. They get sufficient training in three years' practice, but deputy collectors have got no training at all. They are appointed as such just when they leave their college career and have no knowledge of law at all. They are not acquainted with these matters and their case is quite different from that of munsifs. If you insist on training it will be better in that case to have men of five or ten years' standing.

Q. What would you suggest in a case like this. You have got a very long running case before you and there are 600 witnesses. You make a sort of arrangement with the court to, take ten witnesses every day. Now five out of these ten witnesses are not served, and do you think that the court should not do any work on that day after finishing with these witnesses? What sort of arrangement would you suggest? Would you have two cases simultaneously?

A. That is a very bad idea. I would not have two cases simultaneously, but would have more witnesses, if there be a chance of only five witnesses coming out of the ten.

Q. Then you start with summoning 15 witnesses for a day instead of 10. 15 to-day, 15 to-morrow and so on, and one witness may take four days.

A. We are talking of a hypothetical case.

Q. No, I am talking of a practical case.

A. I have been trying cases and seldom it has happened that I have to sit idle. It may once happen in the course of the whole case that the judge has not sufficient work to do, but that will not happen every day.

Q. With regard to service of processes, there are very many cases where the defendant has not accepted service, i.e., he pays two or three rupees to the process-server and he makes a report that the defendant was not at his place. Now could not a better arrangement be made so that we may also have the service of patwaris in this matter?

A. -Service of the peon and also of the patwari.

Q. Or patwari alone?

A. The same trouble will arise in this case. He would most certainly be more responsible because he gets more pay and is better educated, but the trouble would be that the patwari is not under the direct control of the civil court. If he misbehaves you cannot punish him. You will have to write to the tahsildar. I would suggest improvement in the lot of our present peons and stricter supervision.

Q. In your experience did you have much to do with the issue of commissions, not for local investigation but for examination of witnesses? There is a conspiracy that the thing must go on for say 10 or 12 days.

A. I have not had this experience. I never had any case like that.

Q. In Oudh they go on examining for 20 days and for doing so they, I mean lawyers, earn money.

A. In the province of Agra we fix the amount of fee which the lawyer will get.

Q. Then you suggest that commissioners should be given powers to over-rule questions which according to them are irrelevant?

A. If they are properly trained men.

Q. Then what are your practical suggestions? It is very hard to get commissioners who are properly trained.

A. It is generally junior pleaders who get commissions, senior pleaders will not accept them because the remuneration is not sufficient and attractive.

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**Dr. KAILASH NATH KATJU, High Court Vakil, and Editor,  
Allahabad Law Journal.**

**WRITTEN STATEMENT.**

I propose in this statement to follow the order of the questions in the questionnaire issued by the Committee; but I should like to make it clear that, in my opinion, the real cause for the delays that are experienced in the administration of justice in these provinces is the undermanning of the judiciary from the lowest to the highest. The subordinate judges and munsifs are a hard-worked and overworked body. They work at least on an average nine hours a day, and in an enervating climate like that of India it is unjust and unfair to a body of public servants like the judicial officers to ask them to perform their work carefully and expeditiously at that rate from month to month and from year to year. The result is that in the hurry of dispatch of business and in the desire to get rid of accumulating arrears care is not bestowed on the preliminary spade work which in the end would shorten the proceedings and clearly mark out the real issues between the parties. Whatever delays may be ascribed to the defects of procedure in the trial courts due to protraction in services of summons and other cognate matters, delays in the appellate courts are almost solely due to the undermanning of the High Court bench. In the High Court appeals become ready for hearing months and years before they are put up for disposal before the Judges. The delay in the decision of

these appeals is not due in the remotest possible manner to any one of the litigants, it is solely due to there not being sufficient number of Judges to cope with the work. I am apprehensive that if the primary cause of the delay is not met with by a requisite increase in the strength of the judiciary of India and methods are simply devised for further speeding up of judicial machinery, that may in the end result in some injustice to the litigants concerned. Regard must be had to the habits and modes of the people living in this country and to the illiteracy which abounds all through the agricultural classes who mostly frequent the courts. Justice delayed may be justice denied but justice hurried is something much worse. I would therefore respectfully impress upon the Committee to emphasise on the real root cause of the delays, namely the insufficient number of Judges throughout.

I will now take up the questions in their serial order.

1. In my opinion the period reasonably required for the disposal of business, provided a sufficient number of Judges were forthcoming, should be as follows :—

- A. (i) High Court.
- |                        |               |
|------------------------|---------------|
| First Appeals,         | 15—18 months. |
| Second Appeals,        | 6—9 months.   |
| Miscellaneous Appeals, | 4 Months.     |
- (ii) District Judge's Court.
- |                        |            |
|------------------------|------------|
| Original suits,        | 6 months.  |
| Regular Appeals,       | 3 months.  |
| Miscellaneous Appeals, | 1½ months. |
- (iii) Subordinate Judge's Court.
- |                 |             |
|-----------------|-------------|
| Original suits, | 6—9 months. |
| Appeals,        | 3 months.   |
| Small Causes,   | 3—4 weeks.  |
- (iv) Munsifs.
- |                 |           |
|-----------------|-----------|
| Original suits, | 3 months. |
|-----------------|-----------|
- B. Claim proceedings in all courts, 4 weeks.

2. The period actually taken for the disposing of the proceedings, both original and execution, in the courts of first instance does, in my opinion, exceed the reasonable limit in many cases. I ascribe that to the following reasons :—

- (a) The overworking of the judge. He has to face large and accumulating arrears and in his anxiety to clear off the file there is hurry and slipshodness of manner. Till the actual recording of evidence begins, proceedings preliminary thereto are regarded as unnecessarily occupying the time of the court and are not carefully gone into.
- (b) The trouble experienced in appointing guardians *ad-litem* of minor defendants. If a defendant dishonestly desires to protract proceedings, nothing is easier than to induce relations one after another to decline to act as a guardian.
- (c) Facilities for evading services of summons by intentionally keeping out of the way or by bribing the process servers.
- (d) Unnecessary adjournments. This evil however is now becoming gradually less and less in these provinces.
- (e) Enormous protraction of proceedings before commissioners for taking accounts.
- (f) Cases referred to arbitration hang fire for months together and ultimately such references prove abortive. I have also experienced that sometimes references to arbitration are made simply in order to get rid of the case on that particular day.

- (g) Automatic stay of proceedings by frivolous appeals made in the High Court from interlocutory orders and preliminary decrees. Records are sent up to the appellate court and nothing can be done in the trial court.

In execution proceedings main causes for delay are :—

- (a) Unnecessary facilities under Order 21, rule 58, Civil Procedure Code. Unnecessary multiplicity of notices before sales; postponement of sales on wholly insufficient grounds.
- (b) Stay of execution proceedings by reason of appeals to High Courts from Orders made under section 47 and by injunctions granted in separate suits.

2 and 3. I would suggest the following remedies for shortening the period during which the civil proceedings remain pending before courts of first instance :—

- (1) In cases where there are minors concerned, plaintiffs should be asked to name at once all the relations of the minor suitable for appointment as guardian *ad-litem*. Notices should be issued to all such people at once and in case of the refusal by all such persons the court should at once appoint a pleader or an officer of the court as *guardian ad-litem* of the minor concerned; and where the court has reason to believe that the refusal to act as a guardian on the part of the natural guardian is deliberate and vexatious and the minor is possessed of certain property, the court should make an order that the guardian *ad-litem* should be put in funds from the estate of the minor at once. The plaintiff should not be penalised and asked to find funds for the conduct of the defence of the minor concerned.
- (2) Judicial officers should be required to examine parties themselves on all material points before framing the issues and the personal attendance of the parties should, so far as practicable, be enforced on the date when issues are framed.
- (3) Care should be taken that documentary evidence adduced in the case is admitted or denied by the parties concerned before the actual trial begins; and so far as possible this denial or admission should not be left to the pleaders but should be made by the party himself. In case the court finds that the genuineness of documents has been denied by any party recklessly and without any justification whatsoever, simply with a view to harass his opponents and put them to the trouble of formally proving such documents, the party guilty of such conduct should be penalised in costs either of the whole suit or partially. I attach great importance to this because in case after case I find it has become habitual with at least some pleaders in the districts to deny every possible document of the other side simply with a view to obstruct the proceedings.
- (4) Trials *de-die-in-diem*; no adjournments unless good cause shown; no adjournments when witnesses are not in attendance owing to their not having been summoned in time.
- (5) Where the court finds that the conduct of the case on behalf of any party has been needlessly vexatious, cross-examination is unduly lengthy, and there has been no desire to have a clean fight, such a party should be deprived of costs; and if unsuccessful, should be penalised by ordering to pay exemplary costs. It is notorious that costs actually incurred are much more than the amount allowed on taxation, and the awarding of exemplary costs would only partially re-imburse the successful party.
- (5) In cases of appeals or revisions from interlocutory orders, or from orders under sections 47 and 144, Civil Procedure Code record should never be sent up to the appellate court as of course. The



appellant should be asked to state in a petition or an affidavit all the facts leading up to the order complained of, and the parties should be allowed to file in the appellate court certified copies of proceedings strictly material to the disposal of the appeal from such an order; and the whole record should only be sent for from the lower court when a special order to that effect is obtained from the judge of the appellate court, such special order not to be made unless exceptional cause is shown. Proceedings in the lower court should be continued while the appeal is pending. If this procedure is adopted I am clearly of opinion that it would do away with many appeals filed by the plaintiffs or the defendants which are filed simply with a view to protract proceedings or to remove the case from the file of a particular judge.

- (7) Where cases are adjourned and witnesses are not examined, they should be informed of the date fixed and be asked to attend on such dates. No further summons need be issued to avoid difficulties in service.

In execution proceedings, I suggest the following:—

- (1) Greater restrictions should be placed on objections filed under Order 21, rule 58, Civil Procedure Code. No objection filed after a stated period of the attachment (say one month), should be entertained under any circumstances. Sales fixed should not be postponed unless the judgment-debtor pays a substantial part of the decretal amount. Execution not to be stayed by the appellate court unless very substantial cause is shown. In the case of simple money decrees, generally cash security should be demanded before a stay of execution is granted.

4. It is in my opinion essential for the proper administration of justice that legal practitioners should be appointed to the judicial services in India. The system recently adopted in these provinces by which it is not necessary that a candidate for a munsifship should have had any practice at the bar is not calculated to procure efficient officers. It is to be borne in mind that a munsif has to dispose of more complicated suits than ordinary deputy collectors who have to dispose of criminal and revenue work of a comparatively easier description. It is not good that men with no actual experience of how cases are prepared and run in the civil courts, should be at once elevated from the law classes, to the judicial bench. In my opinion the age-limit for a munsifship should be raised to 33 or 35 years and at least 5 years' practice at the bar should be insisted upon. In order to attract really competent men to the bench, initial salary may well be raised to Rs. 350 or even to Rs. 400. I have no fear that even if a 5 years' practice is insisted upon, suitable men will not be forthcoming. The bar is overcrowded and the life in the profession is one of daily struggle and the career in the service offers security, status and dignity, and a supply of competent men would always be forthcoming. I am in favour of a larger recruitment to district judgeships direct from the bar of senior legal practitioners practising both in the High Courts and in the districts. Conditions of service can easily be arranged to attract suitable men. For the High Court, Judges should, as far as possible be drawn from the ranks of the bar, preferably the Indian bar, and also, if suitable candidates are not available in India, from England.

5. I think a 5 or 7 years' practice at the bar would in itself be a quite sufficient training for a district munsif, and no other special training is necessary.

6. Frequent transfers are to be deprecated and unless a particular judicial officer renders himself unpopular in any particular district by his modes of work, it is in the interest of speedy and efficient administration of justice that he should be allowed to remain at one station as long as possible. He comes to know personally various members of the bar and acquires a good idea of their respective merits, and the closer the co-operation between the bench and the bar, the better.

7. I would dispense with written reports and returns as much as possible and insist upon closer and more frequent supervision and inspection by district judges and High Court Judges of the work done by the subordinate judicial officers.

8. In my opinion there is no appreciable delay due to the concentration of many civil courts in one place. In these provinces 2 or 3 pleaders are always engaged in a particular case and there is not much of waiting for members of the legal profession. The concentration of many courts, however, may cause great inconvenience to the litigant public, and from this point of view I would prefer the establishment of at least a subordinate judge's court in every district headquarters. This would considerably cheapen the cost of litigation and also encourage the growth of fairly strong local district bars.

9, 10 and 11. I would increase the jurisdiction of munsifs generally to Rs. 2,000 and in case of selected officers in districts where the subordinate judge's file is congested, I would increase the munsif's jurisdiction even to Rs. 3,000. I am not in favour of increasing the jurisdiction of munsifs in small causes. Poor people are concerned in the litigation before the small cause courts and it is very very necessary that judges who preside over such courts should be senior officers of large experience so that miscarriages of justice might be avoided as much as possible. It is nothing short of disaster to appoint junior officers—munsifs and even junior subordinate judges—to act as judges of the small cause courts. There is no right of appeal from their decisions and an equitable judicial temper is a paramount necessity in the presiding officers of such courts.

12 and 13. I would not take away much administrative work from the district judges. So far as judicial work is concerned, references under the Land Acquisition Act may be entrusted to subordinate judges. A larger number of civil appeals from munsif's courts and of rent appeals from revenue courts may also be transferred to subordinate judges. Probate and Succession certificate cases, I would prefer, to be tried by district judges for two reasons :—

- (1) That a district and sessions judge by his intimate experience of criminal and sessions cases is in a good position to come to correct conclusions in a probate case where the issue involved is of a simple description, and the facts lie more or less in a narrow compass.
- (2) That having regard to the fact that probate and intestate jurisdiction is one *ad rem*, it is safer that a final decision on facts should in all cases be had, if a party so desires, in the High Court.

14. I have no experience of village courts and panchayats. But what I have heard from other members of the Bar does not lead me to form an opinion favouring the extension of their jurisdiction.

15. I am in favour of extending the jurisdiction of small cause courts for the following classes of suits, namely, suits for compensation for wrongful arrests, malicious prosecution, libel and slander. I am not in favour of giving the small cause courts jurisdiction in any suit relating to immoveable property including mortgage suits; the machinery in such courts is not suitable for such purposes.

16. Commercial causes arise only in few cities in these provinces and summary procedure may profitably be extended to simple money suits arising out of breaches of written contracts or on negotiable instruments in such cities.

17. I am not in favour of giving sub-registrars any jurisdiction to try suits. Sub-registrars as at present appointed have no legal training and unless a better and more competent class of sub-registrars is appointed, it would be unwise to confer judicial powers on them.

18. I think that right of appeal is not given in too many cases in India. As a matter of fact right to appeal may profitably be extended to many other interlocutory orders.

I mention particularly three orders :—

- (1) Order refusing to add parties.
- (2) Order setting aside an award under para. 15 of the second schedule to the Civil Procedure Code and superseding the arbitration.
- (3) Order holding on a preliminary issue that the suit was cognizable by the court, and it had jurisdiction to try it.

The right to appeal is sometimes abused with an ulterior motive of delaying and obstructing the final decision of the suit by the trial court, but if it were well-understood that the mere presentation of an appeal from an interlocutory order or from a preliminary decree will very rarely result in staying further proceedings in the action, I am pretty certain that fewer appeals would be filed. What frequently induces a dishonest litigant to lodge a frivolous appeal is the fact that an appeal, for instance, from an order of interim injunction or appointment of a receiver automatically holds up the suit. A right of appeal is a valuable right; not only does it give opportunity to superior courts to prevent miscarriages of justice but it acts as a great moral check on the vagaries of subordinate judicial officers and the very consciousness that there is a right of appeal produces in them a greater sense of responsibility and greater circumspection. Moreover there are many orders in which an immediate appeal (*e.g.* orders enumerated above) may in certain cases prevent irreparable injury and unnecessary multiplicity of litigation.

19. In the Allahabad High Court, Letters Patent appeals are not allowed from civil or criminal revisions at all. Second appeals below the value of Rs. 500 for the purpose of court-fees are heard and disposed of by a Single Judge. In many second appeals zemindari property of large market value is involved though court-fee is only payable on 5 times the Government revenue. For instance the market value of zemindary property on which the Government revenue assessed is Rs. 99 would be anything between Rs. 2,000 to 3,000, yet such an appeal is disposed of by a single Judge. I am not in favour of curtailing the right to appeal under the Letters Patent at all. In the first place Letters Patent appeals are not filed light-heartedly. Counsel in the High Court in my experience undertake to file such appeals only in very arguable cases and a consideration of the statistics of successful Letters Patent appeals would easily show that they serve a very useful purpose.

20. The right of second appeal is a cherished right. As it is, the statutory provision that a finding of fact cannot be interfered with in second appeal results in patent injustice in numerous cases. Till the district judges are as a whole better trained, it would be unjust to deprive suitors of this right. At any given time, practitioners in the High Court are aware of two or three *district courts* at least where the presiding district judge is obviously learning his work at the expense of the litigants, and any curtailment of the right of second appeal would be tantamount to people in those particular districts being put at the mercy of inexperienced officers. Frivolous second appeals are sometimes filed but every decent legal practitioner finds that the filing of such second appeals does not pay. I think that a rule requiring counsel for the appellant to certify under his signature that the second appeal in his opinion raises a point of law or of defect in procedure, would meet the situation and a careful use of the powers given under Order 41, rule 11 of the Civil Procedure Code would automatically result in the disappearance of frivolous second appeals.

21 and 22. Powers under Order 41, rule 11, Civil Procedure Code are fully used in the Allahabad High Court, and also by some district judges and a more extensive use may profitably be made in other district courts also. I am not in favour of imposing any conditions precedent, for instance a deposit of the decretal amount in cash, to the exercise of the right of second appeal. It should be made well-known that the mere filing of the appeal would not result in a stay and that would suffice.

23. The right of application in revision is not abused in the Allahabad High Court. The number of civil revisions admitted every year is not very large

It is somewhere between 100 and 150 at the highest. As section 115 of the Civil Procedure Code has been construed very strictly in Allahabad, few revision applications are filed under that section. Many revisions arise from small cause court cases and also under the Insolvency Act and other Acts. Interlocutory orders are not revised by the Allahabad High Court.

24. I have pointed out earlier the reasons for the delay in the trial of original suits. I only wish to emphasise that in an anxiety to speed up business the habits and the illiteracy of the people of this country should not be overlooked.

25. I am not in favour of using the procedure indicated in section 106 of the Transfer of Property Act in regard to service of summons. In many cases the plaintiff has fraudulent service effected and I am apprehensive that extension of the procedure in section 106 of the Transfer of Property Act would lead to frauds on behalf of dishonest plaintiffs. A greater use of service by registered post and of substituted service by advertisement in the local newspapers would be a sufficient remedy. There is a disinclination in the trial courts to order substituted service. I would suggest that if the notice returns unserved twice and there is reason to suspect that the defendant is evading service, substituted service should be ordered as of course.

26. Plaints in mortgage suits literally follow the forms provided in the Code. The drafting of other plaints depends upon the skill of the pleader employed in the case. In my experience there is a noticeable improvement in the art of drawing pleadings; whenever there is an ambiguity found in the plaint, it is more often than not, intentional in as much as the pleader does not know his own mind or does not know his case definitely and wants to leave the matter open. A stricter examination of the pleadings at the time of the framing of the issues would cure the evil and the courts should be empowered to penalise the party guilty of filing ambiguous pleadings in the matter of costs.

28. A more extensive use of the post office is desirable. Postmen are as a class more honest than the ordinary process server. It may be that when postmen come to know of the trust imposed in them, they may turn out as greedy and as unreliable as the ordinary process server.

29. I would insist that as soon as a party enters appearance through a pleader, all subsequent notices up to the determination of the suit in that particular court should be served upon that party's pleader and such service should be deemed sufficient. Every party should also be required to give a registered address in court and such registered address should hold good throughout the determination of that litigation up to the High Court, leaving it open to the party to change his registered address by giving previous information to the other side. And all notices of appeal should issue to such registered address, and similarly in the appellate court too, when appearance is entered by counsel, notices should be issued to the counsel for the party concerned.

30. I am not in favour of the suggestion that a process server should report himself to the pleader of the party on whose behalf he is taking process for service. In actual practice the process server always goes to the party concerned and the party himself or his agent accompanies such process server for the purposes of identification.

31. Trial courts should be required to draw proper proceeding on the date of issues noting the names of the parties present and the pleaders concerned. There should be a clearer examination of the pleadings and a strict ascertainment of the case of each party and clear issues should be framed.

32. Provisions of Orders 10, 11 and 12 are neglected in the province of Agra, specially the provisions of Orders 11 and 12. I know only of one city in which attempts are made to file interrogatories or affidavits of documents. This is due to the indolence of parties and to a desire not to undergo extra labour in framing questions.

33. I am not in favour of an examination of the parties before the examination of the witnesses begins. An examination by a court under Order X would

serve all necessary purposes but I would insist that documents filed by the parties should be admitted or denied as far as possible on the date of issues and the party who deliberately and intentionally declines to admit documents whose genuineness is obviously not open to question simply with a view to harass his opponents, should be suitably penalised in costs. This admission and denial of documents is very perfunctorily done in courts and I would prefer if the trial courts have this done under their own supervision and give rulings, if so required then and there, as to the relevancy of the documents produced.

34. The witnesses generally remain in attendance till they are examined. They generally side with the party who summons them and remain of their own accord. Disinterested witnesses and public officials generally ask for the direction of the court at the conclusion of the day's business and get suitable directions. The trial Judge should be required to direct that if a case is adjourned all witnesses in attendance should be informed of the date next fixed and no fresh notices should be issued to them.

35. Unnecessary and avoidable oral evidence is not frequently let in in the courts in this province. Sometimes a party is obliged to adduce unnecessary evidence because of the denial of his documents by the other party. If the trial judge suspects that unnecessary witnesses are being examined, I think he should ask the party producing them to state what they would prove and this scrutiny would probably be sufficient to eliminate the production of unnecessary witnesses. Whenever a large number of witnesses have been cited merely to increase costs, the party so calling them should be deprived of the costs of the entire litigation.

36. I am not in favour of affidavit evidence. This would lead to protraction of business and unnecessary multiplication of documents. In summary enquiries and proceedings an oral examination of one or two witnesses leads the court to form just conclusions more rapidly than dozens of affidavits would do. On the whole power should be given to the court to refuse to examine more witnesses than they think necessary for the purpose and if the Judge formed a clear opinion after hearing one or two witnesses, he should be allowed to give his order and conclude the matter.

37. I am not in favour of the suggestion of fixing a time-limit for the examination and cross-examination of witnesses. An intelligent grip of the case on the part of the presiding judge and a careful control of the examination and cross-examination and shutting out of irrelevant and improper questions is a quite sufficient safe-guard.

38. Order 37, Civil Procedure Code may usefully be extended to suits on Negotiable Instruments and simple money bonds in cities like Cawnpore, Agra, Aligarh, Allahabad, Lucknow, Fyzabad and Meerut.

39. I would make it a rule that a father or a manager of a joint Hindu family should be regarded as a representative of the other members and such other members should be bound by the decisions rendered in that suit unless it was specifically proved that the father or manager had been guilty of fraud or of collusion in the conduct of the litigation towards the other members of the family.

40. I do not like to throw the duty on a legal representative to come forward and request the court to add him as a party.

41. I am in favour of the suggestion made in this question as to the issuing of notices to all possible guardians in one proceeding.

42. The practice of granting *ex-parte* injunctions and orders is not taken undue advantage of in these provinces.

43. The language of the judgment depends upon the temperament of the particular judge. There are some district judges and subordinate judges who write most admirable judgments, there are others in whose cases it is difficult to follow what they precisely mean and to appreciate their line of reasoning. I cannot think of any method of curtailing the length of the judgment nor do I think that this causes any appreciable delay in the decision of suits.

44. Points of law are not usually disposed of before taking evidence in these provinces, unless they dispose of the whole case.

45. In original suits original dates of hearing are sometimes fixed by munsarims and sometimes by the judge himself, but dates of adjourned hearings are usually fixed by judges in consultation with the pleaders concerned.

46. Want of knowledge as to how long a particular case would take does lead to unnecessary adjournments of cases. I would emphasise upon subordinate courts the necessity of fixing dates for particular cases in consultation with the pleaders and after seeking information as to the length of time a case is likely to occupy.

47. Examination of witnesses, specially of pardanashin ladies on commission, leads to great abuses and harassing of witnesses. Under the present practice, however, junior practitioners are appointed commissioners and it may, I realize, be unsafe to entrust them with powers of ruling out irrelevant questions and care may be taken to appoint comparatively senior practitioners. I would give powers to commissioners to rule out questions. To minimise error, the cross-examining counsel should be given a right to put in a separate written application asking that a particular question should be put to a witness and answer thereto should be taken down. The present intolerable state of affairs is due to the fact that the commissioner is a mere clerk and is really unable to exercise the least control on the proceedings.

48. Day costs are generally awarded on adjournment in these provinces and frivolous adjournments are getting rare.

49. The practice of trying cases *de-die-in-diem* is growing in these provinces and subordinate judges in my experience dislike to postpone cases when once the hearing is begun.

53. I am in favour of the extension of the principle of Section 21, Civil Procedure Code to execution proceedings.

54. I think the present law applying to courts to which a decree is transferred for execution does not stand in need of any change. It is necessary and in my opinion expedient that all matters relating to the addition of legal representatives or of assignees should be dealt with by the court which originally passed the decree.

Section 42, Civil Procedure Code is wide enough for all practical purposes. It must be borne in mind that a decree is sometimes transferred for execution temporarily to distant places and it would be expensive and may cause delay and inconvenience if assignments whether by act of parties or of law are dealt with by courts to which decrees are transferred for execution.

55. Under the law as it stands at present a stranger purchasing at a court sale obtains, generally speaking, a clear title to the interests of the judgment-debtor after the confirmation of the sale and is not affected by any subsequent reversal or modification of the decree. This tends in some way to security of title conveyed by court sales and proper prices are fetched.

I am apprehensive that if section 47, Civil Procedure Code is changed so as to cover the case of a stranger purchaser too, it may lead to complications and he may be sought to be affected by the subsequent proceedings in appeals from the decrees under execution. The provisions of Order 21, rules 95 to 102 of the Civil Procedure Code meet all necessary requirements and afford sufficient protection to the purchaser.

56. An enormous number of execution applications which are never expected to be fructuous in the least are simply made to keep the decree alive and there is a vast amount of litigation in the courts of first instance and appellate courts raising purely technical points as to whether a step in aid of execution had been taken within time or not.

The existing rule formulated in Article 182 of the Limitation Act does not work well in practice and only tends to increase unnecessary litigation. To simplify matters I would leave it to the decree-holder to apply for execution whenever he likes, within a fixed period. Twelve years is not a very long period,

but it may be reduced to ten. To reduce it to six would be unduly favouring debtors at the expense of creditors.

57. The provisions of section 66 are stringent enough. I am not aware that the section as it stands causes any delay in the administration of justice or leads to litigation. The habit of making *benami* purchases is widely prevalent in India and the suggested alteration of section 66 will not do any material good to anybody.

58. The suggested alteration of Order 21, rules 1 and 2 would lead to great inconvenience in rural parts where banking facilities are unknown. Registration officers are not very many in the districts. I am not aware of any serious difficulty being caused by the working of the existing rules and the short period of three months within which such payments should be recorded ensures a speedy inquiry, if the factum of the payment is disputed.

There have been, however, decisions in some High Courts that it is open to a decree-holder to certify payments whenever he likes. The rule of three months limitation does not apply to him. The result is that in some cases when execution application becomes time-barred, the decree-holder puts forward the false plea of a part payment within three years from the date of the application. The judgment-debtor naturally denies having made such payment and an extremely belated inquiry becomes necessary. This is an evil to be remedied and I would suggest that the limitation of three months should be made applicable both to decree-holders as well as judgment-debtors within which an application to certify or record a payment must be made.

59. I agree with the first suggestion, but I am not in favour of the deletion or modification of the second proviso to rule 16 of Order 21. This proviso really meets cases of satisfaction of decrees by one of several judgment-debtors and the equities between judgment-debtors *inter se* are sometimes very special and must be determined by a separate suit.

60. Order 21, rule 21 may be deleted.

61. I favour the suggestion in part (a) of this question.

In my opinion Order 21, rule 26 is sufficiently wide and should enable the courts to pass suitable orders in the case of money decrees.

63. I entirely agree that a notice in the beginning at the commencement of the execution proceedings should be sufficient; the judgment-debtor, if he wants to watch his interests, should enter appearance as soon as possible and then notices, if any, may be served on his pleader.

64. I am not in favour of any one of the suggestions made in this question. A copy of the sale proclamation should be served on the judgment-debtor. There is no reason why a vakil should, after the suit has come to an end, be saddled with the responsibility of hunting out his clients when decrees are put into execution against the latter after years and years. The remuneration which a vakil in the district court receives in petty suits is much too small for his being made to undertake all this trouble.

66. I am not in favour of materially altering the procedure relating to mortgage suits. A rule directing sale of mortgaged properties *free from encumbrance* even at the instance of puisne mortgagees would result in grave inconvenience, and decision of questions of paramount title would needlessly protract and complicate decision of mortgage suits. A greater insistence on the impleading of all subsequent mortgagees, so far as the plaintiff is aware or may after enquiry become aware of their existence, would be useful.

The preliminary decree may itself direct a sale on default, and a further application for preparation of a final decree may be dispensed with.

The existing procedure prevents the preparation of a final decree if an appeal from a preliminary decree is pending, and this leads to the filing of many vexatious appeals from preliminary decrees.

67. Yes. Execution should not generally be stayed. Record should not be sent up to the appellate court thus bringing about a stay. Exemplary com-

pensation may well be awarded in the shape of double costs, and more specially, by enhancing the rate of interest on the decretal amount from 6 per cent. to a much higher rate.

68. Yes. Injunction restraining the decree-holder from executing his decree should only be granted on suitable security being given by the judgment-debtor or by the third party applying for the injunction for loss caused by the stay.

71. Rules as to proof of documents required by law to be attested need modification. Such documents now invariably require compulsory registration, and the present requisite mode of proof leads to perjuries by attesting witnesses at the instance of dishonest debtors.

The period of 30 years mentioned in section 90 of the Evidence Act may well be reduced to 10 years in the case of registered documents.

72. I would not shift the burden of proof, but allow a mortgage-deed (and a deed of gift too) to be proved just as a sale-deed is proved.

73. Not much time is taken in obtaining certified copies. I would accept papers printed in the High Court in *original* in a previous litigation as secondary evidence but not translations. The accuracy of translations made in the Allahabad High Court cannot be absolutely relied upon.

74. Suits to contest the validity of an adoption should be instituted within 6 years. The liberty to contest adoptions by way of a suit for possession, on the death of a Hindu widow under Art. 141 of the Limitation Act, gives rise to immense trouble and is gravely abused and the status of an adopted son may be put in jeopardy by its validity being questioned after a long time when all direct evidence has disappeared. A similar rule regarding rights to question the validity of a sale by a Hindu widow is urgently required.

76. I favour the suggestion for demanding a registered deed to evidence a partition, and also of partnerships started in cities only (and not rural areas) like Allahabad, Cawnpore, Lucknow, Meerut, Hathras, Moradabad, Bareilly and others.

78. Yes. In my opinion the application of the doctrine of 'part-performance' to India is not desirable.

79. Yes.

80. I don't accept the general proposition as to the necessity of a general compulsory registration.

82. I don't favour any enhancement of court-fees.

83. No.

84. I would give power to courts to grant most exemplary costs in champertous litigation against persons really financing and conducting the litigation even though not parties to the suit, or such parties may also be made parties so that they may not escape payment of costs.

86. I do not think so.

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**Dr. KAILASH NATH KATJU called and examined, on Wednesday,  
the 12th March 1924.**

*Sir Tej Bahadur Sapru.*—Q. Before you came to the High Court you were practising in Cawnpore?

A. Yes.

Q. For how many years?

A. Six.

Q. I suppose you have been here about 10 years?

A. Yes.

Q. Even now I suppose you go frequently to the mofussil?

A. Yes.



Q. Which districts are you familiar with, so far as the mofussil is concerned?

A. I am familiar with the western districts—Cawnpore, Meerut, Aligarh, Benares, Mirzapur and Jaunpur.

Q. When you go to the mofussil do you conduct cross-examination or are you generally taken for arguments?

A. It all depends upon the nature of the case. I am taken in heavy cases for examination and cross-examination of witnesses and in smaller cases for arguments only.

Q. Now when you start the case there in the mofussil, do you generally open your case?

A. No.

Q. Have you had any difficulty in persuading the judges to allow you to do that?

A. Sometimes when it is stated to them they say that it is not necessary. They only just read the plaint and written statement and ask the parties to commence with their evidence.

Q. Sometimes questions of relevancy arise during the examination of witnesses?

A. Yes.

Q. How are those questions disposed of?

A. It all depends upon the nature of the individual judges. Sometimes they take the line of least resistance and say you better reserve it to be dealt with during the course of the arguments. If the judge happens to be a little strong he gives his ruling at once. But the inclination is not to give any ruling.

Q. From your experience of the working of the courts are you in a position to say that every subordinate judge has a firm grasp of the facts of the case and the points arising in the case?

A. Not generally. Certainly he has knowledge of what the case is about but I do not know that he knows a great deal of the documents which are on the record.

Q. As regards the production of documentary evidence is it all produced at the stage at which it is required by law to be produced?

A. Generally it is. But then, attempts are made to produce documents later on. In the province of Agra with which I am familiar, it is not very good at all. The real difficulty that I feel is that the courts do not insist upon the admission or denial of the documents at the proper stage—that is at the stage at which issues are framed. There is a lot of formal evidence adduced afterwards, if they do not insist on it being produced at the proper stage.

Q. When the stage at which the documents are to be admitted or denied is reached, how is the matter conducted then?

A. On the date of issues, nobody knows anything about the case. On the date of the hearing when the evidence begins, supposing the plaintiff wants to prove certain documents, then for the first time it is admitted or denied; or a request is made to the judge for some time to consider and then a short adjournment is granted either to admit or deny.

Q. Is it not a fact that even pleaders and juniors going from the High Court are not very frequently supplied with copies of the documents so that they themselves do not know whether they ought to admit or deny a particular document?

A. There is no such practice; but when the senior is given a brief copies of important documents are given with the papers supplied to him.

Q. Taking for instance even very important documents, my experience has been that unless you insist strongly neither the litigants nor their pleaders do supply them. When you go and begin the case it is a mere chance whether you will admit or deny a particular document.

A. Yes.

Q. Is it the practice prevailing in the districts not to admit anything as far as possible?

A. Yes.

Q. Even in regard to wills this happens. I have known cases relating to wills being conducted without the wills being supplied to the counsel.

A. I have no personal knowledge of that.

Q. What is it exactly that pleaders in the districts mean by admitting or denying a document?

A. Sometimes they say "admitted." That means the genuineness of the document alone is admitted but not that the contents thereof are relevant to the facts of the case. When they want to deny the genuineness of a document which is relevant they are reluctant, because at a late stage they will be prevented from arguing that they are not relevant to the real case.

Q. Don't you think that that defect could be cured if the pleaders could be given time for the consideration of the whole case and decide for themselves whether it is to the interest of the client to admit a particular document or not?

A. No.

Q. You admit that it is not so much a defect of the law as a defect of the practice which is responsible for the prolongation of cases so far as this particular matter is concerned?

A. Yes.

Q. Is any intimation given by the parties when they file lists of papers here, to show the relevancy of a particular document or the purpose for which the document is filed?

A. That is never done in this province.

Q. Is it done most perfunctorily? Practically no sufficient notice is given as to the use which the party producing the document intends to make of it.

A. No notice of any sort is given. Only the dates and description of documents are given.

Q. As regards cross-examination it is said that cross-examination in the month is sometimes unduly long. What has been your experience?

A. Well, it is sometimes long. I have been noticing gradually an improvement in that respect. There are certain subordinate judges who never interfere and try to control the cross-examination. They think it safer to take down mechanically rather than interrupt the counsel.

Q. Is it not the idea prevalent in subordinate courts that the longer the cross-examination the more effective it is?

A. That is of course the idea of the litigants.

Q. I speak of the lawyers themselves. Is it not the idea among the members of the bar that the longer you cross-examine a witness the more effective it is likely to appear and the shorter the cross-examination is, the more ignorant you are of the art of cross-examination?

A. Yes. Of course in every district there are some leaders of the bar and every body tries to imitate their leaders and to follow the example they have left. There is some impression "the longer the cross-examination, the better."

Q. Coming to the cross-examination before the commissioners, generally the trouble arises when a pardanashin lady is going to be cross-examined or when somebody else who cannot come to court is cross-examined?

A. Yes.

Q. What is the remedy you suggest for its prevention?

A. The question is not free from difficulty. I will give powers to the commissioner to disallow questions. When a question is disallowed the party

may make a written application that a certain question should be put and the commissioner should take down the answer to that question separately.

Q. I suppose you will agree with me that for the fee usually paid to the commissioners in this province you cannot get a better class of lawyers?

A. In the munsif's courts the fee is Rs. 5 and in the subordinate judge's courts the fee is Rs. 10.

Q. Generally the commissioners are very busy for about 3 to 4 hours a day?

A. Yes.

Q. If you entrust some larger powers to the commissioner it follows you will have to have a better class of lawyers to do that work for a higher fee?

A. You can get better men for Rs. 32.

Q. What is the usual practice with regard to the engagement of pleaders? Is it not a fact that in a vast majority of cases the juniors never get a chance?

A. So far as this is concerned in almost every district there are about 6 people commanding almost the entire practice. Then there are people who are struggling as juniors and seniors entrust their cases with them when they go out.

Q. In regard to the junior pleader, it appears that the senior pleader is not sufficiently interested in him or he is not properly paid and is not ready to go on with the case.

A. Yes. That is the case.

Q. It also depends upon the interest the senior pleader takes in the junior.

A. Yes.

Q. Will you tell me whether the senior member of the profession in the district court does take that interest which is necessary for the growth of a competent junior bar?

A. In every district I went, I found either a cousin, a nephew or some relative of a senior lawyer practising along with him, and he takes particular interest in that individual. But apart from that I do not know if he has any particular fancy to any particular individual.

Q. What is the practice in the High Court here? Have the junior lawyers any chance? Is it a fact that very often the cases are held up because the senior man has not the time to argue the case?

A. You have got what you call a slip system here. If one man is engaged in one case in a particular court, he may not be able to attend that court on the day the case comes for hearing, as he might have to attend to other cases in other courts. If somebody is engaged, it is not opposed. Every thing depends on the clients.

Q. I am talking of the system, and I think it does not obtain either in the High Court or in the districts.

A. Yes.

Q. Therefore the client has not sufficient confidence in the junior because he has not had any advantage of a consultation with the senior.

A. Yes.

Q. With regard to litigation in this province, will you tell us whether there is such a thing as consulting a lawyer before any party enters into a transaction which would involve litigation afterwards?

A. So far as that matter is concerned, my experience is limited to Cawnpore and of course I was concerned with bigger cases and bigger transactions. So far as the Cawnpore city is concerned, there this practice is growing up, because it is a commercial city. So far as other areas are concerned, I do not think that is being done.

Q. Even in the case of biggest landlords it is very seldom done.

A. Yes.

Q. So far as the banks in this province are concerned, will you please tell us if even the banks incorporated in England have such a thing as permanent standing counsel?

A. Not to my knowledge. Some of them have. The difficulty is that people think that money spent on legal advice, apart from actual litigation, is money thrown away.

Q. Even the big zemindars, taluqdars and landed proprietors who very often figure in courts of law, do not very often have family lawyers?

A. Of course they have got their lawyers to whom the actual court work is entrusted, but their advice is not taken in any particular matter.

Q. Perhaps you would agree with me that much of the litigation taking place in this province is preventable if only proper advice is taken in proper time.

A. Yes.

Q. And so far as most of these legal documents are concerned, they are drawn up by semi-educated people.

A. Yes.

Q. And then those documents go up to engage the attention of a district judge, or possibly a full bench of the High Court.

A. Yes.

Q. Is it a fact that the work of the High Court has within your experience become much heavier than it was 10 years ago?

A. Yes. The number of institutions has increased, particularly in first appeals.

Q. And you would suggest the appointment of certain extra Judges in the High Court to cope with the work?

A. Yes. The permanent Judges should be increased to 9, and more Judges should be appointed to clear off the arrears.

Q. You will agree with me that it would be desirable to have one permanent Judge doing supervision work, so far as subordinate courts are concerned.

A. Yes. I would do away with most of the report-writing and returns, and would insist upon inspection by district judges more frequently.

Q. Now with regard to second appeals, will you please place before the Committee, the view generally held by the profession? Do you think that there is any room for stiffening the law as regards admission of second appeals in the High Court? What is the view of the profession generally on the subject?

A. Well, if you refer to Order 41, Rule 11, the procedure here is that every second appeal, which is valued for purposes of court fee at or below Rs. 5, should go before a single judge. The practice varies with the judges. In a hearing under Rule 41, Rule 11, some judges, if they think that there is an arguable point of law, admit the appeal. With some judges, there is a regrettable tendency. If the respondent was in the court, they would admit the appeal, otherwise they would not. The profession hold the view that if the case is an arguable one, it should be admitted.

Q. As a matter of fact is it only one out of ten of the second appeals which is decreed?

A. So far as I know it may be anything between ten to fifteen per cent.

Q. The point is whether you would favour any stiffening of the law regarding the second appeal or you would leave it as it is?

A. I would leave the law as it is.

Q. In a vast majority of cases do you not think that judges of lower courts arrive at a correct finding?

A. That is a very delicate question. It all depends upon the judges.

Q. Is it not a fact that very seldom counsel in this court reads the evidence which has been given by the lower court to see whether the finding of the fact is correct or not?

A. If a second appeal comes to a junior lawyer then he sometimes accedes to the wishes of the litigant and goes through the evidence as he generally has much time.

Q. What has been your experience? In the vast majority of cases is there anything wrong with the appreciation?

A. To put it plainly so far as district and sessions judges are concerned when they come new to the civil court they very often go wrong on question of adoption and on questions relating to joint Hindu family. Of course in first two or three years of their occupation of the bench they are so.

Q. But the same thing happens in regard to the munsifs when they are appointed first?

A. I think so but then they are corrected by the appellate court.

Q. And you suggest in your memorandum that you will require a certificate to be given by the lawyer who is filing the second appeal as to the grounds on which it really arose?

A. I think that will meet the case. As a matter of fact one finds in actual practice that if frivolous appeals are filed it does not pay and if very many appeals are dismissed the judges generally have prejudice against the man that he brings too many frivolous appeals.

Q. Now as regards Letters Patent appeal, what is your suggestion?

A. My suggestion is that the right to file the appeal should remain.

Q. But why?

A. The difficulty is this—when a case is argued before a single Judge, I see it every day in actual practice in single Judge revision and single Judge second appeal, as it is called in this High Court, no Letters Patent appeal can lie from the decision in revision cases, and the Judge disposes of the revision cases summarily. But in every second appeal the Judge gives more careful hearing because he is conscious that there is a Letters Patent bench and he is liable to be reversed. Single Judge second appeal involves property of a very large value and interests of litigants are fairly large. The Letters Patent appeal is not filed in a very large number. It is not filed unless there is a good arguable point in the case.

Q. And the bench of two Judges decides whether the appeal should be admitted or not?

A. Yes.

Q. Supposing there is a rule that no Letters Patent appeal should be filed unless first application is made to the Judge from whose decision it is to be filed, that in his opinion the point is such as should be decided by a bench of two Judges, that is to say, the practice which has just now been adopted in the Burma High Court. How would you like it?

A. I do not think the Judge at the time of hearing of a case attaches much importance to a point of law. When once the point has been heard he does not like to bother himself about it again.

Q. What has happened in cases which go up to the Privy Council? Do you find it difficult for the Judges to give certificates?

A. Of course there also you have right to apply direct to the Privy Council.

Q. I take it that you represent the view of the profession that so far as Letters Patent appeals are concerned they should not be curtailed?

A. That is my opinion.

Q. Now apart from the appeals would you raise the jurisdiction of a single Judge? At present cases up to five hundred rupees come up to him.

A. I have no objection in simple money suits.

Q. Under the Code of Civil Procedure there is no appeal in simple money suits.

A. I will not raise the value at all. I will let the law remain as it is because second appeals are not filed in a very large number, they number only

five to six hundred. If you raise the valuation then there will be a larger number of Letters Patent appeals.

Q. Do you think there is much delay in the High Court in getting the records ready? Could it be prevented if we require the sub-judges in this province to record the evidence in English only?

A. The difficulty is not that the records are not ready but that there are no judges to decide the case. The difficulty of getting the record ready can be removed by adding more translators in the translating department. Cases are kept back not because the records are not ready but because there are no judges.

Q. Now leaving aside the High Court you will agree with me that the subordinate judge in this province is the hardest worked officer?

A. Yes.

Q. He disposes of much larger number of cases than he ought to?

A. Yes.

Q. And he gets scarcely any time to get himself abreast of even the current rulings of the High Court?

A. I think so. Probably they have no time. I think they have neither time nor inclination.

Q. Now in your memorandum you suggest that land acquisition cases may be transferred from the district judge to the subordinate judge. What particular merit do you see in that suggestion?

A. Only in order to relieve the district judge.

Q. Then in that case the work of the subordinate judge will become heavier? You say that the subordinate judge is the hardest worked officer and at the same time you suggest that more work should be given to him.

A. I have put forward that proposal merely from the financial point of view. The district judge is a very highly paid officer. If that work is done by a low paid officer, there will be a good deal of saving and at the same time the district judge will be able to attend to administrative work which he seldom does at present.

Q. What about cases under the Succession Certificate Act? Would you also transfer them to the sub-judge?

A. No.

Q. Why not?

A. Because there will be no direct right of appeal to the High Court in these cases.

Q. Supposing a direct right of appeal was provided by the law to the High Court?

A. Then I have no objection to these cases being decided by the subordinate judge.

Q. In your memorandum you suggest that probate cases should always go to the district judge?

A. I would prefer probate cases to be retained for two reasons, first being the direct right of appeal to the High Court and secondly probate cases involve points of law and the district judge is quite competent to decide simple questions of law.

Q. Sometimes probate cases involve very difficult questions of law. As a matter of fact there are not many probate cases in this province.

A. Yes.

Q. With regard to jurisdiction of munsifs you say that you would increase it up to Rs. 2,000 and in special cases up to Rs. 3,000?

A. Yes.

Q. Now would you also transfer a certain number or cases from the ordinary civil courts to the small cause courts?

A. Yes.

Q. Do you say from the public point of view whether it would be safe to increase the jurisdiction of munsifs?

A. I see no difficulty in that.

Q. Would you also favour an increase in the jurisdiction of judges of the small cause court?

A. No. Unless the old practice was reverted to. The old practice was that very old men were appointed as subordinate judges and they had great experience. They were appointed as such at the age of 52 or 53—only two or three years before their retirement. Now junior men are invested with small cause court powers and they are quite inexperienced. I have seen in many cases that the judge sits there as Almighty God and decides cases according to his own fancy and whim. I know one case in which the judge dismissed the suit in a very peculiar manner. It was a case relating to a promissory note in which consideration had not been paid. When the judge was writing judgment the man said that the plaintiff was not a man of means. He brought a ghora gari and they all drove off at that suggestion. On enquiring the man said that he had not got money at home, but he had a friend from whom he could get it. The judge came back and dismissed the suit then and there. In another case the judge said "You are a very nasty man and I dismiss your suit." That is the way in which these judges decide cases.

Q. Are you suggesting that there has been some dissatisfaction or considerable dissatisfaction with regard to the appointment of inexperienced munsifs at small cause court judges in some parts of this province?

A. Yes, and the profession very much dislikes the amended rule by which candidates for munsifship are not required to have any practice at all at the bar.

Q. With regard to appointment of munsifs what length of practice would you require?

A. I would require substantial practice. At least five years practice.

Q. Do you think that people of five years practice will accept munsifship?

A. I do not know that, but if you give them decent pay to start with, *i.e.*, three hundred rupees, with security of tenure and security of promotion to subordinate judgeship after some years and then to district judgeship, I think they will accept it. They will forego their chance at the bar as there will be security of pension.

Q. Then you mean that with security of pension they will accept the post?

A. Also on account of the dignity that the post gives in the society and also in the public eye.

Q. Well you have made certain suggestions in your memorandum with regard to modification of certain provisions of the law. I will not ask you about all of them, but there are just one or two on which I would like to put you some questions. You know that there is a considerable amount of litigation in this province with regard to mortgages?

A. Yes.

Q. Would you transfer some kind of mortgage suits to small cause courts?

A. No.

Q. Then what do you suggest about the passing of decrees in these mortgage suits?

A. What I suggest is that instead of applying for a final decree there should only be preliminary decree, that is to say, the preliminary decree may automatically become final decree if money is not paid within certain time.

Q. What is your opinion about the period of limitation for redemption suits? Should it not be reduced to 12 or 20 years?

A. No I am not in favour of that, because the period of 12 years is not sufficient.

Q. Then you would favour 60 years?

A. I do not think why the debtor should be deprived of his property. The mortgagee is there in possession and is getting return from his property.

Q. With regard to certain classes of suits in this province, for instance suits by reversioners to set aside certain alienations made by widows, you would modify the law so as to give the benefit of the suit by a reversioner to all other reversioners as a sort of representative suit with a view to prevent litigation after the death of this plaintiff?

A. Yes.

Q. What safeguards would you adopt to prevent mischief being done to other reversioners?

A. What I would suggest is that if the suit is to contest an alienation, then a period should be fixed within which a suit may be brought by the next presumptive reversioner and if a suit is not brought by the next or remote reversioner, then another opportunity should be given after the death of the widow to contest any alienation.

Q. You would modify the law to that extent?

A. Yes.

Q. With regard to champerty what is your feeling as to the extent of its prevalence in this province?

A. The matter can be looked at from two points of view. One point of view is that the plaintiff is a poor man and should be given some help. But the other view which I myself personally feel is that you have got in every city here a certain class of people who live upon fostering litigation in this particular way. They either take a sale deed in the name of a dummy or some relation of theirs or they take an agreement which provides that if the man succeeds he will get half of the property. These are suits which relate to immoveable property and are of much value. The defendant has to defend himself. The suit may take 3 to 6 months. The cost may amount to lakhs of rupees. The legal fees allowed are Rs. 1,000 only. They bear no proportion to the real costs incurred in the litigation. I recommend that you should not allow any restriction upon the agreement but liberty should be given to the court to make the person who is actually at the bottom of the litigation as a party and then if the court thinks it is champertous then the court should order a heavy amount bearing a good proportion to the cost actually incurred by the defendant, in respect of costs.

Q. You would not abolish the law of champerty altogether?

A. I won't abolish the law relating to England to India.

Q. Do you know from experience whether indulgence in transactions of this sort by the pleaders is very much?

A. Not very much. In every district you have got some pleaders who indulge in that practice and sometimes they are their clerks and their sons.

Q. Can you from your experience say whether the High Court has taken cognizance of such facts?

A. It comes to light only in a few cases. Sometimes it appears in the course of the evidence. I don't think the High Court has taken any action upon it.

Q. What has been your experience of the working of the law laid down by the Special Bench in regard to pre-emption cases? Has that led to a diminution of the litigation or to an increase of litigation and is the litigation in the same state now just as it was 10 years ago?

A. I think the litigation has to some extent decreased. But I am not speaking from personal knowledge.

Q. The Special Bench has been in existence for a number of years?

A. The traditions of the earlier days are not known to me.

Q. Is there any certainty about the law of pre-emption now?

A. There is no certainty.

Q. Do you favour the law of pre-emption at all?



A. It is very much cherished in this province. People do not want their shares to go out of their family and the tendency is that every sale is sought to be contested on the ground of pre-emption.

Q. Do you think that, if the law of pre-emption is abolished, it would be a greater hardship to the litigants?

A. I believe so in the eastern districts.

Q. What about the western districts?

A. I am not so sure about that. The settlement in Cawnpore took place about 1906. The High Court held that after that settlement there was no right of pre-emption. Very few cases arise from Cawnpore District. I have never seen very great dissatisfaction in that particular district.

Q. With regard to execution cases have you any definite suggestions to make as to either the simplification of the cases or a better and systematic treatment of the execution cases?

A. What I would suggest to get rid of the evils is that there are two matters. The first is that when there is an attachment, a definite rule should be laid down that all objections by anybody should be made within one month. The existing practice is that when properties are attached, one gentleman comes forward and says the property is his own. The court used to postpone the sale and decide that objection. Three months later another man comes forward and says that the property is his and it protracts the execution proceedings. I would fix a period of one month from the date of the attachment for all objections and then no objection by anybody ought to be entertained at all. The second suggestion is that notices should not be issued repeatedly. Only one notice should be issued of the application for execution. Then you have got the pleader for the judgment-debtor on whom the other notices may be served.

Q. Do you favour the retention of the provisions relating to the "step-in-aid of execution?"

A. Not at all.

Q. You therefore think that the law admits of simplification so far as that is concerned?

A. Yes.

Q. You would not allow time to be extended merely because some application has been put in by the decree-holder which subsequently is found to be a step-in-aid of execution?

A. No.

Q. That is a sheer waste of time?

A. Yes.

Q. From your knowledge broadly speaking I suppose you will admit that the volume of case-law on the subject is simply staggering?

A. Yes.

Q. And it is not always possible to reconcile one view with another?

A. You can get all sorts of ruling on either point.

Q. It has been said that there is a growing tendency in the legal profession in the district courts and also in the High Courts of citing too many cases. What is your feeling with regard to it?

A. I cannot give a definite answer to that. It depends upon the judges. I have been here for 10 years. Before some judges it was very difficult for me to induce them to look to any ruling at all. On the other hand other judges wanted an authority for every proposition.

Q. Have you cited in your practice any ruling by the Resident of Coorg or the Chief Commissioner of Baluchistan?

A. No.

Q. Is it a fact that the practice is growing almost to a vicious extent in the districts?

A. Yes.

Q. Don't you agree with me that the time has come that something should be done to relieve the suffering humanity of the legal profession and the judges?

A. Yes.

Sir T. Desikachari.—I am told that the time that is now occupied for the disposal of appeals is much longer than it used to be about 15 years ago in the High Court.

A. That has grown up, because of the accumulation of arrears, also of a larger number of institutions, and also, I believe, the large increase in criminal work.

Q. It appears that the time that is now occupied is at least 10 times that occupied 15 years ago?

A. Yes.

Q. It appears that the volume of appellate work has not substantially increased?

A. Well, it has increased only in first appeals and not in others.

Q. Is there any possibility of having the work done more speedily except by increasing the number of Judges in the High Court?

A. I do not think so. In the High Court, I can only suggest a larger number of Judges.

Q. Have you got statistics of some kind with regard to appeals before High Court Judges?

A. No.

Q. Again the time now occupied in the disposal of first appeals is much longer than it used to be in olden days?

A. Well, if you see the first appeals, they have increased very largely. As I said, the duration only shows that there was delay, but it does not show how the judges have been occupied.

Q. With regard to devolution of powers, is there any agency in this province which can take up some of the petty litigations from the munsifs' courts—for instance the village panchayats?

A. I have no personal experience of that. From what I have heard from other lawyers, it does not lead me to any great hope of that agency.

Q. I see a large number of cases have been disposed of by village munsifs. Have you any idea of the work done by them?

A. No.

Q. In this province, what do you think of the suggestion regarding the appointment of sub-registrars for the purpose of hearing certain classes of cases?

A. I would not favour that, because some of them are appointed from the army—pensioned rasildars. They know the registration manual thoroughly, but they do not know law.

Q. Are not the sub-registrars recruited from among graduates in this province?

A. No.

Q. What is the salary?

A. I believe it is about Rs. 60 or 80.

Q. With regard to the increase of small cause court jurisdiction, in your reply to Sir Tej Bahadur, you said that you were not in favour of increasing the jurisdiction. I find in my province the munsifs can go up to Rs. 200 and subordinate judges up to Rs. 500. Generally they start with Rs. 50 and according to experience they are invested with powers up to Rs. 100, 150, 200, etc.

A. That is the practice here too. Personally speaking I would not give a munsif power to try a case of Rs. 50, unless he has put in 6 or 7 years.

It may be a petty case, but to the person who is concerned in that case, the sum would be equivalent to a lakh.

Q. So far as the Madras Presidency is concerned, we do not experience any bad results by the munsifs being invested with Rs. 50 powers.

A. Of course in bigger cities you have got small cause courts. Take Aligarh, you have no regular small cause court.

Q. Why should not first grade munsifs have their powers increased?

A. Let them have Rs. 50 to Rs. 100.

Q. You would not be in favour of increasing the jurisdiction of subordinate judges to Rs. 750.

A. No.

Q. With regard to the selection of munsifs, you say that they must have at least five years' experience. Would you add to that some sort of competitive examination in procedure, or an obligation, after they have taken their degree, that they should serve in Chambers as practising lawyers?

A. I would personally suggest one year's association with some lawyer in the mofussil and five years' practice at the bar. I do not think any competitive examination is necessary. In my opinion, five years' experience at the bar would give a man sufficient knowledge as to how the case is conducted, how the pleadings are to be drawn up, etc. Personally I think a Selection Board consisting of three Judges would really meet the situation.

Q. With regard to admission of documents and admission of facts, is the chapter relating to admission being used in the mofussil?

A. In one city that practice has grown up. I would suggest that if a party does not admit documents when called upon to do so under rule, then the penalty would be that those documents need not be proved at all.

*Chairman.*—Supposing a man puts forward a false document and the other party refused to admit, then you suggest that the penalty should be that the document need not be proved at all.

A. If he is served with notice, his duty should be to come.

Q. Either to refuse or to admit?

A. Here what they do is that they do not reply one way or the other.

Q. So you say, if they do not answer, you should take it against them.

A. Yes.

*Sir T. Desikachari.*—Q. When a part of the amount is admitted, is the decree passed for that amount?

A. Not to my knowledge. Such cases do not occupy a long time.

Q. Are they not adjourned?

A. In hearing the practice in the subordinate courts is that if the case is very heavy adjournments are granted to issue processes or to settle issues, but in such cases only adjournment is granted for the final disposal of the case and the only dispute sometimes is about the rate of interest.

Q. I was reading the Allahabad Law Journal of the 20th February in which there appeared a letter from a gentleman whose name I forget. It is stated in that letter that decrees are prepared months and months after the judges have pronounced judgments. Is that correct?

A. The rule here is that decree is not signed by the judge till after a certain number of days. The official of the court takes a long time in going through the record and it remains there for about ten days. Then the draft decree must remain for about seven days for inspection by the pleaders. The decree in subordinate courts takes about three weeks, in the district judge's court it is done very early, while in the High Court also it takes about three weeks. Then certain copying establishments are very much under-staffed. I know in a district like Benares you cannot get a copy within less than six weeks.

Q. I forgot the name of the gentleman, but what he says is that it takes months and months before the decree is prepared and then another set of months for getting a copy.

A. That is exaggeration. The delay takes place in the preparation and signing by the judge and then this evil is due to the under-staffing of the copying department.

Q. Are execution applications dealt with speedily by munsifs themselves or are they left to the ministerial establishment?

A. Execution applications, as a matter of fact, go to the clerk in charge of the execution.

Q. Here again I am taking from the journal. It is said that it leads to too much corruption.

A. I think so because at each stage the clerk asks for his fee.

Q. In the subordinate courts are cases posted not knowing whether they would be reached?

A. I have seen the things improving now. In a sub-judge's court the first date of hearing is sometimes left to the munsarim but when the case is put up for hearing then adjourned date is fixed by the judge himself in consultation with the pleaders.

Q. So things are improving now?

A. Yes.

Q. With regard to the amendment in the Law of Limitation this is what the Madras Law Journal says regarding reversioners suits.—“But I would suggest in the present connection the introduction of a procedure by way of originating summons to consider and decide upon the *prima facie* propriety of proposed alienations by limited owners or persons with qualified powers. At the outset I would make it only permissive but the resort to it can be made fairly certain (at the instance of the intending transferee) if the law is changed so as to cast on the subsequent plaintiff the onus of displacing the presumption of validity arising from the Court's sanction.” What do you think of that suggestion?

A. I will not favour that suggestion. It will cast great burden on the courts.

Q. But would it not prevent people coming fifty years afterwards to establish a right with the aid of oral evidence?

A. My suggestion is that you must insist on the suit being settled within limited time by a close reversionary or by a remoter reversionary.

Q. That will entail lot of hardship on people like those who have daughters?

A. There may be some hardship in individual cases.

Q. But the public opinion will be in favour of this?

A. Yes. May I also add that in adoption also there is a lot of difficulty. My opinion is that attempt to set aside or establish the adoption must be brought immediately.

Q. Would you in this connection favour the view that every adoption should be evidenced by an instrument and that that instrument must be registered?

A. Yes.

Q. You will possibly give the same answer that all wills must be in writing?

A. I will first introduce that rule in certain urban areas and then freely in rural areas.

Q. With regard to the period of limitation in which suits against the Government or by the Government could be instituted sixty years are prescribed. With regard to local bodies it is thirty years. Why should not thirty years be sufficient for the Government?

A. Yes, I will reduce it to even less than thirty years.

Q. Why should not Government have that advantage: Government's property is nobody's property?

A. I will not give any advantage to Government. What happens now is that a man has been in possession of a property for fifty years and then some of his enemy complains against him and the man cannot prove his claim.

Q. Then you said that you would not be willing to curtail the limit of 60 years to 12 or 20 years in redemption suits.

A. I am not in favour of reducing the period.

Q. With regard to other mortgage suits?

A. In neither case I am in favour of reducing the period of limitation.

Q. What do you suggest with regard to alienation of trust properties? Would you like a special provision made similar to Article 141, enacting that in all cases of improper alienation of trust property, limitation will begin to run only from the time of the successor of the alienating trustee?

A. Yes, I would favour that.

Q. Have you answered the question relating to referees in certain class of cases?

A. No I have not. That practically is not followed here. What they do follow is that they refer cases to commissioners.

Q. The method of referring cases to arbitrators is becoming very popular and do you not think that powers could be given to courts to refer certain class of cases to arbitrators on the analogy of Section 14 of the English Arbitration Act?

A. We have not got any machinery here. Of course it will have to be created. You must have a bench of referees to which cases may be transferred.

Q. But don't you think that it will prove useful if certain class of cases are referred to arbitrators?

A. I have no personal experience of it. I can not give any definite opinion.

Q. Have you answered the question relating to sham transaction, i.e., the person who is a party to a document or a transaction says that the document executed by him is a sham and was never intended to be acted upon?

A. I have suggested that in my opinion no change is necessary in the existing state of things.

Q. In those class of cases in which a document is executed in favour of another man and the executant after five years says that it was a sham transaction and was never intended to be acted upon, do you think that such a plea should not be allowed to be set up? Don't you think that it will increase litigation?

A. The vendee who is in possession and has not transferred to anybody else can show that according to the document he got it. I do not think that it will increase litigation in any particular part of this province.

Q. Have you answered the question relating to partitions?

A. I have suggested that partitions should be evidenced by registered documents, but partnerships only in cities and not in urban areas for the present.

*Mr. Justice Stuart.*—Q. With regard to appointment of munsifs, do you think that it is possible to insist on the 27 years age limit, if the candidates have to get five years practice before they can be taken as such?

A. If you insist upon 27 years age, then it would be difficult for the candidates to have five years practice. I would suggest that the age limit should be increased to 33 years.

Q. I suppose you know that the fact that the man has been in good practice tells very much on the Committee?

A. That was not considered to be an important factor in former days?

Q. I am not talking of former days. Let the dead past bury its dead and get on with the present. Don't you think that it now counts much at the time of selection?

A. Yes.

Q. With regard to second appeals, I quite see your trouble and the trouble of the public. The trouble of the public is that they object to having a good decision upset by an incompetent court which is not in a better position to understand the point involved. What is your view about that?

A. I have heard many objections myself and I think the High Court should be given the power to interfere. I would refer the case of Durga Chaudhrani. I am compelled to cite that ruling because I was respondent and I never forget it.

Q. Does it not strike you that a much more effective method of deciding all these appeals would be that they should be heard in the first instance by a bench in the district of two judges?

A. I think that arrangement will be quite satisfactory.

Q. Do you think that in second appeals in this court substantial points of law are raised very frequently?

A. Yes.

Q. In how many cases?

A. I may say about 20 to 25 per cent. of the appeals.

Q. You say then that, if on a question of law an appeal is to be made, leave should be given by the judge certifying that the case involves a question of law?

A. I think that would improve the situation very much.

Q. With regard to the question of registering wills how can you deprive a Hindu of the right of making a nuncupative will when it is a personal law?

A. That has been done in Bengal under the Hindu Wills Act.

Q. Do you find any suggestion to improve the pleadings by which we can reduce the appeals?

A. What I suggest is to penalise the parties in costs, and a stricter examination of the pleadings at the time of the framing of the issues.

Q. In your experience how often is Order VIII, Rule 4, relied on?

A. Very seldom.

Q. Did you ever hear of a leading counsel in Lucknow who used to frame his pleadings and could argue the case in one way in a subordinate judge's court, a second way in the Judicial Commissioner's Court and a third way in the Privy Council?

A. I know of some pleaders who draft pleadings in that way. It is a good art.

Q. Could you suggest anything to stop that?

A. So far as the province is concerned, stricter examination of the pleadings on the date of the issues and a rule to be drawn up by the High Court insisting every party to be present as far as possible excluding pardanashin ladies.

Q. Don't you think that a good deal could be done by impressing on the courts the necessity of doing that?

A. Yes.

Q. Of course we have got rules.

A. They are very seldom observed.

Q. Is Order XIII, Rule 1, complied with?

A. That practice is gradually improving now. I have now known subordinate judges who would not look at an unregistered document if filed late.

Q. Now do you find that under Rule 3, the court very seldom rejects document as irrelevant?

A. Very seldom; at least never till the argument is over.

Q. Is that due to the court's fault? The court sometimes gets rather unreasonable strictures passed on it.

A. In this province you do not get an admission or denial on the date of the hearing at all. That is a great difficulty.

Q. I think your case is that it is very very difficult to expect this very fine standard from men who work under these difficulties?

A. Yes.

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**Mr. JAMES MOSS, Representative of certain Manchester Mercantile Firms.**

WRITTEN STATEMENT.

I have been in this country on four occasions having first arrived in 1912 and have spent seven years here.

My first term was for four years as manager of a firm of merchants in Calcutta, during which time I had to file several suits, but had no cause for complaint regarding the civil courts, but had cause for serious complaint regarding the police court.

My second visit to this country for 15 months was during 1920-21 and my only cause for complaint during this period also related to the police court.

My third visit, during the autumn of 1921, was only of short duration, during which time I was not interested in litigation.

My present stay in the country dates from September 1922, the object of my visit being to prosecute claims on behalf of several Manchester merchants, who had litigation in Calcutta, Delhi and Bombay.

In my Calcutta matters the suits had been filed in June 1921 and appearance entered in August of the same year, but the written statements were not filed until March 1922 and the suits had not appeared on the board for hearing by October 1922, by which time the defendant firms had disappeared from business, and owing to the impossibility of tracing the financial partners of the firms, compromise had to be effected with very heavy loss to my principals. These delays are general.

In Bombay, it is a well-known fact that a suit filed to-day, if fixed as a long cause matter, does not reach the hearing stage, even though no interlocutory proceedings are taken, for about four years, during which time it has happened in several cases that litigants and witnesses have died, in consequence of which, the claim or defence could not be proved and justice could not be meted out.

This is a scandal, which can and should be avoided.

In the Bombay High Court suits can be filed either as a short cause or long cause, besides those filed as commercial causes and summary suits.

A commercial cause has many advantages inasmuch as it comes on for hearing within four months, but if interlocutory proceedings are taken it may be 9 to 12 months. The unfortunate part of proceedings in this matter is that such suits must be filed within three months from the date of accrual of the cause of action. It is a well-known fact in commercial circles that a debtor always pleads for some time in which to meet his liabilities and such request is invariably granted, but if the debtor fails to meet his liability at the time granted, it is then too late to institute proceedings as a commercial cause. This can and ought to be avoided by proper legislation, so that unnecessary delays may be avoided. There is neither rhyme nor reason for such a restriction for the filing of a commercial suit. If such restrictions were removed it would be a great blessing not only to the commercial community of Bombay but also to the commercial community in England.

In the case of creditors in England, under present conditions, three weeks or a month elapse before they are aware of the cause of action, after which time enquiries are made, incurring a further loss of time, after which the papers relating to the matter are sent to an attorney in Bombay who has to acquaint himself with the facts of the case by which time the three months have expired and the suit cannot then be filed as a commercial cause.

It is not considered commercial morality to file a suit immediately the cause of action arises.

Summary suits: Prior to January 7th of this year a suit filed as a summary suit, if a written statement of defence were filed the matter would be transferred to the list of long causes and a suit on D/P note or accepted bills filed as a summary suit would be transferred to the list of long causes, thereby taking about four years for disposal.

Since January 7th, however, the Honourable the Chief Justice of Bombay, Sir Norman McLeod, a most conscientious Judge, has passed certain rules, whereby not only summary suits filed on D/P notes and accepted bills are expedited and the hearing takes place within six months but he has included in the category of summary suits the liquidated claims arising on contracts or otherwise. If this procedure were adopted by other courts much time would be saved.

Drastic action should be taken regarding the service of summons. At present, a server will take a summons to a party and the latter after taking full particulars of same will give the server a few rupees and ask him to return it with the report that the party cannot be found. This necessitates further trouble and expense in making application for substituted service. On several occasions I have had to accompany the server myself and on one occasion was put to the expense of travelling from Bombay to Delhi to effect service of summons. I have had difficulty in serving summons on witnesses due to the efforts of a defendant and although such matter has been reported to the court no action has been taken.

In one case it was only by means of substituted service and after three months that service of summons was effected in one of my suits, yet two months before service, I was informed that the defendant had a copy of the plaint. Although a suit on accepted bills, the judge adjourned same for nine months and then asked my counsel what the case was. The day prior to the suit being called I heard what the decision was to be. This long adjournment was very useful to the defendant as he is now insolvent and the hopes of recovering my claim of about two lakhs are now very remote.

In a recent suit of mine in Delhi, a matter was referred to a European gentleman of that city, for an opinion and same was returnable on January 25th. Before that date I left that city but in due course was informed by my lawyer that the court had not received this opinion and the suit was adjourned in consequence. Suspecting that this report was not correct I wrote the gentleman in question and informed him of the court's statement and asked on what date his opinion was sent. I received his reply to the effect that it was sent to the judge on January 17th and was signed for accordingly.

Although this particular suit is a simple one of accepted bills I have paid six visits to Delhi over the matter without result.

It is the rule in this country rather than the exception that perjury be committed particularly by defendants, aided and abetted by their attorneys who draw up written statements knowing that much of same is false. The attorney draws up a lengthy and complicated written statement with the idea that the judge will think it a long suit and adjourn same whereas it may be a suit that could be disposed of in a few minutes, but with very few exceptions such written statements answer their purpose. This should certainly be obviated and the court should take action against such people, making the attorney a party to the offence.



A matter in which I am interested: a party has been adjudicated insolvent and the address at which the business was carried on was, at the time of the publication of the notice, an empty office. The empty office was sealed by the court assistant who apparently did not report the fact. On the date fixed for the filing of the schedule no word was received from the insolvent and no action had been taken by the court to obtain any information.

It is a well known fact in this country that the majority of firms trade under names other than those of the partners, also that the alleged partners have no active interest in the business. In many cases when proceedings are instituted it appears that the alleged proprietor is at the time of filing the suit a minor, although the business has been carried on for many years under the same name. It is also a well known fact that businesses are carried on under two or three different names and styles although actually under one ownership. By this means bogus transactions can be made and monies due to creditors of one of the firms are transferred to the other firm or firms and the defaulting firm does not mind being adjudicated insolvent. Legislation should be introduced enforcing the registration of partnerships.

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**Mr. JAMES MOSS called and examined on Friday, the 14th March 1914.**

*Chairman.*—You are Mr. James Moss?

A. Yes.

Q. And I think you have been in India since September 1922 in connection with suits filed on behalf of certain Manchester merchants. I think you have something to do with the litigation in Calcutta, Delhi and Bombay. Now I understand that in these cases the suits have been on accepted bills of exchange, these bills of exchange having risen in connection with contracts of piece goods on C. I. F. term. And in these cases, as I understand the matter, the bills have all been discounted and the bills were with the banks and the goods probably in the godowns of the banks?

A. In one or two instances we had paid part of the money to London office of the bank.

Q. Now can you tell me whether in these cases in which the dealings have taken place the firms had known Indian customers or are these cases where the people at home have rashly thrust the goods to the credit of Indian firms?

A. They have been with people who on reports were believed to be reliable.

Q. Were they first transactions?

A. In some cases they were.

Q. I understand that you had to do with some suits in Calcutta and you tell us that suits were filed in June 1921, the written statement was not filed till March 1922 and the suits appeared for hearing in October 1922 and that by that time the defendant firm had gone out of business.

A. Yes.

Q. That was the time, of course, of tremendous slump in piece goods market, that is to say, not only the prices of piece goods gone down very much since the time the order had been placed but also the rate of exchange probably had gone against the Indian buyers—I mean any time after September 1920?

A. Yes, the rate of exchange had depreciated.

Q. Can you find out for the Committee the number of the suits so that we can send for records?

A. I have got a copy of the plaint.

Q. Can we keep it?

A. Yes.

Q. This is one case, suit No. 2769 of 1921. The first thing, I understand, is that the written statement was not filed till March 1922 although the suit was filed in June 1921. Can you tell me whether anything was done to compel the written statement being filed earlier?

A. I do not know. I have written to my lawyers to give me that information.

Q. Because in the ordinary way when application was made in June then long vacation would have commenced. You do not know the facts?

A. No, I have written to my lawyers. I wrote to them last week for the second time by registered post but I have not received any reply yet.

Q. When they come will you let us have them?

A. Yes.

Q. What happened, did these suits come up for hearing at all?

A. No, finally we compromised for Rs. 13,500, payable in instalments.

Q. For how much was the total claim?

A. Forty thousand, something near half a lakh of rupees.

Q. At that time in the piece goods market the people were, I think, very generally offering concession and in this particular case did you attempt first of all to settle by offering concessions, before you filed the suit?

A. My predecessor attempted to settle the case but they did not agree.

Q. And in the result you compromised for thirteen thousand for a claim of thirty-nine thousand?

A. Yes.

Q. What was that claim of thirty-nine thousand, was that a claim on the face bill of exchange?

A. No, it was for damages based on the market rate after re-selling the goods.

Q. Was that transferred to the commercial list?

A. I do not think so.

Q. Why was that not transferred to the commercial list?

A. Of course this is the information which I am awaiting from the lawyer.

Q. Were some other suits in Calcutta based on bills of exchange?

A. No, they were for damages after re-sale.

Q. Do you know the numbers of them?

A. One was No. 2271 of 1921.

Q. What about the second case? Was it of the same character? What happened in that case?

A. We compromised that case. Its value was about one lakh and twenty thousand rupees. There was very little hope of recovering the money and so it was compromised. They agreed to pay in instalments. We have up to this time received Rs. 1,250. I have now asked my lawyer to take action in the matter and to ask them to pay the full value.

Q. I take it both of these cases were filed in Calcutta?

A. Yes.

Q. I understand the reason why they were not able to pay was that there was collapse in exchange and tremendous slump in the market?

A. My opinion is that they were able to pay. I have dealt with Marwaris and they were quite in a position to pay. It was admitted by one of them in the presence of their lawyers that they had covered exchange. I am sure of it that they covered the exchange and sold their goods and made enormous profits. I know that the fact that they had covered exchange was admitted by one of these defendants.

Q. Would you just tell me when you compromised the first case, I think its numbet was 2769?

A. Yes. That case was compromised in October 1922.

Q. And the written statement was filed in March 1922?

A. Yes.

Q. What about the other suit? When was that case compromised?

A. In December 1922.

Q. And in that case the written statement was filed in the same month? When was the plaint filed?

A. It was filed on the same date as in the first case. Perhaps it was in June.

Q. Was appearance obtained in both the cases?

A. Yes.

Q. When did you sell your goods in these cases?

A. Before the suits were instituted.

Q. Have you had any suit relating to bills of exchange in Calcutta?

A. No, not in Calcutta.

Q. You say you have had some experience in Bombay?

A. Yes.

Q. There if a suit is fixed as a long cause matter, how much time does it take?

A. About three or four years.

Q. I understand you to say that from January this year it is possible to file suits as summary suits?

A. Yes.

Q. And so far as this arrangement is concerned your only criticism is that the rule should be enforced as early as possible?

A. Yes.

Q. In Bombay what were your suits about? Were they about bills of exchange or breach of contract?

A. Bills of exchange.

Q. In these cases I take it you have applied Order 37, i.e., the defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter provided so to appear and defend, and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted?

A. Yes.

Q. And did you get a judgment *ex parte*?

A. In Bombay I got an *ex parte* decree. I think the defendant was present in court, but he did not contest the case.

Q. Do you know that these cases were brought under summary procedure?

A. No, they were not brought under summary procedure, because they were too late.

Q. Could you send us documents in any case of bill of exchange in Bombay?

A. This particular case was transferred to the long cause list and a very long date was given. In the first place I may mention that it took more than three months to serve the summons.

Q. Then this particular case you say was not brought under Order 37?

A. No. The defendant adjudicated insolvency and the case has not yet been brought up in court for hearing. In this case notice was served upon the defendant and he was asked to supply the court with schedule, but he failed to do so and apparently no action was taken. Then I applied in the official assignee's office and explained everything there to the superin-

tendent. I also heard that the man intended to leave Bombay and to go to his own part of the country. I asked the clerk of the official assignee what to do and the official assignee sent an order to the man that he should present himself with all the books and accounts for examination.

Q. Did you move the High Court in insolvency to do anything?

A. I did everything as far as it lay in my power to get them produce the books.

Q. When did you do that?

A. By the end of January or in February.

Q. Did they produce the books?

A. They did not produce the books and stated that he was no longer a partner of the firm. Subsequently a letter was sent calling upon him to produce all the books and he did not come.

Q. So, he never complied with the summons for examination?

A. No.

Q. Then what happened?

A. The official assignee took steps to compel his attendance.

Q. Have you any other case in Bombay where you had been subjected to any unreasonable delay?

A. My principals have sued two firms in Bombay on accepted bills. One of these cases is Suit No. 2 of 1923—Cox & Co. vs. H. Pastinge & Co. The suit was called up in February, I think. It was transferred to the short cause file and a date was given in July. I was summoned to attend as a witness. Of course the case was reached. It went on up to just prior to the summer vacation. The judge had not been able to dispose of it quickly. The suit is not yet reached. As far as I know it cannot be reached before June.

Q. Is that suit brought by the bank on a bill of exchange?

A. Yes.

Q. Was any application made to get security for the debt?

A. No.

Q. You say you brought another suit?

A. Another bank has brought a suit against the same defendants. That case was fixed as a short cause to be heard in February. It was not heard in February. I had written a letter to them asking them to inform me the approximate date when the suit would be taken. They have made enquiries and written to say that it will not be heard before June of this year.

Q. What is the number of that case?

A. I cannot give the number.

Q. Will you give the particulars so that we can send for the records?

A. Yes.

Q. Have you had some experience in any case in Delhi?

A. At the time of writing my memorandum I had one suit. I have filed another suit subsequently.

Q. What was that for?

A. That was for money due on accepted bills.

Q. This will not be a bill of exchange that arose at the time before the slump?

A. About the time of the slump.

Q. What is the date of the bill of exchange?

A. 1920 September.

Q. How did you go in May or June 1923 suing on a bill of 1920?

A. The pleader made a settlement with the client and he wanted an allowance of 27 per cent. to take up the goods. He took 14 cases out of 30. When I went to Delhi in October or November 1922, I called on the man and

persuaded him to take up the balance. But he did not. Eventually I had to file a suit against him.

Q. When you filed the suit you filed on the original bills?

A. For the balance due on the two remaining bills.

Q. You started on June 29th. What happened?

A. In the first place my lawyer wrote to me that summons had not been served on the defendant.

Q. Where was the defendant?

A. He was in Delhi. When I came to Delhi I served it on the morning of my arrival.

Q. Had you any difficulty in finding him?

A. No. He refused to accept the summons. But in the meantime I had obtained sanction for substituted service and had it affixed on the door of his house.

Q. What happened then?

A. He was given a date for filing his written statement. He filed it in July 1923. After several adjournments, the suit is still pending.

Q. Have you had any discovery of documents? Have you made him disclose his books?

A. I asked him to produce his books; but he has not done so.

Q. You simply called upon him. The court made no order.

A. Not yet.

Q. Since you got his written statement what has your lawyer done by way of hurrying up the suit or getting it ready?

A. Everything possible. I have taken care to waste no time. The great trouble on one occasion was that the man who was summoned to produce documents was served only the day before the date of the hearing. The evidence he had to produce consisted of copies of about 100 letters and consequently he could not produce it.

Q. Was he called upon by the defendant to produce it?

A. No. By me.

Q. He was served only on the date prior to the date of the hearing?

A. Yes.

Q. When was the process taken up?

A. 10 days before.

Q. You wanted him to produce a number of letters and copies of documents. Don't you think that a period of 10 days is rather taking a risk?

A. I think that 10 days are ample.

Q. You never asked him personally to be ready at court.

A. My lawyer said: "You had better do it properly through court." It is now a part-heard case. The judge has recorded some evidence.

Q. When did he do that?

A. On the 16th February.

Q. Why was it adjourned?

A. The case was not completed on the rising of the court.

Q. Then how long did he adjourn it?

A. To the 19th of this month.

Q. From January to March?

A. From February to March 19th.

Q. What happened to the goods?

A. The goods are at present lying in the bank's godown. I stated that the best season to sell them would be January or February. The matter came up before the court again in January. The court issued an order to a Mr. Grey in the firm of R. H. Wood, asking his opinion as to the best time to sell the goods and whether he thought the goods would deteriorate or not, and the date fixed for his report was 25th January. I asked my lawyer to wire me the result. He only wired me to say that Mr. Grey's report was not received. This appeared to me to be very, very strange, and so I again asked my lawyer to make enquiries about the delay. At the same time I wrote to Mr. Grey stating the facts as I suspected . . . . .

Q. In the end he sent his report on the 17th.

A. Yes.

Q. Did the defendant in that case say that he was not liable to take the goods?

A. Yes.

Q. Have you got anything to say against lawyers?

A. Yes. They make certain suggestions and the court accepts; in one case, they challenged my power of attorney, which necessitated my sending to Manchester a copy of the resolution. When that was produced in court, the case was started. The manager of the Mercantile Bank was asked whether he knew me and also whether the document was the particular power of attorney. They also challenged the signature in the document. He was also asked, how he knew that it was the signature of the party;

Q. Did the judge give him permission?

A. No, not in this case.

Q. Have you got any other grievance?

A. Well, I have got something to say about the purchase of court fee stamps. On this particular suit to which I am referring now, I paid the money to my lawyer's clerk for the purchase of stamps. So he made the application for stamps. As I was leaving the following day for Bombay, I wanted to file the suit before I left. My lawyer's clerk told me that the stamps could not be got before Monday. When asked the reason, he told me, that unless something extra is paid to the stamp vendor, he won't comply with the request promptly. I went myself, got the stamp and had the suit filed in an hour.

Then as regards the service of summons, here is a summons dated the 17th of November 1922, calling upon me to give evidence on the 18th. The notice is very short.

Q. But this is a summons taken out by your own firm to give evidence.

A. Yes.

Q. Who served it on you? The peon of the court?

A. There is a particular bailiff, who serves summons on Europeans.

Q. Can you give me the number of the suit in Delhi?

A. This is a suit in which I was asked to give evidence as a witness. One of my pet theories is the perjury that is committed. No action is taken against that.

Q. What sort of perjury?

A. Absolutely false statements, which are known to be false by the attorney as well as by the defendant. I had a case in Bombay on accepted bills. In this case the defence had made some written statement after a long time. On the morning of the hearing of the suit I had been in court and sat just two feet away from the defendant. The case related to some goods bought by

the brother of the defendant. The goods were shipped in October which was quite in order under the terms of the contract. In the written statement they stated that the goods were shipped late and that they ought to have been shipped in September. His counsel came to me and said that he had seen the contract. When the case was called, I went into the witness box. The counsel for the defence got up and said, "My Lord, the brother of the defendant who is now in Manchester bought these goods for shipment in September." I thought I should not interrupt, but it was a good opportunity for me to expose their fraud. So I got up and said "approximately September" and there was a sensation in court.

Well, here is a case where the defendant made a false statement and the lawyer abetted it.

Q. Have you got any other complaint to make?

A. Yes, there is the question of the service of summons. Some people have suggested service by registered post. I say it is impracticable, because the postal peons are as bad as the court peons. What I would suggest is that summons should be taken to the place of residence or business of the defendant. If the man is not there, a substituted service should apply automatically.

Q. In Bombay or Calcutta there should be very little difficulty where processes can be served at the place of business?

A. In that case I will suggest that summons be sent by post. In fact it has been admitted that these court peons do not get very much pay and it is quite possible that when summonses are sent by registered post the peon will come and inform the party that it has been sent and that he should be prepared for it. If the man cannot be found in the place of business the process should be fixed on his door. I took three months and then it was served by substituted service. But two months before I knew that the defendant had a copy of that and he knew that the judge was going to place the case on a long cause list.

Q. What do you suggest about that? You are dealing with Bombay or Calcutta in that case?

A. That case was in Bombay.

Q. That is the High Court Judge?

A. Yes.

Q. How did you know beforehand that the Judge was going to decide that your case was to be placed on the long cause list?

A. As a matter of fact I knew it beforehand that the Judge was going to place my case on the list for long adjournment.

Q. How did you come to know that the Judge was going to do that?

A. I learnt it from a merchant in the bazar that my case was not coming up for hearing to-morrow and that the case was going to be transferred to the long list.

Q. Now you say that the defendant knew in one case what the Judge was going to do. What do you suggest in regard to that matter?

A. I think the Judge had no right to suggest that matter be transferred to the long list. I have got the synopsis of the case.

Q. Have you gone through the synopsis together with the evidence? Do you find anything to which you want to draw attention of this Committee apart from the points which you have already mentioned?

A. Only I would like to say regarding the insolvency matter, the matter to which I referred. The man was ordered to appear and he did not appear.

Q. That is about summons?

A. Yes.

## Saiyid Wazir Hasan Shaheb, Judicial Commissioner, Oudh.

## WRITTEN STATEMENT.

1 and 2. The periods reasonably required for the disposal of the following classes of Civil proceedings are as below:—

*Judicial Commissioner's Court.*

Class of proceeding.	Period reasonably required.	Average time taken in disposal.
(a) Original suits . . . .	Not tried in this Court.	
(b) First civil appeals (Bench) .	6 to 8 months . . . .	Time has varied in different years from 10 to 18 months.
(c) First civil appeals (Single) .	6 months . . . .	About 3 months.
(d) Second civil appeals . . . .	6 months . . . .	Duration has varied from 4½ to 18 months. At present these have to be kept without date for one year before a date can be fixed for hearing.
(e) Miscellaneous appeals . . . .	3 months . . . .	About 2 months. Before 1915 this used to take 5 to 9 months.
<i>District Courts.</i>		
(a) Original suits . . . .	Same as Subordinate Judge.	4 to 11 months.
(b) Regular appeals . . . .	6 months . . . .	3 to 7½ months.
(c) Civil miscellaneous appeals	3 months . . . .	2 to 6 months.
<i>Subordinate Judge's Courts.</i>		
(a) Original suits of title . . . .	One year . . . .	5 to 7 months for contested and 2 to 3 months for uncontested.
(b) Original suits of money . . . .	3 months . . . .	Same as above.
(c) Regular civil appeals . . . .	6 months . . . .	3 to 5 months.
(d) Miscellaneous appeals . . . .	3 months . . . .	2 to 3 months.
(e) Small causes . . . .	5 to 6 weeks . . . .	1 to 2 months for contested and 4 to 7 weeks for uncontested.



Class of proceeding.	Period reasonably required.	Average time taken in disposal.
<i>Munsifs.</i>		
(a) Original suits of title . . . .	6 months . . . .	3 to 4 months for contested and 1½ to 2 months for uncontested.
(b) Original suits of money, rent, etc.	1½ to 2 months . . . .	Same as above.
(c) Small causes . . . .	One month . . . .	5 to 7 weeks for contested and 4 to 5 for uncontested.
<i>Execution proceedings.</i>		
(a) Immoveable property . . . .	6 to 8 months . . . .	No statistics are kept but the period is longer than what it should be
(b) Moveable property . . . .	3 to 4 months . . . .	Same as above.

The main causes of delay apart from the insufficient number of judges are :—

#### *Judicial Commissioner's Court.*

2 and 3. With the exception of second appeals, the work of this court is quite up-to-date and is promptly done.

(1) Non-service of processes, deaths of parties and substitution of their heirs, etc.

#### *District Judge's Courts.*

The increase in the duration of civil appeals is, as the subjoined statement shows, very marked. The number of such judges has increased during practically the same. There is undoubtedly great dissatisfaction on account the last 30 years by 50 per cent., but the total outturn of work remains of civil appeals being kept without date for months until they can be transferred to an additional or a subordinate judge for disposal.

That the administrative work of the district judge has increased can admit of little doubt. It is also clear that a sessions trial now takes longer time.

The causes of delay are as follows :—

- (1) Too frequent transfers than before. It is noticeable that the number of district judges who are allowed to stay for a reasonably long period at one place is small. There is also more leave taking than before. Naturally a temporary or an officiating man who knows he is not to stay long does not take much interest in the work.
- (2) Want of proper training in civil work. This naturally gives rise to a tendency to avoid doing civil work, particularly that involving intricate questions of procedure and law. It is also not right that a district judge who has had no experience and training of civil work should be made to hear appeals from the decisions of experienced munsifs and subordinate judges.

It should be made a rule that no district judge shall hear such appeals unless and until he has had actual training as munsif for at least one year, and as subordinate judge for at least two years.

- (3) The district judge has rather too much miscellaneous and administrative work to do and he should be relieved of some of it by transferring it to subordinate judges and munsifs, *e.g.*, appointments of officials of different courts from the divisional list as prescribed in para. 644, O. C. D., Supervision of the nazarat, the record room and the copying department, etc.

Land Acquisition cases, Trust cases, Probate and Succession matters could and should be transferred to selected subordinate judges.

*Subordinate Judges and Munsifs.*

The most important cause of delay is shortage of officers and the growing complexity of the litigation. In addition to this the causes of delay may be briefly summarised as follows:—

(1) Dilatoriness of parties, *e.g.*, non-payment of process-fees at the proper time, summoning of witnesses at a late stage, not coming prepared to give their counsel full and proper instructions and all the documents necessary to have the pleadings drawn up, etc.

By being more strict, courts could help in an improvement in removing this dilatoriness, but this should be done gradually. Too great strictness will probably result in injustice.

(2) Very often the plaintiff or applicant gives a wrong address of the opposite party in the plaint or application without caring to first find out whether the man is actually there. The result is that notices and summonses are received back unserved and delay occurs. Under Order 6, Rule 2, the plaintiff is required to ascertain, as far as possible, the correct address of the defendant or opposite party.

(3) One of the most serious causes of delay is the way in which pleadings are usually drawn up. Loose pleadings due to the negligence or incompetency of the pleader or the petition-writer waste much time of the court and further delay occurs if the latter is not particularly careful to have them rectified. By reason of such pleadings, clear cut and succinct issues are not framed; unnecessary evidence is led, arguments are long and tedious, and judgment takes time of the trial as well as the appellate court.

The following suggestions may be made on this point:—

- (a) Forms of plaint given in the Civil Procedure Code should be as far as possible adhered to.
- (b) Presiding officer should personally receive and examine plaints in other than simple cases and return or refuse those that are defective. Pleaders or petition-writers found to be habitually negligent in this matter may be warned.

Order 6, Rule 17, should be acted upon at the earliest opportunity.

- (c) The same procedure should be adopted in the case of written statements.
- (d) The presiding officer should record the substance of the plaint and the written statement in the proceedings, *i.e.*, he must have a methodical record of the arrangement of the grounds of claim and defence.
- (e) When this has been done the parties should be examined thoroughly on oath as suggested in Question No. 33 in order to clear the pleadings further.
- (f) The documents should be carefully examined when they are filed and their perusal should not be left until the close of the case as is generally now done. It is only when the trial Judge has mastered the pleadings and the documents that he can properly control the evidence and curtail the time.

- (g) The provision regarding discovery and interrogatories should be more frequently resorted to.
  - (h) The filing of the written statement on the date fixed for it should be insisted upon.
  - (i) Application to summon witnesses should be made within 10 days from the date of issues.
  - (j) This application should be received by the presiding officer and should be carefully scrutinized. He should issue orders for summoning witnesses in the presence of the parties or their pleaders.
  - (k) Proof by affidavit may generally be accepted in *ex parte* proceedings.
- (5) Unnecessary denial of documents by parties and their counsel. The Court should have power not to allow costs of the party or pleader who unnecessarily denies the documents.

To prevent unnecessary formal evidence being produced on the point the court may, whenever proper, accept proof by affidavit; registered documents may be presumed genuine. In regard to documents required to be attested there should be a rule that they shall contain an attestation clause and that where such clause exists the necessity to call an attesting witness may be dispensed with.

(6) The provisions of Order 18, Rule 2, are very wholesome and if they were followed evidence would certainly be curtailed and the time taken in arguments considerably reduced. It is absolutely necessary that both counsel and court should know what the case of the parties is, both as to facts and law and how it is intended to prove it. A strict compliance with this rule would do away with the present unsatisfactory method of first leading evidence and then trying to construct a case out of it as well as with the laxity in arguments. Too much emphasis cannot be laid on this point and the sooner trial courts are asked to give up the present and wrong procedure of hearing arguments after the entire case has been closed, the better.

(7) In the matter of lengthy arguments the Government of Bihar and Orissa have stated that in this behalf it is the High Court which has to set an example to the subordinate courts: the former being a little too indulgent, the lower courts feel their position to be difficult in acting fearlessly and independently in the matter of stopping counsel in their arguments.

(8) Bad arrangement of the cause list and not trying the cases from day to day as laid down in the rules.

The Greeven Committee laid down a certain standard of work, namely, two subordinate judge's appeals or three munsif's appeals per day for a district judge, one contested suit in one and-a-half day for a subordinate judge and one and-a-half contested suit per day for a munsif. This standard is not generally too high, but some officers have found it difficult to attain to it. The work of officers is often judged by the number of cases tried by them with the result that simpler and easier cases are given preference over tedious and intricate ones to show a large outturn, and delay thus occurs. It is necessary to remove this feeling from the mind of the presiding officer that quantity more than quality will weigh with his superior authority. This seems to be the principal reason why too many cases are fixed on one date. Some officers also have an idea that there is no harm in adjourning a new case in preference to an older one and on the off-chance of its being compromised or put off by reason of non-service on witnesses they fix more work than they ought to do. If it were impressed upon them that a too strict adherence to the standard of quantity will not be required and that they must do a case from day to day according to rules duration could be curtailed. Frequent inspections by the district judge and the Judicial Commissioner would ensure the strict observance of this rule, and particularly so if the presiding officer knew that his future promotion and prospects depend upon the method and quality of his work. If his files and cause list were

examined at the time of inspection it could be easily found out whether he has utilised his time properly and fully.

(9) The concentration of too many courts in one place is an element of delay. Parties have to travel long distances and thus more time is taken by them to perform the necessary acts in relation to proceedings. Process-servers have also to undertake long journeys to serve defendants and witnesses and presiding judicial officers are not able to exercise independent control as before. The central nazarat system has proved a complete failure and the sooner it is done away with the better. Munsifs' courts should be transferred to suitable places in the interior.

(10) Non-service of defendants and witnesses through process-servers.

It is difficult under the prevailing conditions in the country to substitute an entirely different agency. Improvement can be effected only by more strict supervision over the process-servers and devising safeguards to minimise collusive or false reports by them. In the first place as has been said above the central nazarat system should be abolished: each presiding officer should have full power to punish a process-server found at fault. The making of the reports to the district judge or subordinate judge is found rather distasteful and officers naturally avoid it. Prosecution of chaprasi for false reports should be more frequent. They should be given printed forms prescribing all the details which they are required to give in order that the service might be considered sufficient. Their diaries should be more frequently checked and their promotion should be made to depend upon the way in which they effect service.

Simultaneous service through registered post also should be more frequently resorted to.

As regards the *sufficiency of service*, service on the male members of the defendant jointly residing with him should be accepted as sufficient. In case of this being not possible the fixation of a summons and beat of drum at the same time should be considered as sufficient provided that the report of the process-server is written on the spot and is attested by two neighbours of the defendant or the patwari or the chaukidar or the mukhia or the school teacher or one of the panches. The cost of the drummer should be deposited with the plaint or the application so that it may not be necessary to send the chaprasi twice over.

As regards the service on witnesses the primary responsibility should rest on the parties. Summonses could either be handed over to the party himself for being served on the witnesses or he may be asked to help the process-server in its service, and no fresh summons should be issued unless the court is satisfied that the party has done all that could be reasonably expected. The notion that an unserved witness is biased and that for this reason alone his testimony is liable to rejection should be discouraged and the parties should be encouraged to bring their own witnesses before summoning them.

It would be advisable to require the parties to give a registered address service at which should be deemed sufficient, not in all cases, but for particular cases only.

The suggestion in Question 30 about a process-server reporting himself to the pleader does not appear to be of much practical use.

(11) The appointment of guardian for minor parties if made in the same manner as suggested in Question 41 would effect much saving. Instead of successive petitions being filed as each proposed guardian refuses to act, the plaintiff should be made to name all the possible guardians in one petition, notices should be made to go to them simultaneously and the court should appoint after hearing of the petition the one best fitted to safeguard the interests of the minor. If one of them is willing the court may then and there appoint a pleader or an official without further notice.

(12) The proceedings for substitution of heirs in place of a deceased party cause much delay. The suggestion in Question 40 about throwing the duty of being made the party on the legal representative is likely to work hardship.

and injustice. On an application being made a public citation should be issued in the names of the proposed representatives as is done in matters of probate and administration and disposed of at an early stage.

(13) Examination of witnesses on commission.

The pleader-commissioners are not in a position to control their own brethren appearing before them and it does not seem to be of much use to add to their powers. The insistence of written interrogatories except in special cases would lessen the number of commissions and the extension of the limit of residence of the witness from 200 to 500 miles would also be useful. It is eminently desirable that as far as possible witnesses should be examined before the court.

The following suggestions would also, it is believed, tend to speedy and less costly disposal of civil work:—

- (a) Jurisdiction of munsifs should be increased from one to two thousand and in the case of selected officers to five thousand on the regular side and to five hundred on the small cause court side. Subordinate judges may be given small cause court jurisdiction up to one thousand. Village panchayats could be given jurisdiction in simple cases up to Rs. 25 or Rs. 50.
- (b) The provisions or Order 7, Rules 3, 15 and 18, should be followed strictly as well as those of Order 8, Rules 3 to 5.
- (c) Order 10, Rule 1, is not generally observed.
- (d) The district judge should inspect his subordinate courts at least twice a year and the Judicial Commissioner or the Additional Judicial Commissioner at least two district judges' courts, four subordinate judges' and four munsifs' courts every year. The presiding officers should inspect their own courts once a month and a definite rule to the above effect should be laid down so that compliance may be made. This will ensure the proper working of the officials as well as of presiding officers.
- (e) Secondary evidence may be allowed to be given in any form with the consent of the parties, for example, printed papers by the High Court in a previous litigation.
- (f) The period of limitation for redemption suits ought to be curtailed from 60 to 20 or even 12 years and the period of pawn or pledge should also be reduced to 12 years.
- (g) It would be well if all partition of immoveable property were evidenced by a registered document.
- (h) The same observation applies to partnership started with a capital of Rs. 100 or more.
- (i) The same observation applies to the discharge of obligations created by a registered document.
- (j) There is no justification for making void all transactions of champerty and maintenance. The poor in India have no other means to get their rights remedied.

Caste disputes, suits for restitution of conjugal rights, divorce and dower may very well be referred to referees nominated or selected by the court.

*Execution of Decrees.*

The following suggestions are made to lessen the duration of execution proceedings:—

- (1) The supurdars to whom moveable property is entrusted for custody should be made liable by attachment of their property in execution in case they do not produce it when called to do so.

- (2) The principle of section 21, Civil Procedure Code, should be applied to execution proceedings and the plea of want of jurisdiction should not be entertained unless made at the very beginning.
- (3) The court to which the decree is transferred should have the same power as the court which passed the decree, of adding legal representatives, recognizing assignment of the decree, etc.
- (4) A stranger auction-purchaser may be included under section 47, Civil Procedure Code, by a proviso to this effect being added to this section.
- (5) The period under section 48, Civil Procedure Code, for execution of money decrees should be reduced to 6 years where the value of the property does not exceed two thousand and for others to 9 years.

There should be no necessity for taking out execution every three years and Article 181 of the Limitation Act should be repealed.

Transfer of decree may be allowed to be proved by an affidavit.

Notices to judgment-debtors in the case of decrees being executed after one year should be done away with, but should remain in the case of legal representatives.

There is no necessity for a special notice being sent to the judgment-debtor in the different stages of the execution proceedings. One notice may be sent at the beginning and subsequent proceedings may be continued without further notice, except notice of sale proclamation.

*Statement showing the work done by District Judges.*

Year.	CIVIL WORK.						CRIMINAL WORK.		
	ORIGINAL JURISDICTION.				APPELLATE JURISDICTION.		Sessions trial.	Criminal Appeals.	Criminal revision.
	Number of officers.	Original.	Execution of decree application.	Miscellaneous judicial.	Regular.	Miscellaneous.			
1894 . . .	7	31	166	769	1,067	220	530	3,060	319
1895 . . .	7	49	119	728	760	272	596	3,717	434
1896 . . .	8	47	123	808	674	200	656	3,769	424
1897 . . .	8	52	97	640	720	207	708	4,254	301
1898 . . .	8*	29	57	665	675	176	607	2,374	355
1899 . . .	6	11	58	729	726	163	583	2,281	344
1900 . . .	6	8	96	850	694	157	564	2,055	389
1901 . . .	6	9	68	798	776	276	468	1,401	379
1902 . . .	6	10	62	668	651	125	401	1,621	515
1903 . . .	7	10	41	577	620	154	419	1,625	346
1904 . . .	7	21	48	634	813	178	455	1,905	436
1905 . . .	7	59	43	582	1,238	153	471	1,620	387
190 <sub>6</sub> . . .	7	240	107	672	999	127	463	1,732	395

\* Plus one Assistant Sessions Judge.

Year.	CIVIL WORK.						CRIMINAL WORK.		
	ORIGINAL JURISDICTION.				APPELLATE JURISDICTION.		Sessions trial.	Criminal Appeals.	Criminal revision.
	Number of officers.	Original.	Execution of decree application.	Miscellaneous judicial.	Regular.	Miscellaneous.			
1907	9	24	67	704	970	133	483	1,637	402
1908	10	32	37	628	695	100	782	2,046	318
1909	10	25	42	783	807	98	539	1,965	251
1910	9	264	77	906	1,548	145	466	1,920	255
1911	9	123	122	1,007	1,226	158	463	1,716	258
1912	8	67	112	1,079	1,378	120	480	1,384	324
1913	10	40	68	1,087	1,303	137	419	1,472	305
1914	7	11	32	1,205	1,269	95	377	1,544	276
1915	8	14	19	1,145	1,364	147	369	1,545	285
1916	9	10	130	1,097	1,191	136	387	1,563	293
1917	8	13	43	1,133	1,284	146	346	1,328	277
1918	8	12	34	1,064	880	92	393	1,116	196
1919	9	20	40	1,230	531	78	496	1,577	172
1920	9	23	115	1,279	757	112	418	1,049	182
1921	11	21	46	1,105	559	86	479	1,295	201
1922	10	23	31	1,200	647	113	462	1,057	226

*Regular Appeals decided by the Subordinate Judges in Oudh.*

Year.	Instituted.	Total number of appeals decided.	DISMISSED		Number of appeals in which the orders of the lower Courts were interfered with.	Average duration (in days) of each decided appeal.
			On the merits and for default.	Under Order XLI.		
1911	597	556	342	5	209	59-97
1912	669	649	408	1	240	63-32
1913	879	788	436	3	349	76-76
1914	898	934	575	..	350	89-65
1915	741	767	485	2	280	92-56
1916	782	812	510	39	263	93-4
1917	735	791	484	23	284	99-81
1918	966	939	603	23	313	83-80
1919	812	957	622	4	331	96-31
1920	1,151	1,270	772	9	489	123-80
1921	996	1,153	738	6	409	115-53
1922	858	1,044	665	5	374	143-06

\* Obviously received from District Judges.

*Regular Appeals decided by the District Judges in Oudh.*

Year.	Instituted.	Total number of appeals decided.	DISMISSED		Number of appeals in which the orders of the lower Courts were interfered with.	Average duration (in days) of each decided appeal.
			On the merits and for default.	Under Order XLI.		
1911 . . . . .	1,209	1,226	825	42	359	75-56
1912 . . . . .	1,316	1,378	859	57	462	104-85
1913 . . . . .	1,321	1,303	852	106	345	99-89
1914 . . . . .	1,227	1,269	889	50	324	100-02
1915 . . . . .	1,257	1,364	922	53	389	85-36
1916 . . . . .	1,174	1,191	788	32	371	95-19
1917 . . . . .	1,259	1,284	881	28	375	89-45
1918 . . . . .	1,019	880	604	6	270	103-66
1919 . . . . .	893	531	373	6	152	166-98
1920 . . . . .	680	757	546	1	210	220-72
1921 . . . . .	832	559	404	3	152	236-90
1922 . . . . .	925	647	476	3	168	233-06

NOTE.—District judges have been transferring more appeals to subordinate judges. The duration has considerably increased. Recourse to Order 41, Rule 11, is now rarely had. The annexed statement of criminal work shows that District Judges' criminal work has not appreciably increased.

**SAIYID WAZIR HASAN, Judicial Commissioner, Oudh, called and examined on Monday, the 17th March 1924.**

*Chairman.*—Q. You are the Judicial Commissioner?

A. Yes.

Q. I gather from the Administration Report that in your province there are whole-time sub-judges roughly? Would it be something like 30?

A. Yes.

Q. Putting aside the question of criminal powers, how many sub-judges are whole-time sub-judges roughly? Would it be something like 30?

A. I should think so.

Q. I think there are some 37 munsifs and some 57 honorary munsifs.

A. That is so, Sir.

Q. Looking to that report and to your memorandum, should I be right in saying that in your own court the first appeals are in a satisfactory position as regards prompt disposal?

A. That is so, Sir. We are now doing appeals which were instituted in the middle of last year.

Q. But in the case of second appeals, these appear to be getting more and more into congestion?

A. Yes.



Q. They seem to be taking undue time to go on?

A. The average duration I should not expect to be more than 9 to 10 months, even with that congestion.

Q. That is very much better than a good many other offices. But still you regard that the present condition as regards second appeals is not quite satisfactory?

A. Yes.

Q. As regards the appeals in the mofussil, that I understand is not up to your standard?

A. No.

Q. They are kept for a long time, I understand, on the file of the district judges without being transferred to the additional sub-judges for disposal?

A. That is so.

Q. Can you give me a rough figure for the present duration of appeals in the lower courts?

A. Six months.

Q. In your province do the district judges themselves or the additional district judges dispose of a substantial proportion of the appeals from munsifs or is that work done by the subordinate judges?

A. The latter is true.

Q. Would you explain to me how it is that from 1917 to 1922 there seems to be a considerable drop in the figures under the heading "Taluqdari Jurisdiction Regular" in the statement which you have given to me? Does that mean simply that the district and additional district judges have not been able to give so much time to the hearing of regular suits?

A. That is so. They are more engrossed with criminal work.

Q. Then the actual number of regular civil appeals in the subordinate courts has been increasing more and more all these years?

A. Yes.

Q. Are appeals from munsifs instituted before sub-judges?

A. They are instituted before the district judges and transferred to them.

Q. Then, this column "Instituted" in each of the statements appended to your memorandum, what does it refer to? In the case of subordinate judges does it refer to the number of appeals transferred to them?

A. Except in cases where there is no district judge.

Q. Would it be right to add these two columns together to get a view of the total amount of regular appeal work in the province?

A. Yes.

Q. And your impression is that the total amount of appeal work has been steadily increasing.

A. That is so, Sir.

Q. And the total amount of second appeals in the Judicial Commissioner's court has on the whole been increasing?

A. Yes.

Q. As regards civil appeals you say the period reasonably required is six months; but you do it within half the time?

A. That is the time which I have taken for the last 10 years.

Q. Coming to the district courts, you say the period reasonably required is 6 months. The average is 3 to 7½ months. That is the average for the last 10 years?

A. Yes.

Q. Then what would be the average to-day?

A. The average to-day I shall put at about 10 to 12 months.

Q. In the same way with the other figures for the last 10 years?

A. Yes.

Q. Then in the subordinate judges' courts you say the reasonable period for regular civil appeals is 6 months. What would be the average time taken to-day?

A. About the same.

Q. Now taking original title suits for which, you say, a year would be reasonable, how long is the present time?

A. I put it at 18 months instead of a year.

Q. Then in the same way as regards original suits for money, how long would it take for the sub-judge now?

A. Six months.

Q. Then as regards the small cause work of sub-judges you say it will take 5 to 6 weeks. How long does it, in fact, take to-day?

A. I should think it takes more than 6 weeks.

Q. Now broadly speaking, do you agree with the opinion expressed, I think it is the opinion of Mr. Dalal, in the last administration report that the powers of munsifs might be advantageously enlarged because there seem to be too few sub-judges in your province and not quite enough work for munsifs?

A. Yes.

Q. You think that will result in a better distribution?

A. Yes.

Q. As regards your munsifs in Oudh, up to what limit would you invest them with powers?

A. I have said that in my memorandum. I think it is Rs. 2,000.

Q. And in the same way, will you be prepared to increase their small cause court powers?

A. Yes.

Q. Is it the practice to give to subordinate judges power to try small cause cases, or is it a long standing practice?

A. Well, it has been in practice for the last 7 or 8 years.

Q. Don't you recognise that it seriously interferes with the disposal of civil work?

A. It does.

Q. Have you in Oudh certain centres of trade which produce suits of commercial character?

A. No.

Q. Lucknow, for instance?

A. I do not call it a centre.

Q. You do not think there is any necessity in your province for a special arrangement to be made for giving special expedition for suits of commercial nature?

A. No, Sir.

Q. Do you agree with the opinion expressed by Mr. Dalal that the frequent changes in the office of Judicial Commissioner have led to a certain ineffectiveness and loss of efficiency in the lower courts over which they have administrative power?

A. I am not prepared to share that view in its entirety. To a certain extent it might be.

Q. Do you think the outturn of work by subordinate courts in Oudh is small?

A. Not on the whole.

Q. I take it as being true that the Judicial Commissioner's court does experience a good deal of change in the personnel?

A. It does, yes.

Q. Don't you think that is due to much inefficiency on the part of judges in the lower courts?

A. No.

Q. Would you be good enough to give us your opinion upon the question of the utility of honorary munsifs as distinct from village munsifs?

A. I think if a careful and proper selection is made, they are a great help in the disposal of litigation.

Q. Where do the honorary munsifs hold their sittings?

A. We have two classes of such courts: bench munsifs and single munsifs. Well, a centre is chosen where they would hold their courts, both as a bench and as single. And the selection, under the rules now being observed, is made by the district magistrate in consultation with the district judge. Indeed in certain cases the matter comes to our opinion as to the proper person who should be appointed as honorary munsif.

Q. These benches of honorary munsifs dispose of only civil suits?

A. Yes.

Q. Then in your opinion, is that a form of court that should be encouraged and extended in due course?

A. Yes.

Q. In the cases tried before honorary munsifs what is the limit of jurisdiction?

A. Rs. 50 is the highest, I should think.

Q. Can you tell me under what legislation are these courts established?

A. We have a particular Act for honorary munsifs' courts.

Q. How long has this experiment been going on in this province?

A. For some time. Certainly not less than 10 years.

Q. Certainly you would not regard it as having passed beyond the experimental stage?

A. Yes.

Q. As regards village courts, I understand the policy of Government is that they are to be replaced and absorbed by panchayats under the new Village Panchayats Act, and they probably are an institution that won't continue in the present form for long.

A. That is so.

Q. I see you say that the work of the district judges suffers from too frequent transfers, and you point out that when he begins his duty as a district judge, the officer has had hardly sufficient experience in civil work to hear appeals from the decisions of experienced munsifs and subordinate judges. You also say that it should be made a rule that no district judge should hear such appeals unless he had actual training as munsif for a year, and that as subordinate judge for 2 years.

A. That is so.

Q. At the present time, when a man comes as a district judge for the first time, has he any experience in civil work?

A. Hardly any.

Q. He is usually promoted from what?

A. From a joint-magistrate.

Q. Of course to obtain an officer of that sort with a training of three years would be a matter of considerable expense. Is it not?

A. I dare say, yes.

Q. I mean it would require a very considerable extension of cadre too?

A. It is just a suggestion.

Q. That is what you would like to see being done in practice?

A. Yes.

Q. I see you say that the district judge has too much ministerial and administrative work.

A. Yes.

Q. In fact the whole administrative system of lower courts at present is on the principle of throwing on the district judge, in theory, responsibility for nazarat, accounts and everything else.

A. That is so.

Q. But he is in fact an overworked officer, being largely engaged in hearing important criminal cases.

A. That is so.

Q. Do you think that land acquisition matters, probate and succession matters may quite well be transferred to subordinate judges?

A. Yes.

Q. Now, in connection with subordinate judges and munsifs, you mention certain important causes of delay. First of all you say, non-payment of process fees in proper time . . .

A. That is a constant source of trouble.

Q. What usually happens, as I understand, is that the case is adjourned to another date—say a month hence. It then comes on in the list and it is then discovered that some process that has been taken out by the plaintiff has been returned unserved. Now, I understand, there is no method by which the plaintiff is to know of the failure of the service until the adjourned date is reached.

A. At least he pretends that.

Q. I mean there is no way in which he can know until the adjourned date. Suppose the plaintiff deposits his fee to-day and then process is sent but is returned unserved on the witness. What particulars he has got before the adjourned date of hearing for knowing whether the process has been returned unserved or whether he has to deposit another fee?

A. Speaking from my experience outside the court my impression is that the plaintiff knows of all the movements of the process-server and he knows which of the processes have been served, will be served or have not been served.

Q. But the judicial officer can hardly proceed on that assumption. The result is that in such a case, however many witnesses the defendant may call, he applies for another adjournment.

A. Yes.

Q. Can something be done to put a burden upon the plaintiff, not only to deposit the process fee, but in given time to take steps to have the service again effected before the adjournment? Will you give him the right to come to office and to inspect the return and then impose a duty to pay the process fee?

A. Taking the question broadly I hold strong views on the subject. It seems to me that all these delays caused in the non-service of processes can be avoided if we let almost entire responsibility upon the party asking for the issue of the process. If he wants the witness to come he would come, if he does not want the witness to come he would not come. He should be refused all adjournments unless he satisfies the court that he has done all that could lie in his power to get the service effected.

Q. That is, a general rule should be laid down that some time will be given to the plaintiff within which he must bring his witnesses to the court.

A. Yes, or if he is not willing to have the service made himself, he should be asked to help the process-server.

Q. In this province when a peon goes out with a process what is the practice? Does he attempt to get somebody to identify the man or does he go to the pleader asking for somebody to go with him?

A. Generally he goes out himself.

Q. Would you be in favour of attempting to make the plaintiff, before he files the plaint, to have it served on the defendant, that is to say, to file a plaint already served on the defendant so that the suit could proceed effectively?

A. No.

Q. You think it is the duty of the court to help?

A. So far as the defendant is concerned.

Q. I see you suggest that the presiding officer should personally receive and examine the claim and, I take it, it would be quite practicable in the case of your munsifs. But if the duty were thrown upon the subordinate judge at present, would it be possible for them to do that work?

A. It will require some time but it will be more than compensated by the speedy decision of the suit at the end.

Q. I understand in this province you had considerable addition to judicial strength. Is that so?

A. Well just two sub-judges we had and not more.

Q. If that addition were made you think every sub-judge can examine the plaint himself?

A. I think, Sir, it is possible.

Q. Would you be in favour of plaints being returned in case they are prepared improperly, that is, if there are vague allegations?

A. Yes.

Q. The plaint may be returned altogether for amendment?

A. Yes.

Q. I suppose that hardly is ever done?

A. Very seldom.

Q. Plaint returned is generally for insufficient court-fee?

A. Yes.

Q. In this province do the judges consider that there is any difficulty when the plaint is presented with insufficient court-fee, giving four or five days in which to pay the balance? Is it rejected if he does not pay the balance within that time or does the court go on giving him time until the balance is paid?

A. The latter alternative is very seldom. Generally the balance is paid within the time fixed for that.

Q. Have you some complaint about undue delays in the filing of written statement? Is it filed in due time?

A. I think the defendant generally takes more time.

Q. I understand that, with you as throughout India, a great deal of judicial time is wasted by unnecessary denials of documents and, in some cases, of facts. I see you suggest that courts should be given powers not to allow costs in these cases. At present in the mofussil there is no test to allocate the cost or sub-divide the cost at the end of the suit.

A. The calculation as a whole embraces the cost towards the proving of the documents. A witness has to be examined for the purpose of proving documents. These costs have to be included in the general cost. It would not take much time if they are set apart from the total cost of the litigation.

Q. In cases where there is unreasonable amount of dispute about documents, would you not be in favour of giving powers to the court to make him order the parties to furnish security?

A. No. I am not prepared. I would suggest that the courts may be invested with jurisdiction to accept documents by proof of affidavit or by presuming their genuineness. They may be given discretion as regards registered documents which they should exercise in proper cases.

Q. But is there any objection to giving powers to munsifs to make one or both the parties to give security of the costs?

A. I fear it might result in injustice being done to an honest litigant.

Q. But if the document is proved, he can get the money back at the end?

A. Still I think it would make it difficult for him to get his grievances redressed. I would not be in favour of asking him to furnish security and there would be no method of striking a proportion between the costs incurred with regard to the proof of documents and other costs incurred at the initial stage.

Q. And what do you think about the attestation by witnesses?

A. I would suggest that the presence of attesting witnesses be dispensed with.

Q. As regards cross-examination in lower courts, do you think that in many cases it is unnecessarily protracted?

A. I would not say in many cases, sometimes it is. Still there is an end in view kept by the counsel, and I have found in many cases that the counsel does not prolong cross-examination capriciously.

Q. But I take it that a great deal of time, in fact, is wasted by the counsel asking questions which do not touch the fringe of the subject.

A. Yes.

Q. It does not mean that the counsel asks questions which are irrelevant, but he asks some questions with the object of getting something out of the witness against his own credit.

A. It is very difficult to deal with a hostile witness, a witness who is in the box and deposes in favour of the party who has summoned him. On the whole I wish to emphasise that I am not in favour of condemning the bar as a whole as if they were indulging in prolix cross-examination. I think they take it seriously as part of their responsibility. Of course there are always exceptions.

Q. I gather you consider that it would be inadvisable to lay down any hard and fast rules?

A. Yes, I think so.

Q. Do you think that the judge is helpless in stopping questions which appear to him irrelevant? Under the present law, I understand, he is helpless.

A. I think he is helpless.

Q. If that is so, I think, it might be advisable to do something by which he may be able to stop irrelevant questions and may not be so helpless.

A. Well I do not object to discretion being given in that way. I trust that with the advance of culture in the subordinate judiciary and in the bar as well the evil will die of itself, and it seldom happens in a case where there is a leading counsel engaged.

Q. As regards cross-examination before commissioners, do you think that there is sometimes undue cross-examination because the commissioner is a junior pleader?

A. Yes, that is so.

Q. And because it is not very clear to him whether he has got the right to disallow irrelevant questions?

A. Yes.

Q. What remedy would you suggest for this?

A. Well I would entrust this work to senior pleaders, and, as a rule, would give them some powers for deciding as to the relevancy or otherwise of the questions put to witnesses.

Q. As regards process serving establishment, do you find that generally munsifs and subordinate judges are not in a position to punish process-servers.

A. Yes.

Q. They can only report to the district judge against them?

A. Yes.

Q. Then what do you suggest with regard to this? Do you think that each munsif and each subordinate judge at the same station should have a separate nazir and a separate set of peons of his own?

A. Yes, each should have a set of peons of his own over whom he should have direct control.

Q. Well what do you consider of the suggestion of keeping the central nazarat system and allotting certain peons to each particular court?

A. If the central nazarat system has to be maintained, I would suggest that each court should be given direct control over the set of peons attached to it and power to punish the man whom he finds at fault.

Q. The idea of keeping the central nazarat system was, I understand, to avoid overlapping of work. Supposing a subordinate judge and a munsif exercise jurisdiction over a particular area and each of them have a separate set of peons and a separate nazir. Now each court has to serve some processes in the same area. Do you not think that there will be overlapping of work if each court sends his own peons to serve the processes instead of giving all the processes to one man to serve them in that area?

A. My idea is that supposing the munsif's court issues processes and these processes are to go in a certain direction, what the central nazir should do is to keep these processes with him and wait until he gets processes from other courts in the same station bound for the same direction. I think that causes undue delay. I would rather have overlapping than let the peon wait.

Q. How long does the nazir make the peon wait for that reason?

A. Generally a week.

Q. Therefore something might be done to reduce that limit. It need not be for more than 3 days?

A. I think it would hardly remedy them.

Q. Why? The staff in the central station is large. In 3 days he gets a process and can go.

A. But that would mean a very substantial increase in the number of process-servers and it would also be that practically there would be no advantage in that system.

Q. Would it be possible to keep the nazarat system as it is and to give each munsif who might have good reason for complaint some 5 or 6 peons?

A. It won't be possible. Munsifs might have to make remarks and at any rate they have to be confirmed by district judges.

Q. Can you tell me why it is that munsifs and sub-judges regard it as a disgraceful matter to prefer their complaints to the district judge? Is it on account of the petty matter or has it something more behind it?

A. It is all only a petty thing. The duty of reporting is like any other duty to be performed by them conscientiously.

Q. Is there any reason why they should not do it?

A. To write reports you have to make out a case which would be accepted. That takes a good deal of his time and he is cut off from his judicial duty. He would rather let the matter go after censuring the peon.

Q. Would it be possible in such cases to do it less elaborately without the form of a trial? Would it not be possible to send for the nazir, for the return of the process-server, examine them and deal with the matter then and there? Is it necessary that everything in this country should be done by writing and record?

A. If he has to report, he must report in a proper way. But in the case which you suggest I think the judge should be entitled to say that the thing

should wait till his convenience. He may be busily engaged in session work and it would not be possible for him to attend to it then and there.

Q. Could it not be done within 5 minutes after the rising of the court?

A. Nobody would be satisfied with that decision. The peon will have a grievance.

Q. You want to have a State trial?

A. All guilty persons used to have the State trial.

Q. As regards guardians *ad litem* you are in favour of notice going simultaneously to all members of the family?

A. Yes.

Q. You make a suggestion as to substitution of heirs. You say that where no application is made, a public citation should be issued in the names of the proposed representatives as is done in matters of probate and administration. What is the method of making a public citation effectually public? I will take a probate case where you cite all the parties coming and objecting to the will. How is that done in the province of Oudh?

A. It is done by a public proclamation in the village where the deceased lived; it is published in newspapers which are of local character and also by beat of drum and affixing a notice on the court-board.

Q. Is it found effective?

A. Yes. I have never come across with a case where an heir is left behind in citation under the probate and administration proceedings. He always comes, if he wishes. I think this will be a very effective way of avoiding the delay.

Q. As regards the inspection of courts do you agree that the system of inspection of courts is probably the most to be reformed?

A. Yes.

Q. You think that the district judge should inspect his subordinate courts at least twice a year?

A. Yes.

Q. You say that the presiding officers should inspect their own courts once a month. Is there anything in the rules?

A. Yes.

Q. That is to say, to see what the munsarim and the execution clerk are doing?

A. Yes.

Q. You say that the period of limitation for redemption should be reduced from 60 years to 12 years. In what kinds of mortgages you want to reduce the period of limitation?

A. All classes of mortgages.

Q. Take the case where a mortgagee enjoys the profits of property in lieu of interest. He goes on doing this for a long time. Why should the mortgagor be deprived from getting his land back, because he has been unable to pay the principal back in the meantime? What is the difficulty that courts experience in regard to this?

A. He is not generally unable to get the property back if he wishes. I think he can well manage to get it redeemed within 12 years.

Q. Do you get a good many suits in which false claims to redeem are set up?

A. I won't say good many.

Q. If it suits the mortgagor and the mortgagee, the one not to pay the principal sum and the other to enjoy the fruits of the property why should it not go on for 12 years? Why should the mortgagor lose his land altogether?



A. I don't think it really has a direct bearing on the question of delays. We begin after the institution of the claim so far as delays are concerned, not as to limitation previous to institution.

Q. As regards champerty and maintenance you do not like legislation against that, because the poor litigant may require assistance to get his rights asserted in courts of law?

A. This is more so in what we call big taluqdari suits.

Q. I rather understand that these big taluqdari suits are some of them absolute scandals in general with the result that the whole thing is in the hands of somebody who gets the whole benefit if he succeeds and that for a comparatively small sum.

A. That observation could be made and has been made only on the result of the litigation where it has failed.

Q. Then you can well say that this was a mere speculation. This man had put up a false title and wanted to back it by false evidence and so forth.

A. In all these cases when the direct line of descent is exhausted you have to find out the reversioners somewhere in the remote corner of the country to fix upon the rightful heir. It is hardly likely that you will find him with means enough to fight the opponent in possession. Perhaps he is the poorest man living and yet he has good title to a big estate. He can never get justice done to him if you shut him out from all financial help.

Q. Supposing you do not shut him out and you lend money at a certain rate of interest on the strength of such expectation, suppose you allow that, is it necessary to allow him to go to a financier who may be a mere speculator and who will bring a suit against somebody else costing him lakhs and lakhs?

A. I don't think we can create a class of financial helpers of that frame of mind. I think he will look at it from his own personal point of view. He will certainly have the best of the bargain in his favour before he parts with a single pie.

Q. He would not be really lending the man money on the strength of his expectation at a reasonable or a high rate of interest but would want to make a good thing of it as a speculation?

A. That is so, Sir.

Q. Now when you consider the injustice or damage that would be done to the other party, don't you think that the poor man might in some cases be not able to assert his rights?

A. I suppose the judge would, in that case, presume that he is helping the assumed title holder.

Q. But he has caused tremendous expense to the other man.

A. Would it be less, Sir, if he had money of his own? Would it be less costly to the opposite party?

Q. But if the opposite party wins in the end, and the plaintiff has money advanced by a substantial person, there would be some hitch when the order for costs is passed. The trouble about the other man is that he cannot be made to pay any part of the cost.

A. This man who is helping, in my part of the country, is generally a party on the record. He is a plaintiff.

Q. Do you mean to say that the financier, having taken an assignment of the interest, is a plaintiff and therefore helps the case?

A. He generally sees to it that he is made a party.

*Sir Tej Bahadur Sapru.*—Q. As a matter of fact in Oudh, there is very great care taken about the settlement of issues. There are lengthy proceedings in the courts of subordinate judges and on the date of settlement of issues, the statements are taken of the counsel of the parties, and points on which the judges are in doubt are explained.

A. That was with certain subordinate judges and district judges. But as it does entail a good deal of labour and grasp of the case at the outset, I do not think the general class of subordinate judges advert to it.

Q. I think there is a class of subordinate judges who follow the practice.

A. Yes. I would not say it generally contributed to loss of time.

Q. In answer to the Chairman you said that you favoured the practice of opening cases. But what is the present rule followed in Oudh. Do counsel open the case, and subordinate judges favour that?

A. They do. We had off and on some subordinate judge who insisted that the case should be opened. But it is not generally done. I think if that is strictly observed, a good deal of time would be saved.

Q. As regards the recording of evidence, perhaps you will tell the Committee how the evidence is recorded there. I mean to say, it is not incumbent on a subordinate judge in your province to record every bit of evidence which the witness gives.

A. Under the local Act, he is required to make a memorandum. But it is not a memorandum at all, it is a full verbatim report. Practically he writes down all.

Q. Though the law gives the judge power to note down only the substance, he records the whole of the evidence.

A. He thinks it is much better to do it in order to avoid any grievance in the court of appeal.

Q. So far as this is observed, in spite of the indulgence given by the law, in practice there is not any difference between what is done there and what is done in the province of Agra.

A. Yes.

Q. Coming to the Judicial Commissioner's court, what is the pecuniary jurisdiction which is exercised by a single judge in your court?

A. He is competent to hear and dispose of appeals up to any value below Rs. 10,000.

Q. Are records in those cases printed for the benefit of the judge?

A. Not in cases below Rs. 10,000. But in appeals of Rs. 10,000 and above we have printed records.

Q. How has that system worked in your court—the system of not printing records of appeals?

A. It has not presented any real obstacle.

Q. Supposing you had an English Barrister fresh from England as one of the judges. Would you still preserve the present rule, or would it necessitate the printing of translation, etc., even in those small suits?

A. I suppose it would, if you had such a person in the court. Even as it is, where we have printed records, sometimes the case turns upon the meaning of a particular sentence as expressed in the vernacular, and the judge, who is not quite familiar, finds some difficulty. So we do resort to the original text.

Q. But generally speaking there is not much difficulty in cases where the case is disposed of by a bench of two judges?

A. Yes, if his colleague accepts his interpretation.

Q. I suppose the present practice in your court leads to a considerable amount of saving of time. If each one of the records came up to you, to point the records would mean so much time and cost to the litigants. So your practice leads to saving of time and money.

A. Yes.

Q. You have had considerable experience of the work of the Oudh Taluq-dari Act both on the Bar and on the Bench, and I should like to have your opinion as to the merits of that Act. Do you think that that Act results in prolonging litigation?

A. It is anything but ideal.

Q. Don't you think I am right in saying that there is very little of legal principle in that, and a great deal of conundrums in it?

A. I should not publicly and generally use these words to stigmatise it in that way.

Q. Perhaps your position would make the task a little difficult.

A. It is to be remembered that the skeleton of the present Act was made somewhere in 1860 and 1861 and when it came to be passed in 1869 there were some alterations and improvements, and when such alterations and improvements are made, they generally result in making the matter worse, because they are done at the spur of the moment, or while the proceedings are going on in the Legislative Council, you add a word here and a word there, without considering the consequence that would result.

Q. Do you feel very happy with that legislation as a practising lawyer?

A. The taluqdars are very proud of it.

Q. Perhaps you will agree with me that if the Act showed greater amount of legal intelligence in its framework, it would result in a great deal of saving of time and money.

A. Undoubtedly.

Q. And much of the litigation in these taluqdari cases is really attributable to the Act itself?

A. Yes.

Q. The delay is not on the part of the litigants or on the part of the counsel?

A. No. I feel it and I might express that all attempts made towards the amendment have made matters worse. I had a very unhappy experience in a recent case where the amendment was intended to remove the effect of the Privy Council's decision, which it was said had really shocked the whole province by going against the intention of the original law and therefore to restore the original intention the amendment was made, with the result that the present amendment consisted of about three thousand words and it took us two weeks to argue about it, and I do not know what the Privy Council may finally say.

Q. With regard to champerty perhaps you will indicate to the Committee the usual character of questions which arise in these taluqdari cases?

A. In these taluqdari cases, in majority of issues you will find the custom—the custom of impartible estates, the custom of more remote reversionary excluding the senior and that class of issues. Issues like that naturally involve a good deal of evidence.

Q. Do you not think that a proper legislation in regard to this matter would prevent speculative suits being brought forward to some extent? Can anything like that, what has been done in Madras, be done with regard to bigger suits? Could the law be put on a satisfactory footing?

A. In fact we have already got in the Act that no evidence will be allowed on presumption.

Q. Presumption gives rise to a great controversy. If the law may be further examined and all these inconsistencies in one part of the Act and in another part of the Act be removed and presumption were made stronger there will be much less room for speculation.

A. It is impossible to lay down any successors by name. You can only describe the heirs by class or by qualification and then apply those qualifications to a particular individual.

Q. With regard to these speculations, is it true to say that a certain number of legal members indulge in these suits?

A. That might be true some twenty years ago but not now.

*Sir T. Desikachari.*—Q. With regard to training of district judges in civil work, could not civilians be asked to do munsif's work up to five years

of their service without any additional expense to State? In answer to a question from the Chairman, I understood you to say that if district judges have to be trained in civil work that would mean more work.

A. He will be diverted from his usual work and that usual work must be done by somebody else. In that way I meant that it would cause extra expenditure.

Q. Would it not be better for a young civilian after four or five years' service to be asked to elect or not to become a judge?

A. He may not like to go to the judicial side.

Q. Once the scheme was tried in the Madras Presidency and there who were trained finally entered the judicial service.

A. You cannot fix a time. It will be unjust to the man. He would not have his capacities developed definitely.

Q. It is necessary that a district judge in charge of administration should be made to do the more important civil work and for that purpose something must be devised.

A. I think it is very well known to the Government that such and such officer will be made a judge six months before his appointment and that time may well be utilised in necessary training. I take it, it is generally known to the Government some time before he is put in charge of a district.

Q. Is a failure in the executive line generally made a district judge?

A. That is the impression generally.

Q. What is your impression?

A. I have no experience of the executive side and I cannot say as to who will be a failure and who will not be a failure.

Q. You agree that before a civilian is asked to do civil work he must be trained in that work?

A. It is very desirable.

Q. With regard to munsifs' courts are they located in the centre of their territorial jurisdiction?

A. Formerly they were scattered but lately there was a tendency to settle them in the centre.

Q. I think it is your opinion that munsifs' courts should be located within their territorial jurisdiction? It will be for the convenience of the plaintiff as well as for the convenience of the defendant.

A. Yes, it will also save time.

Q. With regard to execution proceedings I see it is stated in the administration report that quite a number of applications have proved infructuous. The report says—"The percentage of successful applications fell from 27 to 22, while those of infructuous ones rose from 56 to 62." What is the reason?

A. The margin is so small that I cannot assign any definite reason.

Q. Apart from the fall in a particular year, why is it that such a large number of execution applications proved infructuous?

A. It is due to two causes generally. One side, I think, the decree-holder is not very vigilant and, on the other hand, the judgment-debtor avoids execution.

Q. May I suggest that a large number of applications which are shown as infructuous are merely applications which are made to keep a decree alive and then dismissed?

A. Yes.

Q. And this is the reason why most of the applications are returned as infructuous?

A. I presume so.

Q. Would you be in favour of the proposal of the court fixing a date for seeing whether the case is ready, and the witnesses will be available?

A. That may be an alternative course, but I would strongly insist and emphasize the view on the Committee that the parties should primarily be made responsible for the service of processes on their own witnesses. I say so because I have no fear of any injustice being done in that case. My own experience is that if a party desires his witnesses to be present in court, they will be present, at least 90 per cent. of them will be present, and if the party does not desire this, there will be no service at all.

Q. I quite agree with you in that respect, but I ask if you would like the idea of fixing a date to see whether the witnesses will be available in addition to what you have suggested?

A. I have no objection to that being done.

Q. With regard to the central nazarat system, your view is that munsifs and subordinate judges are not in a position to exercise any control over process servers?

A. Yes, that is the general complaint.

Q. And they generally feel that their report to the district judge is of no avail?

A. No, that is not the case. I think the district judge will have greater respect for munsifs and subordinate judges than for the nazir.

Q. What do you think of the suggestion of attaching certain peons to each munsif's court to do his urgent work alone leaving rest of the processes to be served by the central nazir?

A. I do not think that it would be of much use, it might be of some use no doubt.

Q. Then your suggestion is that each munsif and subordinate judge should have his own nazir and a separate set of peons over whom he should have direct control. Do you think that this would make for speedy disposal of cases?

A. Yes.

Q. With regard to the jurisdiction of munsifs, why should it not be increased to Rs. 3,000? That is the case in the Madras Presidency.

A. Well I would not do it because of the results that have obtained in the matter of appeals from munsifs' orders. I would say that it would not be quite safe to entrust them with increased jurisdiction.

Q. But when they were given the present jurisdiction the purchasing value of the rupee was very much less. Why should it not be increased to rupees three thousand?

A. It was one thousand in my province and I am not prepared to increase it any more.

Q. But there are certain munsifs who may very shortly be promoted to subordinate judgeship. Will you not even increase it in their case?

A. I have said in my memorandum that it may be increased in some cases.

Q. At present though their jurisdiction is only up to rupees one thousand, they are trying cases whose value is much more on the basis of court fee. I refer to land suits. It is valued at five or ten times but the value of the property may become eight thousand or ten thousand?

A. In these cases court-fee is determined with reference to Government revenue, it may be five times or ten times, but jurisdiction will be determined with reference to market value.

Q. But Section 8 of the Suits Valuation Act runs like this—"Wherein suits other than referred to in the Court Fees Act 1870, Section 7, paragraphs V, VI and IX and paragraph X, clause (d) court fees are payable *ad valorem* under the Court Fees Act 1870, the value as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same."

A. But in cases where you take court fee five times or ten times Government revenue I take it that this is not *ad valorem* fee.

*Q.* I do not want to discuss the matter, but only want to know whether munsifs should be invested with increased jurisdiction?

*A.* No, I would not invest them with any increased jurisdiction.

*Dr. DeSouza.—Q.* We had a great deal of evidence about the malpractices of process servers. I should like to know from you what sort of people generally they are in your province?

*A.* Well, Sir, I am not prepared to condemn them wholesale. Indeed it has pained me to hear these complaints made against them. The process server goes to the village. He is not a very highly paid officer. Generally the village people make it a point to treat him as their guest and he takes his meals from the house of one of the village people. He does his work and comes back. Probably he also receives some sort of bakhshish from them now and then. He is never a tyrant in any sense of the word and I think it is an unjustifiable attack. I do not share the general condemnation in the least and I have courage to say all this because I have direct experience of these process servers. I have found about 100 witnesses sitting all round my camp in big cases and as a rule these people do their work admirably well. It is only in a few cases that these process servers deviate from the path of their duty, but these exceptions cannot be made a ground of general condemnation of that class of people.

*Q.* It means that you do not agree with the general trend of the evidence that has been given before us that these people make false reports?

*A.* No. Certainly I do not agree.

*Q.* What is the standard of education of these process servers? Are they literate men? Can they read and write well?

*A.* Well I think the majority of them are literate in the sense that they can write down the names of witnesses and the fact that they have been served or they have not been served. At present in the majority of cases they are to some extent literate, but previously they were not.

*Q.* I believe in Agra they are obliged to keep a diary?

*A.* Yes.

*Q.* If they are asked to keep a diary, then of course they will have to be fairly literate?

*A.* Yes, but they may get it written by somebody else.

*Q.* But is there any advantage of their writing the diary when they come back to the headquarters?

*A.* They can get it written in the village.

*Q.* Can you tell us what is the average pay of these men in your province?

*A.* I cannot tell the exact amount they receive, but the average pay of these men is Rs. 10 per mensem.

*Q.* You start with Rs. 10 and finish at Rs. 10. There are no grades at all?

*A.* Yes.

*Q.* Now on Rs. 10 a month is it possible for anybody in these days to keep a family?

*A.* That is so, Sir.

*Q.* It seems to me that it is not a matter of suspicion but a matter of certainty that he must have other means of gain besides his pay and that should be illegitimate gain.

*A.* Not so much as to bring them into calculation at all. I am not inclined to agree with that view. I think with the way he gets his little help on the village he can get on very well.

*Q.* I suppose he has a family to maintain at the headquarters?

*A.* Yes. I think he has relations also. The system of keeping up a family amongst us, Indians, does not depend on that only one man must maintain the whole family. His wife may have a brother. His father-in-law may be

of little help. If his means are not wide enough to place the whole burden on himself, he will get assistance from other relations who are well off.

Q. We heard some evidence the other day that people would be willing to accept a process server's post even without any pay whatever.

A. I am not prepared to say that for the reason that they want you to infer that this bribery and corruption is so strong a thing that he would accept this appointment even without any salary.

Q. Now amongst all classes of menial servants of the Government in the Postal Department or the Police or the Judicial Service, is not the process server paid the least of all? The post peon gets much higher than the process-server.

A. I have no definite knowledge.

Q. If that is so, do you think it right that the Government should maintain a staff of menial servants about whom the general impression is they have to be corrupt to maintain body and soul together?

A. No. I think it is very desirable to increase their pay.

Q. If they increase the salary, could they not at the same time obtain a class of men better educated in the vernacular, who can read and write so as to make the service a little better?

A. Yes, slightly.

Q. If you have got a better class of men you could expect a higher standard of honesty?

A. I should think so.

Q. Have you got any examination in vernacular so that we may insist that all process servers should pass that examination before appointment?

A. We have a vernacular examination.

Q. Would not that to some extent avoid these complaints if you appoint men who have passed?

A. It would be a great improvement.

Q. What salary do you think would attract men who have passed such an examination to accept the posts?

A. About Rs. 20.

Q. That is exactly the pay we pay in Bombay. The starting pay is Rs. 20 and rises up to Rs. 40, and that for inferior class of process servers.

A. I am very glad to hear of that.

Q. There are superior process servers who are paid Rs. 40 to Rs. 50. If their pay and prospects are arranged in this manner, do you not think that a great deal of complaints about process servers would be reduced to a minimum?

A. Yes.

Q. Do you think there is any force in the argument that by raising the pay you only raise the standard of bakhshish?

A. It must be a very peculiar mentality.

Q. You do not think there is much force in the argument?

A. No. I have not put in any suggestions to that effect because I could not make any suggestion which would involve extra expenditure in the department.

Q. You are then of opinion that you would be able to get a more satisfactory class of process servers if you raise their pay and prospects and you would get men who have passed a certain literary examination and you would also expect from them a greater degree of honesty?

A. Yes.

Q. Have you any idea of the number of days in a month during which the process servers are on duty? I am asking this question because I am not sure whether a full month's work is got out of the process-servers. We found

in Bengal that out of 30 days they hardly work for 10 or 15 days in a month. Have you any impression as to the number of days in which they are actually out?

A. I can only give you a general impression. I think he is generally out for 3 weeks out of 4 weeks.

Q. Will there be room with more effective supervision to reduce the number of process servers actually working in court?

A. No. I think the demand is the other way.

Q. I suppose you have got a standard minimum number of processes for each process server.

A. I believe so.

Q. I think you have said in your note the most competent method of reform of the subordinate courts and munsif's courts would be a more effective and more constant inspection by the district judge.

A. Yes.

Q. Of course the principal point which the district judge on inspection would notice, would be, I suppose, the delays in the disposal of suits. Would not the same purpose be served to a considerable extent if the appellate officer hearing appeals from sub-judges and munsifs studies the order sheets in the case and wherever there are undue delays or improper adjournments he calls for a report? Would it not be a sort of effective check?

A. I think it would amount to something. It won't partake of a judicial treatment of the appeal. It would be some extra work to supervise the proceedings of the court below.

Q. I take it that owing to want of time they could not go out on inspection duty?

A. Yes.

Q. If it is insisted that the district judge or subordinate judge, before he hears any appeal, should also go through the order sheet of the particular case and inspect and examine it carefully and call for it in proper time, would it not be a sort of effective check?

A. That may be a way of making the inspection. But that is never done as a matter of practice unless the needs of the appeal require it.

Q. If it is more generally done, there would be some effective control over the delays in the lower courts?

A. He might choose some cases for that purpose. If he is asked to do in all cases that come before him, perhaps it might be too much.

Q. With regard to evidence, I think, in the province of Oudh you have got a special law on the subject?

A. The judge need not take the deposition *in extenso*. He is required to make what is called notes.

Q. That is in supersession of Order XVIII, Rules 5 and 8 of the Code of Civil Procedure?

A. Yes.

Q. Now does the munsif or judge take notes in English?

A. Yes.

Q. In vernacular?

A. No.

Q. Only full notes in English are taken?

A. Yes.

Q. Is Section 138 of the C. P. C. strictly observed in Oudh?

A. No. We have got a section in the Oudh Civil Courts Act.

Q. In spite of the discretion given by the law, instead of taking short notes of the evidence, the judges prefer to take full notes. Why is that?



A. Undoubtedly it is the better of the two. Apart from the question of saving of time, at the spur of the moment it is very risky for the judge to decide what part he may take down and what part he may not take down. In the appellate court, it may turn out that the part he has omitted may be considered as important evidence.

Q. Do you think that the recording of the whole evidence is a sign of advancement?

A. Yes.

Q. In most advanced countries like England, the judges take only short notes.

A. It all depends upon the custom, the calibre of the judge, etc. You can very well depend upon such notes made by judges in England, but you cannot do so here.

Q. Do you not think that the munsifs, subordinate judges and district judges are sufficiently advanced in point of law, procedure and language, that they can be trusted?

A. Yes. It is a matter of opinion.

Sir Tej Bahadur Sapru.—Q. When you referred to the good old days, were you thinking of the military officers who administered justice?

A. Yes.

Dr. DeSouza.—Q. Now don't you think it would be a great saving of time if the munsifs and subordinate judges were not required to take down full evidence?

A. I would not say, Sir, that he should not take down *in extenso*. I would rather seek for saving of time in other directions. Much depends on the counsel of the parties and the parties themselves. I am more interested in this view of mine, because in the court of appeal the judge always finds that there is something wanting, and had it been there, he would have been in a better position to decide the case.

Mr. Nabi Ullah.—Q. With regard to the appointment of munsifs now-a-days, do you require three years' practice?

A. That rule has been superseded.

Q. Are you not in favour of renewing that rule?

A. I am in favour of renewing that rule.

Q. After three years' practice, would you like these selected munsifs to undergo some kind of other training? For instance, would you make them sit with an experienced officer for a number of months or weeks to see how the work is done in the court by the judge?

A. It will be some improvement, but not an appreciable improvement. I would rather put him in charge of a munsif than merely make him attend the court of a senior officer.

\* Q. With regard to the quality of the work that is being done by the honorary munsifs, have you much experience of that quality of work as a Judicial Commissioner. What is the basis of your opinion?

A. I have made a particular study. I have examined numerous judgments of the munsifs as to how the work was going on. I find the work satisfactory.

Q. With regard to the popularity of these courts, are they popular with the public?

A. I think they are. The defeated party always is discontented. On the whole they are doing their work very well. It all depends on the type of men you select.

A. Are the provisions of Orders X, XI, XII, C. P. C., absolutely neglected in your province?

A. Very much.

Q. Don't you think that they should be more rigidly followed?

A. Yes.

Q. And with regard to recording of evidence in full, I am very glad that you are sticking to it. It would be very difficult if the munsif, who is appointed to do so, were to act in that way and take only notes.

A. In my opinion it is a risk of justice.

Q. As a matter of fact, I think the munsif exercises certain discretion.

A. Yes. And the bar makes no grievance of it.

Q. It will serve no useful purpose, to make the rule more strict, so far as your province is concerned?

A. No.

Q. So far as appeals over Rs. 10,000 are concerned, that is a modern introduction in our courts?

A. Yes.

Q. Now we are spending a considerable amount of money over the printing of records. Both as a practising lawyer and a Judicial Commissioner, do you think the benefit gained by printing is in any way commensurate with the expense?

A. I think it is much better that you take the opinion of the majority on this point, because I have some peculiar views on this matter. They are perhaps too personal. If you want to hear my view, I will say I don't care for printing at all. Perhaps they would not be a proper test, if I may say so. In other cases, I suppose it has been the source of a good deal of saving of time. Apart from myself, or from somebody-situated like myself, it saves a good deal of time. I would rather keep on in view of the convenience.

*Sir Tej Bahadur Sapru.*—Q. What class of second appeals are heard by a single judge in the Judicial Commissioner's court?

A. All second appeals unless they are specially referred to a bench of two judges.

Q. A second appeal, howsoever low, going up to Rs. 5,000 in value may be heard by a single judge.

A. All second appeals in value below Rs. 10,000, unless you refer to any special provision of our local law.

*Chairman.*—Q. Is it done more frequently?

A. Recently it is more frequent than before. This is one of the causes which has induced the people of this province to ask for a Chief Court. I may say that Sir Tej Bahadur Sapru has put this question simply to find out that the people in Oudh are not satisfied with the procedure that all appeals in value below Rs. 10,000 should be heard finally by a single judge.

*Sir Tej Bahadur Sapru.*—Q. You suggest that feeling now-a-days is that the pecuniary jurisdiction of a single judge is much too high and they want really a division of bench to hear larger number of cases?

A. Yes, just in the High Court this is meant one of the old relics—relic of barbarism.

*Chairman.*—Q. Have you any idea of the figure to which you will reduce the practice of a single judge hearing the case?

A. Highest I will put at one thousand.

Q. And you would confine that to second appeals?

A. Yes.

### Written statement of the Vakils' Association, Allahabad High Court.

A. (1) In the High Court a first appeal should be decided within 18 months, a second appeal within 9 months, and other appeals and revisions within 4 months.

A. (2) Original suit in the district judge's or subordinate judge's court should be decided within 6 months, regular appeals within 3 months, and other appeals within 6 weeks. A case in a small cause court should be decided within 3 weeks.

A. (3) All suits in a munsif's court should be decided within 3 months.

B. Claim proceedings should be disposed of within a month.

2. The period actually taken at present for the disposal of all kinds of cases, does certainly at present exceed the reasonable limit in many cases. The reasons amongst others are as follows:—

1. The courts are overworked and there is no inclination to grapple with the cases at the earliest stage, but to mechanically go on recording the proceedings, and then trying to understand the case only when a date for arguments is fixed.
2. Service of summons is often delayed and many tactics are adopted by the litigant who expects to lose in keeping off the evil day of judgment.
3. Adjournments are unnecessarily asked for and granted without the court's appreciating the injury they are doing to the other side.
4. Proceedings are also hung up by frivolous objections made to higher court in which the whole record is sent up to the higher court.
5. In cases where minors are concerned, the proceedings are not registered until a guardian is appointed. Sometimes a minor is most unnecessarily impleaded with the result that the whole case hangs on until the preliminary appointment of guardian proceedings terminates. Courts should be given greater facilities in expeditiously terminating these proceedings.

3. (1) Courts should on the very first date of hearing examine the parties and try and intelligently understand the case. Proceedings should be drawn up showing the issues and the points upon which oral evidence is intended to be laid.

(2) The documentary evidence which is filed should be examined, and care should be taken that one party should not deny the documents simply with the object of harassing the other. The party so doing should be penalised so that this practice may be stopped.

(3) In the recording of evidence the presiding officer should exercise more control than he does at present, and should take an intelligent interest in the development of the case.

(4) The Appellate Court should not grant an *interim* stay *ex parte*, unless the person applying for stay satisfies the Appellate Court that he has served the opposite party with notice of his intention to move the Appellate Court on a date specified, and the record from the lower court should not as a matter of course be called up without a special order of the Judge of the Appellate Court.

4. Munsifs should be recruited from the members of the bar, but they should have at least five years' practice before they are appointed. District judges should also be selected direct from the bar of competent men practising in the High Court and in the districts. Appointments to High Court Judgeships should also be made from amongst practising lawyers.

5. Practice for five years is quite a sufficient training for a district munsif.

6. Transfer of judicial officers does often delay the disposal of a case. An officer who is under orders of transfer does not feel inclined to begin a case, and unnecessary adjournments are often the result.

7. The amount of work done is not always a great standard of efficiency, and the desire to show a large number of decided cases in a given time is apt to impair the quality of the work. Returns sent to the High Court should be dispensed with, but closer supervision of the inferior courts by the superior courts would be more desirable.

8. No.

9. No.

10. The jurisdiction of munsifs may be extended in the case of original suits to Rs. 2,000, and in districts where there is one subordinate judge whose file is always heavy, the jurisdiction of munsifs may be increased even more. Small cause court jurisdiction should not be increased.

11. Already answered in Question 10.

12 and 13. The district judge may be relieved of purely formal miscellaneous judicial work. For example uncontested suuccession certificate cases, or formal guardianship matters, or even uncontested probate matters. The administrative work should remain with the district judge. Land acquisition references may also be made over to subordinate judges.

15. The jurisdiction of small cause courts should not be extended to any class of case excluded from their jurisdiction at present.

16. (a) No.

17. No.

18. The right of appeal given at present is not granted in too many cases. In fact there are many cases in which a right of appeal not now given should be given.

19. A right of appeal under the Letters Patent should in no event be curtailed. It is absolutely necessary, and the reported cases of our court show that in a very large percentage of cases the judgments of a single Judge have been wrong.

20. Frivolous second appeals are filed, but not many, and the provisions of Order 41, Rule 11 are a sufficient safeguard. No further restriction on the right of second appeal should be made.

21. No.

22. In the High Court the power under Order 41, Rule 11 is duly exercised. More extensive use of it may be made in the districts.

23. No.

24. Already answered in Question 3.

25. Service by registered post should be made greater use of, and once a party is served, a registered address should always be maintained for future use.

26. The form of plaints given in the Code is a mere skeleton. Plaints as drafted more or less adhere to the form with such variations as the facts and circumstances of the case necessitate. The remedy against prolixity or introduction of irrelevant matter is sufficiently provided for, and no further penalty seems to be called for.

27. The provisions of Orders 7 and 8 are often neglected, but the obvious remedy is that courts should insist upon a closer examination of the pleadings at the earliest hearing.

28. A more extensive use of the Post Office is desirable. But of course there is a possibility of postmen in the course of time realising that their position opens out a new source of income and thus lead to dishonesty.

29. Yes.

30. No.

31. Issues should be drawn up after an intelligent appreciation of the case in the presence of and with the help of the parties' pleaders.

32. The provisions of Orders 10, 11 and 12 are neglected. The reason is due partly to the unfamiliarity of the practitioners and the courts with these sections. If courts insist on these provisions being more frequently used, practitioners and parties will become more familiar with them and in the course of time would certainly lead to beneficial results.

33. Yes.

34. Courts should be directed to order witnesses to appear at the next hearing without a fresh summons being issued. Ordinarily this practice is

only observed, if the next hearing happens to be the next working day, and not when the next hearing comes on after an interval.

35. Unnecessary and avoidable evidence is sometimes produced in the courts in this province. The best control is that courts should intelligently follow the development of a case, insist upon the party stating the purpose for which a particular witness or group of witnesses is called, and the court should penalise in costs the party calling an unnecessary number of witnesses.

36. No.

37. No.

38. The provisions of Order 37 should not be extended.

39. The principle of representation may be made of wider application, and wherever more than one party having the same interest whether they are members of a joint Hindu family or not, the decision in a suit fairly fought out by one should be binding on the others.

40. No.

41. The suggestion of issuing notice to all possible guardians in one proceeding should be accepted.

42. *Ex parte* injunctions and orders are taken undue advantage of. One of the methods in which this could be checked is by insisting on the party applying to serve the other side with notice of his intention to apply.

43. No.

44. No.

45. Adjourned dates are usually fixed by the judge. No irregularity exists in this particular.

46. Courts should always fix dates in consultation with pleaders.

47. Examination on commission is unusually lengthy. It is due to the commissioner having no power to control the examination. They should be given that power.

48. Payment of adjournment costs will be a sufficient check against frivolous applications.

49. Courts to which a decree is transferred should be given wider powers, and it should not always be necessary to refer back to the court passing the decree.

55. No.

56. No.

57. No.

58. No.

59. No appreciable advantage in the proposed change.

60. Order 21, Rule 21 gives a discretion, and no useful object would be achieved by its being deleted.

61 (a). The special notice may be made part of the notice of the execution petition.

62. Order 21, Rule 26 is sufficient for all purposes.

63. Yes. A notice at the beginning should be sufficient. A judgment-debtor if he wishes to watch the proceedings should appear at the first hearing.

64. A copy of the sale proclamation should be served on the debtor, but notice of execution proceedings should not be deemed sufficient if served upon the pleader who appeared for the debtor in the case.

66. The existing procedure applicable to mortgage suits does not require alterations. The law on the subject is now generally understood, and any alterations would only go to unsettle the law. The preliminary decree may itself direct a sale on default of payment, and a final decree may be dispensed with.

67. No.

68. Yes.
73. Yes. Papers printed in the High Court and certified by the High Court in a previous litigation should be accepted as secondary evidence.
74. No change seems to be necessary, except suits by the Government should be governed by the same limitation as govern ordinary individuals.
76. Yes.
77. Yes.
78. The provisions of the Registration Act need no change, and there is no reason to exclude the doctrine of part performance.
79. Yes.
80. No.
82. No.
83. No.
84. If a court is satisfied that somebody not a party is financing the litigation, it should be given the power to pass a decree for costs against him.
86. No.
87. No.

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**Messrs. PYARE LAL BANNERJI and MOHD. IQBAL AHMED,  
Representatives; Vakils' Association, Allahabad, called and  
examined on Monday, the 17th March 1924.**

*Sir Tej Bahadur Sapru.*—Q. You have sent a letter embodying the views of the Vakils' Association on the various questions that have been referred to in the questionnaire. May I take it that these questions were considered at a meeting of your Association and that the replies given represent the views of the Association?

*Mr. Bannerji.*—Yes.

Q. What is the strength of your Association?

A. Forty-eight members at present.

Q. In your memorandum you say that the period in which the first appeal in the High Court should be decided should be eighteen months and the second appeal nine months. In order to achieve this end do you think that the present number of judges is sufficient?

A. No.

Q. Now from your study of the statistics can you say that the present number of first appeals and second appeals is so very much in excess of what it was five years ago that you will require perhaps two more judges?

A. Certainly.

Q. Have you studied the statistics? What was the number in 1917 and 1918?

A. In 1917 it was about 325 and now it has risen to about 500.

Q. 325 first appeals?

A. Yes.

Q. And second appeals?

A. Second appeals stood at about 1,500 and now probably the number is 1,700.

Q. As a matter of fact I gather from the statistics that number of second appeals is about 1,800 or 1,900 and in olden days it was about 1,600. I am talking of the institutions.

A. I should say there is no increase in the second appeals, 1,500 or 1,600 is the average. In the first appeal there is a distinct increase.

Q. I agree. Can you suggest from your knowledge of the profession and the condition of litigants in this province any reason for increase in the number of first appeals?

A. The only reason can be that suits of value above rupees five hundred have increased.

Q. But why, what has led to further litigation which has its effect on the High Court?

A. Well the advancing stage of civilisation.

Q. Surely you do not judge of the advancing stage of civilisation by an increase in litigation?

A. Well, it is difficult to assign any particular cause.

Q. At one time there was an increase of litigation on account of certain rulings of Privy Council as regards mortgage?

A. Yes.

Q. You say that the courts are overworked and there is no inclination to grapple with the case at the earlier stage. What do you mean by that?

A. When the issues are fixed courts are not in the habit of seeing what the points are.

Q. You have experience of the mofussil courts. Will you please tell the Committee all that happens when issues are framed?

A. When I was practising in the district nothing was done at all. Either party drafted the issues and the judge accepted them without even reading them.

Q. Pleadings were not discussed or explained?

A. No.

Q. When you moved up to the High Court what was your experience?

A. In the High Court the settlement of issues is considered as a special part of the hearing.

Q. In how many causes during your experience have you had to open a case formally?

A. Not at all. I tried once or twice but was not allowed to do so.

Q. Did you find that a judge understands the case?

A. I think he does not understand the case.

Q. Do you think from your experience that if you open a case that would lead to curtailment of time?

A. I think it would.

Q. As regards adjournments you say that adjournments are unnecessarily asked for and granted without appreciating the injuries which are done to the other side. What are the grounds on which applications for adjournments are granted?

A. In subordinate courts applications are made that certain witnesses cannot be presented and adjournment is asked for. In fact witnesses are available and they are kept back merely to get adjournments.

Q. Do you think that the entire responsibility lies with the parties? Would you not make the legal profession also responsible?

A. No, I would not. It is no fault of the lawyer concerned if the plaintiff comes to him and says that his witnesses have not turned up. In these circumstances he is obliged to put in an application for adjournment.

Q. But are applications ordinarily granted by subordinate judges?

A. Yes, they are.

Q. Why. As you have knowledge that the plaintiff is asking for adjournment wilfully, similarly I presume the judge has also got some knowledge of this state of affairs?

A. What can the subordinate judge do. He can only proceed *ex parte*. It is not his fault because he is confronted with this situation.

Q. But how can this be stopped?

A. The only way is to penalise the party asking for adjournment. When some strict measure will be adopted, the parties will never ask for adjournments.

Q. Does not the judge ask the parties to pay costs?

A. Sometimes only, but the costs are hardly commensurate with the loss the other party sustains.

Q. Well there are adjournments also in High Courts and there is no question of witnesses there. Why are adjournments asked for there?

A. They are asked for on personal grounds. For instance if on the date fixed I am not at headquarters, I will ask for an adjournment.

Q. But sometimes cases are adjourned because counsel are engaged in some other case?

A. It is only temporary. It does not contribute any appreciable delay in the disposal of cases. It is absolutely negligible.

Q. Then coming back to lower courts with regard to documentary evidence which is filed, do you think that one party denies documents with the object of harassing the other party? In point of fact it is done.

A. Yes it is very often done.

Q. Have you any constructive suggestions to make with regard to this? Do you think that the party denying should be penalised?

A. In the first place the parties must be examined at great length with reference to documents produced and each document must be proved. Supposing the other party does not admit, then a statement must be taken on oath and if it is found that the denial was wholly without reason then the subordinate judge must proceed criminally against the person who has denied. Sooner or later the litigant public will realize the fact that it proves harmful to deny without reason.

Q. On what charge the judge can proceed against the man denying?

A. For giving false evidence.

Q. You think that very drastic steps should be taken?

A. Yes.

Q. Do you consider that the judge should allow exemplary costs in matter like this?

A. Yes.

Q. Am I right in assuming that the party denying is sometimes advised by pleaders to do so?

A. It is desired not to help the other side as far as possible.

Q. So it means that it is sometimes shared by pleaders also?

A. Sometimes. Sometimes documents are denied by both the parties. In my recent experience about two weeks ago, I found that 100 documents were produced and were denied by both the parties.

Q. Then so far as this is concerned the responsibility must be shared by pleaders as well?

A. Yes.

Q. Coming to the constitution of courts, you suggest that munsifs should be recruited from among members of the bar who have got five years' practice?

A. Yes.

Q. Five years' practice before their appointment, you mean?

A. Yes.

Q. Then you would like the old system to be restored and instead of three years, you would have five years. You would not like the present rule, but insist on practice for a certain number of years on the part of candidates



for munsifship? After they have completed five years, would you like to give them some more training?

A. No. Five years' practice will be a sufficient guarantee for their qualification.

Q. If you insist on five years' practice, then the question of age will arise?

A. Yes, but I would raise the age-limit to 32 or 33 years.

Q. And you would not object to that?

A. No.

Q. Will you take the present Selection Board?

A. No. There must be some practising lawyers on the Board.

Q. Do you consider that the judges know less about the mofussil lawyers than the practising lawyers of the High Court?

A. I suppose a practising lawyer of the High Court knows more about practising lawyers of the mofussil than a judge of the High Court. Judges are never in touch with lawyers practising in lower courts, but members of the bar know much about them.

Q. If you take a man after five years' practice, would you start him on present salary, or would you give him higher salary?

A. I suppose the present salary ought to attract practising lawyers. I think the present salary of munsifs is Rs. 250. When practising lawyers of three years' practice were appointed munsifs they were given Rs. 150, but the value of the rupee was much less and I think the present salary of Rs. 250 ought to attract men of five years' practice.

Q. Then you say that district judges should be selected from the bar. I understand that this has been done in recent years in this province?

A. There is only one instance.

Q. What number would you like to be selected from among the members of the bar?

A. An appreciable proportion of district judges must be selected from among practising lawyers. Say one-third from the bar, one-third from the provincial service and one-third from civil service.

Q. Then with regard to the appointment of High Court judges, do you think that they should also be made from among practising lawyers? Has that not been done in the past?

A. Our suggestion is that in course of time the judiciary of the High Court must consist of practising lawyers only, that is to say, appointments of High Court judgeship should not be made from other quarters, but should be made from practising lawyers as is the case in England.

Q. That is the suggestion you have in view?

A. Certainly that is the suggestion we have in view. What we suggest is that High Court Judges should not ordinarily be made from members of the Provincial Judicial Service.

Q. Suppose you find a man of outstanding ability in the Provincial Judicial Service, would you keep him out merely because he happens to be a member of that Service?

A. Of course all rules have exceptions. If he is a man of outstanding ability, we don't want to keep him out.

Q. But as a matter of fact nothing is reserved for the members of the vakil's branch under the Letters Patent?

A. Certain posts are reserved for the I. C. S., and certain posts for Barristers and there are the remaining posts and they should be given preferably to practising lawyers.

Q. Do you think it would lead to less delay?

A. If the bench is more competent, it will lead to less delay.

Q. Taking the present number of Judges in the High Court, do you think there could be more regular supervision over the amount of work done?

A. No.

Q. For that reason would you suggest the appointment of a special Judge to carry on that work?

A. We suggest that the permanent strength of the High Court be increased.

Q. With regard to the jurisdiction of munsifs you say that the pecuniary jurisdiction might be extended to Rs. 2,000. Would you extend it generally or in the case of some special munsifs?

A. Only with respect to munsifs who have already put in 5 years' service.

Q. You suggest that certain classes of work might be transferred from the file of the district judges to the sub-judges; but that will lead to no relief; that might add to his work and it is admitted that the sub-judge is a very hardworking officer.

A. We were talking of relieving the district judge; but it would be possible only in cases where the sub-judges are not overburdened.

Q. Therefore, you want a permissive legislation that when a sub-judge has no heavy work you can transfer to him certain class of work which cannot be done now?

A. Yes.

Q. Would you on no account allow a judge of the small cause court to try some of the simple cases under the Law of Torts—an ordinary law of defamation?

A. We are not prepared to give a finality to his decision in those cases.

Q. Assuming that a judge who had put in 15 years' service and had acquired some capacity to weigh evidence, would you not allow him to try some of those cases which are now excluded from his jurisdiction under the schedules?

A. We are not prepared to extend the jurisdiction.

Q. In other words you are opposed to the very idea of finality?

A. Yes.

Q. Coming to the question of appeals you say the right of appeal granted at present is not granted in too many cases. Would you tell us what sort of cases you have in view with regard to right of appeal?

A. For instance an order returning the plaint on the ground that the court had no jurisdiction to try the suit and that the plaint should be presented in another court is made appealable by the provisions of Order XLIII. But if the particular officer tries only the question of jurisdiction and comes to the conclusion that he has jurisdiction to try the matter, then there is no appeal with the result that the High Court has held that you could not come in revision against such an order. The result is there is a complicated trial and then when you ultimately come to the High Court you get a decision that the particular court had no jurisdiction. The plaint is then returned for presentation to the proper court. Therefore there should be a provision of the Code giving a right of appeal over a decision holding one way or the other on a point relating to jurisdiction.

Q. That is to say, whether the lower court assumes jurisdiction or refuses to assume jurisdiction, you would allow a direct appeal against that?

A. Yes. Then, an appeal is allowed by the Code when an application for setting aside an *ex parte* decree is rejected; but when it is accepted, no appeal is allowed. The appeal ought to be allowed in both cases.

Q. There is one view which I wish you to consider. At present the Code allows too many petty appeals in some class of cases and it is felt by some that the time has come that the right of appeal in certain class of cases should be curtailed. What is your view with regard to that?

A. The right of appeal already given under the Code should under no circumstances be curtailed.

Q. If the right of second appeal is taken away in suits of the value of Rs. 100 or below?

A. Certainly we think that the right of second appeal at the present stage should never be taken away.

Q. Even absolutely petty second appeals?

A. Property worth Rs. 100 of a poor man is as valuable as the property of a rich man worth Rs. 50,000. The poor and the rich should equally feel that the High Court is a Court of Justice.

Q. Have you considered the question that not more than 10 per cent. of the second appeals to the High Court are decreed, which means that in 90 per cent. of the second appeals the time of the Court is taken away and wasted? When as a matter of fact, experience shows that only 1 in 10 is decreed, why should the Legislature allow this extensive right of second appeal?

A. Is the higher percentage of success of larger value. The idea should not be that the High Court is only for the rich and not for the poor.

Q. Supposing on the other hand you had an appellate bench constituted for the territorial area now within the control of each of the district judge and this appellate bench went into questions of fact and law in certain classes of cases and then there was a finality attached to the decision of the first appeal bench, would you object?

A. Yes. We are not in favour of curtailing.

Q. Don't you think that the present right of second appeal gives a very poor appeal. The High Court is very much bound by the findings of fact in the lower court. It is a very unsatisfactory state of things. It will be much more satisfactory to have the decision of 2 sub-judges of equal standing, if they went both into questions of fact and of law.

A. I do not think that will inspire confidence.

Q. Among whom?

A. Among the litigant public and the legal practitioners.

Q. I take it that it is your deliberate opinion that there should be no tampering with the right of second appeals on any account and in any class of suits?

A. No.

Q. If these second appeals are filed, you say that the provisions of Order XLI, Rule 11 are sufficient safeguard. You admit that there are frivolous second appeals. But you would not agree that out of the 90 per cent. of second appeals which are dismissed, at least 45 per cent. of them are frivolous.

A. We don't think so. Much lower percentage of the appeals dismissed would be frivolous.

Q. What do you mean exactly by frivolous second appeals? Those which are dismissed under Order 41, Rule 11?

A. I am not prepared to say that. If a Judge of the High Court admits the appeal under Order 41, Rule 11, it could not be called frivolous.

Q. It so much depends on the judge?

A. Yes, it is true.

Q. You suggest that Order 41, Rule 11, should be applied more extensively?

A. Yes.

Q. That might lead to a reduction of second appeals.

A. There would always be second appeals on questions of law. If a Judge chooses to decide a case wrongly under Order 41, Rule 11, still it would be open to second appeal.

Q. With regard to Letters Patent appeals, what is your view?

A. I think it is very necessary.

Q. Would you not put any limit to some classes of suits?

A. You mean for a single judge.

Q. Don't you think that every single judge should have some finality of decision? Would you increase his jurisdiction from Rs. 500 to Rs. 1,000?

A. No.

Q. On what ground?

A. If looked into, you will find that the largest number of appeals decreed are Letters Patent appeals.

Q. Don't you think there would be saving of time if it is decided by a Bench?

A. Yes; if they hear it independently.

Q. You say that unnecessary and avoidable evidence is let in. Do you suggest that this should be done away with by the courts as a matter of practice, or do you suggest any legislative amendment?

A. We would not advocate any legislative amendment. This should be done by the subordinate courts as a matter of course. That is never done. They go on recording the evidence like machines.

Q. In answer to Question 39, you suggest that the principle of representation may be made of wider application, and wherever more than one party, having the same interest, whether they are members of a joint Hindu family or not, the decision should be binding on all the parties. Would you apply that to suits filed by reversioners?

A. Yes.

Q. How would it work out?

A. That has already been extended by the Privy Council.

Q. Do you think the Privy Council went as far as that?

A. Yes. That is how our courts understood it.

Q. And in that case, of course the period of limitation may have to be revised?

A. Yes. We would also extend it to Mohammedans.

Q. Can you refer to any system of law where this doctrine of representative suits had been developed to the extent to which you suggest.

A. I could not. But the principle on which the father of a Hindu family is accepted, should be extended to other classes of cases also.

Q. With regard to Question 38, you suggest that you are in favour of extending the application of Order XXXVII, with regard to Negotiable Instruments. Are there many suits of Negotiable Instruments in this province?

A. Very seldom we have any.

Q. What about Cawnpore?

A. I have not much experience of Cawnpore.

Q. You really think there is no need for extension?

A. Yes.

Q. But if there is need for that, would you extend it?

A. We have no experience of that.

Q. With regard to examination on commission, do you suggest that the commissioner should be given power under the Statute?

A. Yes, it should be.

Q. If that power has to be given to commissioners, they should be selected from senior men of the bar. That would mean more money, but it would be in the interests of the public.

A. Yes. He should be given absolute powers.

Q. As regards special notices in execution proceedings, I think your general view is that there are far too many notices given to judgment

debtor in execution proceedings and that there is room for curtailment of such notices.

A. Yes.

Q. Question 84. Does it not very frequently happen that the party who is financing the litigation is also a party?

A. It does happen.

Q. But sometimes he is behind the scene.

A. Yes.

Q. You suggest that in such cases, the court should be given power to make him a party and pass the decree.

A. Yes, it comes to that. Recently it has been done by a bench of this court. In an appeal, it came to know that there was a man behind the scene. The court passed a decree against him as well. Then he filed an appeal and the case was rejected.

*Chairman.*—Q. Under what jurisdiction?

A. None whatever. It was done. That is why we say, the court should be given such power to do so.

*Sir Tej Bahadur Sapru.*—Q. Would you abolish the law of champerty altogether?

A. We do not wish to introduce the rules.

Q. You would have it subject to the suggestion that you have made just now.

A. Yes.

Q. With regard to first appeals in the High Court, do you think that some time could be saved if the records were prepared much more intelligently and with greater care?

A. It is very seldom that a first appeal goes to the High Court.

Q. It has been suggested that sometimes delay occurs because too many cases are concentrated in the hands of a few pleaders, and that the juniors do not get a chance?

A. We do not think so. There is after all the slip system.

Q. I understand the slip system is going.

A. Well, we hope not.

Q. In other words, you do not think that the present relations between the senior and junior members of the bar in any way interfere with the disposal of cases quickly?

A. I do not think it interferes with the disposal of cases.

*Chairman.*—Q. Perhaps you know the practice of making applications for execution to keep the decree alive. What do you think about it? Would you like to say anything on that?

A. It would not be desirable to allow a decree-holder to execute the decree for the first time without notice.

Q. Supposing the time for executing a decree is shortened to six years and a provision is made that a decree-holder may execute his decree at any time within six years?

A. We are not in favour of either.

Q. You want to maintain the system by which applications are made to keep the decree alive?

A. Yes.

Q. You say that first appeals are not delayed by reason of necessary matters not being printed but still of course the printing of all the necessary matters is much abused and it adds to the material that a judge has to handle or a pleader has to consider. You are not in any way suggesting that the profession would object to exclude from printing formal documents;

A. No, the cost of printing is so heavy that that in itself is a sufficient check.

Q. Well in some cases it is not sufficient.

I may just say about second appeals. Take a simple appeal—not of the small cause court case—of about rupees fifty. The man gets all the trial issues framed before the munsif. The appeal comes to the sub-judge who in some cases has fifteen to twenty years' experience. The sub-judge is made final authority in such a case. Would you say that it will be wrong to reduce any further appeal to the High Court. Further appeal to the High Court may result in remand and then there may be an appeal on the order for remand.

A. As far as the period is concerned we shall like to see it curtailed but we are not in favour of curtailing the right of appeal.

Q. Which you think is the greater evil, the sub-judge should be put right or a small case should be made liable to this tremendous delay?

A. That is a very difficult question to answer.

Q. One has to balance one against the other. Is there any principle in meaning that there should be no limit to value under which this process should be allowed?

A. We do not think if a sub-judge is invested with finality it will lead to justice.

Q. A sub-judge trying cases constantly in which there is an appeal over him will get into the habit of trying properly even those cases in which there is no appeal. He will try that with even greater care?

A. That is not our experience. We think unless there is a right of appeal he is liable to be slipshod.

*Sir T. Desikachari.*—Q. With regard to duration of suits you think that suits in the High Court should be decided within eighteen months and in the district judge's court within six months. You seem to think that first appeal might be decided within eighteen months. In the district court the whole work has to be done, the witnesses are to be summoned and then trial is to come up?

A. The reasons are two-fold. In the first place papers are to be printed in the first appeal and that certainly takes no less than six months. Then the second thing is that the delay in the disposal of original suit is likely to be much more than the delay in the first appeal.

Q. I do not seem to have made myself sufficiently clear. I do not understand the disparity between the time taken in a suit before a subordinate or a district court and the time taken in the first appeal in the High Court. No suit can be got ready within six months. Having regard to the evidence that has been recorded the test is whether it is one year old or not?

A. So far as I know the subordinate courts have to send explanation for cases which are six months old. I am speaking of regular suits.

Q. Do you not think that within six months a difficult suit cannot be dealt with?

A. There may be one difficult suit in hundred suits.

Q. Then you think that six months are sufficient?

A. Yes.

Q. With reference to duration in the mofussil courts you expect a suit in the mofussil court to be disposed of in three months?

A. Yes.

Q. Have you practised in the munsifs' courts?

A. Yes for six and a half years.

Q. Do you not think that in some suits notices are not served even within three months?

A. Yes where the defendant is avoiding service.

Q. Do you consider the existing staff to be in a position to cope with the work?

A. No.

Q. What is your remedy?

A. Well—increase in the cadre. One has to go back to that.

Q. In order to achieve your ideal the only thing that can be done is to increase the cadre of district judges, subordinate judges and munsifs?

A. Yes.

Q. Do you think that in this province any other agency could well be employed to relieve them?

A. No.

Q. Could not honorary munsifs be entrusted with petty cases?

A. No.

Q. I am told that honorary munsifs have been doing their work very well?

A. I entirely disagree with that view.

Q. But at present also they are doing some work?

A. Yes they are doing work, but in a slipshod manner. Their work never inspires confidence either in the public or in the bar.

Q. About what province are you talking?

A. About Agra. I was startled to hear the remarks of Mr. Wazir Hasan, Judicial Commissioner. His ideas came to me as a surprise. I do not desire to conceal my views in the matter. These honorary munsifs are appointed on the recommendations of the district magistrate. The merit of these men is hardly taken into consideration. They usually exercise jurisdiction all round their village and are approachable to all sorts of influences. They have no regard at all for the public opinion as a paid munsif has, and therefore the result is that the work turned out by them is highly unsatisfactory.

Q. Don't you think that it is better to have litigation disposed of as near to the village as possible?

A. That will be a very desirable thing, but to give it a practical shape is very impracticable at the present day.

Q. What is your suggestion with regard to village panchayats? Don't you think that they could be given some petty civil cases to dispose of?

A. I have no personal experience of these village panchayats and I am not prepared to express any opinion.

Q. Then it means that you can think of no other agency to take up the work of district munsifs and the only remedy you can suggest to relieve them is to increase the cadre.

A. Yes.

Q. With regard to the speeding up of work of district munsifs, why should they not be empowered to try suits of higher value on small cause court side? There will be less number of appeals.

A. There is no objection to that.

Q. What limit would you have for these suits? Five hundred or less?

A. Very experienced munsifs only should try these suits—who are on the border line of the rank of munsifship and are soon to be appointed as subordinate judge.

Q. What limit for others?

A. Rs. 250.

Q. So you will agree to the suggestion that their powers to try these suits should be increased according to their experience—from Rs. 250 to Rs. 500?

A. Yes according to their experience.

Q. What about subordinate judges? Will you similarly increase their jurisdiction to Rs. 1,000?

A. No. There must be a limit. You must draw a line somewhere.

Q. But generally they are people who have put in about 20 or 25 years of service and have got considerable experience. At present they have powers up to Rs. 500. Would you not increase it to Rs. 750?

A. No, that reasoning would not lead to any good. If that argument is followed then you would go on increasing their power up to Rs. 2,000. There must be some line because their decision is final. We are neither in favour of raising the value of suits nor in favour of extending the nature of suits.

Q. What do you consider about Question 78 of the questionnaire. What do you think of the suggestion that every transaction relating to immoveable property in which rights of the value of one hundred rupees and more are created and to which at present section 17 of the Registration Act would apply if there is a document, should be entered into only by a registered instrument? Don't you think that a rule should be made to prevent false pleas being put forward? No sale deed at present can go without registration and they are usually of small value.

A. We do not think that there is any need of making such a rule. Everybody understands the doctrine of part performance. Any interpretation can be given to it.

Q. No doubt that some people interpret in one way and some in another way, but we are thinking of preventing false pleas being put forward. I can point out from the decision of various High Courts that a large number of pleas are put forward. My suggestion is that Section 54 should be more strictly drawn up than now.

A. We do not think that Section 54 requires any change.

Q. What is your opinion about the scrutiny of lower courts' work? Don't you think that, if the judges scrutinize the work of lower courts carefully, there will be some check over them?

A. We would prefer personal supervision to scrutiny. We have suggested in our statement that there should be more personal supervision than these returns. These returns should simply remain in office.

Q. Don't you think that if these returns are carefully scrutinized by higher authorities they would show what quantity and quality of work the lower court has done?

A. These returns can not give any idea of the quality of work done. They simply tell or show the number of cases decided.

Q. Then your suggestion is that the system of submission of returns should be abolished?

A. Yes, because returns only give the quantity, and not the quality, because there is always a desire on the part of the officer submitting it to show the quantity such as is expected of him.

Q. I have heard evidence with reference to touts. How is this system working in this province?

A. It prevails to some extent.

Q. Does it prevail very largely in the mofussil?

A. It can not be said that it prevails very largely.

Q. Are they allowed to come into courts and instruct vakils?

A. No.

Q. Do you think that gomashtras also work as touts?

A. We do not understand the word gomashtra.

Q. I mean clerks of vakils?

A. No they do not act as touts.



**Dr. Mr. L. AGARWALA and Mr. B. E. O'CONNOR, Representatives, Bar Library, High Court, Allahabad, called and examined on Tuesday, the 18th March 1924.**

*Sir Tej Bahadur Sapru.*—*Q.* Mr. Agarwala, I understood, you have practised for a considerable time?

*A.* Yes for 28 years.

*Q.* For how many years have you practised in the High Court?

*A.* For 23 years.

*Q.* For how many years in the mofussil?

*A.* I practised in the mofussil for four years before coming here.

*Q.* And you were also connected with the Law College for sometime?

*A.* Yes I was Lecturer for 10 years.

*Q.* Now will you mind telling the Committee if pleading is taught in the college?

*A.* No. The teaching of pleading is discouraged. It was not part of the curriculum.

*Q.* Do you consider that the college has improved since you left?

*A.* I do not think so.

*Q.* Have you been examiner for sometime?

*A.* I have not been since 1918.

*Q.* I think I am right in assuming that students in the law college receive no education in the element of pleading?

*A.* None whatsoever.

*Q.* Then it means that the legal profession here does not learn the art of pleading?

*A.* There is no such thing as the art of pleading here.

*Q.* And as a rule litigants here are not anxious to get their pleadings settled. It is only in very big cases that they are anxious?

*A.* Yes, only in very big cases. The moharrir generally draws up the plaint and the pleader only goes through it and if there is nothing glaring in it he passes it on.

*Q.* Do you not think that sometimes, if not very often, delay is caused on account of very loose pleadings?

*A.* I should say often.

*Q.* Now what is your view with regard to the manner in which issues are settled in district courts in this province?

*A.* In a very haphazard way. What generally happens is that pleaders of both sides stand up and make statements of facts and then the court fixes issues. The court does not go through the pleadings.

*Q.* We are told that things are improving now?

*A.* In very few cases the court goes through the pleadings and then fixes issues.

*Q.* I suppose your experience has been like that of many other lawyers practising in the High Court that judges have sometimes to frame proper issues themselves?

*A.* Yes in a very large number of cases, especially in second appeals.

*Q.* With regard to trial of cases, will you kindly tell the Committee whether there is such a thing as the opening of a case?

*A.* The cases are not opened properly.

*Q.* Have you got any experience about the subordinate judges court with regard to opening of cases?

*A.* I know two cases in which applications were made that the provisions of Order XVIII, rule 2, should be followed strictly, but the other side filed

an objection and the result was that the subordinate judge said he was not going to waste time in seeing how the case should be opened and he went on in the ordinary way.

Q. But if in the course of evidence a question arises as to whether any particular evidence is relevant or not, how is it disposed of?

A. It is shelved for the time being. The judge generally says that he will decide it at the time of writing judgment.

Q. And when you argue the case, do you discuss these things?

A. Generally the whole thing is forgotten.

Q. And therefore the mischief as regards the admitting of evidence, which should not have been admitted, is done?

A. Quite so.

Q. Well then with regard to the admission of documentary evidence, we have been told that the usual practice is that the pleader on the opposite side denies documents?

A. Yes.

Q. Although the document happens to be perfectly above suspicion and is registered?

A. Yes.

Q. Could you tell us why that practice is followed here? How would you stop it?

A. I would suggest that the court should saddle the party denying with the costs of the whole litigation. If that were done I am confident that this practice would be stopped altogether.

Q. Do you know that even revenue papers are denied, for example, khewats and jamabandis?

A. Yes.

Q. And you think that this practice leads to unnecessary prolongation of the case?

A. Indeed very much. It not only prolongs that very particular case, but leads to unnecessary subsequent litigation, in some cases.

Q. Then with regard to applications for the appointment of guardians do you think that any special difficulty is experienced in getting guardians for minors appointed?

A. Yes. Order 32 is very specific about these things. Notice should go to the specific person.

Q. And sometimes it so happens that the man does not take up the office of guardian, merely because he does not want it or because he wants to benefit somebody else?

A. Or he wants to prolong litigation.

Q. Could you tell the Committee as to how a compromise on behalf of minors is settled?

A. The usual practice is that both the parties stand up and say to the court that they have negotiations over it and they want to take time. When negotiations are complete they come to the court and say that they have compromised the matter in a particular way.

Q. Do they generally lay the terms of the compromise before the court and let the court see how they affect the interests of the minor?

A. Yes they lay the terms before the court, but that fact is ignored.

Q. So leave is granted by the court without seeing whether the compromise is to the benefit of the minor or not?

A. That is not the fault of the court, but the fault of the system.

Q. And there is no practice known in this province of asking a junior pleader to give a certificate as to the terms of the compromise?

A. No.

Q. And the result is that when the minor attains age he repudiates the compromise?

A. Yes that is so.

Q. And he starts fresh litigation?

A. Yes.

Q. In cases of impartible cases, adoption cases, or cases of succession or inheritance, questions of custom are raised. Now, do you think that a great deal of unnecessary evidence is given in such cases?

A. There is.

Q. And it is supposed to be good in the lower courts to multiply witnesses on the same point?

A. It is so. But generally the man who introduces the evidence has not any idea of what he is going to prove.

Q. The question of custom also arises very frequently in the cases of rajs with regard to succession as to impartible estates.

A. It does.

Q. You will agree with me that impartible rajs in the province of Agra are not very many.

A. No. They are not.

Q. Whenever a raja dies without leaving an issue, there is litigation.

A. Generally there is litigation.

Q. Do you think that litigation could be prevented if some suitable legislation were passed, giving a schedule of these rajs, . . . .

A. I think that is done by the Agra Estates Act, to some extent.

Q. But that does not deal with rajs or impartible estates.

A. Yes. You might have an Act.

Q. You know the Madras Government passed an Act in 1904, and I understand that that Act has done very well in Madras.

A. Yes.

Q. Do you think that such an Act could be passed in the local Legislature?

A. Yes. Another thing that would save time is when custom is specifically pleaded. The court should see that the custom is specific and not vague.

Q. Well, in regard to execution matters, it has been said that far too many notices are issued to the judgment debtor. What is your view with regard to that?

A. I think two notices are essential. One is the initial notice of execution and the second is a notice for sale proclamation. I will do away with other notices.

Q. Do you think that a good deal of time of the courts is wasted in execution matters in trying to find out those details which are ultimately found in the sale proclamation?

A. I think they are necessary.

Q. But don't you think at that stage a good deal of time is wasted, and that it could be demanded from the judgment debtor during the trial of the suit itself?

A. I would not agree to that.

Q. You think therefore that these details can only be secured after the decree has been passed, and before the property is actually put up for sale?

A. Yes.

Q. Are there many applications here for setting aside sale in execution of decrees?

A. A good many.

Q. Raising always questions of material irregularity. How are those cases disposed of?

A. Very summarily.

- Q. Do they unduly cause much loss of time?
- A. A good deal of evidence is led as a rule.
- Q. Could you suggest any way of shortening time in those cases?
- A. Well, it is very difficult to suggest anything without doing injustice to the parties.
- Q. Now, with regard to stay matters, etc., what has been your experience? Are applications being made light heartedly?
- A. Generally they are made not with the object that the stay will do the man any good, but with the object of getting time.
- Q. Do you think the present rules are sufficient to deal with the evil?
- A. The law is quite sufficient if the courts would only stick to it.
- Q. Are there many applications made for the appointment of receivers in this part?
- A. Not many.
- Q. A good many applications are made either for stay of execution or for injunction?
- A. That is so.
- Q. Would you tell us what is the practice in the mofussil in these provinces with regard to discovery and inspection of documents?
- A. Well, practically unknown.
- Q. Have you found courts suggesting that?
- A. The courts are working so much against time that they do not think it worthwhile suggesting anything.
- Q. Do you think if the provisions of the Civil Procedure Code are properly used, a considerable time of the court, and much expenditure could be saved?
- A. Undoubtedly.
- Q. You said just now that that practice is unknown. Is it because pleaders find it inconvenient to make use of the Civil Procedure Code or because perhaps they have no clear idea of discovery and inspection?
- A. I think both.
- Q. The Committee has been told that a good deal of time is wasted unnecessarily by commissioners who go to record evidence. Do you agree to that?
- A. Very often commissioners take a lot of unnecessary evidence and waste much time.
- Q. What remedy would you suggest to meet that evil?
- A. Well, again that is very difficult to suggest any remedy.
- Q. Would you empower the commissioner to overrule the unnecessary evidence?
- A. I think he has got that power. If he is a firm man, he would omit such irrelevant and unnecessary evidence.
- Q. Perhaps in order to meet that evil, you would agree that it would be desirable to appoint better paid senior men as commissioners?
- A. That would probably obviate the difficulty to some extent.
- Q. Now, do cases in the mofussil sometimes or frequently stand over because one pleader has got too many cases in hand, and he cannot attend to every one of them when they are simultaneously dealt with in different courts?
- A. Yes. It has happened several times.
- Q. You will agree that the work is concentrated in a few hands?
- A. That is so.
- Q. And there is no encouragement to juniors there in the mofussil?
- A. There is none.
- Q. Coming to the High Court what has been your experience in this matter?
- A. In the High Court, according to the rules that prevail here the senior has the best chance of getting his case through from day to day.
- Q. Is the junior associated with the senior?

A. No.

Q. Why is that, is it because the junior does not mind his work or is it because he is not paid his fee?

A. There is very little consultation between the junior and the senior. If he is content with small fee let him be, but he generally says "my learned senior is engaged" and he does not want to take responsibility.

Q. Do you make this statement only with regard to first appeals?

A. Second appeals also.

Q. In second appeal is it the practice for a single man to appear?

A. Not only the briefs are made by the juniors but the juniors also do the case.

Q. But usually two men are not engaged?

A. No, not in second appeal.

Q. You have said that you have 24 years' experience of this Court. Probably your experience is that the work of this Court has very substantially increased in regard to first appeals and second appeals?

A. In second appeals the increase is about fifty per cent. since I joined.

Q. What was the state then?

A. In commencement of 1902 the number of second appeals here was about 1,200 and now it is about 1,800 to 1,900.

Q. I am afraid the increase is not so much. The figures for 1900 are 1,445 and 1920, 1,626. Last year it was about 1,900. I think the increase really works out to fifteen per cent.?

A. If you take the average. Of course in 1900 it was a special case. Normally it was not the case.

Q. In 1905 it was the smallest—1,285.

A. That was the smallest year. Probably that may be my idea when I said it was fifty per cent. less in 1902.

Q. What about the first appeals?

A. The first appeals have increased considerably. Now the institution is over 500.

Q. Can you give us any explanation?

A. Another explanation will probably be that judges look more to the quality of work than to the quantity of work.

Q. With regard to second appeals, would you have any restriction put upon the free right of second appeal?

A. None whatsoever.

Q. Why are you opposed to it?

A. Because we find that district judges are of very small experience and sometime they reverse the finding of facts and they have only the same experience as the sub-judge has.

Q. Now suppose instead of having second appeal the first appeal in the district lies before a bench consisting of two district judges or two sub-judges who will go both into the facts and the law. Would you agree to that provided there is finality attached to their judgment?

A. As regards sub-judges of these provinces they are very good original courts, but very bad appellate courts. At present I find that district judges are very junior.

Q. Will it matter very much if second appeals to the value of hundred rupees or below were absolutely stopped?

A. Well you see in these provinces especially in one or two districts valuable questions of title are decided on test cases of small valuation, say rupees hundred or rupees hundred and thirty simply to see how the law stands.

Q. In Gorakhpur, Ghazipur and Ballia districts?

A. Yes.

Q. Do you not think that the valuation of the test case will increase?

A. That will be Rs. 105. I do not think that will have any effect at all on the future litigation. It may affect the cases which have been decided.

Q. Leaving aside the second appeals what is your view with regard to Letters Patent appeal?

A. I think Letters Patent appeal ought to be kept.

Q. Why?

A. Some judges have got peculiar notions. It is a very good check on the aberrations of such persons if I may say so.

Q. If you give a judge of the small cause court powers to decide a case of five hundred rupees value why cannot you entrust a single Judge of the High Court to try cases up to rupees five hundred?

A. Unfortunately the Judges here are much more human.

Q. Then the only alternative is to have all these cases tried by a division bench?

A. So far as I know in Patna a single judge tries appeals only to the value of hundred rupees.

Q. In Calcutta jurisdiction is rupees fifty.

A. In Patna it is hundred rupees and this is the only province where a single judge tries cases up to the value of rupees five hundred.

Q. Are you suggesting that there is dissatisfaction with the system of certain appeals being heard by single judges?

A. Yes there is a good deal of dissatisfaction.

Q. Do you think that the public would welcome the system of hearing appeals by a bench of two judges and not by single judges and do you think that there will then be no dissatisfaction?

A. Yes I think so.

Q. If that were done, I suppose, your suggestion is that there will practically be no occasion for Letters Patent appeals?

A. Yes that is so.

Q. As regards subordinate courts, do you think that there is room for much greater supervision by the High Court?

A. Not much.

Q. Do you think that they have been well supervised recently?

A. Yes they have been supervised.

Q. And that supervision tends to keep down arrears?

A. It does.

Q. And having regard to the state of arrears in this court, would you suggest that the strength of the court might be increased?

A. I do not think of any other way of minimising delays.

Q. Is there much public feeling with regard to delays apart from the feeling of the legal profession?

A. Not much. There used to be longer delays before than now.

Chairman.—Q. With regard to minimising delays, if a question were put to you as an hypothesis that Government in this country cannot afford to go on increasing the judicial establishment any more and you are asked to advise it how to minimise arrears, what would you suggest?

A. I would suggest that a better selection of officers should be made. Only those men should be appointed as judicial officers who have fairly good knowledge of law and practice.

Q. Apart from improvement in the personnel or in the method of recruitment, have you anything else to suggest for minimising delays? Take the case of first appeals in the High Court. First appeals usually take 2½ years in this court. What would you suggest to reduce the period of 2½ years?

A. So far as I understand, it is not the fault of the judicial cadre, but it is the fault of the ministerial cadre. They usually take much time for preparation.

Q. You mean to say that delays in hearing first appeals are due to delays in preparing papers, etc.?

A. Yes. I have known cases in which judges have complained that cases are not made ready for hearing quickly and sometimes they have no work at all to do.

Q. Then I take it that cases would not take so long as they take now if they are prepared and made ready for hearing quickly?

A. Sometimes cases are prepared and are disposed of in no time and judges are left no work to do.

Q. Then about second appeals, what limit would you have for these cases? Do you think that there should be no second appeal under rupees one hundred?

A. I think rather I should say that all second appeals below rupees one hundred should be tried by a bench of two judges. It will reduce litigation.

Q. Then with regard to revision work, I understand, that a large amount of work of this nature is done by single judges?

A. Yes it is.

Q. As regards Section 115, what construction is put on it by this court?

A. Our High Court is very strict.

Q. Have you had an opportunity to see how lower courts try applications for *ex parte* injunctions?

A. Injunctions are granted as a matter of course.

Q. That is to say the person files a plaint and gets an *ex parte* injunction and then after a week or so when the case comes up for hearing, the process is returned unserved?

A. Yes.

Q. So that in fact *ex parte* injunctions sometimes go on for a long time?

A. Yes.

Q. Supposing the defendant wants to discharge the *ex parte* injunction, how will the subordinate judge treat him in this province? Will he deal with it on affidavit?

A. Yes on affidavit.

Q. Are affidavits filed by both the sides? If so, does the judge see carefully whether he should discharge it or not?

A. Yes he does.

Q. You were saying that there is no training of law students in such practical matters as pleading. Do you think that a pleader who has worked as such for two years or more begins to understand the art of pleading?

A. Those who are inclined to learn this art usually sit or attend courts to learn how cases are conducted by senior pleaders who are engaged in those cases. If they do so, they can learn this work very easily.

Q. In connection with these Law Colleges, does anybody with experience of the bar, ever give lectures, say, on practical hints on advocacy, or how to go about cross-examining witnesses, etc.? In fact the senior men never seem to impart any of the benefit of their experience in a systematic way at all to the young men.

A. They have no opportunity to impart.

Q. Do people ever come to junior pleaders and ask their advice on cases?

A. No.

Q. Does anybody teach the junior pleaders to draft mortgage deeds?

A. It is generally done by the patwaris.

Q. Have they certain things like moots?

A. Well, there is a Law Debating Society, but not in the nature of moots.

Q. That Law Society is the only opportunity the young man will have to learn something about marshalling facts, arguing cases, etc. Nobody ever teaches them the correct way to cite authorities?

A. No.

Q. Now, would it not be easily possible in connection with a large law college, like the one at Allahabad, for senior lawyers and experienced barristers to go and give lectures now and then on practical hints, which would be of use to young pleaders?

A. It will be of effect only if that part of education is made a part of the examination, otherwise the students will not pay any heed.

Q. You could give an examination paper setting out the main facts and asking the candidates to draft a plaint, or giving them a specimen plaint, ask them to draft an answer. All these things could be easily done?

A. Yes. These should be made part of their education.

Q. Now in connection with cross-examination, in the mofussil of course there is no two branches of a profession. That is to say, apart from the fact that the pleader has to find out what the evidence is going to be, he should also see the witnesses. Is it customary for the client to go to his pleader with information as to what the witnesses are going to say, or simply to bring them and let the pleader find out from them?

A. Well the client comes with a number of persons and the pleader asks them what they are for. He says this fellow is going to say such and such a thing.

Q. In practice is it difficult in this province to know for certain whether a certain case will come up when the date fixed has arrived?

A. In the districts, yes.

Q. You now take the ordinary subordinate judge on an ordinary day. How many cases you suppose he puts down in his diary?

A. Well, the first thing he does is to take up the cases for the settlement of issues. Then generally he has one case for evidence, then two or three miscellaneous matters, and then an appeal or two.

Q. Have you not come across cases in which plenty of contested suits were put down for the same day?

A. I have not seen more than two or three cases being put down.

Q. Do you think in these provinces the subordinate judges manage their work reasonably well?

A. Yes.

Q. As regards applications made in connection with discovery and inspection of documents, is it customary to make such applications on dates on which the case is not set down for hearing, say, interlocutory applications?

A. Interlocutory applications are made before hearing as a rule.

Q. The result is that when an application has to be made, it is usually made when the case next comes into the list?

A. No, before that.

Q. Have you found that the profession generally has a grievance as regards the way in which the subordinate judges take down evidence? They do not encourage the opening of cases. Is it really true that they start off with the witnesses and take down whatever they say?

A. That is so.

Q. Have you any experience of the office of the district courts and subordinate courts?

A. I cannot say that I have much experience of the inner working of the office.

Q. With reference to the evidence before the Committee, both here and elsewhere, a considerable amount of condemnation was made against the court-peons and court clerks—certainly it is a matter of impression, and one does not



know to what extent it is lacking in discrimination. What is your impression of the state of the ministerial office?

A. Well, if you want to get anything, you have to pay for it.

Q. Has that *dastur* come to be looked upon as a legitimate sum?

A. Yes. Every kind of application has a certain sum fixed upon it.

Q. Supposing you do not pay the money. What happens?

A. The chances are that the applications are obstructed.

Q. We understand that in some places, the diet money, which the peon has to give to the man who is summoned, never goes to the witness?

A. I do not know that.

Q. Now in the last 20 years of your experience, have you found that the number of people at *mofussil* bars has increased more and more out of proportion to the amount of work?

A. It has.

Q. Have you noticed in recent years that it has a bad effect on the practitioner?

A. It certainly lowers the morale of the bar. Many people get into the bar without sufficient staying power.

Q. And in the last 20 years, the nuisance of the village *touts* has increased?

A. A good deal.

Q. Who is the village *tout* as a rule?

A. It is very difficult to put a label on him. It may be the *patwari*, it may be somebody who is known as the village barrister, or it may be somebody who knows everybody in the village.

Q. But he is apt to bring work to people who will give him some commission?

A. Yes, he would not do it for love.

Q. Have you ever thought if anything could be done to stop these *touts*?

A. No amount of legislation will stop them. Only the members of the bar themselves can stop them.

Q. If the members of the bar do not stop this practice—the competition among them is getting more and more and some of them have not got means even to carry on—is there anything that could be done to stop it?

A. It has been tried here before the Legal Practitioners Act was amended in 1906 and there used to be a provision under which these *touts* were liable to six months imprisonment. For some reason or other that imprisonment was abolished and it has gone on increasing.

Q. I do not quite see why he should not have six months imprisonment?

A. I think he should have more. He should be bound over under the Criminal Procedure Code.

Q. Have you had instances in which the Limitation Act is too generous?

A. Excepting in matters of execution and suits against municipalities.

Q. Generally speaking the Indian Limitation Act is strict but the different items have given rise to serious litigation in this province.

A. Yes, they have given rise to much litigation.

Q. In civil suits there is a period of limitation?

A. They become difficult questions. Court will not ask the man as to what particular item of the Limitation Act he wants to plead.

Q. Have you had any difficulty in connection with the doctrine of part performance? Have you had cases where a man has not taken a registered document and then afterwards claims specific performance? Is that common in this province?

A. I know of two cases only in this High Court.

Q. Have you had any difficulty on the question of arbitration of suits under the second schedule? Does that work successfully?

A. We find that allegations of bad conduct are made against arbitrators and if matter is investigated it takes a long time, as long as an original suit would have taken.

Q. Have you had instances of people who had in course of a suit gone to arbitration informally and then afterwards when the award was against a party he wanted to back out of it?

A. Very often.

Q. And then it is litigated under Order 23?

A. Yes.

Q. Have you had any difficulty such as when one party brings a suit in one province, the other retorts and brings a more comprehensive suit in another province, say Calcutta?

A. Yes in commercial cases.

Q. Is substantial amount of commercial work done in these provinces?

A. Yes in some places like Cawnpore.

Q. Who generally disposes of the case there—a sub-judge?

A. Generally there are two sub-judges.

Q. And they have to get to know commercial cases?

A. Generally they are not allowed to stay there very long.

*Sir T. Desikachari.*—Q. Do you think that the qualifications of munsifs have generally improved during the last twenty years?

A. I think they pass the same examination as they used to pass twenty years ago.

Q. Are they a better class of people than before?

A. Class of people is the same.

Q. And their qualification is the same?

A. Practically the same.

Q. You do not see any improvement?

A. It all depends upon the calibre of the man. They have got the capacity to work but unfortunately the system under which they work does not give them opportunity.

Q. What is the system about which you complain?

A. The system is that a man is taken as a munisif who has just an elementary knowledge of law and then he has got to sit at the desk and work like a machine.

Q. You mean to say that munsifs have to do more work than they can get through and therefore they are not in a position to improve their knowledge of law?

A. That is so.

Q. Are they competent to do the work?

A. They do it and therefore I suppose they are competent to do it.

Q. Do they do it fairly well?

A. If the work is easy they do it fairly well but if there is any intricacy they have no time to think over it.

Q. Judging from the report and the information available from people who have been in touch with the munsifs it appears that munsifs have improved during the last few years and they are fairly doing their work.

A. Yes they get through the work but whether the quality of the work has improved is another matter.

Q. What should be the remedy to improve the munsifs?

A. You give them as much work as a man can do and no more.

Q. Have you gone through the report called the Greeven Committee's Report?

A. I have read part of it.

Q. Is the standard fixed there practicable?

**A. In theory not in practice.**

**Q.** You think that that standard is not a practical standard. You think that work prescribed cannot be turned out by a munsif?

**A.** Cannot, unless he is a thinking machine.

**Q.** I was putting to you these questions to know as to whether it is possible to enhance the jurisdiction of district munsifs. Supposing you invest them with pecuniary jurisdiction up to rupees two thousand.

**A.** You will have to take away a good deal of other work.

**Q.** Supposing you take away a good deal of petty work and they are given pecuniary powers up to five thousand rupees. Will they be competent?

**A.** Some of them.

**Q.** Some means not none, what proportion?

**A.** I cannot fix a proportion of them. People who are in touch with munsifs can only say.

**Q.** Would you be in favour of increasing the jurisdiction of munsifs from Rs. 1,000 to Rs. 5,000?

**A.** I would divide the work between certain classes of munsifs. I would select munsif of good standing to do cases up to Rs. 5,000 and would give less jurisdiction to munsifs of less experience and so on.

**Q.** You will have gradation of munsifs according to the pecuniary valuation of suits to be tried?

**A.** Yes.

**Q.** Do you think that it is possible to find some other agency to try petty cases up to the value of Rs. 50 or Rs. 100 and to relieve the munsifs' court of the work that it has to dispose of along with other cases? I mean to say whether it would be possible to entrust honorary munsifs with these petty cases.

**A.** It will depend upon the selection of honorary munsifs. If competent men are not selected the results would be disastrous.

**Q.** But if a proper person was selected, do you think, that he could be entrusted with a fair amount of munsif's work?

**A.** In my opinion it will be very difficult to find competent men to take up this work.

**Q.** I think honorary munsifs in this province have done fairly well?

**A.** Yes.

**Q.** I think they try cases up to the value of Rs. 500?

**A.** No they try cases up to Rs. 200.

**Q.** Would it be possible to give some sort of relief to munsifs by entrusting these honorary munsifs with petty cases?

**A.** But the difficulty would be about the filling up of appointments. I do not think that really competent men will be available.

**Q.** I have read in the Greeven Committee's Report that the appointments of honorary munsifs can be filled up by three classes of persons:—(1) retired officials including subordinate judges, munsifs and superior revenue officials, (2) landlords who have got considerable influence in the area and (3) people in towns who will sit in benches. Do you think that if honorary munsifs are selected from among these three classes of persons, they will be able to do good work. Would you have these three classes? Do you not think that it would be a substantial relief to munsifs if a large amount of their petty work is given to these men?

**A.** Certainly that will give some relief.

**Q.** Do you know anything about the work of village munsifs?

**A.** No.

**Q.** Have you any idea as to whether the new Village Panchayat Act has been extended?

**A.** No.

Q. If honorary munsifs are appointed at all, what would be your suggestion about their sitting singly or in a bench?

A. In my opinion single munsif will be better than a bench of two munsifs.

Q. I put you this question because a different view was expressed by another witness?

A. I should say that a single man would be better than two sitting together.

Q. I put you another question with reference to relief that can be given to district munsifs. Do you think that it would be advisable to give them extended powers as regards summary procedure?

A. No. I would give powers only to very senior and experienced men.

Q. On what grounds do you object to this? Do you object having regard to the habits and customs of the people, or having regard to the want of confidence in munsifs?

A. One of the causes is that they are not so highly trained as to be invested with these powers. They have not got sufficient training to be entrusted with summary powers.

Q. Munsifs who have got 20 or 25 years of experience, I think, are sufficiently trained in the ordinary work?

A. But that is an extraordinary procedure.

Q. Then you think that it is an extraordinary procedure?

A. Yes.

Q. Then you would not entrust any munsif with powers to adopt summary procedure in connection with any kind of suits?

A. That is my idea.

Q. Do you think that munsifs are not capable of doing this work?

A. No that is not my idea. What I say is that this work requires special training.

Q. I put you a similar question with similar object namely how to give relief to district munsifs. Do you think that they can be given powers on the small cause court side to try cases up to the value of Rs. 500? I think their present jurisdiction is up to rupees two hundred and fifty?

A. I don't think that they can be invested with increased powers. I would not give these powers to all of them.

Q. Many munsifs in the Madras Presidency exercise powers up to Rs. 200 and sub-judges to Rs. 500? Is there any special object in not giving similar extended powers here to them?

A. I suppose there is a history behind it.

Q. And you do not want to disclose it?

A. No.

Q. With regard to territorial jurisdiction of munsifs, do you consider that courts are located at comfortable distance from the group of villages over which they exercise jurisdiction? Is there any complaint about it?

A. No there is no complaint about it.

Q. What is the distance at which courts are located? Is it sixty to seventy miles?

A. No. Not so much. I think it is forty to fifty miles.

Q. Do you think that it would in the interests of the litigant public if the distance is curtailed?

A. I think forty miles is not much.

Q. Then with regard to insolvency proceedings, do you think that it is a fact that in this province no body thinks about insolvency assets after the adjudication order has been passed?

A. It all depends upon the activities of the receiver. In some cases receivers are active while in others they are not.

- Q. Are there any official receivers in this province?  
 A. Yes.
- Q. And some of them are active and others are not?  
 A. Yes.
- Q. What is your experience about discharge orders?  
 A. The difficulty is that they neither understand the law of discharge nor the law of insolvency. No body knows the imperative provisions that now exist.
- Q. Are assets realized without any difficulty in this province?  
 A. They are not realized because no body cares.
- Q. Would you like that all partitions of immoveable property should be evidenced by a registered document?  
 A. Yes.
- Q. And a similar answer you would render to Question 77?  
 A. Yes.
- Q. With regard to Question 78, would you say that Section 54 of the Transfer of Property Act and Section 17 of the Registration Act should be so construed as to prevent a person from coming and saying "I have advanced money on the property under a contract of sale and therefore I have a right on it?"  
 A. The law says you can do a certain thing in a certain way and if a man did not wish to do a thing in a particular way, let him suffer the consequences.
- Q. Is it a very just law that lays down that every sale deed even for an anna should be registered?  
 A. Yes.
- Q. Do you agree that where the sale of an immoveable property is for more than Rs. 50, it should be registered?  
 A. Yes.
- Q. Then why do you object to say yes to Question 78?  
 A. Suppose a man has sold his property to me. When I go to take possession, I find somebody else in possession, who will say "My dear fellow, it is all right. I have fixed up with him just a few days ago, and have got into possession."
- Q. So you are in favour of any person saying that he got possession under a contract. You are in favour of a person saying that a person getting possession is part performance of an intended sale?  
 A. He should not be allowed to succeed on that ground.
- Q. Do you accept the suggestion that the discharge of obligations created by registered document should be valid only if there is a registered document to evidence it?  
 A. No, certainly not. Take the case of a pardanashin lady who has obtained a mortgage. She has gone to register the document for the first time. The second time she sends somebody to take the money for registration and that somebody plays her false.
- Q. You suggest that a pardanashin lady will not be willing to go to a registration office for a second time?  
 A. Yes.
- Q. What about Question 81? That is allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon.  
 A. I should allow it.
- Q. With regard to mortgage deeds, you won't allow the person who executed a document come and say to the court, "I did not put my signature in the presence of the two attesting witnesses"?

A. I should first ask him whether he signed or not.

Q. Anyhow you would say that a mortgage deed should be attested by two witnesses?

A. Certainly.

Q. Why is it not so with sale deeds?

A. The case is quite different. There is no comparison. In the case of a sale deed, the possession is transferred at once. So that if anybody sells my house unknown to me, I can know the second day that my house is sold. If anybody takes a mortgage deed I may not know anything about it for a long time.

Q. But how does it help matters by asking two persons to attest in one case?

A. It is some guarantee.

Dr. DeSouza.—Q. Regarding munsifs, you say that they work like machines and that they have no time to devote to rules?

A. Yes.

Q. Various methods of relief were suggested. What do you think of the system of keeping a record in which they have to record evidence at length? Can it be modified to some extent and their work relieved?

A. Well, as a matter of fact I find many munsifs and subordinate judges keep a single record.

Q. Do they write down evidence in English?

A. No, in vernacular.

Q. Is it a common practice here?

A. It is getting common.

Q. How about when the case goes on for appeal. Suppose the appellate officer is not conversant with vernacular?

A. He ought to be, otherwise he should not be allowed to try the appeal. Most of the officers know vernacular.

Q. So that as a matter of fact you say that the system of keeping double records is not very common?

A. I think the system of keeping single record is getting common, and that too in the vernacular.

Q. Are there any cases here where munsifs and subordinate judges are empowered under Section 114 of the Civil Procedure Code to take evidence in English?

Q. Not in these provinces.

Q. Do you approve of the extension of the notifications under that section?

A. Well I do not think that it would do much harm.

Q. What I mean to say is that if evidence is recorded in English, and if the case goes up in second appeal to the High Court, the evidence recorded in English has better chance of being understood than that in vernacular?

A. Sometimes. There are vernacular phrases in which the present system comes very handy.

Q. Now would you insist upon the whole of the evidence being recorded or only a memorandum?

A. Well, if it is a single record system, the whole evidence should be taken down. If it is a double record system, the reader takes down the evidence and the judge makes notes.

Q. What I mean to say is when a contested case comes on the presiding officer is more or less absorbed with the recording of evidence. He has no power to control the evidence or weigh the evidence and he is a mere machine recording the evidence.

A. I should say that shorthand writers should be given to them.

Q. You will not be satisfied with short notes.

A. I should like to have full evidence and allow a shorthand writer to take it down, as it is done in English courts.

Q. In English courts notes of Judges are sufficient.

A. Not in all, in many cases shorthand writers are provided.

Q. Would you be in favour of recording evidence in English? It would save time and it would make the weighing of evidence more effective?

A. Yes.

Q. So far as I know even in other parts—the Crown colonies—the practice is to record the evidence in English.

A. In the Central Provinces it is so.

Q. Outside India in Crown colonies?

A. English is the language there.

Q. With regard to the fixing of dates you said that in these provinces is very rare to have more than one contested case clashed. When the judge has no date issued what does he do?

A. He fixes the nearest date.

Q. Does he fix four months hence?

A. Yes.

Q. And even longer?

A. Yes.

Q. Do you work here on diaries as they do in other provinces?

A. They do the same here.

Q. Have you got what is called prospective list or *sine die* list?

A. Never heard of it.

Q. That is the list on which cases, after they are ready, are put and then they are picked up from there.

A. It is not kept in this province.

Q. When a case is ready certain date is fixed for hearing with reasonable certainty that the case will be taken up?

A. If the sub-judge knows that a large number of witnesses are to be examined, then he takes good care to fix a date fairly in advance.

Q. Has he got the list of witnesses?

A. He consults the pleaders.

Mr. Nabiullah.—Q. With regard to recording of evidence by judicial officers do you not think it is very dangerous to allow munsifs who have recently been appointed to make a selection as to what they should take and what they should not take?

A. I should say the common sense would tell them.

Q. You think that common sense is quite enough to decide what they should take down?

A. In many cases, and then there will be a special provision if the counsel wants special questions to take down.

Q. You will let the young man exercise his discretion?

A. Yes.

Q. You suggest that it will rather shorten the duration of a case if these people are supplied with shorthand writers. I understand there are shorthand writers of English only and there are very few who can take down notes in Urdu. Do you think it is very common to get shorthand writers who know Urdu?

A. Yes.

Q. Now if you are to give these shorthand writers to subordinate judges how will you apply the provision of Order 18, Rule 5?

A. That will have to be modified.

Q. You will not mind if the evidence is not read over to the witness?

A. That provision will have to be modified to some extent.

Q. That is to say the provision should be taken out of the Code?

A. Yes.

Q. There is no check over the notes of the shorthand writer?

A. The check will be that they must be made over to the presiding officer within a short time.

Q. But the witness is gone. Do you think there are possible means of saving time without running the risk of false record?

A. I should suggest that the presiding officer should take notes himself.

Q. I can agree with that but with regard to notes it is rather dangerous. Do you agree with me?

A. I should say it will be very good if the presiding officer makes a short memorandum of the points but I should also say that it would be very satisfactory to litigants if shorthand notes are taken.

Q. I should point out another danger. I have seen in the court of the deputy collector, the witness is there, he is giving a statement and sheristadar is there to write out. The deputy collector is supposed to be listening but he may be doing something else. I fear that if the presiding officer of the court does not himself take down the notes there is a danger.

A. Sheristadar is there to take down the evidence in vernacular.

Q. Would you not insist on the judge either to take down the evidence in full or to take down the evidence in notes?

A. According to their common sense the presiding officer should make their own notes.

Q. Now with regard to the honorary munsifs, do you not think they are in bad odour with the public and the public have no confidence in them? What is your experience with regard to them?

A. They are not highly spoken of; public have no confidence in them.

Q. Do you think that people, in their disposal of cases, would like to go to these munsifs' courts where they get speedy disposal of their cases or to the courts where they can get justice?

A. I should say that litigants in these provinces will rather have their cases tried in regular courts.

Sir Tej Bahadur Sapru.—Q. You have been very much interested in the law of pre-emption and have written a book.

A. Yes.

Q. I suppose you have had considerable experience in pre-emption cases?

A. Yes.

Q. Do you think the number of pre-emption cases has gone up or has gone down or is about the same as it used to be 10 years ago?

A. It is not the same as 10 years ago. It has gone down.

Q. Do you attribute the reduction in the number of pre-emption cases in this Court to the working of the Special Bench which was constituted in the time of Sir Henry Richards? How do you explain that? Don't you think that it has led to a great degree of certainty of the law of pre-emption?

A. It has not.

Q. Has the number of pre-emption cases gone down?

A. Yes. In many areas.

Q. As a lawyer of considerable experience of the province, would you rather have the pre-emption go on than abolish it?

A. I would not abolish pre-emption now.

Q. I suppose your view is that at any rate the rural population in this province attach some importance to that right?



A. If you abolish pre-emption now, no less than 4 times the number of profit suits will be instituted. There are a large number of mahals in this province and the number of profit cases under the Land Revenue Act is very small. The reason that I would assign to this is that pre-emption provides homogeneity in the mahal. Generally people who are owners of mahal have common interest besides common ownership of property, in the sense it shuts out strangers.

Q. But still a co-sharer who purchases the property in preference to a stranger will claim his profits.

A. That is where the law of pre-emption comes in. The moment the stranger comes in, the court ejects him.

Q. What I do not understand is how, if the law of pre-emption is abolished, it would give rise to a large number of profit suits?

A. Suits for pre-emption keep out strangers from the villages. The persons who constitute the proprietary body of a mahal in the village are more in touch with each other and have a common sympathy towards each other. The result is that there are a few number of suits for profits.

Q. You will on that ground maintain the law of pre-emption?

A. Yes.

Q. Do you think that the result of the recent legislation on pre-emption will be that the number of suits will go down or the law will get to a more certainty?

A. If it is properly interpreted there would not be a suit of pre-emption anywhere in this province.

Q. In pre-emption cases do they take a long time to be disposed of because you cannot always have a Special Bench?

A. When they do come up they do not take much time in the High Court.

Q. Nor do these cases take time in the lower courts.

A. Practically no evidence has to be let in except as to consideration.

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### Examination of Mr. O'Connor.

Q. You have been connected with this Court for about 31 years?

Mr. O'Connor.—I have just completed the 31st year.

Q. I suppose I am right in saying that at least for the last 20 years you have been extensively practising on the civil side?

A. About 20 years.

Q. Your practice lies mostly in the first appeal bench?

A. I do not take any other class of work unless for some special reason.

Q. You have also experience of mofussil courts in this province?

A. I have got extensive experience.

Q. In almost every district?

A. Yes.

Q. You are the Secretary of the Bar Library?

A. I was up to the last meeting. I have been so for about 24 years.

Q. You are certainly speaking on behalf of yourself and for the Bar Library?

A. I have been deputed by the Bar Library.

Q. Do you think that the work of the High Court has substantially increased during the last few years?

A. Undoubtedly.

Q. What class of cases?

A. Looking at the list of cases I find that both the first and second appeals have increased. Appeals from orders have increased very materially and there has been a substantial increase in both the first and second appeals.

Q. Taking the first appeals do they take very much time to be disposed of?

A. They take over a year as matters now stand.

Q. Most of the first appeals are either appeals from insolvency or appeals from orders of remand or guardianship.

A. Yes.

Q. Since the Arbitration Act has been extended to Cawnpore, has it given rise to a lot of work?

A. It was extended to Cawnpore somewhere near 1912. As a matter of fact nobody knew that it had been extended to Cawnpore till 1915 or 1916. When the discovery was made, certainly a large number of cases were filed.

Q. In short there is a large increase of appeals?

A. Yes.

Q. Perhaps you would agree with me that a good deal of unnecessary litigation under that Act is due to the want of a proper machinery for working out the provisions?

A. That has been one difficulty.

Q. So far as Cawnpore is concerned, can you say from your experience that there has been any substantial increase in the commercial cases?

A. The expansion of business throughout the province has carried with it naturally expansion of work.

Q. Now, 20 years ago cases under the Indian Companies Act were very rare. The number of cases is now somewhat large.

A. I say considerably large.

Q. Take the case relating to forward contracts which were practically unknown in this province about 20 or 25 years ago.

A. There are a considerable number of them now.

Q. A certain number of cases relating to wagering contracts do arise now in places like Cawnpore.

A. Yes; in Aligarh and Agra also.

Q. You will agree with me that there is a tendency towards an increase of commercial litigation in the province as a whole.

A. Yes. It is on the increase.

Q. Now when these commercial cases come up to you, do you find that they have been disposed of very satisfactorily just as you would expect a trained commercial lawyer or judge to dispose of them?

A. I do not think they do.

Q. I suppose your experience has been that in some of these cases particularly under the Indian Companies Act they are disposed of in the lower courts just as title suits are disposed of?

A. I am not afraid so much about Companies Act cases as about purely commercial cases on foreign contracts. They are disposed of really in a highly unsatisfactory manner in most cases.

Q. I suppose you would agree with me that the proper remedy for them is to have proper commercial judges. You want to have men who have got special experience in this class of work.

A. What I have noticed is that the judges in charge of these difficult cases have been mostly young men—munsifs recently promoted—with practically no experience of commercial work and who have more or less to be at the mercy of the men pleading a better cause. There ought to be trained judges to dispose of cases relating to any Act that involves special knowledge and which is based on English legislation.

Q. Am I right in assuming from the trend of your statements that you welcome the appointment of commercial judges in places like Cawnpore, Agra, etc.?

A. Yes. I would have judges specialised in that law and who have sufficient experience of the working of that particular law.

Q. Do you think that the appointment of such judges would make for speedy disposal of cases?

A. Not only that, but it will obviate the number of appeals which are caused by unsatisfactory trials.

Q. Leaving aside that class of litigation perhaps you will agree with me that a considerable amount of delay is caused in mortgage suits?

A. Yes.

Q. And perhaps you will also agree with me that while considerable amount of litigation relates to mortgages, we have not been very happy with regard to the development of the law?

A. I do not think we have been. If subordinate judges are well experienced in these matters and have got sufficient knowledge of the working of law regarding mortgage suits, I think, delays now caused will be minimised to a very large extent.

Q. Do you consider that sometimes delay is wilfully caused by one or both the parties?

A. Yes. So far as the defendant is concerned, when a decree is passed, he comes up with an appeal and tries to hang up matters. He would go on asking extension of time when the appeal is decided. He has got every inducement to delay matters as long as possible.

Q. Perhaps you know that the present law requires a preliminary decree being followed by a final decree. Do you not think that it would save lot of trouble and time if the preliminary decree automatically becomes final decree and the final decree required under the existing law is done away with? Are you in favour of doing so?

A. Yes.

Q. Do you think that the question of representation in these cases also sometimes is a source of delay?

A. Yes. Of course the question of representation of parties sometimes causes delay.

Q. Especially under the Hindu family law?

A. Yes it is very troublesome there.

Q. Then with regard to pre-emption cases, I take it that this class of litigation is very peculiar to this province?

A. I think the Punjab has a good deal of it, but they have got their own Act and so far as I am aware they are not very happy over it.

Q. Do you think that the rule laid down by this High Court has tended to diminish litigation, or is it the same as it was before the rule was laid down?

A. I do not think it has diminished. I am inclined to think that there has been increase on the other hand due to the fact that in second appeals the Judges have to look into evidence in these pre-emption cases and it has shown tendency to prolong litigation.

Q. So you think that it has added to the work of the court?

A. Yes.

Q. Have you had much time to look into the recent Act of Pre-emption passed by the local legislature?

A. I have not had any opportunity to see how it is working. Of course I have gone through the Act, but how it is working will be judged by actual results obtained.

Q. Can you give the Committee any other class of litigation which is peculiar to this province and which you think takes considerable time?

A. In Agra we do not have much trouble, but suits relating to customs are cropping up in the adjoining provinces.

Q. Yes in the Meerut district there is considerable trouble experienced owing to the adoption of daughters' sons. There is the population consisting of jats and many questions arise about the inheritance of daughters.

A. Many indeed.

Q. And when these questions of customs arise, there is a good deal of evidence?

A. Yes both documentary and oral. In these cases commissions have to be sent all over the country. When a question regarding Boora custom arises, commissions have to be sent all over Rajputana. You find all these things in Muzafargarh, Meerut, Saharanpur, Cawnpore and other adjoining districts. We had a case in Oudh relating to Kashmiri Brahmans in which commissions had to be issued all over the Punjab including Kashmir. These commissions usually take more than a year to take evidence.

Q. How would you meet cases of this character? Would you recommend any codification of customs?

A. That is almost impossible. In the Punjab the codification has not succeeded.

Q. With regard to impartible estate questions may I draw your attention to the Madras Estates Act. I am told that it has worked satisfactorily, and has curtailed unnecessary litigation. Do you think that something could be done in this matter in this province?

A. No there will be much difficulty experienced in this province. Estates which are subject to division will become impartible by the orders passed by Government.

Q. So there is not much prospect either of reducing litigation or the length of litigation in this province by any codification?

A. No.

Q. Would you please tell the Committee what has been your experience in lower courts so far as the settlement of issues is concerned?

A. They are very badly settled. My experience is that the subordinate judge never takes the trouble of carefully examining the parties first. Issues are suggested by pleaders and sometimes issues, which do not even touch the fringe of the subject, are fixed and thus much time is wasted and unnecessary delay is caused.

Q. You mean sometimes issues are framed which do not relate to the point in question and sometimes real issues are overlooked?

A. Yes. As a rule there are too many issues.

Q. Is there any such thing as the opening of a case in lower courts?

A. No. In two cases in which I appeared I requested the court to open the cases properly as prescribed by the law, but there was violent protest raised by the other parties.

Q. You begin with your first witness?

A. Yes.

Q. If any trouble as regards the relevancy of any particular point arises, what does the subordinate judge do?

A. He really reserves his views till he writes his judgment.

Q. The evidence objected to is admitted?

A. It is ruled out.

Q. Now what about the length of cross-examination in this province? Do you think it is unduly long?

A. Generally speaking, I do not think it is unduly long, but there is a tendency to prolong at times.

Q. That tendency is only visible in certain parts of the provinces and not in others?

A. Well, I do not know whether I put it down as a local peculiarity. It depends largely on the presiding officer of the court, how far he can control

the work of his court, and a good deal depends on the nature of the case. Some cases lend themselves to unnecessary or extra long cross-examination; others not so long.

Q. Perhaps you would tell us what the practice is with regard to admitting or denying documents by parties here?

A. Well it is most unsatisfactory. It is not done systematically. It is a thing which ought to be done. My opinion is that at the time when you hear the pleadings, you ought, at the same time, go through the documents.

Q. Would you give any special powers to a court to deal with a party or pleader who in its opinion most obstinately and unreasonably denies a document, which obviously is genuine?

A. Well, it is difficult to say how you can deal with that except in regard to costs.

Q. There is nothing new in giving the court power?

A. Only the application of it.

Q. Are the provisions in the Civil Procedure Code regarding discovery and inspection very much used in this province?

A. Very much unused.

Q. That is so either because the lower courts think it is sheer waste of time to resort to them, or the pleaders themselves have not got a clear notion of the provisions?

A. It is really a question of more systematic practice. If it is insisted on then the parties will get into it and do it normally.

Q. One frequent cause of delay is the examination of accounts which is very often produced in partnership cases?

A. That does lead to a lot of delay. I think a good deal of that delay is unavoidable, because when you get a lot of accounts produced, it makes their examination very difficult. I think it is almost unavoidable.

Q. Another cause of delay which has been assigned is the examination of witnesses, pardanashin ladies, and some other persons on commission?

A. That at times is an absolute scandal. I know of a case where a wretched woman was examined for 21 days. When you came to analyse the evidence, about 12 pages represented what was really relevant, and the rest were absolutely irrelevant.

Q. How would you deal with a situation like that?

A. Because the work has to be done by the commissioner and that commissioner in the majority of cases is a young pleader, inexperienced, and who, as often as not, is between two very senior men of the local bar, and he has not got sufficient strength to stand against them. Another reason is that he has not got strong incentive to stop irrelevant evidence.

Q. You think that if more experienced and senior pleaders are employed with better remuneration, it would work better?

A. I certainly think that power ought to exist and personally I think that commissions must be executed by the presiding officer of the court. He should record the evidence of pardanashin ladies as far as possible.

Q. That cannot be done in the interior?

A. Attempts should be made to bring her as close as possible to the court house.

Q. Is there much delay in the progress of a suit in the subordinate courts owing to proceedings over the appointment of guardians for minors?

A. That is considerably abused by successful refusals by parties nominated, then they give notices, and then refusal to accept, a further application and a further refusal, so there is a considerable amount of delay.

Q. How would you cure an evil like that?

A. In the first place the party who wants to get a guardian appointed should nominate at once all the suitable persons he could think of. The note should go round at once, and he ought to choose any one from that.

Q. What is to be done when suitable guardians are not available?

A. I have thought about it. You have got an official receiver attached to every court. You should appoint him as guardian if you cannot get a suitable guardian.

Q. The difficulty is that when you appoint an officer as guardian of the minor, you must also put him in funds?

A. That is so. If he cannot find the guardian and the funds, the court will find the guardian and the opposite party should find the funds.

Q. That would probably require some amendment of the law?

A. Yes.

Q. Suppose the plaintiff has tried for the appointment of a guardian for a minor. Has he not got to pay some money?

A. I think so.

Q. I think some delay is caused by *interim* stay given on applications which are not really *bonâ fide*?

A. That of course is chronic more or less.

Q. They are not applied for *bonâ fide* purposes; the real object is to gain time?

A. Yes. Simply to put off the evil day as far as possible.

Q. Do you find fault with the law, or the manner in which it is worked?

A. The law is clear on the point; it is the way in which it is worked.

Q. In regard to execution matters, sometimes you must have observed a considerable amount of delay is caused by reason of the fact that security is demanded and proceedings relating to security take a very long time. The bond has to be sent down and then there is an enquiry?

A. That does involve a certain amount of delay undoubtedly. With the application there should be a proper bond.

Q. That takes several months. They may take months, you would not put a stop to them?

A. No. When a man presents an application for stay he must present a proper bond—a proper bond certified to be sufficient security.

Q. Now coming to the High Court you said that in your experience the amount of work in the High Court has considerably increased.

A. Undoubtedly.

Q. Now do you think that the system under which the records in the High Court are printed might be improved so that there might be some saving of time?

A. As the rules stand I do not think there is much room for saving the time. Now rules have been made that application is to be made within due period and a case cannot be hung up for want of payment. Now it is done in given period.

Q. It has been pointed out that very often absolutely unnecessary papers are printed to which no reference is made during the argument by counsel on either side. This not only causes delay but additional expense which might be avoided.

A. I am afraid it cannot be avoided. If all the papers are not printed it is not known what papers will be required for hearing the appeal.

Q. The practice is that clerks of the counsel engaged in the case inspect the record and there is no intelligent inspection of the record by any one who is able to read the evidence. If a junior pleader gives a certificate that he has examined the record and that in his opinion such and such papers are necessary to be printed it may alleviate the position to some extent?

A. The junior pleader will act under the instructions of his client.

Q. You do not think that will help very much?

A. If you want a certificate you should have it from the man who conducted the case in the court below.

Q. Now in the vast majority of first appeals there are always two or three counsel engaged—seniors or juniors.

A. It has been the practice and it is going to be a rule.

Q. We have been told that a junior counsel is not generally ready to go on with the case.

A. Well either he is not ready or he does not like to go on with the case.

Q. Or he is not properly paid?

A. Certainly. Whenever I have been asked to appear in such cases I find the junior pleader is absolutely useless.

Q. Is it not a fact that there is no such thing as the system of consultation between seniors and juniors?

A. There is no such practice.

Q. If there is such a practice will it improve matters?

A. Under the new rules that will have to be done because the junior pleader will have to open a case in the absence of his senior and the latter will be bound to have a man on whom he can rely.

Q. That will undoubtedly lead to speedy work?

A. Yes, I hope to better work.

Q. So far as second appeals are concerned, in vast majority of cases you find only a single counsel.

A. In big civil cases you may have two men but in the majority of cases it is only one.

Q. Now according to your view of the matter what do you think to be the reasonable length of time in which a first appeal and a second appeal respectively should be decided?

A. Take the first appeal, you have got to allow time for getting the records ready. If you do that I do not see why the case should not be heard within eight or nine months. This is the state of affairs, I believe, in Oudh.

Q. I think Mr. Wazir Hasan told us that the state of affairs in the first appeal was quite satisfactory but they were in arrears with regard to second appeals.

A. In fact they were coming up for hearing as soon as the file was printed.

Q. Yes that was also my experience last month in a case.

In regard to second appeals what do you think to be the reasonable duration of time if the printing is not resorted to. Will you dispense with it?

A. I think it is necessary.

Q. There may be difficulty when a Judge does not know the vernacular, but in cases up to rupees ten thousand, which do not go to the Privy Council, is there any need of having the records printed when one Judge is a civilian who knows the language of the country and the other Judge is an Indian whose vernacular is the mother tongue?

A. You have further difficulty. You must have some record before the Judges. If a transcript is made for the use of the Judge with practitioners note in the margin giving the actual page of the transcript that will facilitate reference by the Judge.

Q. This is the Oudh practice and the same is the practice in the Judicial Commissioner's Court, Central Provinces.

A. Yes. Then there is another thing in Oudh, that evidence is recorded in English.

Q. Are you in favour of having the double system of record? Will you require the munsif or the sub-judge to record the evidence in English?

A. That system was introduced but after having been tried for some time they gave it up.

Q. But I find that in Oudh that system is working very well.

A. Yes; sometimes it is very well doubted as to what exactly the witness meant and then you have to look up as to what the vernacular record says.

Q. But this is rare.

A. Yes.

Q. Judicial officers in Oudh are recruited from the same class as men in this province. They can develop the same habit in course of time.

A. Yes it is the question of time, they can be trained.

Q. Then you will agree that printing of record is not necessary.

A. Of course there is one comment; the Judges are well behind the office in these matters. The office has seventy or eighty appeals ready but the Judge cannot deal with them.

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**Rai Bahadur VIKRAMAJIT SINGH, Advocate, President, and  
Mr. H. H. HOSAIN, Bar.-at-law, Secretary,  
Bar Association, Cawnpore.**

*Written Statement.*

1. (A) *High Court.*

First appeals, 1 year.

Second appeals, 6 months.

Miscellaneous appeals, 3 months.

*District and Subordinate Courts.*

(a) *Title.*—In our opinion having regard to the habits and customs of the people of the provinces four months should ordinarily be sufficient for the disposal of title suits.

(b) *Money.*—Three months should suffice for money suits.

Three months time for regular appeals before the district judge and two months before the subordinate judge against the decision of munsifs.

Two months for civil miscellaneous appeals against orders.

Small cause suits should not take ordinarily more than one month.

*District Munsif Court.*

(a) Title suits, 3 months.

(b) Money suits, 2 months.

(c) Rent suits, 2 months.

(d) Others, 2 months.

(e) Small causes, 1 month.

1. (B) One month should be allowed for claim proceedings in execution in district courts, subordinate courts and district munsif's court.

2. Yes, we consider the period now taken exceeds the time reasonably required for the disposal of cases, the reasons being:—

(1) Shortness of the cadre of judicial officers.

(2) The non-recruitment of proper officers.

(3) Infructuous service of process.

(4) Inadequate supervision of the lower courts by the district judges.



- (5) Not finding sufficient time to miscellaneous work and execution work leaving it too much to the office.
- (6) Litigant who has got a weak case generally desires postponement.

3. (a) To insist on short, concise and clear pleadings and to avoid long narratives and involved pleadings which waste the time of the court at the time of the framing of the issues and obscure the real points on which the parties are at variance.

(b) To improve the methods of serving process firstly by sending a registered notice by post along with the ordinary process and if the service is not effected to order substituted service at once. The process-serving department requires strict supervision and cases of false services should be strictly dealt with. At present there is a good deal of corruption amongst the process-servers.

(c) The parties should be carefully and thoroughly examined before the issues are struck.

(d) All irrelevant evidence should be shut out and this can only be done if the courts are in full possession of the facts on record.

(e) Taking up a strong attitude in the matter of adjournments.

(f) In places where there are a large number of civil courts and the execution work is heavy establishing an execution court to deal with all cases of execution of decrees and if this is not possible to pay more attention to execution work and curtailing the processes for executions and bringing the property to sale at an early date.

(g) In applications for setting aside *ex parte* decrees where *prima facie* the court is satisfied that the application is not well founded to insist on a cash deposit of the decretal amount before the application is heard on the merits.

(h) Notices sent for the appointment of guardian should be strictly dealt with. If the nominated guardian is not willing to accept the appointment a lawyer may be appointed a guardian at once provided that he may be discharged from guardianship if before the date of hearing a relation turns up and undertakes to defend the case.

(i) The courts should fix the date themselves in the presence of the parties or their lawyers to avoid further change of the dates or postponements.

(j) The courts should keep a strict supervision over the work of the ministerial officers.

4. We think the following changes may be made in the matter of recruitment of judicial officers.

(a) *Recruitment of Munsifs.*—Lawyers of three years' standing be selected. The Selection Board should test their knowledge of law, understanding the pleading, framing the issues and writing judgments. It should be ascertained by some test that they understand the procedure of the conduct of cases from beginning to end. We do not recommend a regular competitive examination but suggest the application of an intelligent test to find out whether the man possesses sufficient capacity and has the grasp of the procedure applicable to all class of cases and is generally acquainted with the broad principles of law.

(b) The munsifs who are quick and methodical workers and have proved good munsifs should be made subordinate judges. District and sessions judges may be appointed from amongst those subordinate judges who have proved their competency as subordinate judges. We also think that some recruitment direct from the Bar may be made as district judges from amongst lawyers who are well known for their integrity, intelligence, knowledge of law, broad commonsense, quick work and a capacity to conduct heavy cases.

The High Court Judges should be recruited from amongst the topmen in the Bar possessing all the qualifications mentioned above in the highest degree and from amongst those judicial officers who have proved themselves

of exceptional ability and fitness by their independence, firmness, integrity, knowledge of law and quick grasp of facts.

No civilian magistrate should be appointed as a district judge unless he has worked as a munsif or a subordinate judge and should not be promoted to the High Court Judgeship unless he has worked as a civil judge with great ability. These appointments should not be made as a matter of course on the ground of seniority.

It is very difficult to fix the proportion of the appointments of district judges from direct recruitment and the promotion from subordinate judges but a ratio of  $\frac{1}{3}$ rd to  $\frac{2}{3}$ rds may possibly be fair, that is,  $\frac{1}{3}$ rd from the Bar and  $\frac{2}{3}$ rds from the Provincial and Civil Services. The Judges of the High Court should be at least one half from the Bar and one half from the services by promotions.

5. In view of the answer to Question 4 we do not think any further training will be required.

6. The transfers generally should not be too frequent but we do not think there is any serious complaint under this head or justice has been impeded for this reason.

7. We suggest there should be a better supervision of the work of inferior courts by Higher Courts.

8. No. This cause is more apparent than real and it can be easily remedied by:—

- (a) fixing the dates in consultation with the counsels in the case,
- (b) fixing and sticking to the order in which the case will be taken up to enable the members of the profession to make proper arrangement,
- (c) encouraging the appointment of the juniors with senior members of the bar.

9, 10 and 11. The jurisdiction of the district munsifs should be raised to Rs. 2,000 and in exceptional cases up to Rs. 4,000.

Selected munsifs of five years' standing or over may be given to try small cause cases up to Rs. 100.

12 and 13. The work of the district judge under Probate and Administration Act and Succession Act can be transferred to subordinate judges and munsifs, only selected officers may be given such powers. Land acquisition proceedings up to Rs. 5,000 may be transferred to subordinate judges.

14. We have no experience of village courts and panchayats and can offer no opinion.

15. We recommend no change.

16. No.

17. No.

18. No, except in cases of Letters Patent appeals.

19. No appeals be heard by a single Judge of the High Court and Letters Patent appeals be abolished.

20. We think some frivolous second appeals are filed in the High Court and the remedy lies in summary rejection of such frivolous appeals by the Hon'ble the High Court.

21. No.

22. No. The Judges should act strictly according to law and pay more attention to Order 41, Rule 11.

23. The answer to first part is in the affirmative and as to the second part the suggestions contained in the question are acceptable.

24. The procedure as regards the trial of the original suits is all right subject to what is said below. There is a lack of compliance with the provisions of the code. It should be strictly enforced. As regards small causes we would suggest that because not less than 33 per cent. of the suits are

decided *ex parte* short dates should be fixed for final disposal—say a week in those cases in which the defendant resides in the same city in which the court is situated and a fortnight in those cases in which the defendant resides outside. If on the date of hearing the case is uncontested it should be decided *ex parte* otherwise a date fixed on which it is to be definitely settled. Opportunity should be taken of the former class of cases to have written statement of the defendant.

25. The procedure under Section 106 of the Transfer of Property Act will not be desirable but we would suggest the following:—

- (a) Service on adult male members of the family should be liberally resorted to.
- (b) The process-servers are corrupt; taking steps to avoid their corruptions.
- (c) There is a general tendency on the part of the process-servers to go only to the residence of the person on whom the process is to be served and even if he has gone out somewhere in the same city or village to return summons unserved. Frequent improper returns and fixing of dates for filing address of defendant and process fee cause much unnecessary and avoidable delay.

26 and 27. English writs and statements of claims differ from the pleadings employed in the mofussil courts. We do not insist on the English writs and statement of claims being employed. The forms of plaint are generally adhered to and where they are not they ought to be returned for amendment or payment of costs.

28. A trial may be given to more extensive use of service through post peons. The help of village official may be taken to effect service.

29. Yes.

30. It is not advisable to throw this additional burden on pleaders but he should go to the party.

31. Issues should be framed after the examination of the parties and in the presence of the counsel.

32. They are neglected. Reason is partly slackness and partly saving of time and pressure of time. Courts and counsel consider them almost unnecessary and burdensome. Juniors should be engaged for this kind of work invariably and their fees ought to be taxed in addition to the fees paid for the conduct of cases in the matter of discovery and inspection applications. The sections of discovery, inspection, production and admission and non-admission of documents require modifications. Inspection sections require a change. One application for inspection ought to be enough. It is not necessary to follow it up by a second application as is the present law. The party against whom the order for inspection is sought ought to bring all papers and documents in his possession and if he has any objection to give inspection he may file an objection. Good deal of time is wasted in connection with applications for inspection of documents.

The provisions of law about admission and non-admission of documents are also not complied with. Party neglecting to write admission and denial be punished by declaring all documents as proved.

33. No.

34. No. The easiest way is to issue instructions to the courts to comply strictly with the provisions of Order XVI, Rule 16 (1) and also to authorise lawyers to issue registered letters to witnesses to attend and this may be deemed equivalent to service.

35. The best way of dealing with cases in which a large number of witnesses are produced who prove nothing is to disallow all costs of witnesses uselessly summoned. We are not in favour of arbitrarily refusing to receive any piece of evidence tendered by any party or not giving a party an opportunity of producing any evidence that he likes to produce at his own risk.

36. We do not agree with the suggestion except in the case of *ex parte* proceedings in which there is no appeal.

37. We are strongly opposed to it. No arbitrary time limit ought to be fixed.

38. We are not in favour of extending application of Order 37, Civil Procedure Code.

39. The answer to the question is in the negative.

40. The existing law is quite right. We do not approve of the suggestion contained in the question.

41. The answer to the 1st part of the question is in the affirmative and I would suggest that the plaintiff should nominate all the possible guardians in the petition and notice should be ordered to go to them simultaneously and the court should appoint at the hearing of the petition one best fitted to safeguard the interest of the minor but if he does not accept the appointment of a guardian, a lawyer may be appointed but if some relation turns up, before the date of hearing and undertakes to defend the suit, the lawyer may vacate the seat and relation may be appointed in his place.

42. We do not think much improper advantage is taken of it and as the provision is not seriously abused no remedy need be provided.

43. No.

44. No, but in cases where a case could be disposed of on the question of law which do not admit of any doubt this practice may be adopted.

45. Yes in majority of cases the judges fix the dates themselves. Fixing of dates has not led to delay in disposal in a large number of cases. Sometimes it does happen that court fixes more work than it can do, this would of course delay the disposal as the case would of necessity have to be adjourned. The courts may be instructed to take better care in future.

46. Pleaders are sometimes consulted in fixing the time required for examination of witnesses. This however should be more frequently done and the dates should invariably be fixed in the presence of pleaders and parties to avoid any chance of delay in disposal.

47. The disposal of cases is sometimes delayed by examination of witnesses on commission but there is no practicable suggestion to curtail the length of such examination. We would not like to add anything to the powers of the commissioners. Written interrogatories may usually be sent and the oral examination may be treated as an exception to the rule. If the court issuing a commission appoints a local man to examine the witness the objections under this head may be minimised.

48. Applications for adjournments are generally given supported by affidavits. In our province there seems to be no hard and fast rule for granting costs of adjournments. We think, however, the rules ought to be framed so as to avoid arbitrary award of costs and there ought to be a uniform rule. A one-fourth fee of lawyer *plus* the cost of summoning witnesses ought to be allowed with a minimum of Rs. 5 in small cause court cases, Rs. 10 in munsifs and Rs. 50 in subordinate judges and district judges court cases.

49. The suits are generally tried continuously day by day. Some courts however get round this rule by taking up the continuing case for a short time and devoting the best part of the day to another case which ought not to be done. The rule ought to clearly lay down that till the continuing case is finished no other case for final hearing should be taken up.

50. We do not propose to answer this question.

51. No.

52. We would suggest that the execution of decree cases in the case of land revenue paying mohals should not be transferred to collectors as the transfer of decree to the collector entails great delay in selling the properties.

53. No.

54. Yes this will be a great advantage and will curtail the time in executing the decrees.

55. Yes we agree with the suggestion contained in the question.

56. The answer to (a) and (b) is in the negative. We agree with the suggestion contained in clause (c). As to the last clause we agree that it should be obligatory on a decree-holder to apply for execution every three or one year provided he applies during the maximum period for keeping the decree alive.

57. We recommend no change.

58. We agree with the suggestion contained in the question.

59. Yes.

60. There is no objection to the deletion of Order 21, Rule 21, altogether.

61. (a) Yes. (b) No objection.

62. In view of our answer to Question 54 the question does not arise.

63. Yes.

64. The answer to first 2 clauses is in the affirmative and the last 2 clauses in the negative.

65. No.

66. (a), (b), (c), (d). Yes.

(e) Two months is enough. In simple mortgage suits there is no necessity of any final decree. It is not necessary to have a separate personal decree framed when the security has been exhausted but the decree may be executed for the balance against the person or other property of the judgment-debtor.

67. There are no serious complaints of abuse and no remedy is called for.

68. No. We should leave it to the discretion of the court.

69. The answer to 1st clause is in the affirmative. The insolvency proceedings hamper a man in the execution of a decree by the judgment-debtor moving the insolvency court at a time when the fruits of his decree are in sight. We think there is delay in disposal of insolvency petitions and realization of assets by the receiver in our provinces. There is no harm in giving insolvency jurisdiction to all the civil courts in a district.

70. Warrants may be issued without notice. There is sometimes delay in execution of a decree by the absconding judgment-debtor.

71. With reference to provisions of law of evidence we offer no other suggestions except those contained in the question.

72. The answer to the 1st part is in the negative. Answer to the 2nd part is in the affirmative.

73. Yes. By agreement those which are not strictly speaking certified copies may be accepted.

74. No.

75. We have to make no suggestions except those already made.

76. Yes.

77. Writing may be insisted upon but no compulsory registration.

78. There should be a registered instrument.

79. Writing should be insisted upon but no registration.

80. Yes.

81. No change recommended.

82. No.

83. No.

84. No.

85. No.

86. No.  
87. No.

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*Supplementary.*

Judgments ought to be delivered soon after the arguments are finished. At present they are delivered sometime 3 or 4 months after the arguments are finished and the case should be argued directly the recording of evidence is finished.

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**Rai Bahadur VIKRAMAJIT SINGH and Mr. H. H. HOSAIN, called and examined on Tuesday, the 25th March 1924.**

*Sir Tej Bahadur Supru.*—*Q.* Rai Bahadur Vikramajit Singh, how long have you been practising in Cawnpore?

*A.* For 27 years.

*Q.* And you Mr. Hosain?

*Mr. Hosain.*—For 19 years.

*Q.* You have got experience both on the criminal and civil side?

*Rai Bahadur Vikramajit Singh.*—*A.* Yes.

*Q.* I suppose your Bar is a very strong one?

*A.* Yes, it is one of the strongest in these provinces. It has got about 90 members.

*Q.* How many members of the English Bar practising?

*A.* Six or seven barristers.

*Q.* In Cawnpore you have got a very large European commercial community?

*A.* Yes, we have.

*Q.* A number of factories, mills and firms and many of the firms are limited liability companies?

*A.* There are a number of them. In addition to the European commercial community, there are a considerable number of commercial firms owned by both Marwaris and up-country men.

*Q.* I think Cawnpore is also a fairly good zemindari district?

*A.* Yes.

*Q.* From Fatehpur, do you get a good amount of civil litigation?

*A.* We get about 40 to 50 cases in the subordinate judge's court in a year, relating to zemindari but not to commercial cases.

*Q.* Is there a substantial amount of commercial litigation in Cawnpore?

*A.* Most of the litigation is commercial based on contracts and resulting in suits for damages, or in suits of bills of exchange or book debts. Most of them relate to commercial transactions.

*Q.* Have you had cases in recent years on foreign contracts?

*A.* Very few.

*Q.* Have you a substantial amount of litigation under the Indian Arbitration Act?

*A.* Yes.

*Q.* Are you satisfied with the working of the Indian Arbitration Act in Cawnpore?

*A.* My experience of these arbitrators has not been very happy because we find the arbitrator, who is appointed for a particular party, usually gives the award for that party, so that there are divergent awards and in not

a very large majority of cases the umpire is appointed and the arbitration is abortive.

Q. Is there a proper machinery for the working of the Indian Arbitration Act in Cawnpore?

A. Yes.

Q. You have no fault to find with the machinery?

A. No. The only thing I would say is that sometime very reckless attacks are made on the arbitrators. I think that ought to be penalised to a certain extent, because respectable people would not like to accept arbitratorship if they find their awards are being attacked improperly.

Q. Who try these commercial cases?

A. The first subordinate judge who is in charge of suit work. Most of the cases are tried by him and some are transferred to the second subordinate judge.

Q. You must have appeared in a large number of suits in your long experience, suits relating to property, or what are otherwise known as title suits. Would you agree with me that so far as title suits are concerned, they are disposed of by subordinate judges?

A. They take a long time.

Q. Are these cases dealt with properly?

A. Many subordinate judges deal with them properly.

In commercial cases, in many instances, they are deficient because they really do not know the things connected with commerce and unless they are there for some time and study the conditions and circumstances of Cawnpore, they will not be in a position to deal with them. They want experience before they deal with those cases.

Q. Sometimes questions of trade usage also will arise?

A. Yes, there are many technical terms which create a lot of trouble to new officers.

Q. I think there are many cases relating to forward contracts?

A. They have been going on for a very long time, especially since the outbreak of the war.

Q. How are they disposed of?

A. They are disposed of as ordinary commercial cases.

Q. What about *badni* transactions?

A. They are not many. The courts put them down wherever they find that it was of a wagering and not of a commercial nature.

Q. Do you get a substantial amount of cases under the Indian Companies Act?

A. Yes, but there are not a large number of cases.

Q. They go to the district judge?

A. Yes.

Q. Speaking with your knowledge of the profession and of the public, do you think both the profession and the public are satisfied with the present system of disposing of these cases, or they would have specially trained officers?

A. I think the people would be perfectly satisfied if they have some intelligent judges who understand commercial cases very well. Of course it is not every subordinate judge who could be posted, but only selected subordinate judges who have got an aptitude to understand commercial cases.

Q. How can you endow subordinate judges with a knowledge of commercial cases? Take a subordinate judge in Aligarh or Meerut. He

generally disposes of cases of title suits, but very seldom cases of a wagering nature. Supposing he is transferred to Cawnpore, how would you put him in the way?

A. I think before a man is put in charge of a subordinate judgeship, he ought to sit and work there for some time before he can work. Otherwise I do not think how he can be trained.

Q. Don't you think it would involve the expenditure of a lot of money and waste of time on the part of authorities?

A. I should think so.

Q. Does your district supply a fair amount of appeals in commercial cases to the High Court?

A. Yes.

Q. Is it your experience that the decision of the High Court has also been responsible for a certain amount of litigation?

A. Yes.

Q. Tell me frankly, we are not arguing a case before the Judges of the High Court; we are finding out the defects in the judicial administration.

A. In some cases the judgment came to me as a surprise. After all they are the Judges of the High Court and they are bound to be followed.

Q. In a centre like Cawnpore perhaps it will be desirable that judges with special knowledge of commerce should be posted there. Every judge is not qualified to dispose of such cases?

A. Yes, they will be appreciated.

*Mr. Justice Stuart.*—Q. I want to know how to get over this difficulty. Supposing I take a really good sub-judge—and we have many such—and keep him down at Cawnpore year after year to try commercial suits. By keeping him there to do that good work I am depriving him of his promotion to district and sessions judgeship. You cannot give a sub-judge more than twelve hundred rupees so if you want a thoroughly experienced man I cannot let you have such a man without punishing him. In the matter of houses, I find that the unfortunate man has to pay eighty or ninety rupees a month more than he would have to pay elsewhere.

A. I think if the High Court sends a report it will be approved in the Legislative Council.

*Sir Tej Bahadur Sapru.*—Q. Your opinion is that the Government ought to spend more money in making administration of justice more efficient?

A. Yes.

Q. Do you know whether the Workman's Compensation Act has already been extended to Cawnpore?

A. We have had nothing so far. As a matter of fact I saw only the other day that some rules were gazetted.

Q. What is the practice in your court with regard to settlement of issues?

A. This has not been very satisfactory. The settlement of issues is never done in the presence of the parties and the pleaders, and in some cases issues are framed out of the court.

Q. Probably you suggest that the sub-judge takes the record to his own house?

A. Yes, he writes down the issues and shows it to the party.

Q. So far as the opening of cases is concerned, is that practice resorted to?

A. This has never been done. It was never done when I started practice 27 years ago and it is not done now.



*Q.* Is that due to reluctance on the part of the profession or on the part of the court?

*A.* I mean to say it is settled as a practice. No one touches it. If the case is opened and the salient facts are put before the court the parties would know as to where they stand.

*Q.* You think it will be a good thing to insist on that?

*A.* Yes.

*Q.* What about the admission and denial of documents?

*A.* This is also very unsatisfactory. The court passes an order that the party should write admission or denial, but the senior lawyer is generally very busy because in addition to the work of a counsel he has also to do the work of a solicitor.

*Q.* Cannot a senior pleader be relieved by employing a junior counsel?

*A.* Something must be done by giving to junior pleaders their fee by taxing it as cost.

*Mr. Justice Stuart.*—*Q.* You think that one of the first steps ought to be the revision of taxable fees. You mean to say that the fee is small and should be paid at the rates which are reasonable considering their qualifications.

*A.* In sub-judge's court 800 applications were put in by two parties and the taxable fee was fifteen hundred. The case went on for a year and went on by one thousand.

*Q.* You have no experience of the munsifs' courts?

*A.* I very seldom appear before the munsifs.

*Q.* And in the small cause courts?

*A.* I have no experience except in insolvency cases.

*Q.* Will you tell me how insolvency cases are disposed of?

*A.* They are taken up by small cause court judges only on Saturdays and they cannot give more than half a day. In fact they are taken after 2-30 and they do not get sufficient time to deal with insolvency work. People get very much discouraged because they cannot realise their money. The thing remains in the hands of the official receiver and the court.

*Q.* Is there an official receiver?

*A.* Yes, there is an official receiver.

*Q.* Is he a Government servant or a pleader?

*A.* A pleader.

*Q.* Does he get remuneration?

*A.* Yes, he makes a fairly good amount. I think he makes about three to four hundred rupees a month.

*Q.* He gets Rs. 290 a month. As regards the examination of witnesses on commission what has been your experience? Is there a tendency to prolong cross-examination before the commissioner.

*A.* Lot of irrelevant questions are put which cannot be checked by the commissioner.

*Sir Tej Bahadur Sapru.*—*Q.* How would you remedy that evil?

*A.* It is very difficult to remedy it unless in ordinary cases you have only written interrogatories.

*Q.* I think if you pay sufficient fees you can get competent men to work as commissioners?

*A.* But that will never attract senior men. They will never take up that work.

*Q.* With regard to inspection or examination of accounts, what is the system followed in your district?

A. Now with reference to inspection of account books, it is another great difficulty in Cawnpore.

Q. We have been told by one witness that there is a special officer attached to each court for the purpose of examining accounts.

A. No. It is always a great difficulty. A large number of applications have to be made before the party brings his account books for inspection. There is always some dispute between the parties as to what inspection should be given and what not. One party wishes to inspect certain accounts while the other party does not want it and so lot of time is wasted in this manner. I know one case in which the matter came up twice to the High Court but the case was dismissed under Order 11, Rule 21, and although the man had account books, but he avoided giving inspection for three or four years. He avoided inspection in spite of the fact that he had books. So our suggestion is that only one application may be sufficient to call upon the parties to bring all the books.

Q. I understand that the Cawnpore bar is the only bar in this province which makes use of the provisions with regard to discovery and inspection of documents? I think they frequently make use of these provisions.

A. Yes, because we have to do in order to get information and curtail evidence.

Q. With regard to the examination of accounts by Mubassir Bahi what has been your experience in Cawnpore?

A. We used to have some Mubassir Bahis attached to courts, but now they are appointed on remuneration, to be paid by the parties, but it has not proved satisfactory. You do not find honest men and they, if appointed, become corrupt. They only get Rs. 4 as their fee, but they may get Rs. 100 from one of the parties.

Q. I remember at one time you had pleaders to do this work?

A. It is very often left to pleaders, but the difficulty is that most of them do not know the language in which bahi khata is kept. They cannot read characters in which these accounts are kept. Some pleaders know Mahajani but not all. But those who know the language demand very high fees and the parties cannot pay them.

Q. Do you think that cases which involve accounts, etc., take very long there?

A. Yes. I know of cases in which a man was kept in the witness box for twenty-one days.

Q. Was it a genuine cross-examination?

A. Yes, it was.

Q. Were there too many items?

A. Yes.

Q. But that is not a normal feature?

A. No.

Q. You say in your memorandum that you would like a certain class of cases to be transferred from the district judge to the subordinate judge, i.e., succession certificate cases and probate cases. Do you think that, having regard to the amount of work that the subordinate judge has to do, it will be feasible to transfer these cases to him?

A. So far as Cawnpore is concerned I should say that the subordinate judge will find no time to do any work of the district judge. I think for Cawnpore you require always two permanent judges. One will have to devote all his time to criminal work and the other to civil work. If there is only one judge he will not be able to find time to do civil work because criminal work is very heavy. At present about three-fourths of the judge's time is taken up by sessions work.

Q. How many judges at present have you got at Cawnpore?

A. We have got at present one sessions judge and one additional judge. The time of one judge is mostly employed in disposing of criminal work and he gets no time to do civil work.

Q. I think you have got three subordinate judges and five munsifs at Cawnpore?

A. We have got two subordinate judges but the third judge does small cause court work. Five munsifs are too many for normal work.

Q. Do you get many cases relating to wills in Cawnpore?

A. Yes, we have got a fair amount of work on the probate side and these cases are sometimes very lengthy because they are to be tried like original cases and they take a lot of time.

Q. I should like to know your views about the question of appeals to the High Court, particularly second appeals. Now suppose you were told that you would have an appellate bench sitting in Cawnpore consisting of two experienced good subordinate judges having jurisdiction to hear appeals from munsifs and that their judgment shall be final both on questions of law and facts and similarly another appellate bench of two district judges, men of experience I mean, disposing of appeals finally on questions of law and facts up to Rs. 5,000, how would you approve of a suggestion like this? I think you follow my suggestion.

A. People have got more confidence in the judgment of the High Court than they will have in two subordinate judges or district judges.

Q. There are many people who hold that the present system of second appeals gives you a bad second appeal, whereas if you have a really good first appeal in the lower court disposed of by a bench of two competent and experienced subordinate judges or district judges according to the nature of the case, do you think that the profession and the public in Cawnpore will prefer a really good first appeal to a bad second appeal in the High Court?

A. There is one advantage no doubt. You will have a better decision in this case as regards question of fact is concerned, but so far as law is concerned they will not get sufficient time to study questions of law.

*Mr. Justice Stuart.*—Q. I quite see your point. But the bench would sit in Cawnpore all the year round and would consist of specially selected men. They would do purely appellate work and nothing else. I think one might suggest that this would be a better appellate court than any single subordinate judge who takes up these cases in his spare time when he has nothing else to do. The bench would not be of men who are not competent, but of specially qualified men.

A. Yes, I understand it.

*Sir Tej Bahadur Sapru.*—Q. You say something in your memorandum with regard to the Letters Patent appeals. I understand your position to be that as far as possible the jurisdiction of the single judge in the High Court should be limited so that second appeals may be disposed of generally by benches?

A. Yes.

Q. You would not abolish Letters Patent appeals?

A. We would recommend the abolition in case all the appeals are decided by two judges.

Q. You get a certain amount of land acquisition cases in Cawnpore?

A. Yes.

Q. Are they held up?

A. Sometimes for a long time before the judge.

Q. At present they have been waiting for a long time?

A. I should say 18 months.

Q. In how many cases?

A. At present not more than 50. That is my impression.

Q. Do you suggest that these land acquisition cases might be transferred to the sub-judges and the law might be amended so as to allow the sub-judges to dispose of the same?

A. I would prefer those cases to be tried by district judges.

Q. With regard to the jurisdiction of munsifs what is your suggestion?

A. I think the jurisdiction ought to be increased to Rs. 1,000 and in the case of selected munsifs up to Rs. 3,000 or 4,000.

Q. With regard to the judges of the small cause court do you think whether there is any room for increase in their pecuniary jurisdiction?

A. No. So far as Cawnpore is concerned he has jurisdiction up to Rs. 500.

Q. You don't think there is any room for increasing their pecuniary jurisdiction?

A. No.

Q. Would you allow the judge of a small cause court to try some class of suits which he cannot now try under the schedules of the Small Cause Courts Act?

A. No. Those cases are rather lengthy and I would not like to burden him with any further work.

Q. Do you remember the nature of the suits cognizable under the Presidency Small Cause Courts Act?

A. Yes.

Q. Would you rather have your judges of the small cause courts in this province exercise the same jurisdiction as the judges of the Presidency small cause court?

A. No.

Q. With regard to service of process, what has been your experience in the city of Cawnpore?

A. In many cases the services are abortive and I should suspect they are intentional in many cases.

Q. Who is responsible for that.

A. I attribute it to the corruption of the process-server and the party. The party tips him, and asks him to write that the man could not be found, and the process-server writes that.

Q. Will better supervision improve matters?

A. Probably it may, but not very appreciably, because they have not got much time to supervise.

*Mr. Justice Stuart.*—Q. Supposing you change the whole thing and put a serious and responsible man in charge of the process service establishment, do you think it would improve matters?

A. I should think so. Where it is found out that the process-server has been corrupt, he should be punished.

*Sir Tej Bahadur Sapru.*—Q. Do you think parties should be allowed to make more use of registered post, and that pleaders should be asked to bring the witnesses?

A. I think it is quite possible in Cawnpore.

*Mr. Justice Stuart.*—Q. Would you take the responsibility on yourself? Would you say that you will bring your own witnesses?

A. My suggestion is that registered notice should go with acknowledgment due letters. They would generally receive it, because they don't know why they come. The services effected through these registered letters would be sufficient.

Q. Would not the letters be refused?

A. They would be refused very rarely. That is my experience.

Q. Even with service stamps on them?

A. They would not know it, because they are used to get many commercial communications like that.

*Sir Tej Bahadur Sapru.—Q.* Now what has been your experience in regard to matters relating to execution of decrees in Cawnpore? Are these decrees executed promptly?

A. That is the greatest difficulty and it is a standing complaint that the decrees are not executed promptly.

*Q.* What remedy would you suggest?

A. The curtailment of processes. There are too many unnecessary processes sent to the judgment-debtor.

*Mr. Justice Stuart.—Q.* Would you suggest any good machinery?

A. In a place like Cawnpore, I would suggest that you have an execution court coupled with insolvency work.

*Q.* You say in your note, that there is no justification now for sales by collector?

A. Yes.

*Sir Tej Bahadur Sapru.—Q.* And would you like to amend your law of Limitation?

A. Not unless we find that the new machinery is working better.

*Q.* If you get a better machinery and a purer machinery, would you still object to make some amendment?

A. Then I would not object to the revision of the schedules.

*Q.* Take for instance the provision in the Limitation Act, about steps in aid of execution, don't you think that the application which is made to keep the decree alive, is frivolous?

A. That is right.

*Q.* And that those provisions under the code of Limitation Act could be modified?

A. Yes.

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### **Supplementary Memorandum by Rai Bahadur VIKRAMAJIT SINGH and Mr. H. H. HOSAIN, dated the 28th March 1924.**

With reference to the suggestion of the Civil Justice Committee made to us on the 25th March last, we have the honour to state that we have consulted the members of the Cawnpore Bar Association and they agree with us in thinking that the suggestion made by the Committee with regard to the hearing of the munsifs' and sub-judges' appeals by a bench of two selected sub-judges and district judges respectively and giving the decisions of these benches a finality will be a desirable substitute for second appeal in the High Courts.

The Cawnpore Bar Association also agree that the safeguard suggested by the Committee with regard to the appeals from the decision of these benches on a difference of opinion and the stating of a case by the bench on an intricate point of law will also be sufficient to protect the interests of the litigants and the general public.

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### **Mr. J. C. WEIR, Professor of Law, Allahabad University, called and examined on Wednesday, the 26th March 1924.**

(No written statement received.)

*Chairman.—Q.* Are you Principal of the Law College?

A. I was, but not now. I am head of the department of law. I am now professor in the Allahabad University.

Q. Will you please tell us what exactly is taught to the pleader before he qualifies himself as such?

A. He is taught six subjects in the previous examination and seven subjects in the final examination. I am only speaking from recollection. He is taught in the previous examination the following subjects:—(1) Roman Law, (2) Constitutional Law, (3) Law of Evidence, (4) Law of Easements, (5) Law of Contracts and (6) Criminal Procedure. In the final examination he is taught the following subjects:—(1) Civil Procedure including limitation, etc., (2) Principles of Pleading, (3) Hindu Law, (4) Muhammadan Law, (5) Jurisprudence and two other subjects.

Q. It has been brought to the notice of this Committee that very little use is made by pleaders in this province of the provisions regarding discovery, admission, etc. Is there any exception in practice in the teachings as regards such orders—Order 10?

A. No, there is no exception.

Q. It is not excluded from the course?

A. No.

Q. And what about admission of interrogatories?

A. I have never lectured on that. It has always been taught by some one who has been practising at the Allahabad Bar.

Q. Pleading in the mofussil courts seems to be rather defective. Is it a fact?

A. It is terrible. I gave 5 lectures on the subject myself.

Q. So you are beginning at any rate to give some instructions on pleading?

A. Yes.

Q. I think there will be no difficulty in some instruction being given on practical points other than pleading. For example on interrogatories, etc.

A. Yes.

Q. Do the students get any sort of lectures from members of the bar, that is, do they get any lectures from outsiders that may be of practical assistance?

A. We are trying to arrange that.

Q. Do you think it would be of much use to provide with a certain amount of practical instruction unless it were made part of the examination to the degree?

A. Well some students would very much like to attend to such classes, others would not.

Q. But there is a type of student who will benefit?

A. Yes.

Q. Do you think it would be advantageous to insist upon including practical or applied subjects to the degree, and secondly that until a student read in chambers with somebody, he is not eligible for practice?

A. That is the idea, but it is very difficult to get good men. Young people are always eager to go to men who are very busy.

Q. Have you ever thought of any practical means of preventing people with a merely theoretical knowledge turned loose on the public?

A. No, I have not got any hard things to say so far as the bar is concerned. What I think would be ideal is this. In India we should have a system something like what we have in Dublin. In Dublin you attend for one year in the University and 2 years in King's College. In India I would reverse it. In Allahabad 2 years in more or less the same sort of work, and one year's lectures from practising men on the practical side, lectures on the actual practice of procedure and so on. I think the student will listen more attentively to a practising lawyer than he will to a professor.

Q. I think you mean a great deal more can be done in teaching him practically?

A. Yes.

**Q.** Do you think that the other universities where law is taught find it difficult in giving more practical form of teaching?

**A.** Yes.

**Q.** If it was necessary to have, say, one paper on practical facts, give the student particulars and ask him to draft a plaint, or defence, or something of that sort, do you think it would be possible to include that in the final examination?

**A.** I think it would be possible. But it should be made a separate paper.

**Q.** Have you ever had occasion to teach anything in the nature of drafting of contracts, partnership articles, etc.?

**A.** I have had no occasion to teach.

**Q.** I heard that in this part people never go to pleaders for advice till they actually want to file a suit?

**A.** Yes.

**Q.** I suppose you get what is called in England, equitable counter-claim.

**A.** I often get it. It is often a very troublesome question.

**Q.** Except for the precedents that you get in the Civil Procedure Code there are no books at all on that subject.

**A.** I do not know any of that kind.

**Q.** I think that a certain amount of instruction in it will be useful.

**A.** Yes.

**Q.** I don't think you would be against a recommendation that provision should be made, as part of the law degree, to give a certain amount of definitely practical training in the application of the Civil Procedure Code.

**A.** I would be very glad of it.

**Q.** After he gets the degree it may be possible to insist on a certain amount of further training for qualifying for the bar.

**A.** I am sure it would be practicable. It may be done.

*Sir Tej Bahadur Sapru.*—**Q.** How many students have you in the college now?

**A.** Slightly over 300.

**Q.** Before the University was established in Lucknow, how many had you?

**A.** I had 450.

**Q.** Have you got day lectures or do you hold classes in the evening?

**A.** All day lectures.

**Q.** Your staff has gone down a great deal in number.

**A.** We are four.

**Q.** Is there any proposal to have some tutors in law?

**A.** Not at present. The practice now is after we finish our lectures we sit on.

**Q.** You have been an examiner in this University for many years?

**A.** Yes.

**Q.** Pleading goes with the Civil Procedure Code in examination.

**A.** Hardly a question is ever put on it. If you have it at all, they ought to be given a separate paper.

**Q.** Whatever attention may be paid to the actual teaching, the examiners don't take particular care to test the knowledge of the students in regard to pleading.

**A.** No.

**Q.** Do your students occasionally go to courts of law to take down notes in cases that are actually being tried?

**A.** No. I am always urging them to do it. But they won't go unless some sensational case goes on.

*Q.* If your University require that they must send notes of at least half a dozen cases in the course of the year which they have taken down and they will be examined in that subject also, do you think that it will be of some good?

*A.* It will be very difficult to carry it out. There should be somebody to supervise whether they themselves take the notes.

*Q.* Probably you want a bigger staff to carry it out?

*A.* We want somebody to make them sit down and take notes.

*Q.* Are there no *viva voce* examinations as in England?

*A.* They were abolished because the numbers were so great.

*Q.* Could they not be got in ratches?

*A.* We had got 12 students for half an hour and it is impossible to examine them during that period.

*Sir T. Desikachari.*—*Q.* Is there any examination here corresponding to the Apprentice Examination in Madras? He picks up a vakil, and has to attend his chambers, take down notes for a whole year, submit his notes through his master to the High Court and then undergo the Apprentice-Examination.

*A.* Yes. That could be done. It would be a very excellent thing.

*Q.* In a majority of cases, I suppose the pleadings would be in vernacular.

*A.* Yes.

*Q.* For that purpose you must have pleadings not in vernacular, but in the language of the court.

*A.* Yes.

*Q.* With regard to Hindu and Mohammedan laws who teaches these?

*A.* Mr. Chowdhary teaches the Hindu Law and Mr. Waliulla used to teach the Mohammedan law.

*Q.* Are there practising lawyers to teach these subjects?

*A.* Both of them are practising lawyers. Mr. Chowdhary practised in the High Court.

*Mr. Justice Stuart.*—*Q.* Do you attempt to do anything by way of practical teaching in cross-examination of witnesses?

*A.* I have lectured to the class.

*Q.* Cannot a student learn a good deal by hearing a good man cross-examine a witness?

*A.* I always tell the students to go to the sessions court to see the cross-examination but few do that.

*Q.* I should strongly recommend that they should come here but the accommodation here is rather little.

*A.* Yes, once I gave the class leave and the court was filled with two hundred people.

*Q.* What was that case?

*A.* It was under the Press Act.

*Q.* The number of people who attend to listen is usually very small and they might hear perfectly good counsel and learn a good deal?

*A.* I press students to do that.

*Q.* You have nothing in the nature of moots in the law college?

*A.* I have got moots on points of law. I find it is very troublesome in writing out imaginary cases.

*Q.* You never take up a thing like a mock trial?

*A.* One year that went fairly well with a limited number of students.

*Q.* When in England I once conducted a mock trial case and handed over the evidence to certain students to commit to memory. As far as they could they reproduced the evidence.



A. I do not think they would all do it unless you got the right type of Indian cases for them.

Q. But you can surely get quite easy and simple cases from the High Court any day.

A. I am afraid it will be very hard to get them to learn the evidence.

Q. Can you suggest any method by which instructions could be given in examination-in-chief and cross-examination?

A. I can suggest ways in examination-in-chief but I am afraid not in cross-examination. I was told by a judge that in his opinion the indifferent examination-in-chief and the confusion that we get in cases in this country was due to the fact that the practitioner will not take the trouble of finding out from his client as to what exactly his case is.

**Mr. A. G. P. PULLAN, I.C.S., Legal Remembrancer, Allahabad,  
called and examined on Saturday, the 29th March 1924.**

*(No written statement received.)*

Mr. Justice Stuart.—Q. How many years' service have you put in?

A. 20 years.

Q. When did you join your first judicial appointment?

A. That is a difficult question to answer. I was first appointed as district judge in 1914.

Q. Were you ever at Dehra Dun?

A. Yes, for a year.

Q. In what year?

A. In 1908.

Q. You were small cause court judge and subordinate judge there in 1908?

A. Yes.

Q. Then you became district judge in 1914?

A. Permanently in 1915.

Q. In what judgeships have you been?

A. Saharanpur, Mainpuri and Benares.

Q. How many years were you in Benares?

A. For three years.

Q. You left that place recently?

A. Yes. Just a year ago.

Q. Now you are Legal Remembrancer. I think you are on the point of going into Judicial Commissioner's Court?

A. Yes.

Q. In Benares how many districts had you?

A. Benares and Jaunpur.

Q. Were you responsible administratively for both districts?

A. Yes.

Q. Your staff in Benares consisted of how many officers?

A. In Benares 1 subordinate judge and usually 2 munsifs, and at Jaunpur 2 sessions and subordinate judge, very often an additional sessions and subordinate judge and 4 munsifs.

Q. You were responsible administratively for Jaunpur. Of course you had appeals from there?

A. Yes. I had appeals from some of the munsifs' courts.

- Q. Was your criminal work at Benares heavy?  
 A. It was about the average.
- Q. Is Benares one of the three districts where the jury system is applied in a modified degree?  
 A. Yes.
- Q. How long did you take for sessions work?  
 A. In a month, it might have lasted anything from three days to a week.
- Q. Was it considered an abnormal session if it lasted for a fortnight?  
 A. Yes.
- Q. I think you were at Benares in 1922?  
 A. Yes.
- Q. Although you spent not much more than a week in a month for sessions work, I see you nevertheless got through 67 cases?  
 A. Yes.
- Q. How long did you find sessions cases lasted? Usually only a day?  
 A. I often did 2 jury cases in a day. Such as theft cases.
- Q. That is you disposed of the ordinary habitual offenders' cases at the rate of 2 per day?  
 A. Yes.
- Q. Nevertheless I find that you decided 451 civil appeals and were able to keep the appellate work in your district and Jaunpur well in your hands?  
 A. Certainly.
- Q. You knew what every man in all the courts was doing?  
 A. Yes.
- Q. Did you find time to inspect every court, every year?  
 A. I don't think I inspected all munsifs courts in Jaunpur; but I inspected all the munsifs courts in Benares and the subordinate judges courts at Jaunpur.
- Q. Did you get round the Jaunpur courts during the three years?  
 A. Yes.
- Q. In Benares itself, did you inspect every court once a year?  
 A. Yes, I did every year.
- Q. Did you find any particular difficulty in getting your subordinate judges and munsifs to arrange their work in a methodical manner?  
 A. No. I think that they all have improved.
- Q. Because you looked after them?  
 A. I think so.
- Q. Were you careful whenever you got the statement of delay to point out to the presiding officer that he must not put down a case on a date on which he could not take it up?  
 A. Yes, certainly.
- Q. And you found that on the whole this worked all right and there was no great difficulty once they applied their minds?  
 A. Well, when I left Benares, no court was seriously in arrears.
- Q. What I mean to say is, did you find it possible to put down continued adjournments of this nature: "Adjourned to such and such a date, because the case could not be taken up owing to other work" ?  
 A. I do not know whether I put a stop to it altogether. They knew my opinion on the subject.
- Q. And knowing your opinion on the subject, they found that they could avoid such delays?  
 A. Yes.
- Q. Could you suggest to me any improvements in the service of processes?

A. Improvements of what kind?

Q. In accuracy and speed. Can you think of any method by which we can get the process from the court to the party quicker than it is done at present, and secondly speedier work in the service?

A. The only thing I could think of is a better supervision of the process-serving establishment. I used to keep a list of the process-servers and give those black marks who made bad services, or who were in any way found fault with.

Q. Did you find that it took you very long?

A. Of course not. The munsif used to submit me the report and it did not take me very long to go through it.

Q. You find that this simple check resulted in a considerable improvement?

A. I think it did.

Q. Do you think that, if the supervision of the process-servers is left to the presiding officers of the courts themselves and the central nazarat is abolished, there would be any improvement?

A. I have never thought of the idea. The control by the district judge is, I think, the best.

Q. How long did your office work take you—accounts, correspondence, etc.?

A. I always went to office at 10 or a few minutes after 10 and I got into court by 11.

Q. There is a suggestion to appoint a registrar for each district court, and possibly for other courts and make him responsible for all that sort of work—ordinary correspondence and also for such matters which do not require a judicial enquiry and such a registrar would be a specially recruited man with legal qualifications. What do you think of that arrangement? Do you think it would make for efficiency and speeding up?

A. I don't think that an ordinary district could find work for him.

Q. Do you think he could only be employed in certain districts?

A. Yes, in a place like Meerut, but in Benares there would not be sufficient work for him nor in Mainpuri.

Q. Take the case of an application for attachment. That is put in and the execution clerk checks it and places it before the munsif. He then orders "Process fee to be deposited to-morrow." Then the process fee is deposited. Then a day's time is wasted to get his initials. Then there is more time wasted in sending the notice, and more time wasted in getting it back, then more time wasted for objections, and then more time wasted in sending out a man to get the property attached. The work of the registrar will be to check these stages and see whether he cannot speed up the work.

A. Of course in places where there are 6 courts in the headquarters—in a place like Aligarh he would have enough work to do.

Q. Suppose a she-buffalo is attached as the judgment-debtor's property and another man claims it as his property. That won't go to the registrar but will go before the munsif. The work of the registrar would be to watch and see that there is never unnecessary delay. What do you think of that?

A. It is quite a possible idea. It might be tried tentatively in 2 or 3 districts.

Q. Do you think we can do anything in separating up cases where a minor is really seriously interested and where the minor is practically a *pro forma* party?

A. The minor invariably comes in as a member of a joint Hindu family. I cannot find a satisfactory solution.

Q. Do you approve of the appointment of a central nazir as a guardian *ad litem*?

A. I think an objection was raised when that was done formerly. It is a very awkward job for a nazir. If a pleader be appointed guardian *ad litem* it would not cost a good deal.

Q. There is another very common case. A Hindu widow has sold forty years ago certain property to "A," "A" has sold it to "B," "B" to "C," and "C" to "D" and so it goes on to "X." The only man who is interested is "X" and you will find the case solemnly held up because you cannot get a guardian *ad litem* to "Z" who represents the interests of "F" by whom the property was sold thirty years ago.

A. Such instances are common. I think the court might be given discretion.

Q. I do not know whether that order is in force that in future every presiding officer should write out the adjournments in his own hand giving his own reasons for that.

A. That order has been passed.

Q. I think you do not disapprove of it?

A. I agree with it.

Q. When you were in a small cause court you had some practice like that?

A. I always used to fix up my own dates.

Q. And the reasons for adjournment?

A. I either used to write them myself or dictate them to the peshkar.

Q. Do you think that we might usefully add a rule to our rules that the court should be authorised to refuse to hear witnesses if they are not summoned in a reasonable time?

A. Yes, I think that might be done.

Q. The difficulty is that some parties keep the case alive, after the witnesses on the list are finished by producing person after person. Have you ever seen that?

A. I have not seen such a case personally. I gather the thing does happen.

Q. Do you not think that it might be possible to introduce a rule by which a man should be compelled to state to the court the names of all the witnesses he is going to bring so as to enable the court to have some check to see that he actually produces those witnesses?

A. Yes, I think so.

Q. You see there is delay in some cases, the cause of delay being this. A man in the course of hearing finds his case very weak on a certain point. He has exhausted his witnesses on the point and he is searching for false witnesses sufficiently intelligent to depose on that point. The time is going and something has to be done. He goes about looking for these false witnesses as he is to keep his case going on. Do you not think that the method I suggest would put obstacles in such a man's way?

A. It will make it more difficult for him.

Q. Have you had much trouble in your experience with regard to commissions issued outside your own judgship?

A. Yes, I have.

Q. Where does the delay come from?

A. Generally from Bengal. Commissions usually take much time there. This is sometimes due to absence of one or the other parties. The examinations are also unnecessarily protracted.

Q. Is it a fact that sometimes these commissions do not come back until after a year?

A. Yes, that is so.

Q. Have you ever been able to discover genuine reasons for so much delay?

A. No. They write down their reasons on paper but I never believe that the reasons given are genuine.

Q. What remedy would you suggest for that? I suggest as the best remedy closer co-operation between the various provinces.

A. Yes, I think so.

Q. I think we cannot stop the delay in this province so long as this system is in existence?

A. I do not think that any expedition can be effected if the system of issuing open commissions is carried on. I think there ought to be interrogatories instead of open commissions.

Q. But even when interrogatories are used have you not found considerable delay?

A. Yes. There is no doubt about it that delay is also caused in those cases.

Q. Have you had any trouble in getting back commissions which have been issued at the instance of Railway Companies?

A. I have not had to deal with many cases relating to Railway Companies. Most of my commissions are about wills and probate cases.

Q. Is that due to the fact that you have in Benares a very large Bengali community in Bengali Tola. These people come to Benares at the end of their lives and die there?

A. I had 30 probate cases in my first year, 20 cases in my second year and 10 cases in my third year. I also prosecuted two men in one case.

Q. Now another point on which I would like to have your views. That point is with regard to arbitration. Can you suggest any remedy as to that? I mean if both the parties say "We want to refer our case to arbitrators," how can you stop them from doing so?

A. I do not say that you can stop them, but I think you can check the delay which is caused by getting cases decided by arbitrators.

Q. You suggest that the arbitrators should be asked to decide the case within a certain period?

A. I want to get rid of bogus applications.

Q. But when both the parties agree to refer their case to arbitrators?

A. I do not think that applications are always made by both parties, rather I should say they are made by one and a half of the parties. I would suggest that the consent of the arbitrators should be got before cases are referred to them.

Q. I think it is frequent that arbitrators after keeping the case for about nine months send it back saying that they have changed their mind?

A. Yes, in many cases arbitrators do not consent to act.

Q. Do you think that you can empower courts to refuse such applications unless written consent of the arbitrator is obtained?

A. Yes, no cases should be referred to arbitrators unless their consent has been obtained.

Q. Have you had much trouble with your subordinates with regard to writing of judgments long after the hearing of arguments?

A. There is frequently trouble with regard to that. For instance, when I was at Benares there was one munsif who would reserve all judgments till the end of the month. He would then take up two or three or four cases and write judgments one after another.

Q. But did you stop that?

A. I attempted to at any rate.

Q. I suppose you are entirely in favour of giving training to munsifs before they actually take over work in courts?

A. Yes, I think that is necessary.

Q. And you suggest that they should get training by attending court?

A. Yes.

Q. In addition to attendance at court do you think that it would be possible for the newly appointed munsif to attend a class which may be opened for giving training on the lines of classes for giving training to junior civilians and deputy collectors for executive work?

A. I think that is a good idea.

Q. Do you think there will be any difficulty in finding instructors?

A. No.

Q. I think a certain number of retired district judges, men who have marked themselves out as exceptionally good men in the Provincial Service, would be very glad to take up that work if they were paid five or six hundred rupees a month for it?

A. Yes.

Q. Do you think it is a practical suggestion?

A. I think it is.

Q. Now with regard to appeals, there is a proposal before us, which I want to explain to you. The proposal is that all appeals below Rs. 1,000, in other words all appeals from ordinary munsifs' judgments should be heard by a bench of two experienced and competent subordinate judges, men who are selected and picked out as really good men and who are going to be promoted to district judgeship as soon as vacancies occur, and that the work should be done by divisions where benches will sit; there will be one at Benares, one at Cawnpore, one at Bareilly and so on. The decisions of these benches should be final both on questions of law and facts and there should be no second appeal ordinarily to the High Court.

A. But how many judges you would put on that duty.

Q. Two judges will sit in each bench.

A. I do not think it will be popular.

Q. I think this suggestion has commended itself to the senior members of the bar.

A. I won't be surprised at that. But it won't be popular with the public.

Q. I suggested to the representatives of the Cawnpore Bar Association that they might have one bench which would sit all the year round at Cawnpore. They welcomed the idea.

A. For that I think you would select two good subordinate judges. Would you choose men in the division?

Q. No. They would be taken from the whole cadre.

A. Then these two men would tour about.

Q. No. They would remain in Cawnpore always. They would take the work of adjoining districts.

A. You mean to say that that is all their work.

Q. Quite enough. It was calculated that there will be 1,250 appeals in a year.

A. I don't think that would be enough work for the bench.

Q. We do not expect your standard, Mr. Pullan.

A. But there is one objection to the proposal, i.e., the nature of the work for these men: doing nothing else but hearing these petty appeals without absolutely any variety in their work.

Q. It is the idea of the central bench system to take over the petty appeals from the High Court. It would enable us to reduce about 1,600 appeals from the High Court. But we are thinking of the expedition and

not of the reduction. Would you like to take time to consider that proposal?

A. Yes, I think, I would.

Q. What suggestions can you give us on the point of insolvency? I believe, in Benares, the district judge has got a good deal of work in that way.

A. Yes. A fair amount.

Q. How many insolvency cases did you have in a year?

A. I cannot say off-hand, but certainly a good many.

Q. Do you think you had 40 or 50 in a year?

A. Yes.

Q. Do you have an official receiver in Benares?

A. Yes.

Q. How did he work?

A. Well.

Q. Did the official receiver get enough remuneration?

A. No, he did not.

Q. If you want to get an official receiver, do you think we can find enough men practising at the bar, who have a certain amount of private means, ready and competent to do the work?

A. I think you will get a reasonably good official receiver. He could make between 100 and 200 rupees a month.

Q. Would it be so much?

A. Yes.

Q. Would you leave the present system of insolvency law alone, or would you be inclined to alter the present law?

A. As far as it has been adopted in India, I do not think there is anything particular to change in the Act.

Q. Do you think that the same procedure should be applied as at present?

A. Yes. It does not really complicate proceedings.

Q. Do you think that in this province, at any rate, the question is hardly important enough to deserve serious consideration?

A. I think that is so.

Q. I am inclined to think that there is not much necessity for change except possibly in Cawnpore?

A. The number of big cases is very few.

Q. Do you think that there is really nothing very wrong in the present civil procedure but what you have got only to apply and what is absolutely needed is efficient supervision?

A. Quite so.

Q. Without efficient supervision no alteration in the law would do any good and if the supervision is really efficient, no great change in law is necessary. You lay great stress on the necessity of supervision that there must be officers capable of supervising and who have the time to supervise?

A. Yes.

*Chairman.*—Q. In connection with the appointment of a registrar in headquarter stations, there are 2 proposals apart from the appointment of a registrar. One is the question of unifying the office at headquarter stations. At present each judicial officer, apart from his bench clerk, has a munsarim and 2 other clerks. Do you think it would be possible to effect any improvement, not merely by appointing a registrar to supervise the staff, but by appointing some judicial officer, who may be a munsif or a sub-judge and who will be in charge of the department of the admission of plaints, etc., and in charge of the nazarat department and who for all purposes will be

under the district judge? Don't you think some improvement in supervision and some better organization of the work might be made if you had a unified office in a large station? The other proposal is to have a separate execution court, that is to say, one judicial officer to do nothing but execution work, to supervise execution proceedings and supervise the whole of the nazarat.

A. One obvious advantage would be that it would relieve the sub-judge. He is the man who has not got time to do execution work.

Q. Have you any experience that when a process is sent from some other district the nazarat gets into the habit of almost entirely neglecting it?

A. It has never been brought to my notice.

Q. Would you be in favour of returns being sent up from civil courts to the district judge and they may be submitted to the High Court—quarterly returns—on the amount of processes served, time taken and such other things? Of course, the district judge gets returns from his own nazarat but there is no method at present by which the results in one district and the results in other districts be comparatively considered at the end of the year.

A. I do not think the High Court gets anything like that.

Q. Do you think such returns would be burdensome or useless?

A. I do not think that it would be burdensome at all.

Q. I understand that in Madras this is done.

A. It would be very helpful.

Mr. Justice Stuart.—Q. Have you devised any method of improving the work of process-servers? What do you do in Benares?

A. We put them down on the list of promotion.

Q. There is difference of Rs. 1-8 only.

A. Still it affects his position.

Q. I mean dismissal would not do anything: you might get a worse man.

A. Still they hate dismissal.

Q. Do you find many appeals from them?

A. Yes.

Q. To whom do they appeal?

A. They appeal to the local Government.

Q. Is it not controlled by the Civil Courts Act?

A. They go straight to the local Government but the local Government throws their appeal into the waste paper basket.

Q. Is not this matter of appeal entirely controlled by the Civil Courts Act? As far as you are concerned is that appeal hampering you in practical exercise of your power?

A. I think not.

Q. Have you ever had it brought to your notice that munsifs or sub-judges refuse to report malpractices by process-servers? For some reason or other they do not like to report.

A. Quite so.

Q. Why is that?

A. It is simply reluctance on their part to punish.

Q. Not because they will put themselves in a false position? -

A. I do not think so.

Q. As regards the nazir when he is once appointed does he go on, as a rule, for ever?

A. He gets his promotion.

Q. What promotion does he get?

A. He becomes a munsarim.

Q. Is it really a promotion from financial point of view?



A. Yes.

Q. In this province nazirs are regarded as quite reasonably honest class of men.

A. They are very carefully selected.

Q. Have you any reason to think that these nazirs are corrupt?

A. I never had a case of a nazir being corrupt. I have heard cases of maib-nazirs being corrupt.

Q. Of course, as regards process serving the nazir looks to all the work and if he likes he can make the process serving much more effective. Do you think that anything could be done to improve the process serving by improving the nazarat?

A. That is a question of selection.

Q. Has he really the time to control the process-servers as he should? He is a very busy man.

A. I think the process serving department takes a great deal of his time. It is a very difficult job to deal with process-servers because they are very truculent.

Sir T. Desikachari.—Q. With regard to the central nazarat system, there is an impression among munsifs and subordinate judges that there should be a separate set of peons attached to their courts so that there might not be any delay in the service of processes as the peons would then be under their direct control.

A. I never had that impression.

Q. I ask you this question because a number of witnesses who have appeared before us have given expression to such a feeling. I like to know from you whether there is any such impression among munsifs that they want to have their own nazir instead of having the central nazarat?

A. I never heard of this impression before I came here.

Q. Then you think that there is no difficulty in getting processes served?

A. No.

Q. Is it a fact that the central nazir waits to have a number of processes collected going in the same direction or in the same neighbourhood before he deposes a peon in that direction?

A. Yes, that he does sometimes, but not always, because the number of peons is limited. He has to do that.

Q. Do you not think that if that is done, there will be serious delay in urgent cases?

A. What I think is this. If there is an urgent case, the nazir sends a man at once so that there may not be any delay; but when he has to serve ordinary processes, he waits for a couple of days so that all processes going in the same direction may be given to the same man and there may not be overlapping of work.

Q. With regard to guardians *ad litem* do you think there is any use in appointing the nazir as guardian?

A. I think this is not satisfactory to have a nazir as guardian. I think only the natural guardian should be appointed.

Q. Would you insist upon the natural guardian going into the court himself? Many people do not appear at all.

A. My suggestion is that the court should not appoint a guardian unless his consent has been obtained. I think there ought to be a definite consent.

Q. Is there any provision to compel a person to file a list of witnesses that will appear on a certain date? I do not think there is any such provision under the present law.

A. No.

Q. Are you in favour of a provision compelling parties to file a list of witnesses?

A. Yes.

Q. There is a provision that a person must file an affidavit of documents, but with regard to oral evidence he need not give any notice to the court that he is bringing so many witnesses on a particular day?

A. That is the law as it stands, but I think it will be a good idea to have a list of witnesses.

Q. A party may do the same thing when the case is opened, he can tell the court at that time that he has brought so many witnesses for examination for that day, but so far as I know there is nothing which necessitates the filing of a list.

A. I think the party must be made to file a list.

Q. Would you like to make it compulsory so that the court as well as the opposite party might have knowledge of the oral evidence which is going to be given?

A. Yes.

Q. Would you also make it compulsory that those witnesses only should be examined whose names have been mentioned in the list?

A. I should leave it to the discretion of the court. He may or may not examine.

Q. Do you think that all the witnesses mentioned in the list would turn up? At least my experience is that if people are insisted upon to file a list they would file an unduly large list for fear many witnesses would be won over by the other party. Is it not?

A. Yes, that may happen sometimes.

Q. Don't you think that it will make confusion worse confounded?

A. I do not think it will make any difference.

Q. Your constructive proposal is that parties should be made to file a list of witnesses whom they want to be examined on a particular date and that any extra witnesses not mentioned in the list, if brought to court, should not be examined at all unless an affidavit is filed.

A. Yes.

Q. And that the sufficiency of the affidavit should be judged by the court, I think that is your proposal?

A. Yes.

Q. Are you in favour of witnesses being summoned by court or brought by the parties themselves?

A. I do not care whether they are summoned by the court or brought by the parties.

Q. Would you like witnesses' summonses to be handed over to the parties?

A. No. I would like the witnesses to be summoned by the court.

Q. So you would not like the idea of handing over summonses to the parties so that they may themselves arrange for the attendance of witnesses?

A. Generally speaking I would have the witnesses served through process-servers.

Q. So that there may not be any application for adjournment on the ground of non-service?

A. Yes.

Q. With regard to training of munsifs you suggest that they should be trained in a particular manner. Now with regard to civilians, what sort of training would you suggest?

A. I think the best training for them would be to work as munsifs and subordinate judges before they are appointed to work as district judges.

Q. So you would like to give training of that sort to all members of the Civil Service?

A. Yes, that is my idea.

Q. Do you not think that it is neither fair to the public nor to the civilians if they are appointed district judges without getting any training in civil law?

A. I think they should have some sort of practical training either as a subordinate judge or something of the kind.

Q. So that they may have some experience both as regards law and practice?

A. Yes. I think that is very necessary.

Mr. Justice Stuart.—Q. As regards training of civilian judges, there is a training scheme in existence; only it has not been produced before this Committee as yet?

A. Yes.

Sir T. Desikachari.—Q. Were not civilians appointed formerly as subordinate judges?

A. Sessions and subordinate judges.

Q. Before they were made sessions and subordinate judges, what civil work did they do?

A. Before that they were joint magistrates.

Q. When they began to do sessions and subordinate judges work, how old were they?

A. About the 5th or 6th year of their service. At the age of about 30.

Q. But since the war young civilian is posted as a judge to decide appeals from the decisions of experienced munsifs suddenly?

A. Yes.

Q. Before that is done, don't you think, in fairness to the civilian himself, it would be better to give him training in the trial of original suits and small cause court cases?

A. Yes.

Q. As regards the probate work, the succession certificate work, etc., I want to know whether it may not be done by some other agency?

A. No. The district judges here do not want any relief.

Q. Do you think the jurisdiction of munsifs could be increased in this province?

A. I approve of the increase, i.e., after they pass the efficiency standard.

Q. What is the limit?

A. About 6 or 7 years.

Q. With reference to their being invested with small cause court jurisdiction, what do you think would be the limit to which they could have powers given?

A. The munsifs' maximum might be raised to Rs. 500.

Q. And the subordinate judges?

A. I thought of a thousand in exceptional cases.

Q. That would take away both of the first and second appeals and would give finality to the decisions of these courts and also relieve munsifs and sub-judges from doing their work in these cases with the elaborate procedure of regular trials?

A. Yes.

Q. If we increase the small cause court jurisdiction of these people, do you think they will have more work than they could get through easily?

A. It is difficult to say. There are few cases that come under the Small Cause Court Act.

Q. You think there will be no relief by the increase of small cause court powers?

A. In the eastern districts not very much, but in the western districts there might be some relief.

Q. I think the munsifs are able to get through their work?

A. I think so.

Q. Do you think that without increasing the cadre of munsifs, you can find other agency to take over portion of the work? I mean the honorary munsifs.

A. Honorary munsifs have been successful in one or two cases.

Q. Is it not possible to encourage the disposal of cases by honorary munsifs?

A. I shall be very pleased to see it being done. But it has not been successful so far.

Q. Have you had honorary munsifs or benches in Benares?

A. No. I think in Mainpuri there was one.

Q. How did they do their work?

A. I cannot give an opinion at this stage.

Mr. Justice Stuart.—With regard to the question of the cadre of munsifs, I suppose you are aware that the cadre is going to be increased.

A. I think the cadre is going to be increased by about 10.

Dr. DeSouza.—Q. With regard to the proposed bench in first appeals, you said you would submit a note. In that connection, I want you to bear these things in mind.

From the point of view of litigants in the districts of Moradabad, etc., they will have to go to Bareilly for their first appeal. Now will they not find it a hardship, if instead of having their first appeals heard at their own doors, they were made to go to Bareilly which is far away from their place of residence?

A. Well, Bareilly is close to both places.

Q. What about the pleaders they have to engage? The pleader at Bareilly will be a different man to that of the pleader engaged in the first instance.

A. That is one of the difficulties.

Q. With regard to those litigants who do not go on second appeals to the High Court, don't you consider that having a bench of first appeal located in a station other than where the original case was tried, would make matters difficult for the litigant to a great extent?

A. I should think so. But I cannot give any definite opinion on it. I shall have to consider it.

Q. Would it not be far more satisfactory, if it was a touring bench in 3 or 4 districts?

A. It would be a question of expense and accommodation. It is a serious question.

Q. Is there not a spare room in the district courts?

A. You can have only in Benares.

Q. Has the district judge much work to do under the Guardian and Wards Act?

A. A great deal of work.

Q. What is the number of cases in which you have appointed private guardians and the number of cases in which an officer of your court is appointed guardian?

A. No officer of my court is appointed as guardian. I usually appoint pleaders as guardians.

Q. I suppose you have got a great deal to do with the administration of estates by private guardians.

A. Yes.

Q. The examination of their accounts must take a good deal of your time.

A. Yes. It takes a certain amount of time.

**Note by Mr. A. G. P. PULLAN, I.C.S., on the proposal to  
constitute benches of two subordinate judges to hear  
munsifs' appeals.**

I have considered this proposal and find that it has certain advantages over the present system, but it has also certain disadvantages.

1. *Pro.*—(i) Appeals will be heard by two experienced judges, instead of one who may or may not be experienced.

(ii) Decisions will be more uniform.

(iii) As the courts will have no other work, there should be no need of adjournments.

(iv) Cases should be heard earlier.

(v) The High Court will be relieved of a large number of petty 2nd appeals.

2. *Con.*—(i) The district judge loses his best means of checking the work of his subordinates, and incidentally much valuable experience for himself.

(ii) The public will resent their inability to appeal to the High Court, a much cherished privilege.

(iii) A bench works slower than 2 separate courts, and the district judge will not fill up the time he is accustomed to spend on munsifs' appeals with any other work. Consequently the proposal involves an increase in cadre.

(iv) If the courts remain fixed, parties will have greater expense, as they will be obliged to engage fresh pleaders, and the pleaders in the outlying districts will lose their appellate practice.

(v) If the courts are peripatetic, there will be a difficulty as to accommodation, expense and waste of time in transit, and dissatisfaction on the part of the officers selected for what will be extremely unpopular posts.

My conclusion is that from the point of view of the efficient administration of justice the proposal is sound, but in practice it will please nobody but the pleaders of the headquarter towns, and will be opposed by prejudice as well as more reasonable if less powerful objections.

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**Mr. C. H. B. KENDALL, District Judge, Lucknow.**

*Written Statement.*

In Lucknow, where a large number of civil courts has been centred during the last 15 years, the outturn of work has been steadily decreasing. I went into figures at the end of 1922 with the following results:—

A certain standard of work had been set up by the Greeven Committee in 1908, and in the case of civil courts, after taking account of the extra work entailed in miscellaneous and execution proceedings, it was decided that a year of 200 working days should be assumed (though a full normal year represents 245 working days) and then a certain number of suits or cases was put down as the normal outturn, e.g., 1½ days for a sub-judge's suit=130 contested suits in a year. The figures in the annual reports show that the outturn of the courts in Lucknow has been very much less in the years 1918-20 than in the years 1902-04, and at the same time there had been a very great increase in the number of courts in Lucknow. There certainly appears to have been some connection between the two circumstances.

From 1902-04, a sub-judge did 246 days work in a year and a munsif 207 days work in a year. In 1918-20 a sub-judge did only 74 days work a year and a munsif 120 days work. A sub-judge therefore turned out in the latter period about one third as much work as in the earlier period.

In neighbouring districts, although there had been a decrease it was not nearly so marked as the following figures show :—

Partabgarh—	Sub-judge.	Munsifs.
	days work.	days work.
1902-04 . . . . .	368	178
1918-20 . . . . .	206	162
Unao—		
1902-04 . . . . .	243	259
1918-20 . . . . .	225	205

The average outturn by the district judge had decreased from 212 days work in 1902-04 to 150 in 1918-20. In the case of the district judge a large increase in miscellaneous and administrative work arising from the greater number of courts under his control was undoubtedly partly responsible for the apparent decrease in outturn. In the early period there was only 1 sub-judge and 2 or 3 munsifs. In the latter period there were 3 or 4 sub-judges and 4 or 5 munsifs, as well as 2 small cause court judges and generally 2 or 3 additional judges.

*The decrease in outturn may be partly due to waiting for members of the Bar.*—It is also said to be due to the greater intricacy of the work. It is generally said that in Lucknow especially the work has grown much more intricate and the conditions may be peculiar, but my figures certainly suggest that the concentration of courts in one place leads to delay.

10 and 11. I am in favour of increasing the powers of munsifs both on the original side and small cause court side. I believe that selected munsifs could be entrusted with powers to try suits up to Rs. 5,000 in value.

12. I think it would be *difficult to relieve district judges of administrative work*, but they ought to be relieved of some judicial miscellaneous work, *e.g., the appointment of guardians, and applications for insolvency*. The former can be conveniently dealt with by munsifs and the latter by small cause court judges.

15. I do not believe that there would be any advantage in extending the jurisdiction of small cause court judges to any other class of suits.

20. I should say generally that there should be no second appeal in suits for property worth less than Rs. 500.

21. I think that the appellant should deposit in full the decretal amount before a second appeal is filed.

33. *I think that the examination of plaintiff and defendant would minimise the calling in of irrelevant evidence*, but I am doubtful whether the summoning of witnesses should be conditional on the examination of parties. As regards the opening of the hearing, I believe, that much time might be saved if the counsel for the party beginning were made to state his case at length *before* the recording of evidence. This procedure is prescribed by law and is, I believe, practised in England. Counsel should not only state what his case is but how, *i.e., by what evidence he intends to prove his various points*. This will enlighten the court and in most cases counsel as well. At present it is usual after issues have been framed, for court and counsel to plunge somewhat recklessly into the oral evidence, which goes on until everyone is tired of it and when that stage is reached, counsel for the two sides argue their cases retrospectively.

34 and 35. *I believe that a provision might be made to enable the court to restrict the number of witnesses*. This should not be difficult if counsel for either side have stated their cases before calling evidence. Apart from this, every effort should be made to finish each suit at one hearing, *i.e., from day to day*. At present it is most unusual for a long suit to be heard out from day to day. The presiding officers are inclined to allow far too little time, very often because they do not consult pleaders as to the time that will be necessary.

Here again if the pleaders had stated their cases it would be easier to estimate the time that the hearing would take. Presiding officers frequently put down a long suit for hearing on a day when they know that they will be able to devote only 2 hours or so to it. The reasons for this appear to be chiefly two. (1) They are afraid of their delay statements. They think that it is better to show two hours work in an old case than to show no work at all. (2) They are afraid of setting aside two or three days for a suit because it may happen that some unforeseen accident, such as the death of one of the parties, may prevent the hearing at the last moment, with the result that they will have no work on those days. This is a great difficulty but I think that the risk should be taken.

45 and 46. I have partially dealt with these above. I would insist on judges fixing their dates themselves. I think they generally do.

49. I have partly answered this above. Mr. Dalal once said, I think, that as soon as a delay statement becomes necessary the judge should make entries in it himself and keep it before him. I would make this compulsory.

56. I think that the delays in the disposal of execution proceedings are very frequently due to the decree-holders themselves. *Decree holders are in the majority of cases money lenders, who regard a decree as a permanent investment, not to be realised in full till the last possible moment. I do not think that there will be much advantage in altering the periods of limitation.*

67. The only thing that I can suggest is that the courts should strictly require affidavits on essential points. At present parties and pleaders in most places are quite prepared to state on oath what the other party is going to do in the future, e.g., they will claim stay of execution because they state on oath that the decree-holder is going to run away as soon as he has realised his decree.

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**Mr. C. H. B. KENDALL, called and examined on Saturday,  
the 29th March 1924.**

*Sir T. Desikachari.*—Q. You have been a district judge for some time?

A. Yes.

Q. For how long have you been a district judge?

A. I have actually worked as a district judge for 5 years.

Q. In your opinion do you think that the concentration of too many courts in one and the same place tends to delay?

A. That has been my experience in big places.

Q. How many civil courts are there in Lucknow?

A. Generally one or two district judges, 3 or 4 sub-judges, 2 small cause court judges and munsifs varying from 3 to 5.

Q. Do you think that the outturn of work has been steadily decreasing?

A. Yes, partly owing to the concentration of too many courts in one and the same place.

Q. Have you examined the figures?

A. Yes.

Q. Do you think that the outturn is steadily decreasing for one reason that you don't get the members of the bar when they are wanted?

A. The reason that they give is not due to the concentration of work but the work is very much more complicated.

Q. With regard to pecuniary jurisdiction of munsifs, I think it is your opinion that the jurisdiction may be enhanced to Rs. 5,000.

A. Yes. I think so on general grounds.

Q. Would it not throw an amount of work which the munsifs cannot cope with?

A. If their powers are increased, that would relieve the sub-judges.

Q. I understand that the munsifs can cope with the additional work.

A. I think so, especially if they are given small cause powers.

Q. Would you like to have also higher small cause powers given to them?

A. Yes. I think powers up to Rs. 250 may be given after 2 or 3 years of service.

Q. Have you any idea as to how the honorary munsifs are doing their work?

A. As a matter of fact I am not very much in favour of honorary munsifs. I am only speaking generally. I do not think from a judicial point of view they are of much use.

Q. Could you give us any reason for holding this view?

A. They are not trained in their work. They don't know law. They are appointed for the sake of paying the gentleman a compliment.

Q. I read in the Greeven Committee Report that the work that has to be done by honorary munsifs is such as does not require very much of law. They could take up a lot of petty work from the munsifs and dispose of them and I see that they have disposed of them both in Agra and Oudh.

A. I find they do the work they are doing now.

Q. I think you have no special means of giving us any decided opinion on the matter.

A. I would not give them higher powers than they have now.

Q. Have you anything to do with the working of village panchayats?

A. No.

Q. You suggest that some relief might be given to district judges by relieving them of work relating to the appointment of guardians and applications for insolvency?

A. Yes.

Q. Would you include also the succession and probate cases in the list?

A. Yes but I have not had very much experience of that.

Q. You think that the district judge might be relieved of some judicial miscellaneous work?

A. Yes.

Q. And these cases could be conveniently dealt with by munsifs?

A. Yes.

Q. And insolvency?

A. I think insolvency work can be left to them.

Q. Your proposal would give time to the district judge to do his work better?

A. It will relieve him of some work. I am speaking only of Lucknow where the miscellaneous work is very heavy.

Q. With regard to second appeals what is your opinion? You would be in favour of limiting second appeals to a particular amount, that is to say, you would have only decrees above rupees five hundred in value appealed against, but not below five hundred.

A. Yes, I think so.

Q. You have just been hearing about an appellate bench to be constituted to take over all first appeals, there being no second appeal filed. What do you think of that suggestion?

A. I think it is better to allow appeals to go to a single judge.

Chairman.—Q. You think if it goes to one subordinate judge as it does now there may be no second appeal?

A. Yes.

Q. Would not that be a little difficult. The idea is if you want to abolish the right of second appeal to reduce the tremendous amount of delay you have to give a better first appeal.



A. I should think that the bench of two judges would probably get through less work. I mean the judges sitting singly will do twice the work. The appointing of this bench would mean crippling of the work.

Sir T. Desikachari.—Q. Do you prefer to leave the limit of second appeal at rupees five hundred?

A. I would like to give no value at all.

Q. Of course you fix here five hundred.

A. I did so because it is the limit of small cause court suit.

Q. You see no reason why the second appeal should not in some way be limited?

A. Yes.

Q. Before the settlement of issues are parties examined?

A. They are not as a rule.

Q. You think if the parties were examined before settlement of issues the judge would be in a position to understand the case better and to handle the case better when it eventually comes up for hearing?

A. Yes.

Q. You will have these provisions of the Civil Procedure Code enforced strictly

A. Yes.

Q. By administrative rules or by making them compulsory?

A. I think administrative rules might be quite satisfactory.

Q. Drawing the attention of judges and munsifs?

A. Yes.

Q. Are cases opened by the parties in the courts of munsifs and subordinate judges?

A. No they are not. I wished to start that but the bar was against it and I did not press it because it was never a practice. When I was at Dehra Dun doing the original civil work I never pressed for that. I have seen good many records and it has never been done.

Q. The practice is to call the first witness, place him in the box and go on examining him.

A. Yes.

Q. You like this to be prevented?

A. Yes.

Q. Before the witness is called you would like the party to state not only his case but that he should also state what points the witnesses would prove so that the court might have an idea as to how to proceed?

A. Yes.

Q. You say that a provision might be made to enable the court to restrict the number of witnesses to be examined. How would you restrict the number of witnesses?

A. The only way is to give the judge some powers under the Civil Procedure Code to restrict the number of witnesses.

Q. How would you restrict the number of witnesses?

A. That will have to be left to the discretion of the judge.

Q. Is there any method by which you can prevent the parties calling in many witnesses?

A. I think the parties should state their case and inform the court that they are going to send for such and such witnesses to prove such and such points. If the number of witnesses to be summoned is very large then the court can object.

Q. Then I think no special rule need be framed but it must be enjoined on the judges to ascertain the purpose for which each witness is summoned

and if possible to curtail the number of witnesses on each side. That depends upon the alertness of the presiding judge.

A. Yes.

Q. Why are these things not done by the judges now?

A. I do not really know.

Q. Are they obsessed by the nature of their returns? Has the idea of periodical statistical returns anything to do with their not doing that work?

A. I cannot say. Under the Code they are not allowed to restrict the number of witnesses.

Q. Are cases tried from day to day?

A. No. I am afraid they are not very often. They are often postponed.

Q. I suppose a case is tried for two hours to-day, for two hours to-morrow and so on?

A. Yes.

Q. The report of work done is shown in the diary as if the case was taken up for the whole day, while in reality it is not so?

A. Yes.

Q. Is that your experience?

A. Yes. Well I have told all subordinate judges and munsifs at Lucknow that they should take up all old cases and try to finish them within a certain period. They tell the pleaders that cases would be tried on a certain date.

Q. Courts fix more than one case on a day so that if a case is not taken up, they may take up another case and so time may not be wasted and they may be doing something all the day. Is that your experience?

A. Yes.

Q. That is the chief reason why they devote a few hours to one case and a few hours to the other. But do you not think that this should be prevented?

A. Of course I think so. By doing so the court is put to inconvenience as well as pleaders and parties.

Q. What remedy would you suggest?

A. I would suggest that they should consult the pleaders and fix up with them that their cases would be taken up on such and such a date. So far I have not seen the results of this practice.

Q. Do you not think that there is a considerable amount of delay in the execution of decrees and the realization of money in money decrees?

A. Yes there is undoubtedly.

Q. And a number of applications are put in to keep the decree alive?

A. Yes.

Q. Do you think that anything could be achieved by curtailing the period of limitation prescribed by Section 48 of the Civil Procedure Code?

A. I would suggest that there should be fixed a certain period beyond which no execution should take place.

Q. Would you curtail the period to three years or six years?

A. I cannot give any definite opinion on that point.

Q. You suggest that decrees should be executed sooner?

A. Yes.

Q. Have you considered Question 74 of the questionnaire?

A. No.

Chairman.—Q. Were you district judge, Lucknow?

A. Yes.

Q. Do you think that second appeal work is generally not substantial?

A. I have not had much experience, but I would say that it is not substantial.

*Q.* With regard to the establishment of an office at headquarters for all courts, would you be good enough to consider this question and let us have your opinion in due course?

*A.* I have not considered this question but the idea has struck me as a good idea.

*Q.* Then there is another suggestion that there should be only one office for doing execution work of all courts at sadar stations. Will you be good enough to consider over this question also and to let us have your opinion afterwards? Kindly let us know how the suggestion has struck you.

*A.* Very well I will do so.

*Q.* As I understand the position in this province at present is that munsifs are not really over-worked, it is subordinate judges that are really over-worked?

*A.* Yes that is so.

*Q.* Is there anything that you would like to suggest about pre-emption cases in this province as distinct from pre-emption under the Mohammedan Law?

*A.* I cannot suggest anything.

*Q.* It was suggested some time back that the law relating to pre-emption was really uncalled for. Do you think it is possible that this law should be brought to an end? Do you think that people regard this law as unfair?

*A.* I believe people think so, but personally I think that this is a very popular law.

*Q.* As I understand the local legislature recently dealt with this matter to some extent?

*A.* Yes.

*Q.* I take it that courts at Lucknow, I mean subordinate judges courts, are not much troubled about taluqdari cases?

*A.* Taluqdari cases are very common.

*Q.* Is there a fair amount of that class of work outside Lucknow?

*A.* There have been some suits outside Lucknow, but I think they are generally tried in Lucknow.

*Q.* Do you think anything would be gained by adopting a procedure by which all heavy taluqdari cases will be transferred to the highest authority, whose decision will be final?

*A.* It is very difficult to say indeed. There is something to be said on both sides. I do not believe that very much would be gained by that.

*Mr. Justice Stuart.—Q.* Now how do these Court of Wards cases come up to you? What sort of information you have before you advise in the case? Don't you have to depend on the incomplete instructions you get? Do you think that is sufficient information?

*A.* It depended of course a good deal on the Government pleader, but it certainly was not very much to go on.

*Q.* In your opinion is the Government pleader fit to give an opinion on such cases?

*A.* He is not usually a great civil lawyer.

*Q.* If the Government was properly advised, some cases would not have been contested?

*A.* Yes.

*Q.* Don't you think that a remedy might be found in creating a special legal agency to advise the Court of Wards who would do nothing else? In other words, do you think that the Legal Remembrancer has really time to advise on these very important points?

*A.* No. As a matter of fact, when I was Legal Remembrancer, I had too much other work to do.

*Q.* You will agree with me that if the Legal Remembrancer has to go through 200 to 300 pages of translations, and 2,000 pages of previous records, he has no time for the purpose.

On other occasions, the Court of Wards in defending these cases, unnecessarily protract proceedings, because they do not really understand what the case is about, and you will agree that a considerable improvement in the speeding up of justice might be effected by improving the legal advice given to the Court of Wards. In other words is it not ridiculous in these days to expect the Legal Remembrancer to attend to his other duties and to advise on the Court of Wards as well.

*A.* Yes.

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**The Hon'ble Mr. Justice B. J. DALAL, Judge, Allahabad High Court,  
called and examined on Saturday, the 29th March 1924.**

*(No written statement received.)*

*Chairman.*—I notice that in your letter you lay a great deal of stress about the training of judicial officers.

*A.* Yes.

*Q.* You point out that when people are first appointed to the judicial service, they have no training in proper ways to manage their file.

*A.* Yes.

*Q.* As a matter of fact these young pleaders who are first appointed have very little training in practical as distinct from purely theoretical knowledge which they get in their examination?

*A.* They do not get practical experience.

*Q.* What sort of training would, you think, be most useful?

*A.* Apprenticing them to a sub-judge to go and attend their courts just as we used to attend joint magistrate's courts when we joined the service.

*Q.* How long did you do that?

*A.* I attended the joint magistrate's court for 2 months and then the treasury officer's court for 6 weeks and then I went out with a senior joint magistrate in camp to see how the revenue work was done.

*Q.* Do you think apart from that, it would be a good plan to get a district judge or a senior sub-judge to take a few of these probationary munsifs and give them certain instructions?

*A.* Very few should be taken at a time.

*Q.* Do you think that something might be possible in that way both as regards their seeing the work for themselves without the responsibility of doing it and also getting actual individual instruction?

*A.* Yes.

*Q.* In addition to that, do you think there is anything fundamentally wrong with the present method of recruitment of munsifs? Have you any special complaint in that way?

*A.* I do not see any, unless it be that very senior practitioners are appointed sub-judges at once.

*Q.* What do you think of that?

*A.* Then the munsifs will have no inducement to work at all. If you appoint members of the bar straight as sub-judges, then the promotion of the munsifs will be blocked.

*Q.* When a munsif is appointed in this province, is he usually sent to court to relieve congestion or is he usually sent to an easy court?

*A.* Sometimes munsifs are being sent to very difficult courts.

*Q.* When he is sent as a relief, is he sometimes given, under the present practice, the thick end of the file?

A. Yes.

Q. When a man is sent to relieve at a particular place is the district judge always consulted as to the work which he should be given?

A. I am very sorry that the tendency of the High Court is at present towards too much interference. The initiative of the district judge has been taken away very much. They have to send 15 days statements.

Q. I think that it is done upon representations made through the district judge.

A. I am afraid that I can't answer. Latterly in the days of Sir John Knox he did everything, without any initiative from the district judge.

Q. You think that when a munsif is first appointed, he should be given easier work if possible and where there are chances he ought not to be allowed to struggle with the congested file?

A. Yes.

Q. I think previously people from ministerial staff were appointed as munsifs. As a matter of fact did they work well?

A. I think so. I know two or three cases in which men had good experience.

Q. Do you know why that practice was abandoned?

A. I do not know.

Mr. Justice Stuart.—Q. Is there a rule preventing that?

A. Yes it is a rule that it cannot be done now. There was a great difficulty in the case of a man who is now at Gorakhpur. The Chief Justice had to write about him.

Q. But he was appointed as a munsif.

A. That was an exception.

Q. Oh yes, there is a rule that the candidate must be below 27 years of age.

Chairman.—Q. As for the munsif, after he is promoted to sub-judgeship, if he was a munsarim, he has to get theoretical training?

A. Not, if he is LL.B.

Q. You can get munsarim whose education equals people who are munsifs.

A. Yes an LL.B. will take up the job of a munsarim if he has prospects of being appointed as a munsif.

Q. So you can get people as munsarims, who have legal qualifications, if there is a chance of their being appointed as munsifs?

A. Yes.

Q. You say that there was a great delay due really to the want of method among the Indian judicial officers. What are the main causes of complaint?

A. I am always telling them that papers should be filed in time. It is not until the judgment that they do not see what papers are relevant and what papers are not relevant. They go on hearing the case and after it is finished they start examining all the documents.

Q. In other words they do not grasp the facts?

A. Yes.

Q. Is it the practice, in your experience, that judges settle issues or do they accept what the pleaders hand in if they agree?

A. Generally in big cases pleaders are consulted.

Q. But does the judge read the pleadings and apply his mind?

A. I am afraid not. He does it in a very summary fashion. As the case proceeds the issues are added.

Q. And you find that sometimes they take the file home and come next morning with the issues framed?

A. Yes.

Q. Do you find in this province that pleadings are very bad?

A. Yes very bad.

Q. As regards the discovery of documents, do they tackle this question in the beginning?

A. I am afraid they do not. They go on putting all documents and courts are very lax about it.

Q. They do not use the machinery that is supplied to them?

A. I think that it is their feeling that it might lead to failure of justice. If previously the party has been negligent and the document is relevant they feel that it will be a failure of justice if they disallow it.

Q. Do they go into the documents at the time of issues or at the first hearing?

A. I do not know. They have all the documents filed and if the pleader is clever he puts in oral evidence in support of the document. They ought to make some sort of hearing.

Q. Do you find great deal of waste of time because the people refuse to admit documents?

A. Yes absolutely true. They simply take technical objections.

Q. In a case where the party is avoiding admission and there is a *prima facie* case is it not reasonable to give powers to the court to order the party to find security for so much of the cost?

A. Yes.

Q. That is as regards actual conduct of a case. In your experience do you suffer very much from utterly unnecessary cross-examination?

A. It depends upon the court.

Q. If the court likes it can curtail it?

A. Yes.

Q. Now as regards the waste of time on commission, is that an important source of delay?

A. Commission is not delayed, but the judicial officer tries to shirk his own duty.

Q. Do you find when you send commissioner that they go on taking evidence rightly or wrongly, for it is not in their power to curtail the evidence?

A. The commissioner is helpless. Even if they reject any point they take it down in brackets for the court might like that point.

Q. Yes, but can you suggest any remedy for that?

A. The court itself going.

Q. But apart from that can anything be suggested?

A. Select particular commissioners. Now it is done by pleaders who have generally no practice.

Mr. Justice Stuart.—Q. Are they paid very low?

A. Yes.

Q. Do you think that it would be possible to give powers to commissioners to check irrelevant questions?

A. If you can trust the man.

Q. Do you think that much time is wasted in that way?

A. That is not waste of court's time.

Q. But the court's time is wasted at the time of argument if irrelevant questions are allowed to creep in?

A. Yes.

Q. Have you any difficulty with regard to appointment of commissioners in account cases?

A. No difficulty at all. I think accounts are well kept. Commissioners in this province do that work in a very good manner.

Q. What about appointment of commissioners for local investigation?

A. I do not know about local investigation. Mostly account work is very well done. That is the best work done by these commissioners. I know nothing about local investigation.

Q. Are there no boundary disputes here?

A. No.

Q. Then you do not have that class of work here?

A. No. Very seldom. There are cases here relating to water spouts or *parnalis*. There was one case in Oudh regarding alluvium and diluvium. In other provinces petty revenue cases go right up to the High Court, but that is not the case in this province. There are very few revenue cases in this province.

Q. Are these cases not tried by the district judge?

A. Very few. Some go to the Judicial Commissioner and some go to the Board.

Q. I think in this province the file of the subordinate judge is very congested. I think he is the only officer who is hard worked.

A. Yes.

Q. Do you think that the court puts down more cases than it can do for every day?

A. Yes. When I was Judicial Commissioner I had to tell all the courts that they should not fix more than two cases for a day, because if more cases are fixed, witnesses have to be returned four or five times. Sometimes it so happens that witnesses do not turn up, and the case, there being no evidence, is dismissed.

Q. Is it a fact that the judge being overworked sometimes fixes new cases six months hence?

A. Yes that is so. But I think some method must be found out by which parties should be made to bring witnesses to the court. In some cases witnesses do not turn up at all and the court has to sit idle. Suppose I have fixed two cases for to-day and no witness has turned up in both the cases. Now what am I to do.

Q. Now as the judge is overworked and he can not promise trial of new cases for six months, do you think that it would be possible to have a *sine die* list or prospective list and to try them one by one as they come at the top of the list?

A. Then parties will have to be informed. They do not come to the court regularly to enquire when their case is going to be taken up.

Q. Is the pleader not on the record?

A. If pleaders refuse to take notice on behalf of the parties, what should be done. It will be an excellent arrangement if pleaders could be obliged to accept notices on behalf of their parties.

Q. Is the pleader not on the record?

A. He comes on the record, no doubt, but he refuses to take notice.

Mr. Justice Stuart.—Q. There is a rule here which makes it compulsory for the pleader to accept notices. It is a new rule and perhaps you have not seen it. It was passed only two years ago. Any notice can be served on him. It is Order 7, Rule 23 of the new Rules.

A. What I say is that if the pleader says that he has sent intimation to his client, but he has not turned up, what should be done in that case. The rule which you have just read provides that notices can be served on the pleader without any difficulty and he is obliged to accept any notices issued by the court.

Q. But I think probably that rule was made after you had left this province?

A. Yes that may be so, but I do not know how the rule works. The pleader will always say that he sent intimation to his client, but the client has not turned up.

*Chairman.*—*Q.* Then whose fault is that? That is not the fault of the court. It is the pleader's fault. Now as regards the subordinate judge's file, do you think that the state of his file is sufficient to make him to have a sort of prospective list?

*A.* Yes that will help very much in disposing of new cases soon. It will make him separate out his cases. I think that will be a very good arrangement. Of course there might be some difficulty in the beginning, but once it is known it will work very well. The only difficulty is with regard to communication.

*Q.* Have you come across such a case in which witnesses are summoned but for some reason the case is adjourned, say to 30th of June? What happens in these cases? When the case is adjourned are witnesses told to come back on the 30th June or fresh notices have to be served on them? If you pay them their diet money and discharge them on that day and tell them to come again on the 30th June, do you not think it will save a lot of inconvenience and trouble that is otherwise caused? Don't you think that re-summoning of witnesses is entirely difficult?

*A.* Yes it is.

*Q.* What is the practice here?

*A.* The judge says "I am not going to take up the case to-day," and he fixes another date.

*Q.* Where a case is adjourned, is there any reason why the parties should not be told to send notices to their witnesses along with diet money, asking them to appear on a particular date?

*A.* That would be an excellent arrangement.

*Q.* As regards nazarats, do you think it is necessary to increase the power of the immediate judicial officer over the process serving staff? Do you think if he has any complaint to make, he should report to the district judge?

*A.* There should be one man in authority. There are very few munsifs who bring it to the notice of the district judge.

*Q.* Some witnesses told the Committee that the district judges do not always take action on the report of the munsifs?

*A.* It won't happen very often. Invariably district judges take action on the report of the munsifs.

*Q.* Order 16, Rule 16 (2) lays down that on the application of either party and the payment through the court of all necessary expenses (if any), the court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

*A.* This is not done. Possibly the court itself is not ready with a date.

*Q.* Do you really want a system by which a witness will be given a subsequent date? The obligation will lie on the witness to appear and the party will pay the diet money and other expenses.

*A.* Yes.

*Q.* Is it quite possible to make the witness sign a statement that he has received the diet money, and that he will appear on the specified date?

*A.* That would be a difficult thing. But the court will never be prepared with the case.

*Q.* Do you think it would improve matters in congested courts, if they had certain dates allotted for certain classes of suits?

*A.* Yes, that would also have a control over cases.

*Q.* As regards trying cases continuously, is there any real reason why a case should not be adjourned next day, where it cannot be finished the same day?

*A.* Next day there will be another list waiting.

*Q.* Have you been in any place where there has been any amount of commercial work?



A. Yes, Cawnpore.

Q. In those places did you find any difficulty with the subordinate judge because he has not sufficient knowledge of commercial cases?

A. I did not see any difficulty.

Q. Does not the subordinate judge, by the kind of work he has been doing for years, become rather out of touch with commercial cases?

A. Probably. But he gets through in the end somehow. He may not be as quick.

Q. You don't think there is any dissatisfaction in Cawnpore as regards the quality of decisions?

A. I do not think. It would be better to have a sort of city judge specially for commercial work in Cawnpore.

Q. As regards appeals, do you think that there are many applications for stay of execution?

A. Especially when appeals are pending for a long time.

Q. On what principle is that done as a rule? First of all take a case of immoveable property. The plaintiff succeeds and the defendant is ordered to give the property to the plaintiff. Then there is an appeal. What would be the thing that would happen as regards the stay in execution of first court decree?

A. Generally the execution would be stayed by the first appellate court.

Q. On what terms?

A. Practically on no terms at all.

Q. In the meantime the man may stay there for three years?

A. If there is only mesne profits.

Q. When they apply for stay of execution, are they told then and there that they should deposit security?

A. No.

Q. If you take the law which appears to be Order XLI, Rule 5, sub-clause (3), it lays down :—

“ No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the court making it is satisfied :—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay, and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

A. Not in all cases. If it is a money decree it is a different matter, and security is taken. In cases of land, the judge himself says that the land is there.

Q. Do you find in the first appellate court, that applications for stay of execution are entertained *ex parte*?

A. Sometimes it does happen. Of course a temporary stay is given always.

Q. Is it customary in this province to file stay application even on the last day of the sale?

A. Yes. I used to be worried even on Sundays.

Q. You also find that applications are made for *ex parte* injunction without sufficient cause?

A. I do not think so.

Q. Supposing a whole lot of suits are being filed, or about to be filed. One suit is decided in a certain way. Do you find that the other suits are hung up?

A. Yes.

Q. Apart from section 202 of the local Act, people sometimes come and say that such and such a case is going to be decided and this case should be postponed.

A. It is very rare.

Q. As regards appeals, I think that the first appeals in this province are fairly heavy and that there is much difficulty in disposing of cases within a reasonable time.

A. Yes; the district and sessions judge is the same and the sessions work has increased so much that there is very little civil appeal work done.

Q. In many cases I suppose the district judge has an additional judge.

A. Very rarely.

Q. Do all cases of appeals from munsifs go to sub-judges?

A. Yes. But they are not able to dispose them of because they have got so much of original work. Only an additional sub-judge is engaged. I have never known of a sub-judge being able to hear civil appeals.

Q. Your idea is that the district judge or additional district judge does the appeal work.

A. Yes. Sometimes the additional sub-judge.

Q. In that case, are these appeals transferred to these courts in batches?

A. Yes.

Q. As regards second appeals, do you think that something might be done to put an end to second appeals in the case of suits of small value, where two subordinate courts agree? But I think the difficulty of that is there might be a temptation for the appellate court to agree, because there is no second appeal.

A. They may say the same of the High Court that there is no appeal to the Privy Council.

Q. Do you think that the public would not feel that there was any temptation for the appellate court to agree with the court below?

A. No. The suits are of small value also.

Q. What do you think of this that there is first of all to be a limit up to which there will be no second appeal?

A. It is the opinion of one man. There is always the complaint about the high jurisdiction of the Judicial Commissioner's court up to Rs. 10,000 which is the opinion of one man.

Q. Do you think that if instead of giving them one appeal by an appeal judge with the result that the man who has not seen the witnesses may reverse the lower court's decision, you could provide that in all cases up to Rs. 1,000 in value there should be a first appeal by two specially selected sub-judges and no second appeal, except in this sense that, if there is a question of real importance, it should be open to the High Court to state the case to the High Court and of course with some proper provision if the judges disagree? Do you think it would be desirable?

A. Yes, I think so.

Q. That will relieve considerably the work of the High Court.

A. Yes. But the subordinate staff will have to be increased.

Q. At any rate, the work of one of the judges in second appeals will be reduced.

A. Yes.

Q. There is another point affecting headquarters stations. As you know, at headquarters stations, the district judge has a great deal of office work to do and almost everything is thrown on his shoulders as a matter of responsibility in theory. He has got the accounts. He is the person, I suppose, really responsible for the copying department. Do you think it possible to have all that work taken away from his direct supervision and put under him in charge of a judicial officer of the type of a junior sub-judge and to have an unified office instead of each munsif having an office of his own?

A. It might at least be tried.

Q. Another suggestion is that you get the same results better in some ways by having a separate execution court. What do you think of that?

A. I don't think that could be done unless you have 2 sub-judges and munsifs.

Q. That is to say if one man simply is given execution work he will not have enough work.

A. No. I would not advise for him to do the execution work of all the courts.

Q. But why, you think there is any special disadvantage?

A. The jurisdiction will be high and there should be a certain amount of relief also. The judges doing the original work get light work for a day or two in a week. That was my complaint also when they made all the districts equal. If they divide the work and give hard work to every one proportionately then there is no difficulty.

Q. In regard to the Judicial Commissioner's Court, Oudh, I understand, the proposal is to make it a Chief Court and therefore it is unnecessary to enquire very much into the existing state of things. Have you ever thought of any way in which one might lessen the printing in the case of first appeals to the High Court?

A. The only thing that the pleaders have confessed before me is that when matters go over to them the party does not pay them for going into all the documents, and so they have all the documents printed.

Q. They are not sufficiently paid and therefore they go on for printing all the documents?

A. Yes, there was a case in which printed documents amounted to five thousand pages and I do not think reference was made to more than 150 pages.

Q. Sometimes these documents are of very irrelevant nature. We hear a great deal from the Privy Council about printing. What is necessary is that there should be an official. The moment anything of that sort is attempted the matter should be taken to the Registrar and under the Privy Council rule it should be excluded. There is a list of documents so excluded and if the High Court thinks any such document is necessary it can be looked afterwards in original.

A. Yes. In the Judicial Commissioner's court the translation is very bad. There is no appeal in which original documents are not consulted.

Q. Why is that; do you think that translators seem to be worse than they used to be?

A. I have no experience of translators.

Q. Have you any experience of interpreters?

A. No.

Mr. Justice Stuart.—Q. You have been in Oudh for a long time. Have you had any appeals in taluqdari cases?

A. Yes.

Q. Can you give a case? The Bhilwal case.

A. Yes.

Q. You heard that appeal. I think you dismissed it.

A. Yes.

Q. Was that appeal instituted by the Court of Wards?

A. Yes.

Q. Do you think the Court of Wards was well advised to institute the suit?

A. The Court of Wards had to do that so that the minors afterwards might not complain.

Q. I think you will agree with me that many of these cases are cases that when you look into them you cannot understand as to how a sane man could have advised a contest.

A. It is a very difficult point. I have seen case after case in which the Court of Wards has been a party and there was a case in which the Court of Wards represented both the plaintiff and the defendant.

Q. In the Bhilwal case there was an enormous amount of time wasted?

A. Yes one case went on for three years and the other for four years!

Q. What remedy would you suggest for these cases?

A. They must be carried on with better legal advice.

Q. What is the legal advice like? Have you had any experience?

A. No, I have no experience.

Q. I think the case is something like this. There are about ten large boxes full of papers relating to the estate with reports by the Government pleader and the Court of Wards manager initialed by the deputy commissioner who, perhaps, has not gone into a single document.

A. You cannot expect the deputy commissioner to go into all the documents.

Q. I do not expect him to do anything. I state the facts.

A. But sometimes they do appoint senior barristers to advise.

Q. But I think they appoint senior barristers after the institution of the case and never before?

A. Yes.

Q. When senior men are asked to take up cases, do you think that they go into all the documents?

A. Yes. I know one or two cases in which Mr. Wallach was consulted.

Q. Was that before the cases were instituted?

A. No, he went through all the documents afterwards.

Q. Well I think you will agree with me that the taluqdari litigation is one of the things which militates strongly against the prosperity of the province and it is one of the causes which is ruining the people of this province. Do you not think that something should be done and a very serious attempt should be made in that direction?

A. But not by legislation. If it is made by legislation then it will give rise to more litigation. I think it would be better if courts of arbitration could be established.

Q. What I am driving at is this. The first thing is, and I hope you will agree with me, that it is an evil which is very serious.

A. Yes certainly. It blocks the work of subordinate judges to a very great extent.

Q. The second thing is, and in this also I hope you will agree with me, that for the last 30 years with the exception of an amendment in the law not the slightest attempt has been made to get over this evil by any one.

A. No.

Sir T. Desikachari.—Q. With regard to pleadings, I think, it was your point that they are very indifferently drawn up?

A. Yes.

Q. I think you will agree with me that pleadings are not usually gone through by the court itself?

A. I do not think the judge has got sufficient time to go through pleadings. The munsarim fixes the date and when the case comes up for hearing pleadings are placed before the judge. He goes through them only when there is some difficulty, i.e., when one party says that the other party is alleging something quite different from that given in the plaint.

Q. Do you consider whether if the orders and rules in the Civil Procedure Code were observed, this evil could be rectified?

A. Yes. The difficulty is that the pleader himself never draws up pleadings, it is his clerk that does everything connected with it. Extension of time is many times asked for owing to these pleadings having been drawn up not by the pleader himself but by his clerk. Yesterday I had a case of that sort in which the man wanted extension. On enquiring what was the reason, he said

that he went to the pleader's clerk and the pleadings were drawn up by him. Sometimes petition-writers also draw up pleadings.

*Q.* So it means that touts play a prominent part in these things' in your province?

*A.* We do not call them touts. They are in reality clerks to pleaders.

*Q.* I am myself a pleader and I suppose plaint is always signed by the pleader if one is engaged. I think it is only in petty cases that pleaders do not draw up pleadings themselves and sign the plaint?

*A.* Even in big cases. The difficulty is that clients do not spend money in the beginning to have their pleadings drawn up by experienced and competent pleaders. Their negligence at that time leads to unnecessary trouble, inconvenience and delay afterwards.

*Q.* But it is the pleader who signs the plaint because it is presented in court?

*A.* Why should he.

*Q.* Does that happen in the majority of cases?

*A.* Yes. Generally the plaint is shoved in by someone and the pleader without going through the pleadings signs the plaint: The client puts his thumb mark on it. It is simply a verification of facts and it is the client who knows best what really the points are. What has the pleader to do with that?

*Q.* I wish to get at the bottom of this matter. You are sure, as a matter of fact, the plaint is drawn up by the vakil's clerk?

*A.* Vakil has nothing to do with the plaint, it is only a verification of facts?

*Q.* What about the written statement? Do you think that it is also prepared by the pleader's clerk?

*A.* No. It has always to be prepared carefully and it is generally prepared by the pleader himself. The client does not know anything what the other party has to say or has said and so pleader is in the best position to understand all these things. It is always signed by the pleader. The pleader has to be very careful in this matter as the party cannot do anything.

*Q.* So it is felt that the written statement has to be prepared carefully and in fact it is prepared by the pleader himself?

*A.* Yes.

*Q.* Do you think that the petition-writer in his province plays a very prominent part in the preparation of pleadings?

*A.* Yes. The pleader will always say that the plaint was shoved under his nose and without reading anything he signed it.

*Q.* Are pleadings drawn up in vernacular?

*A.* Yes always. It is very rare that we come across pleadings drawn up in English. It is only in those cases where some European is a party. We know very little English here.

*Mr. Justice Stuart.—Q.* There is a good deal of talk about the necessity of keeping vernacular, because it is a language that everybody uses. Is it not your experience that sometimes the court translator cannot read a single line of the document?

*A.* Yes. He can read only the handwriting of the people he is used to.

*Sir T. Desikachari.—Q.* Now that the evil is existing, what is the remedy you would suggest? Would you make it a rule that every pleader should be responsible for either the plaint or the written statement being drawn up in the proper form?

*A.* How can you make him responsible? Suppose some important matter is left out.

*Mr. Justice Stuart.—*Very frequently the plaintiff himself files the plaint and employs the pleader after it is filed.

A. Yes.

Q. In many of these cases the plaint is drawn up by petition-writers.

A. Yes.

*Sir T. Desikachari.*—Q. When is the vakalatnama presented?

A. Sometimes along and sometimes after the plaint is filed.

Q. In those cases in which the vakalatnama is presented along with the plaint, you may take it that there is a vakil who is entrusted with the case. Surely you can make it a condition that he should be responsible for the pleadings being drawn up in a proper form?

A. Yes, if he is made responsible. The only thing is that the clients are very foolish. They spend a lot of money in paying witnesses, but not the pleaders.

Q. What should be done?

A. If it is made compulsory that only a pleader should file a plaint above a certain value, the client will necessarily have to go to the pleader.

That is why in Oudh there is a system of clearing of pleadings. After the issues are framed the pleader is asked what he has got to say about his statement. This applies to the defence pleader also. This clearing goes on week after week before a statement is made.

Q. So there is a clearing of pleadings which is done on the statements of pleaders and this takes much time?

A. Yes.

Q. With regard to the clearing of pleadings, I should like to know a typical case of this kind?

A. I think it will be a great revelation to you if you get one of these taluqdari cases.

Q. Is it done by means of affidavits at times?

A. Under the directions of the Commissioner. Sometimes the pleadings personally I do not believe in clearing the pleadings, because the pleaders themselves are not interested. They do not themselves know what the case is about.

Q. Is this clearing done before or after the settlement of issues?

A. After the settlement of issues and before examining witnesses.

Q. Are pleadings cleared in ordinary cases also?

A. They do not take so long.

Q. Under what provision of the law is that being done?

A. Under the directions of the Commissioner. Sometimes the pleadings are not properly understood by the courts.

Q. Even in taluqdari cases there is no opening of a case?

A. No.

Q. With regard to the junior bar and the senior bar, I think you are pointing to an evil that actually exists. Is it not due to the way in which fees are awarded now, that a junior is not appointed in every case along with a senior?

A. I have been in many districts. The junior always tries to cut away the fees of the senior pleader.

Q. It is always the jealousy of the senior pleaders that prevents the employment of a junior.

A. Yes.

Q. Don't you think that the fee awarded legally is too small to permit two people being engaged?

A. Yes.

Q. You mean to say that the actual money spent is realised by way of costs?

A. Yes.

- Q. In the case of a suit for Rs. 1,000 what is the fee awarded?
- A. Rs. 50.
- Q. Do you mean to say that a pleader would take up that case for Rs. 50?
- A. Yes.
- Q. Don't you think that the existing system of payment of only one fee to a vakil and that a very low fee is the reason why juniors are not engaged? It is a matter of general complaint that the fee that is awarded in a decree in a suit is much too low for even one of the legal practitioners.
- A. I have never heard of that complaint here.
- Q. With reference to district judges, I think they are also district registrars in this place.
- A. Yes.
- Q. They have control over the sub-registrars under them?
- A. Yes.
- Q. That is a thing which might very well be avoided?
- A. There is very little work. That does not affect his judicial work.
- Q. With regard to second appeals, it is a fact that there are many frivolous second appeals filed and very few second appeals are eventually successful. Is it not so?
- A. Yes.
- Q. Is it not right to prevent this awful waste of time and money?
- A. Yes.
- Q. If you think that the appellate benches are not a proper remedy, would you limit the value of second appeals?
- A. I would limit up to Rs. 500 or Rs. 1,000, because it is not known to stop the right of appeal. So, there will be a tremendous uproar.
- Q. The so-called right is a thing created by statute.
- A. Anyhow they have got used to appeal.
- Q. Do you think that Rs. 500 might be the value over which second appeals might be allowed?
- A. Yes.
- Q. If you make a rule that, if both courts agreed, appeals between Rs. 500 and 1,000 should not be filed unless the decree amount is deposited into court would not that reduce frivolous second appeals?
- A. No. They will get somebody else to do it. They are great fighters here. Any litigation is quite a piece of pleasure for them to have.
- Q. So, the only way is to put an end to second appeals?
- A. Yes.
- Q. In connection with giving finality to decisions would you increase the small cause powers of district munsifs? Would you make it Rs. 500?
- A. I think the powers should be given to selected munsifs.
- Q. What is the period of service after which selection should be made?
- A. There is no fixed period. Each munsif should be selected according to his merits.
- Q. With regard to sub-judges, would you enhance their small cause jurisdiction?
- A. I would not in the case of a subordinate judge, except in the case of a small cause court judge.
- Q. Would you go up to Rs. 2,000 in the case of a small cause court judge?
- A. Yes.
- Q. Would you, in this province, enhance the pecuniary jurisdiction of munsifs up to Rs. 5,000?
- A. Yes, because the value of things has gone up. What was worth Rs. 1,000 then is now worth even Rs. 10,000.

Q. The jurisdiction, I think, was fixed about 40 years ago.

A. Yes. And Rs. 1,000 suits are so many that you will have to increase the munsifs.

Q. Having regard to the qualifications of the existing munsifs, you think that their jurisdiction could be enhanced safely?

A. Yes.

Q. I wish to know whether you will take away a portion of munsif's work and give it to honorary agencies?

A. My experience of honorary munsifs is not much. They have no desire to work and they only want to keep a gun and therefore they are working. They do not put their heart into the work.

Q. In the province of Oudh so far as I can see from your returns they have done a great deal of work.

A. A very small number.

Q. Supposing these honorary munsifs are properly selected and their benches are properly constituted, will they be able to relieve the regular munsifs substantially? There is absolutely no reason why suits which are decided *ex parte* and suits of small cause court should not be given to them.

A. But these suits can be done by regular munsifs in a couple of minutes.

Q. They are suits of small cause court nature which are not tried by small cause court side.

A. You would not send them to honorary munsifs. You can only send money suits but for these I will advise only the bench of honorary munsifs.

Q. With regard to village panchayats in this province, I suppose you have not had sufficient experience yet?

A. No.

Q. With regard to transactions which are evidenced by registered instruments and the plea that is often set up that they are sham transactions and that documents should not be enforced, will you prevent any such plea being put forward?

A. Not in the present state of Oudh. Education is not spread very much and people do not understand anything about it.

Q. You would not have that prevented?

A. No.

Q. With reference to the provisions that the mortgage deed should be attested by two witnesses would you like to have that continued? That is responsible for lot of false pleas.

A. Yes, whatever might be.

Q. Sale deeds are not required to be attested.

A. The mortgage deed is on hypothecation. I would like to have that provision continued.

Q. Would you make registration compulsory in case of partitions of immoveable property and contractual partnerships started with a capital of one hundred rupees or more?

A. They are very few.

Q. With regard to execution what do you think of the period beyond which no execution petition should be filed? Would you make it six years?

A. I am averse to that. The decree-holder's lot is bad; there are so many devices, especially in joint Hindu family.

Dr. DeSouza.—Q. I gather from your note that the translation is very bad and that in nine cases out of ten you have to refer to the original document. What advantage do you have in having these documents printed?

A. You get a general idea; it is only in regard to particular sentences that we have to refer to original documents.

Q. This system was introduced recently; do you know why?



A. The appeal goes before two judges and if there is only one copy it might cause delay.

Q. But it causes great expense to the parties.

A. Yes, especially because the way in which printing is done. The pleader never decides in the original documents as to what is necessary and what is not.

Q. In the case of Judicial Commissioner's court at Sind we have no printing at all. We are satisfied with the four copies prepared in the office. What sort of practice have you in case of criminal appeals?

A. In murder cases the whole case is printed.

Q. But in all other cases the original file is given to one judge and copies to other judges?

A. Yes.

Q. Would it not be sufficient for the office to prepare four type-written copies in civil cases?

A. Printing does not delay at all.

Q. I am speaking of the expense to the parties which is considerable.

A. That is fault of the parties. They do not pay adequately to pleaders who do not take proper care.

Q. So far as printing of evidence is concerned I think that can be dispensed with. So far as documents are concerned they can be referred to in original. Would not that practice be possible in the case of Judicial Commissioner's court at Oudh?

A. Here the cases are very big. We cannot study the case if the papers are in original.

Q. Now just another point. In this province with regard to first appeals before the district court, you say that stay for execution is granted though sometimes security is not deposited. Appeals are more or less admitted and as a matter of course notices issued to the respondents.

A. Under Order 41, Rule 11, it must be done at once but the fact of the matter is that the sessions judge is not able to attend to it because he is overworked, the sessions work is so heavy now.

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### The Hon'ble Mr. Justice KANHAIYA LAL, Judge, Allahabad High Court.

#### *Written Statement.*

#### *Ancient methods.*

Before dealing specifically with some of the more important questions raised in the Questionnaire, it is necessary to refer briefly to some of the causes, which interfere with the "*speedy, economical and satisfactory*" administration of justice in this country, and the remedies which have from time to time been suggested for consideration. The administration of justice in India was considered one of the paramount duties of the State, and that duty used in old times to be administered without any charge by judges learned in the law and anxious to study the rights of the parties and to apply their rough and ready methods of enquiry to the ascertainment of the truth. There were no court fees, process fees and other charges payable for the issue of summonses or the execution of decrees or orders or the translation and printing of paper books, and there were no elaborate rules to regulate the procedure of the courts in every detail.

#### *Modern Complexities.*

We have now substituted for the same a most elaborate and complicated system of law and procedure, the enforcement of which requires a large staff

of competent and trained judges, and the litigants, ignorant and unsophisticated as most of them still are, are apt to make mistakes and hurt themselves at every step, if no skilled legal aid were available to them. The complexities of the law and rules have introduced to some extent an uncertainty in the results of litigation, and a man with the largest purse regards it as a gamble well worth his money. To a poor man, the civil courts afford but little relief, because the actual expenses of litigation, leaving aside the initial court fee, are heavy and often beyond his means. He has in many instances to seek the help of a speculator to fight on his behalf; and not unfrequently he who wins finds himself ultimately as much embarrassed as the man who actually loses his case.

#### *Simplification of Laws.*

The necessity for a strong, adequate and competent staff of judges to cope with the work is admitted on all hands and requires no emphasis, though the requisite funds for providing such a staff are very often wanting. The necessity for simplifying the laws and procedure with a view to adapt them to the conditions of the country requires closer examination and deserves greater attention than it has apparently received. The simpler the laws, the greater is the possibility of substantial justice being administered in India. The more stringent the provisions and the greater the technicalities insisted on, the greater will be the opportunity for dishonest people to take advantage of those provisions and seek to deprive ignorant and unsophisticated people of their rights. Elasticity should give place to stringency, and the value attached to the technical observance of the laws of procedure should not be disproportionate to the merits of the subject matter for enquiry and decision.

#### *Simplification of Rules.*

A similar simplification should be aimed at in the rules made by the High Courts to regulate the procedure in matters of detail. For instance, one of the immediate causes of the delay is the time needed for compliance with the steps required for further progress, or the demands of court fees, process fees and other charges at every succeeding stage of a suit, appeal or execution proceeding. The parties have to be allowed time for compliance with each of these demands, and if they live in villages, as most of them do, considerable delay is frequently occasioned. It is legitimate to insist on the prepayment of expenses for the issue of summonses to the defendants, processes to the witnesses, or for the appointment of commissioners and the like. But many of the other smaller demands can, in view of the heavy initial court fee which a suitor or appellant is liable to pay, be easily dispensed with; and some of them can, at all events, be consolidated. The process fees charged yield a large surplus, which is annually credited to the Government. If a record has to be summoned, the party concerned is often required to pay the expenses for summoning the record, though it may be the record of the decree appealed against. If a warrant of arrest is applied for and the decree is over two years old, the party is required first to pay the expenses for the issue of a notice under Order 21, Rule 22, of the Civil Procedure Code, then for the issue of a notice to the judgment-debtor why he should not be arrested, and then for certain expenses for his actual arrest. If a warrant of attachment is asked for and the decree is not over two years old, he is required to pay for an order of attachment and for the expenses of deputing a man to carry out the attachment; and if the attachment is carried out, he is then asked to pay for the issue of various notices connected with the enquiries preliminary to the sale, and finally called upon again to pay for an order for the sale of the property and for the expenses of deputing a man to carry out the sale. Cannot a charge of, say, Rs. 2 for a warrant of arrest or for the attachment and sale of movables and debts, or a charge of Rs. 4 for a warrant of attachment and sale of immoveable property, if levied with the application, be treated as sufficient to cover the expenses of all notices and writs incidental to such proceedings, especially when Rs. 6-4 per cent. is deducted in the end from the sale proceeds and credited to the Government on a sale, other than a sale

of landed property, being confirmed? The charge is less where the property sold is landed property. In Oudh there are no amins or bailiffs, except two at Lucknow, and the sales are conducted by process servers and at times by nazirs, and gross abuses and injury to the rights of the judgment-debtors are not uncommon. It would be surprising if delays do not result in the above circumstances.

In the High Courts, the position is still worse. Our rules here require that the appellant should file a copy of the judgment of the court of first instance, and, if he does not file it, time is allowed to him to obtain a copy and file it, though within that time the record can easily be sent for and the case put up for hearing as soon as the record arrives. For over half a century, a copy of the judgment and decree appealed against was all that was needed; and naturally when the new rule was introduced, the litigants, relying on the old and well established practice, continued ignorant of it, and came here to file their appeals armed only with the copies which the pre-existing law and practice had required. For a time the appeals began to be summarily dismissed as barred by limitation, because the memorandum of appeal, often filed on the last day of limitation, was not so accompanied by a copy of the judgment of the trial court. The resulting injury to the rights of the litigants was, however, so great that the stern attitude, first taken up, had soon to be abandoned, and the penalty was mitigated by a concession to the demand for time to file the copy in every instance.

A copy of the judgment of the first court when filed does not, however, always dispense with the necessity of summoning the original record, for questions of construction, pleadings, admissibility or absence of evidence still arise in many appeals, which cannot be settled under Order 41, Rule 11, of the Civil Procedure Code, till the record is available for examination. Adjournments for the record, therefore, still continue.

Again the paper book, containing the pleadings, judgment and decree in second appeals, used till recently to be prepared, as in the subordinate appellate courts, by the office as soon as an appeal was admitted. The preparation of such a paper book for the judges, comprising the pleadings, the judgment and the decree appealed against and the grounds of appeal, was considered a necessary corollary of the admission of an appeal on which a heavy initial court fee was paid. But the amendments recently made require that the appellant must pay the expenses for the preparation and printing of that paper book. Under the old rules, the paper book so prepared used to be sold at a fairly high price and a certain proportion of the cost used to be realized from the parties who purchased the copies. Now the appellant is required to contribute an initial cost of Rs. 15 on account of its preparation within 30 days of the admission of the appeal. The respondent is required to contribute Rs. 10 towards the cost of the same as soon as he puts in his appearance, and if he does not appear, the appellant has to make good that amount within 14 days of the notice of demand or such further time as the court may allow. Till then the appeal remains in abeyance. The period so spent is generally two or three months, and sometimes much longer, where the service of notices on the respondent is delayed.

In first appeals, when an application is made for the printing and translation of evidence, further delays occur. The office very often takes six months in counting the words and preparing an estimate, though there may be not more than half a dozen papers requiring to be printed (*cf.*, F. A. Nos. 235 and 236 of 23). The parties take their own time in filing the estimates, and a year generally elapses before the work of translation is actually started. The second year is taken in the translation, printing and proof reading of the papers comprised in the paper book, and in the vast majority of cases, the actual hearing of the appeal does not start till after two years or two years and a half. In second appeals, no printing of the evidence is necessary and, if the record is sent for as soon as the appeal is filed, three months ought to be more than sufficient for the appeals to be ready for hearing.

Out of 1,208 first appeals now pending, paper books are ready only in 253 appeals. Out of nearly 2,000 second appeals now pending, paper books are ready in about half that number. The actual number of working days in the High Court is about 200 days in a year, and if adjournments can be obviated, means can be devised to expedite the disposal to some extent.

#### *Original and Insolvency Jurisdiction.*

In the High Courts, where original jurisdiction is exercised, the congestion can be relieved, if the original jurisdiction is transferred to the district courts or to a Presidency civil court constituted for each of the Presidency towns. There were 5,378 suits pending on the original side in the Calcutta High Court, out of which 2,720 or over a half were over a year old; 4,958 suits in the Bombay High Court, out of which 2,148 suits were pending for more than a year; and 1,306 suits in the Madras High Court, most of which were over a year old at the end of the year 1922. If the trial of these suits and of Insolvency cases, leaving aside admiralty, testamentary, matrimonial and company cases, is transferred to the district courts or to a Presidency civil court, manned by a suitable staff of judges, the disposal of these suits will be expedited, and the time now spent by the High Courts in the trial of original suits and insolvency cases will be available for other important work, now in a congested state.

#### *Right of Appeal.*

The people are naturally averse to any material curtailment of the right of appeal, partly because the lower appellate courts are not always manned by trained judges of standing and experience, and their decisions very often fail to give satisfaction, and partly because the existing system has added to the uncertainties of the results of litigation. Our aim should be to give the people a satisfactory tribunal and give finality to findings of fact, wherever such a tribunal is available.

#### *Trial by Benches.*

There are two means possible to secure that end. The first is to provide a tribunal of three judges for different grades of suits, other than suits of a small cause court nature, and make the decisions of that tribunal on questions of fact final, allowing an appeal direct to the High Court, only on questions of law or usage having the force of law, or material error in procedure, leading to a miscarriage of justice. The decisions of two judges would not command much weight; and, if they happen to differ, a third judge may have to be called in and the trial of the cases may be considerably delayed. Several such tribunals would have to be established in each district of different grades and standing for the different classes of suits, and though the number of appeals on facts would be thereby reduced, the cost of maintaining these tribunals would in every district be heavy and almost prohibitive.

#### *Trial with the aid of a Jury.*

The other is that certain classes of cases, for example, suits for money or moveables, rents or profits, damages for breaches of contracts, malicious prosecution, defamation or torts, and suits for dower, cash allowances, maintenance and the like, may be made triable under proper safeguards with the aid of a jury by a single judge; and the unanimous verdict of the judge and the jury or of the judge and a majority of the jury may on questions of fact be treated as final.

An appeal should be made to lie in such cases direct to the High Court, but not on questions of fact, unless there is a misdirection to the jury or the judge differs from the verdict; and an intermediate appeal will be thus obviated.

The trial with the aid of a jury can be either made compulsory for suits of the specified classes or as a tentative measure left optional, and in the

latter event, the right to convene or empanel a jury for the trial must be vested in the trial judge to be exercised on an application being made for the purpose by any of the contesting parties, when the plaint is filed or the issues are settled, if having regard to the nature of the contest and the facts in issue such a trial is expedient in the ends of justice.

#### *Some necessary safeguards.*

From ancient times, a *panchayat* or a conference of the elders of a village, town, guild or caste, was an established and permanent institution in India for the settlement of all disputes and claims, and the decisions of these panchayats very often partook of the nature of an equitable award and were treated as final and binding. A trial with the aid of a jury would serve the same purpose and would be less expensive than a trial by a bench of three judges, but the number of jurors would have to be kept sufficiently high to reduce the possibility of corruption, and as an additional safeguard, the concurrence of the trial judge with the verdict of the jury or of the majority of the jury should, in the present circumstances of the country and the state of education, be made a condition precedent to its being regarded as final on questions of fact.

In the remaining classes of cases, especially those dealing with mortgages and rights to or in immoveable property, complicated questions of mixed law and fact or construction of documents arise, and the trials will have, therefore, to continue as hitherto.

#### *Benches for Appeals.*

A third and possible alternative is to provide a bench of two or three judges, the latter number being preferable, for the trial of first appeals below a certain value, and to make their decision on questions of fact final. But the cost of permanently constituting these benches in every district or judgeships for the different classes of appeals, civil and revenue, which are fairly numerous, will be very heavy, if not greater than under the system first suggested. The system of a trial with the aid of a jury would be easier to work and less open to objection, being in harmony with the traditions and notions of the people, and also less expensive to the litigants; and it would tend very materially to mitigate and reduce the uncertainties of the results of litigation.

#### *Supplementary Privy Council in India.*

There is another matter to which it is necessary to refer in this connection before I conclude these general observations. The King has always been considered the fountain head of Justice in this country, and it is extremely inconvenient and expensive to the people that they should have to incur the trouble and expense of sending their appeals to England to have them tried out there in their absence. There is some advantage in having eminent judges of extensive experience and learning applying themselves to the decisions of these appeals in an atmosphere detached from all considerations of expediency or policy. But by reason of the distance and expense, many appeals raising questions of prime importance to the country have had in the past to be heard *ex parte* and the respondents have found themselves unable to represent their aspect of the matters in issue in their best light. The well-known decisions on the question of liability of the Hindu sons for the payment of the debts of their father, which created such a sensation in the country, were decisions passed in *ex parte* cases; and in Oudh there have been instances where big land-holders have managed to take their appeals to the Privy Council against tenants or persons claiming under-proprietary rights, and the latter having been unable to get themselves represented by counsel ultimately lost their cases. It is not fair to the people that the highest court of appeal, or in fact what is in their eyes the fountain head of Justice, should be rendered so inaccessible to them, and it is high time that

a supplementary Privy Council, consisting of retired judges and retired lawyers of eminence, were constituted in British India to dispense justice and hear appeals from the decisions of the High Courts at Delhi or some other suitable centre, aided by such eminent Lords and Lawyers of His Majesty's Privy Council in England, who might from time to time like to visit this country in winter for love, pleasure or money. The association of the Indians and the English lawyers of eminence, selected out of a consolidated list of the Privy Councillors here and in England, will not be without its value in enhancing the confidence of the people in the British Courts, and permanently cementing the connection between England and this country. The creation of a Supreme Court in India, manned by permanent staff of paid judges, would not serve the same purpose in the same effective manner.

#### *Recruitment.*

4. Coming to the question of details, raised in the Questionnaire, I am of opinion that the present system of recruitment has the advantage of catching promising young men early in life, who, if they had advanced well in their professional career, would not have been easily available. In practice, we get men who have had from two to five years' practice. The candidates are rarely appointed soon after they are selected, or before they have had some practical experience in professional work. A beginner in the legal profession does not usually get much work; but he still learns a great deal, if he is attentive, by careful observation and regular attendance in the courts, while cases are being heard and argued. It is not uncommon to find persons with scanty practice or briefless vakils or Barristers-at-Law striving hard to get into the judicial service; but instances of good, capable and promising young men, getting into the service in the early part of their professional career, are not wanting. The important point is to attract the best and the most capable young men available on such terms as the State is prepared to offer, and this can only be secured by requiring the candidates to undergo a preliminary test not so much in the principles of law, which it is presumed they have studied before they were given their degree, but in their capacity to apply them to given facts and express their decision in a methodical and logical manner. For the purpose of such an examination, I would allow the candidates the use of books and offer to them hypothetical cases, giving certain undisputed facts, and ask them to imagine the defences and give the findings or conclusions at which they arrive. Their intellectual alertness, grasp of legal principles, and their capacity for methodical and lucid expression can thus be tested; and the best candidates can be selected each year by that method with due regard to the number of vacancies that are likely to occur during the year. If family and communal considerations are also to be taken into account, the selected candidates can be interviewed to determine their personal fitness or suitability in other respects, and a final selection made as the combined result of the examination and the interview. The prospects open to the members of the service in the shape of high judicial appointments must, however, be kept sufficiently high to attract men of the right stamp and calibre. I do not think that any special training for district munsifs is necessary, beyond such as is acquired by observation and attendance in courts and practical work in the profession prior to appointment for a period of usually two years.

#### *Grades of Subordinate Judges.*

9 to 11. The existing distinction of grades between munsifs and subordinate judges should be abolished. The subordinate judges should be classified into three grades or classes. Those of the third class should have original powers up to rupees one thousand. Those of the second class should have original powers up to rupees five thousand, and those of the first class should have unlimited original jurisdiction. No subordinate judge of the third class should be given small cause court powers. Those of the second class should be given small cause court powers up to Rs. 500. Those of the

first class should have small cause court powers up to Rs. 1,000, and should also be empowered to hear appeals. No subordinate judge should be given second class powers till he has completed at least seven years in the third class from the date of his confirmation or the expiry of his probationary period, which in these provinces lasts generally for two years, unless his confirmation is for some reason or other postponed. The higher powers should not be conferred after the expiry of seven years from the date of confirmation as a matter of right or seniority, but as a result of proved efficiency and integrity, as judged by the annual (confidential) reports of superior officers, and the result of appeals or the proportion of decisions confirmed to those reversed or modified after contest. In places where there is sufficient work for a whole-time judge of the small cause court, the small cause court powers should not, as far as possible, be distributed between several courts, as the resulting confusion to the pleaders, litigants and witnesses and in the record room is perplexing and troublesome, particularly where the presiding judges change and are succeeded by persons possessing no small cause powers. The most convenient method is to have one or more whole-time judges of the small cause court in each district or sub-district, possessing lower or higher small cause court powers according to the quantity of work there available, and much delay and confusion owing to the time of the presiding judge being divided between works of different kinds in the same court on the same day will be thus obviated. Strict vigilance will have, however, to be exercised in the bestowal of small cause court powers, especially as the power of revision of the High Courts in such cases is limited and failures of justice or bad, hasty or perfunctory work tend only to lower the administration of justice in the public eye.

#### *Small Cause Court cases.*

15. The jurisdiction of small cause courts may be extended by the inclusion of suits for money, other than suits for accounts or the dissolution of partnerships or the recovery of money by the enforcement of a mortgage or charge over immoveable property, or suits for maintenance, where its amount is not fixed by any contract, award or judicial decision. Suits for money cognizable by a revenue court will also have to be excluded.

#### *Special Powers.*

12. The special jurisdiction to try cases relating to Public Trusts, Insolvency, Pro-note and such other matters should continue to be vested in the district judge, as the transfer of such cases to subordinate judges busy with the trial of heavy suits may inordinately hamper and delay their disposal. The subordinate judges of the first class can, however, be given pettier sessions cases and civil appeals for trial; and thereby they can be of material assistance in relieving the district and sessions judges of much of their less important work.

#### *Honorary Courts and Benches.*

14. Except here and there, honorary munsifs and village courts have, as a rule, been dilatory and unmethodical in their habits and work, and I do not think that it would be expedient to extend their jurisdiction or powers or to replace the stipendiary courts in respect of any portion of the more important work now done by them by such honorary tribunals. The honorary munsifs are mostly landed proprietors, anxious to enhance their position and prestige in the eyes of their tenantry, and where the interests of the landlords and tenants are in conflict, grievous instances of injustice may arise. The parties are frequently reluctant, after they have been put to the inconvenience and expense of instituting a suit and engaging a pleader, to have their suits transferred from the stipendiary courts to the honorary tribunals, where they can hardly get any adequate legal assistance.

*Appeals.*

18 to 23. Where there is no trial with the aid of a jury and the findings of fact are concurrent, no appeal from a decree not reversing or varying the decree of the trial court to the prejudice of the aggrieved party should be allowed, except on a substantial question of law or usage having the force of law or a material error in the procedure, causing a failure of justice. At the same time, where the findings are not concurrent, larger powers should be given to a court of higher appeal, as it would tend to develop greater responsibility among the judges of the lower appellate courts; and perfunctory and sketchy judgments on appeals, on questions of fact, will become much rarer.

No person should be appointed a district and sessions judge or allowed to act as such, till he has held judicial office of some kind or another, or practised, or done partly the one and partly the other, for a total period of, say, ten years. A careful selection should be made in making such appointments, and much of the difficulty now experienced in determining the precise nature of the finding, at which the lower appellate court has arrived, will then disappear. I am not in favour of a limitation of the power of the High Court in revision, for the existence of such a power exercises a salutary or moral check on the vagaries of some of the subordinate courts. On the other hand, where no appeal lies, I am in favour of enlarging these powers to the extent they are possessed by the High Courts on the criminal side, to be used only wherever a miscarriage of justice appears to have occurred.

*Service by Post.*

25. Service by registered post is not likely to facilitate the disposal of cases. The presiding judges have at present some control over the process-serving staff, who are required to make reports of service duly verified on oath before the date fixed. There will be no such responsibility on the Post Office, and instances may frequently occur where the witnesses directed to attend may fail to attend and the court may find itself unable to ascertain the cause of their non-attendance.

A process-server, who goes to the village, generally reports what information he receives about the whereabouts of the party or witness concerned, if he is known to be alive. Where a person is dead, or a minor, he reports the reason why he has been unable to serve him. This information the Post Office will be under no obligation to supply. The report of the process-server is attested by witnesses and verified on an oath, and can be admitted in evidence under certain circumstances. The acknowledgment brought by a post peon may not always be received in time, and would stand in need of proof. Any person, desiring to repudiate an acknowledgment, may win over the postal peon to say that he was ignorant of the identity of the person who signed it or to whom he gave the summons. The same cannot, however, be said with impunity in the case of a process-server, whose report of service is attested by witnesses.

*Registered Addresses.*

28 and 29. If the parties are required to file registered addresses in all original suits, appeals and other proceedings, much difficulty and delay can be obviated. Where such registered addresses are filed, and the addressees are not dead, the sending of notices or summons by registered post, acknowledgment prepaid, should be tried as a last resort for the purpose of effecting substituted service. It would be useful to give the presiding judges a wide discretion to direct service by registered post, acknowledgment prepaid, as an additional measure, if the circumstances are such as to require a resort to such additional method otherwise expedient.



*Examination of Parties.*

33. The examination of the parties is to my mind a very necessary preliminary to the commencement of the hearing. There can be no better source of information than the party himself, but the parties are not in every case present, particularly where they are residents of distant places, *pardanashin* ladies, minors or heirs of deceased persons, or land-holders or business men of some standing and position. Sometimes they may not know the details of a transaction, which may have been settled on their behalf by their managers, munibs or agents, but in the majority of cases they would naturally be the best witnesses, and we cannot too strongly impress upon the subordinate courts the desirability of examining them, wherever available, either before the issues are recorded or, at all events, before the hearing of the evidence is commenced, as the trial is thereby often considerably narrowed and simplified. It would not, however, be expedient to lay down any hard and fast rule on the point, in view of the great hardship, inconvenience and expense it may sometimes cause to persons unable to appear on account of illness, distance or other sufficient cause.

*Representative Suits.*

39 and 40. It is not desirable to extend the principle of representative suits beyond that recognized in Section 11, Explanation VI. and Order I, Rule 8, of the Code of Civil Procedure. The status of a joint family is in no sense akin to that of a partnership firm. In the former, no accounts are adjusted or can be claimed. In the latter, the accounts are yearly adjusted, and the profits are either divided and paid or credited in the accounts, and each partner is liable to account to the other for everything passing through his hands. In the former, the shares of individual members cannot be ascertained till separation, and many of them may, if employed elsewhere or absent on business abroad, may not even know what the manager was doing or whether he was protecting or squandering the family estate. The rights of the members so living afar, and particularly of minors and *pardanashin* ladies entitled to maintenance or a right of residence would be greatly prejudiced, if every suit brought against a father or manager, however extravagant, misbehaved and licentious he may be, is invariably treated as binding on the whole family. A person, who deliberately commits, what Lord Shaw aptly describes as a breach of trust in respect of his obligations as a manager, is not likely to allow that breach to become known to those interested in preventing him from committing it; and the rights of the members of a joint Hindu family deserve greater consideration than the claims of those who pander to the evil habits and extravagance of others for their own selfish ends. In the case of a mortgage, the need for protecting the interests of the members of the family, who did not join in the mortgage, is much greater, because the joint property may otherwise pass out of the family by foreclosure or sale without those members being given an opportunity to redeem or to take any other steps to save their interests. It is the duty of the mortgagee or creditor to implead every person interested or whom he seeks to make liable, and if he does not do so, he ought not to be allowed to take advantage of his own omission.

*Hearing de die en diem.*

49. It is usual to hear complaints that the cases are not heard *de die en diem*. But the courts are overworked, and additional staff is not always readily appointed, whenever a big case, likely to take up much time, is ready for hearing. No subordinate judge can allow the daily work of his court, including accounts, office reports, *ex parte* cases, miscellaneous judicial cases, execution cases and the like, to be wholly neglected because another case, which was not originally expected to last long, has remained unfinished and has to go on from day to day. He usually finishes the day's ordinary work, other than contested suits, in addition to any urgent work requiring immediate attention, and then starts with the part-heard case of the previous day.

If he were not to do so, his ordinary and daily work would get congested, and notices and summonses would have to be issued in many cases again. It is impossible not to condemn the action of a judge, who allows two or more contested suits to go on *pari passu* from day to day. But subject to that reservation, a subordinate judge, who labours hard and overtime to keep his work in good order, deserves some consideration for striving, in however mistaken a manner, to study the convenience of all or the greatest good of the greatest number. In these days of monthly statistics, a desire to show some work done in the monthly returns is not unnatural, and if we cannot give him relief, we should not increase his difficulties by stern criticism, where sympathetic guidance and timely relief can have better effect.

#### *Execution of Decrees.*

51 to 63. The execution work is in many courts not properly looked after, because the courts are very heavily worked and find in many places barely half an hour a day to devote entirely to the execution cases. Saturdays are taken up with the hearing of objections filed in execution proceedings and other miscellaneous judicial work. The troubles of the decree-holder begin with the execution of their decrees, and the difficulty is aggravated by the number of notices that have to be issued and the obstruction which the decree-holder has to face at every step.

It is not necessary, for instance, that the decree-holder should be required to take out execution once in every three years, or that a notice should be issued to the judgment-debtor to show cause why the decree should not be executed, unless the decree is:—

- (a) subject to a condition or contingency, the non-performance or non-fulfilment of which gives rise to the right to apply for the execution, or
- (b) more than three years have elapsed from the date of the decree or order or from the last order in the previous execution proceeding, or
- (c) any change has taken place by death, transfer or otherwise in the parties entitled or liable to execution.

#### *Compulsory Execution.*

56. It is needless to compel the decree-holder to apply for execution every third year. Article 182 of the Indian Limitation Act (No. 9 of 1908) has given rise to much contentious litigation and case law on almost every clause and explanation appended thereto, and it should be repealed and Article 183 extended to cover all decrees and orders passed by any civil court not provided for by section 48 of the Civil Procedure Code, 1908. Article 182 was manifestly intended to prevent the decree-holder from holding his decree *in terrorem* over the judgment-debtor without taking any active steps to execute it. But a decree-holder can seldom have any object in keeping his decree standing, if he can recover his money and utilize it for his other business, and more so if the decree allows him interest at only 6 per cent. per annum, which is considerably lower than the usual market rate.

The existing provisions compel the decree-holder, whether he is willing or not, to apply for execution every third year, though the judgment-debtor may be away or out of employment and there may be no reasonable prospect of his recovering a single shell by attachment, arrest or otherwise. He has to apply for execution to keep the decree alive, incur expenditure, which rarely brings any return, and if there happens to be any defect in the frame of the application or the procedure adopted by him, there may arise a question which may some day render his whole decree infructuous and unenforceable. The curious state of the law has been responsible for much of the trouble, vexation and delay occurring in the executing proceedings.

One of the most notorious causes of the trouble, which had thus arisen, was started by the decision in Sarju Prasad *versus* Sita Ram (I. L. R. 10, All. 71) which was followed in Fakirulla *versus* Thakur Prasad (I. L. R. 12, All. 179), and Radha Charan *versus* Man Singh (I. L. R. 12, All. 392); and numerous decrees of considerable value were declared unenforceable or rendered infructuous by virtue of that decision to the great glee of the judgment-debtors and the complete discomfiture of the decree-holders, who were deprived of their moneys. For many years that process of annihilation continued, till the legislature intervened and got a short amending act passed, known as Act No. VI of 1892, the history of which is too well known to old legal practitioners and judges to require any mention. A further and a more serious trouble was averted after the passing of that Act by the decision in Dhoulal Singh *versus* Phakker Singh (I. L. R. 15, All. 84). The case law on Article 182 of the Indian Limitation Act, 1908, and the corresponding articles of the previous Limitation Acts cover a considerable portion of every available Law Digest; and it is difficult to see how that provision, responsible as it is for much complexity, trouble and delay, has really served any useful purpose.

Section 48 of the Civil Procedure Code provides a limitation of 12 years for the execution of decrees; and there is no reason why that provision, taken with Article 183, when amended as above suggested, should not suffice for all practical purposes to regulate the execution of decrees, leaving it free to the decree-holder to apply for execution as often as he may consider necessary.

#### *Curtailment of Notices.*

60 to 64. It would be advantageous if a copy of the proclamation of sale is served on the judgment-debtors by registered post, acknowledgment prepaid, and the existing procedure requiring the issue of notices to them at successive stages of the execution proceeding curtailed, as above indicated, and the differential procedure provided for the sales of landed property, ancestral or non-ancestral, harmonised. The power given by the Code of Civil Procedure to the collector to grant leases or otherwise arrange for the satisfaction of the decrees has rarely been utilized for the purpose of preventing the sales of ancestral landed property.

#### *Sale of Ancestral land.*

The transfer of the execution proceeding in respect of the ancestral land has only led to inordinate delays in the sales without any corresponding advantage to the judgment-debtors, and though the agency provided for the sales of landed property on a fixed day of each month is better than the ordinary machinery, which the civil court has at its disposal, no sufficient reason exists for not treating landed property—ancestral and non-ancestral—alike. The only resulting difference will be that in that event objections regarding the sale of ancestral land will be heard by the civil court in the same manner as objections to the sale of non-ancestral land. It would be open to the collector in such cases to proceed at first with the sale of the non-ancestral land, and, if the decree still remains unsatisfied, to proceed next with the sale of the ancestral lot. If the sale of the non-ancestral land is sufficient to satisfy the decretal money, the sale of the ancestral land can be stopped.

#### *Certification of Payment.*

Another difficulty arises in connection with the certification of payments made towards decrees. If the payments are made out of court and not certified within the time allowed by the law, owing to the ignorance of the judgment-debtor, those payments are not recognized by the court executing the decree, and many judgment-debtors have to pay heavily for their negligence in not getting the same recorded at the proper time. Article 174 of the Indian Limitation Act provides a limitation of 90 days for the issue of a notice to the decree-holder to show cause why the payment should not be recorded. Order

21, Rule 2, of the Code of Civil Procedure provides that a payment not so certified shall not be recognized for the purpose of execution. The two provisions, read together, have indirectly tended to encourage dishonesty and fraud, and though it might be urged that the removal of the provisions might open the door wide for frivolous objections, the stringent restriction laid down by the legislature is more harmful than otherwise. The hardship is greater where the decree provides for periodical payments or payments by small instalments. If it is not considered desirable to do away with Order 21, Rule 2, aforesaid, the period of limitation provided by Article 174 of the Indian Limitation Act may be extended to three years.

#### *Final Decrees for Sale.*

66. In simple mortgages, the necessity for obtaining a final decree for sale or a personal decree for the recovery of the balance of the decretal money after the mortgaged property has been sold or become unsaleable, should be dispensed with. A judgment-debtor has a right to pay the decretal money at any time before the auction sale, and he can pay it even after the auction sale, if he is prepared to pay a certain amount of penalty to the auction purchaser. A personal decree can similarly be passed conditional on the mortgaged property proving insufficient at the time the suit is heard, if the covenant fixing a personal liability is otherwise within time. A final decree for sale and a separate personal decree are quite unnecessary, and the provisions relating thereto, so far as simple mortgages and charges are concerned, may well be repealed. The fixing of a time for payment in these cases is also not necessary. In suits for the redemption of usufructuary mortgages and suits for foreclosure and other suits, where further accounting may be necessary, the existing procedure should be maintained.

#### *Sale Free from Incumbrances.*

It would not be easily possible to provide for the sales of property in execution of decrees free from all incumbrances. An enquiry is made even now into the incumbrances, but a report is often received mentioning incumbrances which were satisfied long ago or the creditors of which cannot be traced by reason of their death or departure from their homes. The report is confined to incumbrances registered within twelve years of the execution proceeding, and does not take into account earlier ones, though they may be alive, or auction sales, which might have taken place in satisfaction of prior decrees. All persons interested in the mortgaged property are, under the existing procedure, made parties to the suit; and, if they are made parties, all matters in dispute, which any of them can raise, are settled before a decree is passed. The difficulty only arises where they are not made parties or where the sales are conducted in the execution of simple decrees for money. The court cannot in any event guarantee any title and no object can be served by requiring an enquiry into all possible incumbrances and insisting on their payment, if the result of such an enquiry can only be to cause further complications and delay in disposal. It would be enough if the holders of such incumbrances as are known are made parties to the suit, and the execution proceeding and any prior incumbrances subsequently discovered are notified at the time of the sale.

#### *Adjudication of Insolvency.*

69. The existing law of insolvency has greatly strengthened the hands of debtors, who possess no immovable property, in evading the payment of their debts. Persons, who lose money in speculation or in extravagant and licentious ways, largely avail themselves of the Law of Insolvency and manage to keep back their cash and jewellery, the existence of which cannot be easily traced by the receiver, and start business afresh in some name or another after their adjudication or discharge. I have not heard of any insolvent starving or

begging for his livelihood, after his adjudication. The concealment of assets, particularly moveables, is very common, but it is not easy to get evidence about it. After the adjudication a discharge is easily obtained and operates to release the insolvent from all his liabilities. The receivers in many instances take no energetic interest in their work; and, under the guise of the law of insolvency, a huge swindle is sometimes enacted to the dismay of the honest people and the demoralisation of others infected by the temptation. Both the adjudication and the discharge should be hedged in by restrictions, to make it difficult for the speculators and dishonest debtors to seek protection without a risk of prosecution, and no discharge should be ordinarily allowed unless the insolvent has by honest endeavours paid up at least eight annas in the rupee of his unsecured liabilities since his adjudication as an insolvent. The enquiry and the adjudication should, in my opinion, continue to be vested in the highest district court to permit of a definite and a uniform policy being maintained in the whole district or division, and stricter supervision should be enforced over the work of the receiver. The subordinate judges and munsifs are loaded with other kinds of work and would find little time to look after insolvency cases properly, and I am not in favour of that work being transferred to them.

#### *Attestation of Mortgage deeds.*

72 and 83. One of the most fruitful causes of delay and unnecessary prolongation of the contest is the provision requiring that all mortgage deeds and deeds of gift should be attested. The attestation of sale deeds is not compulsory in law, but in spite of that fact, sale deeds continue to be attested by numerous witnesses. The vendee knows that if he is required to prove a deed of sale or the payment of its consideration, he would require evidence and he consequently takes care to have the instrument of sale duly attested by several persons. A mortgagee and a donor would take the same care, whether a deed of mortgage or gift is required by law to be attested or not.

Where the scribe and most of the attesting witnesses are dead, the mortgagee or donee is absolutely at the mercy of the remaining attesting witness or witnesses, who may, if they choose, collude with the debtor and say what they may like to deprive the creditor of his dues. In suits on registered deeds of mortgage or gift, denials would become less common, and a temptation to perjury disappear, if the statutory requirement of attestation is dispensed with. Since the decision of the Privy Council in *Shama Patter versus Abdul Qadir* (I. L. R. 35, Mad. 607), contests of this nature have become very common; and, although Act XXVI of 1917 has somewhat reduced the difficulty of proof in the matter of documents executed before the 1st of January, 1915, a denial of due attestation and other defences of that character in cases, where *pardanashin* ladies and illiterate executants are concerned, are still common, tending, if successful, to encourage dishonesty, and, if unsuccessful, to prolong the litigation and delay the payment of the decree till an appeal is finally heard and decided.

Sections 59 and 123 of the Transfer of Property Act require to be amended, so as to dispense with the attestation by witnesses as a statutory requirement. In practice attestations will continue both in respect of mortgage deeds and deeds of gift, as they have continued in the past in the case of sale deeds, without the law making such attestation necessary.

#### *Proof of Attestation.*

71 and 72. Section 68 of the Indian Evidence Act similarly requires amendment, because in many cases evidence, which might otherwise have been considered sufficient, is rendered insufficient, if a sole attesting witness alive has been won over by the other side and is unwilling to state the facts to which he had testified at the time of his attestation.

#### *Limitation for Civil Remedies.*

74 to 80. I am distinctly opposed to the laws of limitation and registration being made more stringent. The laws of limitation are Statutes of repose and

are intended to introduce peace by burying old controversies after fixed periods of time. But these laws take long to filter into popular knowledge, and the less they are disturbed, the better for the people. Every person, who has had to deal with the courts, for instance, knows that the limitation for a suit for pre-emption is one year, and that for a suit for possession after the death of a Hindu widow owning a life estate, twelve years from the date of her death. A curtailment of these periods, which have by a long and unvaried use become so well known to the people, would cause considerable disturbance and loss to ignorant people in many parts of the country and unsettle their faith in the administration of justice.

#### *Compulsory Registration.*

76 to 80. During the last few years, the fees for registration have been considerably enhanced, but no additional facilities for registration have been granted. In fact, some registration offices have recently been closed. The number of optional registrable documents is, therefore, falling. It would be less advantageous to make the laws of registration more stringent than to widen the facilities for registration by materially reducing its cost, so that people might be encouraged to resort to the registration offices for the registration of documents optionally registrable for the security of their titles and rights, without having to undergo undue inconvenience and expense. To the extent we encourage registration and make it popular, we simplify the work of our courts and facilitate the disposal of claims, which can then be settled by documentary proof or the production of registered instruments. An addition to the list of compulsorily registrable documents will not serve that purpose.

#### *Defect in Presentation.*

75. It is necessary at the same time to simplify the law of registration in two material particulars. The existing rules as to the persons presenting a document for registration are very stringent. If a document is presented for registration by the agent of the vendee or the creditor, the registration is treated as void, unless the agent holds a power of attorney from him, though the vendor or the executant may be present at the time and admits its execution.

In India documents are very often unilateral, and if the executant or his authorized agent is present and admits its execution and the document is duly registered, any defect in its physical presentation ought not to be allowed to affect its validity. Since the decision in *Jambu Prasad versus Aftab Ali Khan*, (I. L. R. 37, All. 49), the number of objections taken to the validity of registration on the score of defective presentation has increased, and though Act XV of 1917 provides a remedy by allowing fresh registration within four months of the defect becoming first known, it would be simpler if Section 87 of the Registration Act is widened to cover such defects of presentation. Once the registration is completed, its validity should not be allowed to be questioned on such technical grounds.

#### *Certain Copies of Documents.*

75. Section 57, Clauses (3) and (4) of the Registration Act exclude Register No. 4 from inspection by the public and does not permit copies of any entries therein to be granted to persons, who are not parties to the instruments. If any fact entered therein has to be proved, much delay therefore occurs in obtaining evidence to prove it. An authority to execute or register a document can, for instance, be proved only by the production of a certified copy of the power of attorney; but no certified copy is granted of such a document except to a person who is a party to such a document or his heirs. There are other documents entered in Reg. No. IV, of which certified copies can easily be granted without detriment to the public interest or the interest of persons who were parties thereto. If Register No. IV is made available to the public, much unnecessary oral evidence about the matters provable thereby can be served.

*Penalty in Certain Cases.*

75. Section 35 of the Indian Stamp Act should also be amended to permit penalty being levied on promissory notes and bills of exchange, to render them admissible in evidence. Their exclusion necessitates the production of oral evidence, which is often of a doubtful character and delays the decision of suits.

*Leases and Qabuliyats.*

75. The provisions contained in Section 107 of the Transfer of Property Act, requiring every lease from year to year or for a term exceeding one year or reserving an yearly rent to be registered hampers the administration of justice. The stringency of these provisions results in the parties sometimes contenting themselves with an exchange of letters; and, where the lease is for a small amount or where the transaction is witnessed only by a *qabuliat* executed by the tenant, many difficulties arise in practice. In many cases the sufficiency of a *qabuliyat* to constitute a lease has been doubted. The simplest course is to require registration only where a lease reserves an yearly rent or is for a period of not less than five years, an exception being only made in favour of agricultural leases granted for any term.

*Conflict of Jurisdiction.*

75. A conflict of jurisdiction between the civil courts and the courts of revenue is another constant source of trouble. Where a question of proprietary title is involved in the revenue courts of the Agra province, the question is generally referred for decision to the civil courts; and, where a question of tenant right is involved in the civil court, a reference is made to the revenue court; and the decision of the case, in which that question arises, is postponed till the matter in question is finally decided by the court concerned and the highest court of appeal. In Oudh, suits for rent, revenue or profits are heard by the revenue courts, but the appeals from the decisions of the revenue courts in such cases go to the district judge or the court of the Judicial Commissioner. If these suits or the appeals arising therefrom are transferred to the civil court and questions of proprietary title or tenant right are allowed to be decided by the court concerned, except where they arise out of a partition proceeding, all questions as to the conflict of jurisdiction can be set at rest. Sections 201 and 202 of the Agra Tenancy Act unduly prolong the trial and serve no real purpose.

*Champerty.*

84. It is not possible to check champerty so long as the expenses of litigation continue to be heavy and there are poor claimants, who cannot afford to pay them. Men, who think that they are entitled to some property and have no means of enforcing their claims, are obliged to seek the assistance of speculators to fight out their cases for them. Instead of purchasing a share in the litigation, these speculators take an out and out sale of a certain share of the property, as such a sale has been held to be valid and enforceable. The most notorious case of a sale of that kind is that of the Birwa Mahnon Estate, where a sale of an estate of considerable value without any real consideration, except the expenses of the litigation was upheld (*Lal Achal Ram versus Raja Kazim Hussain Khan*, 8 O.C. 155, S.C. 32, I.A. 113). There is no practical remedy available to stop the intervention of speculators, and all that can be done is to authorise the courts to demand security for costs in such cases from the plaintiffs, though such a demand may in some instances create much hardship, if the speculator finally throws a poor claimant overboard on that account.

*Further Codification.*

87. The legislature should, in my opinion, avail itself more largely of its power to clear up doubtful matters and to rectify errors or omissions in drafting, whenever they are brought to its notice. Act VI of 1892, Act XV of 1917 and Act XXVI of 1917 are instances where the legislature was induced to move after great difficulty and not till after many decrees and claims had been declared to

be un-enforceable. The codification of the law of pre-emption, which was a constant source of trouble and uncertainty in the province of Agra, has after fifteen years of agitation now been effected. The Law of Torts does not need codification. The Hindu Law derives its sanctity very largely from the fact that it was promulgated from time to time by sages and saints, and it is not desirable that its sanctity and flexibility should be destroyed by codification. The orthodox Hindus would, moreover, be unwilling to submit the fate of the Hindu Law to the arbitrament of a heterogeneous body like the Legislative Assembly, consisting of social reformers, faddists and non-Hindus, many of whom would fail to appreciate the spirit which underlies its doctrines. In spite of the trouble, which now and then arises where there is a conflict of authorities, the people would be glad to follow what they believe to be their own personal law rather than a law which is to be codified for them and to which they would attach no sanctity. The Hindu Law represents an evolution of thought and usage, sanctified by the mandates of saints and sages and re-inforced by the authority of kings, under whose patronage they wrote, or by general public acceptance. It is still a living force, and has the capacity to adapt itself, as it did in the past, to the surrounding circumstances, and codification will only hamper its future evolution and growth.

For the same reason I am opposed to the codification of the Mohammedan Law, though in some respects the Mohammedan Law is less flexible or susceptible to change than the Hindu Law.

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**The Hon'ble Mr. Justice KANHAIYA LAL called and examined on Monday, the 31st March 1924.**

*Chairman.*—*Q.* Mr. Justice Kanhaiya Lall, we are very much obliged to you for the trouble you have taken in giving us a memorandum of your points. Well I see you say that at the present time both the law and the procedure are very complicated?

*A.* Yes, as compared with olden days.

*Q.* And you like that something should be done to simplify them?

*A.* Yes.

*Q.* Now as regards procedure, I see you are against any codification of the Hindu and Mohammedan Laws?

*A.* Yes.

*Q.* Apart from the question of procedure, have you any other suggestions to make with regard to the substantive law in this country?

*A.* The substantive law that is followed in this country is the English Law and I think it embodies well-established principles which if they hold good in England must also hold good in India.

*Q.* I understand when the system of codification was commenced in India, it was intended that by its help it would be possible to keep things straight.

*A.* Yes. I understand that there is at the present time a Statutory Revision Committee presided over till recently by Sir Alexander Muddiman and this Committee ought to look after these things.

*Q.* There is some difficulty in getting through amendments with speed.

*A.* There was no such Committee before.

*Q.* Has that Committee to amend and clarify the law or simply to go through the statute book in order to repeal obsolete acts?

*A.* Also perhaps to amend and clarify the law if necessary but I am not certain. They have been preparing bills and revising and consolidating the Acts and doing other things of that kind.

*Q.* Do you think that it is their duty to look after necessary amendments also?



A. If it is not, then it ought to be their duty. What struck me most when I studied the composition of the committee was that several members were not in actual touch with the working of the administration of justice. At times there are lawyers as members of the committee, but the difficulty is that they are not in touch with the actual state of affairs and so they are not in a position to bring these things to the notice of the committee. This point struck me as of very great importance.

Q. Probably one committee for all provinces will not be very successful?

A. Yes, unless it collects opinions from all parts.

Q. As regards the question of codification, I understand that the Hindu Wills Act does not run in this province?

A. No.

Q. Do you think that it would be possible to bring these provinces under the Hindu Wills Act?

A. There is no harm if it is done, but there is no great need of that Act in these provinces. We have got the Taluqdari Act and it governs all the small and big estates in Oudh; and under this Act, wills in respect of all the taluqdari estates are registered. Elsewhere registration is usual in respect of big estates. As regards small estates it is seldom done. If the Hindu Wills Act is brought into operation there will, I think, be no harm. I do not think there will be any disadvantage, if it is brought into force.

Q. As a matter of fact I gather that the law relating to wills is not really a part of the traditional Hindu Law?

A. Yes. It is a part of the law of gifts *inter vivos* or in contemplation of death.

Q. Coming to the matter of procedure, I think you point out that not only litigants have to pay a good deal in order to get their cases tried, but they have to pay a lot of small items at different times and it is one of the immediate causes of delay in the disposal of cases. Does this cause a good deal of avoidable delay?

A. Yes.

Q. Then you point out that if a warrant of attachment is asked for and the decree is not over two years old, the litigant is required to pay for an order of attachment and for the expenses of deputing a man to carry out the attachment; and if the attachment is carried out, he is then asked to pay for the issue of various notices connected with the enquiries preliminary to the sale, and finally called upon again to pay for an order for the sale of the property and for the expenses of deputing a man to carry out the sale.

A. Yes, that is quite so. I would suggest that instead of charging at the time of each process, why they should not charge two or three rupees for the whole thing. Clients are usually illiterate and very poor; and at the same time means of communication are so limited that a notice sent by post can not often reach the litigant in his village in less than fifteen days time. All these things cause unnecessary and avoidable delay.

Q. So you think that something should be done in that direction. That instead of a lot of petty payments, there should be only one payment?

A. Yes, subject to the condition that if the money is not spent, it should be refunded to the litigant. If that is done, people will always be ready and willing to deposit money in advance.

Q. I think you say that sometimes records are still sent for, for there are certain questions which cannot be disposed of under Order 41, Rule 11?

A. Sometimes questions of pleadings and admissibility or absence of evidence arise in a large number of appeals and unless the original records are sent for, they cannot be settled. Personally I always take care to see whether there is any necessity of sending for the records or not when the appeals are filed.

Q. Of course if the record was always sent for, that will have practically the effect of staying the proceedings in the lower court?

A. Only the original record is sent for. Possibly when there is an appeal from an order of remand, but not otherwise.

Q. Do you think the judgment creditor would be able to apply for execution?

A. He can apply. He usually takes a copy of the decree. In Oudh the practice is to send for the record as soon as an appeal is filed.

Q. I think you say that until the respondent's portion of the money is paid in an appeal, it remains in abeyance for 2 or 3 months, or if the service of the notice may be delayed, even longer. Now what do you suggest to get over that?

A. I suggest that we should revert to the old practice. As soon as an appeal is admitted, we should start preparing paper books. I do not propose to print the records in second appeals below the value of Rs. 5,000.

Q. Do you print your second appeal paper books now?

A. Yes. The result is that they take not less than a year and generally more than a year.

Q. I suppose you print the pleadings, the judgment and the grounds of appeal?

A. Yes. My suggestion is that as soon as an appeal is admitted, the paper book should be prepared by the office and typed. Four copies should be typed and two sold to the parties. If two are typed, they will suffice for the judges. In old days they used to be printed at the Government expense and sold and the Government did not suffer more than one-third of the cost. I am for doing away with printing altogether. Let us have typed copies.

Q. Of course there is no reason why Government should pay any part of the cost of a second appeal. Do you think that the system of not printing at all, but simply type-writing judgments and pleadings would meet the case? In Calcutta we do not typewrite the pleadings as part of the record. The record is there. In many cases it is not necessary for reference. If a point is raised, the pleader translates the thing for me and the man on the other side checks the translation and there is no difficulty in practice, even if you have not got the pleadings.

A. It would be safer to have the pleadings translated. My argument is that if in the court of district judges pleadings are translated at the expense of the Government, why should they not be translated at the expense of the Government here too. It is not evidence that I suggest should be printed and translated at the Government expense. It is only the pleadings. The initial court fees that are paid on the appeals ought to be sufficient to cover the incidental expenses of preparing typed paper books.

Q. With regard to first appeals you say the office takes six months in counting the words and preparing the estimates?

A. I have cited three instances. The delay is monstrous. You will find 300 files lying merely for counting.

Q. I suppose the office gets the paper books out in time to keep the bench going and you are not so much in arrears. If the conditions are to be bettered, perhaps you will have to increase the office staff?

A. No. It only requires overhauling and re-organization. The system I have in view is this. I want to help the junior pleaders who take years before they get any practice. Some of them fall into the hands of touts. I suggest that they should be given translation work, i.e., licensed to translate the documents and evidence. In that way they shall be able to earn from Rs. 100 to 200 per mensem. The translators who are now in service of the High Court will thus be relieved of a large amount of their work and their services can be utilised in re-organizing the office.

Q. Then the actual cost of translation would not be increased?

A. It would be less. In Oudh they charge Rs. 5 per thousand words, here we charge Rs. 7-8-0 per thousand words.

Q. Have you experience of both these provinces? If so what is your view with regard to the difference between the two provinces in keeping the records?

A. The Oudh system is all right except that it places too much mechanical work on the judge. He cannot find time to apply his mind to clearing up points and ask other important questions and regulate the various things which come up during the course of examination. His mind is so much occupied in writing that he does not feel quite free. With that reservation, I think the Oudh system is on the whole all right.

Q. Does a case turn upon a word or upon a small item of evidence that has been omitted?

A. It does sometimes. What I suggested was that we should print the judges' notes instead of translating the vernacular evidence. That is the suggestion I made for consideration to the High Court some years ago.

Q. As regards the right of appeal what is your opinion?

A. I think the people are not prepared to forego any right of appeal.

Q. Do you not think there is a liability attached to an appeal as well as a right? Do you not think that a man who wants to recover fifty rupees might not like to fight the matter out?

A. My idea is if there is a fifth appeal, some men would take it to the fifth authority.

Q. Certainly I quite agree with you. In fact there is no principle of giving the man all the appeals he wants, as distinguished from three or four appeals. Our system of second appeal leads very often to the Letters Patent appeal and it is only the expense that stops it from going to the Privy Council. Do you not think that from the point of view of policy the thing to do is to make up your mind to give the parties as good a trial as you can and then give them a good appeal say up to rupees one thousand and nothing more?

A. Provided the findings are concurrent. If the two judges have come to concurrent findings it may stop there.

Q. Supposing you have a bench of two judges for first appeals. They have not heard the witnesses; they would not overrule on the question of facts.

A. If the findings are not concurrent, the people would not be satisfied.

Q. They will never be satisfied?'

A. But we must give them reasonable opportunity. If the findings are concurrent, they should be satisfied. I have suggested other remedies to eliminate delay. My idea is that if we have a bench sitting for the first appeal there will be other disadvantages. In the first place the consequential expenses will be very heavy. There are at present fifteen to twenty thousand civil, rent and miscellaneous appeals filed every year and we shall require a permanent staff of two or three sub-judges, in every case, to look after the appellate work. If the districts are linked up, the parties will have to travel very long distances and bring their pleaders with them and that will cause expense and inconvenience to them. And then the district judges would not in that event be in touch with the work of the subordinate courts. If you make over the work to the subordinate judges, the result will be that the district judge will cease to be in touch with the work of the munsif and if you would want his opinion as to how a subordinate court is working, he would not be able to give any opinion.

Q. What has been suggested is an attempt to give a first and final appeal in all cases under rupees one thousand where an appeal is allowed. That would probably enable you to get over the question of expenses when you would find that there would be a substantial saving as regards second appeals in the High Court.

A. The proposal is not likely to be acceptable to the people. The Legislative Assembly with stand against it and I think it is not desirable to press that matter.

Q. Well I see what your point is. Do you not think that, apart from what the Legislative Assembly may say, (of course we cannot judge what view it would take; it may turn it down), as a matter of fact it will satisfy an ordinary Indian in the United Provinces who has filed a suit of the value of rupees five hundred, if he gets a trial by a competent munsif and gets one right of appeal on facts and law by two experienced and senior subordinate judges?

A. If the findings are not concurrent, he would not be satisfied.

Q. I see you suggest that civil suits should be tried by a jury. Would there not be a certain difficulty in getting a sufficient number of jurors?

A. No, I do not think so.

Q. What kind of cases will you have tried by the jury?

A. Suits for money and movables, and not the title suits. My idea is we must have satisfactory tribunals before we can attach finality to their decision. We might have cases tried by the jury just as we do in criminal cases. No title suits should be tried by the jury because there are often so many documents to be examined; but suits for breaches of contract, defamation, etc., may be tried by the jury.

Q. You mean money suits, not being of a small cause court type?

A. Small cause court suits will go to the small cause court side. I mean other suits for money and movables excluding the mortgage suits. This will give relief to the district judges and the High Court.

Q. You are in favour of a supplementary Privy Council in India and you propose that it should be manned by retired Judges.

A. I mean select retired Judges and retired lawyers, supplemented by such members of the Privy Council in England who are willing to come to this country from time to time either for money or for love or for recreation. We can give them their passage and an honorarium.

Q. You think the retired Judges should be paid?

A. Not a salary but an honorarium.

Q. Do you think you will get a fairly large number of these Judges?

A. My idea is that the number of retired Judges would be increasing every year. We shall in a few years have a pretty large number, if the sixty years rule remains in operation.

Q. Do you think it will give you as good a tribunal as the Privy Council?

A. Let us consider the expense. Parties are put to very great expense for having to go to the Privy Council and the result is that sometimes they lose their appeal.

Q. I see the decision in Sahu Ramchandra's case was given *ex parte*.

A. The same happened in the Brijnarain case. Take another case. A suit of about five or eight hundred rupees in value was decided by a munsif against a taluqdar. It went on an appeal to the district judge and the appeal was dismissed; and the taluqdar was unsuccessful. A second appeal then came before the Judicial Commissioner and he upheld the finding of the lower appellate court. After having lost in three courts the taluqdar applied and obtained special leave to appeal to the Privy Council. The respondent could not get himself represented and he lost. Things of such kind happen very often, where the respondent is a poor man or a tenant or an under proprietor unable to provide funds to engage a counsel in England.

Q. With regard to munsifs and subordinate judges, you say that they should be given practical instructions. You suggest that they should be required to undergo a preliminary test not so much in the principles of law, but in their capacity to apply them to given facts and express their decision in a methodical and logical manner?

A. Yes, I propose this examination only to ascertain whether the knowledge they have acquired can be properly applied by them or not, whether they can frame proper issues and write lucid and methodical judgments, and

whether they can deal with facts and law in an intelligible or intelligent manner.

Q. Then you suggest that subordinate judges should be classified into three grades or classes?

A. Yes. I have suggested that subordinate judges who are in the first grade should have unlimited powers, subordinate judges of the second grade should have powers to try cases up to the value of Rs. 5,000 and third class subordinate judges should not be given small cause court powers at all. If this system is followed and the distinction between munsifs and subordinate judges is abolished, there will be less delay in the disposal of cases, and a more equable distribution of work.

Q. As regards honorary courts or benches, have you any actual experience as to what sort of work they do? I need not trouble you with regard to village munsifs, because they are now giving way to village panchayats.

A. As a matter of fact their cases do not come up to the High Court. They go mostly to district judges, but generally we have heard this complaint that they are not very much methodical in their work. In fact it has been reported many times that they are very dilatory; they adjourn cases very frequently, and I am also told that there are instances of honorary munsifs who sleep and enjoy rest during the whole of the day in the upper storey and their peshkars take down evidence. They usually come down at three or four o'clock in the evening and then pass orders. I am not saying all this from my own experience, but these are only reports. They delay disposal considerably. But there are some good men also. I would keep the system as it is and would try to improve it, but not extend it in any way. In fact I was told recently that there was a case in the small cause court for the recovery of money. That case was transferred from the small cause court to the court of an honorary munsif and it dragged on for about nine months, that is from April to January. Had the case been tried by the small cause court itself, it would have been disposed of within fifteen days.

Q. What do you think of the panchayats established under the new Act in this province?

A. That experiment ought to be tried. I am in favour of it.

Q. I think your view is that village panchayats should be tried as an experiment?

A. Yes.

Q. As regards the appointment of district judges you say that no person should be appointed as a district judge till he has held judicial office of some kind or another, or practised, or done partly the one and partly the other, for a total period of, say, ten years?

A. If I am permitted to explain my scheme I would say that the objective that I have in view is that laid down by the Government of India in its resolution appointing this Committee, namely that the administration of justice should be economical, satisfactory, and speedy. The administration of justice should be economical not only to the Government but also to the litigant public. With this object in view, I have suggested that there should be satisfactory tribunals with an even or equable and satisfactory distribution of work between the several courts; and that the laws and rules should be simplified. In this province there are many munsifs who are drawing from five to six hundred rupees as salary and there are subordinate judges who are getting less salary than many munsifs. I want to remove this anomaly, and hence I have suggested three classes of subordinate judges. My second point is that sooner or later the judicial and executive functions will have to be separated, because there is a great demand for the same. When a separation is effected, there shall be on one side three classes of subordinate judges, first class, second class and third class, and on the other hand there will be three classes of magistrates, first class, second class and third class. If the subordinate judges are given powers to try criminal cases or if the magistrates are given civil powers in the beginning, they would be able to do all sorts of work with great facility and ease, when they become

district and sessions judges. My further idea is that there should be a preliminary examination for those wishing to enter the judicial line, just as there is an examination, called the departmental examination, for the executive officers. For the purposes of such an examination I would allow them the use of their books during the examination and offer to them hypothetical cases, giving certain undisputed facts and ask them to imagine the defences and give the findings or conclusions at which they arrive. I would give them the facts taken from cases in the law reports and see how they frame issues and write judgments. I would see whether they have got sufficient intellectual alertness to grasp facts and to understand and apply the law to those facts.

Q. I understand so far as civilian judges are concerned, no body complains about their inefficiency to grasp facts, but they do not get sufficient time for proper study of theoretical law?

A. That is quite so; but I attach great importance to their capacity to trace for themselves where what law is to be found.

Q. Now as regards the power of the High Court in revision, I gather that you want to extend that rather than to restrict it?

A. My idea is that the High Courts should have larger control over subordinate courts than at present. You cannot have satisfactory control unless you have greater supervision and that supervision cannot be exercised unless the High Court is given higher powers. The fact that we have got power to interfere makes for a greater sense of responsibility among the judges of the courts below and that itself would help to improve the administration of justice. I look at it from a higher standpoint. The more control you possess, the greater the supervision you exercise, the better will be the work which the subordinate courts will turn out.

Q. On the other hand you have got to deal with the point of finality. Would it not impede the speedy disposal of cases?

A. I am applying other remedies to relieve the High Courts, namely, that I am extending the small cause court powers up to Rs. 1,000. Many of those cases that now come here will go to the small cause courts. I am advocating the trial by jury so that there may be a finality on facts. These measures will take away much of the unnecessary work that is coming to the High Court.

Q. As regards service by post, you make some very important criticisms about them. Would you suggest the service by post merely as a check?

A. Yes. It ought to be useful.

Q. You think that if 12 years is given and notice has to issue for a decree of more than 3 years' standing you might abolish Article 182. If you abolish Article 182 in that way, don't you think it might be advisable to shorten the period of 12 years?

A. No. 12 years is not a long period. Judgment-debtors go after jobs to Bombay, Burma, Calcutta and other distant places and it is very difficult to trace them.

Q. Do you think that the method of selling land in this province by which the land is handed over to the collector results in great delay?

A. The sale should be held by the collector. My proposal is that we should fix a date and the collector should hold the sale.

Q. As regards certification of payment, it has been suggested to us that much of the time of the lower courts is occupied in cases of execution by entirely frivolous allegations of payment based on oral evidence. In the case of alleged payments in executions, if it is made a condition that such payments should be made either by a cheque, or by money order through the post office or by some such method which could be taken as evidence, do you think it would meet the case?

A. We have to take note of the circumstances of the country. The payments are seldom made by means of money orders. Sometimes receipts are taken, and sometimes they are not. The number of frivolous objections are

not so numerous as objections arising out of attachment of property and objections arising out of sales. In villages payments are made in a hand to hand way.

*Q.* Of course under our present law we have thrown an obligation on the judgment debtor to have record for any transaction made to satisfy the decree. The question is whether we can go far enough to think that the judgment debtor in India is intelligent enough to know that he should not make informal payments in satisfaction of the decree.

*A.* No, education has not sufficiently spread.

*Q.* On this point what do you think of this idea? I do not know whether you can do that in this province; in Bengal you can send your amount by special money orders.

*A.* You can do the same thing here.

*Q.* Would there be any advantage in having a system by which you can pay money in satisfaction of the decree by special court money order forms?

*A.* That can be done but it will apply only to a small number of transactions, because payments are very often made in kind, sometimes they give cattle and sometimes they give straw, and such other things.

*Mr. Justice Stuart.—Q.* Is there any procedure by which you can pay money by money orders into the court?

*A.* There is a provision on page 73 of our rules about payment of money by money orders.

*Chairman.—Q.* Does it go on in proper form, giving the number of the suit and the year, so as to enable the court to trace the reference.

*A.* It will work a great hardship, if we say that this is going to be the only method.

*Q.* It might be one method but not the only.

*A.* Yes.

*Q.* As regards insolvency that does not work very well in this country, you think that a discharge is too easily made.

*A.* I have come across cases in which it was ordered that the man should apply for a discharge within three months. The law requires that a date should be fixed within which the discharge should be applied for. After three months he makes an application and a discharge is made.

*Q.* Under the Provincial Insolvency Act is it not the practice to suspend the discharge? When a man applies for a discharge, does he get his discharge straightaway or does he take a discharge to take effect after two years hence?

*A.* Some matters are enquired into before the discharge is granted; and if there is nothing against the discharge being granted, the discharge takes immediate effect.

*Q.* In practice, under the Provincial Insolvency Act, who represents to the court the facts as regards insolvency? Whose business is it to come before the court and show that the insolvent has made false entries in the book?

*A.* It is the creditor, if there is any.

*Q.* But no creditor is going to waste his money.

*A.* Then he gets his discharge very easily.

*Q.* Is it not the receiver?

*A.* The receiver does not take any interest. I have suggested that one of the conditions should be to postpone the discharge till the insolvent has paid eight annas in a rupee. He earns his livelihood in some way or another. He should make honest efforts to discharge his liabilities.

*Q.* Of course the law cannot help the creditor?

*A.* In most cases they oppose the discharge and oppose the adjudication.

Q. Instead of assisting the receiver the creditor waits, until the insolvent applies for his discharge and then he makes a series of objections. Sometimes he threatens to go to the Privy Council?

A. Yes.

Q. I think in that sort of cases the creditor should be caught hold of and sent to jail for two or three years?

A. Yes. As a matter of fact district judges do not take much active interest in this class of work, and if they take interest, they can stop many objections both from the creditor and the debtor.

Q. In my experience the ordinary creditor always tries to oppose the discharge and is the most objectionable person. He does nothing to assist the administration.

A. Yes.

Q. With regard to mortgage deeds you say that one of the most fruitful causes of delay and unnecessary prolongation of the contest is the provision requiring that all mortgage-deeds and deeds of gift should be attested. Then your view is that where the scribe and most of the attesting witnesses are dead, the mortgagee is absolutely at the mercy of the remaining attesting witness or witnesses, who may, if they choose, collude with the debtor and say what they may like to deprive the creditor of his dues. In suits on registered deeds of mortgage or gift, denials would become less common, and a temptation for perjury would disappear, if the statutory requirement of attestation is dispensed with.

A. If that is done I think a great saving of time will be effected. Sometimes we have to prove 10 or 15 mortgage deeds and we have in that way to produce witnesses to prove each. Supposing we have summoned two or three witnesses and only one is present and he is won over; what serious consequences may not arise.

Q. Then you say that contests of this nature, have become very common, and, although Act XXVI of 1917 has somewhat reduced the difficulty of proof in the matter of documents executed before the 1st of January, 1915, a denial of due attestation and other defences of that character in cases, where pardanashin ladies and illiterate executants are concerned, are still common?

A. Yes, that is my view.

Q. Then you say that the laws of limitation and registration are very stringent and that you do not want that they should be made more stringent and further you suggest that instead of making the laws of limitation and registration more stringent, they should be made more popular and easy?

A. Yes. A curtailment of periods of limitation, which have by a long and unvaried use become so well-known to the people, would cause considerable disturbance and loss to ignorant people in many parts of the country and unsettle their faith in the administration of justice. It would be more advantageous not to make the laws of registration more stringent but to widen the facilities for registration by materially reducing its cost so that people might be encouraged to resort to the registration offices for the registration of documents.

Q. Then you say that the fees for registration have been considerably increased and some registration offices have recently been closed.

A. Yes the rates have been enhanced and the facilities are less and the result is that the number of optionally registrable documents is therefore falling.

Q. Then you point out that the existing rules as to the persons presenting a document for registration are very stringent?

A. Yes. If a document is presented for registration by the agent of the vendee or the creditor, the registration is treated as void, unless the agent holds a power of attorney from him, though the vendor or the executant may



be present at the time and admits its execution. If the executant or his authorized agent is present and admits its execution and the document is duly registered, any defect in its physical presentation ought not to be allowed to affect its validity.

Q. Do you think that if Section 87 of the Registration Act is widened, it would cover all such defects of presentation?

A. Yes. Once the registration is completed, its validity should not be allowed to be questioned on such technical grounds.

Q. Then you also suggest that Section 57, Clauses (3) and (4) of the Registration Act exclude Register No. 4 from inspection by the public and do not permit copies of any entries therein to be granted to persons, who are not parties to the instruments?

A. Yes.

Q. You are of opinion that if Register No. 4 is made available to the public, much unnecessary oral evidence about the matters provable thereby can be saved. But would it not throw open private documents?

A. Yes. Very few people, however, register private documents, and no stranger would care to obtain its copy: If a copy of a bond or a power of attorney is required, we cannot get any copy without the sanction of the Inspector-General of Registration. We have to apply to the Inspector-General of Registration for the production of the original.

Q. Then you suggest that Section 35 of the Indian Stamp Act should also be amended to permit penalty being levied on promissory notes and bills of exchange to render them admissible in evidence?

A. Yes, because their exclusion necessitates the production of oral evidence, which is often of a doubtful character and delays the decision of suits.

Q. But the real intention is that if a person takes a promissory note and it is not stamped, then that is a waste paper?

A. But he can fall back on the original consideration. My opinion is that he should be asked to pay a heavy penalty, as in the case of a receipt.

Q. You say that the provisions of Section 107 of the Transfer of Property Act might be simplified?

A. The reason is that, as a matter of practice, in many cases no leases are written and registered. If I grant a lease to somebody else, I would generally take a letter from him and he promises to pay me so much rent. He continues to live on. If the lease is for a long term, some people require a letter to the effect that they shall not be ejected for that term. They trust to the fact that no suit would be necessary.

The other reason is that in India most documents are of a unilateral character. The leases are not executed jointly by the lessor and the lessee; and the common practice is that only a qabuliyat is executed by the lessee. He writes it and gets it registered and that is made over to the lessor. But the practice of this High Court has been to treat such qabuliyats as insufficient evidence of the lease.

Q. Have you anything to say as to part performance in such cases?

A. I adhere to the doctrine.

*Mr. Justice Stuart.*—Q. With regard to these benches, I want to suggest to you that the figures are not as large as you calculated. I worked out for the province of Agra. In 1922 there were 8,140 munsifs' appeals. I worked out that six benches would be sufficient to deal with all these appeals.

A. Every judgeship will require a bench of 2 or 3 judges. As a matter of fact we have got 200 working days.

Q. I worked out a standard of 1,250 appeals per bench. I think it would work out fairly well.

A. It is too much. The Greeven standard is 4 appeals a day.

Q. You always did more than that.

A. But when a bench is sitting it cannot be done for both the judges have to be satisfied. Would you put 3 judges or 2?

Q. Two judges.

A. Then there will be an appeal to the High Court?

Q. I would add a power to state a case on a point of law.

A. My idea was that the other system would work better. I have taken my estimate from the last annual report. It does not give the figures of institution. It gives the figures of the work before the court and includes the pending files also.

Q. I took disposals.

A. Again that is not accurate. We must get institutions.

Q. About your idea of jury, at what period would you call the jury?

A. On the date when the issues are fixed, an order would be made for calling the jury.

Q. At any rate I think there might be some difficulty about the attendance of the jury if the case is adjourned for any cause, and their time might be very much cut out?

A. Occasionally.

Q. Do you think there would be a very great deal of saving to the litigants if we had an Indian Privy Council?

A. Yes; in fees.

Q. Another thing is, where will you like this Court to sit?

A. At Delhi.

Q. There are the people of Madras. Would it be any cheaper for them to go to Delhi?

A. Delhi is not very far; it will not take much time to go to Delhi and take their counsel there.

Q. With regard to the examination for munsifs, were you not satisfied with the selection we made?

A. We spent much time and did not interview the whole number. An examination will secure a uniform test and we can save time. For instance, if we require ten candidates we shall have to call twenty candidates for the interview. That system is followed for the annual recruitment to the Provincial Executive Civil Service. There is a uniform test applied to each candidate. My experience is that if we put *visà voce* questions the candidates who come afterwards come to know the questions and then we have to change them. There was moreover some complaint that about fifty candidates had not been sent for.

Q. Did we not give more interviews than any business firm would have done?

Now one other point. I think I may say that there is no man in India, who had greater experience in taluqdari cases than you. You were in Oudh for a longer time than I was and you heard more taluqdari cases than I did; I am inclined to think than anybody else did. Are you satisfied with this litigation? Do you not consider there is something wrong with it that there should be such enormous expense?

A. It is very sad and the remedy is simple. It is this. In the year 1859 the Government issued a letter to all taluqdars enquiring as to what their family custom as to succession was and many wrote back saying that there was a gadinashini custom in their family.\* If following the same example the executive Government were to write every year to landlords paying more than rupees ten thousand per year as land revenue enquiring whether they

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\* In 1860 another letter was issued, asking that if their property was divisible, they should file a declaration stating whether they wanted that it should descend in any particular manner after their death.

had got their wills registered, the result would be that in ten years the litigation would dwindle down to very small proportions. It would be best, to issue such letters to all the landlords, every year, reminding them of the desirability of getting their wills properly registered.

Q. I happen to have before me a case which you and I heard together. I mean the Kala Kankar case. Something of the nature that you suggest had been done in that case and it saved enormous time and trouble. The matter came up like this. You remember the plaintiff came into the court relying upon certain wills. The defendant's case as put up by the Court of Wards was that the testator had only got a life estate. But incidently it came out that the testator had made a will in favour of the defendant. The trial court arrived at a conclusion that the will in favour of the plaintiff had not been proved but that the will in favour of the defendant had been proved, but that the testator had no right to make the will and that under the ordinary law of succession the plaintiff must fail. We arrived at the conclusion that the plaintiff would have succeeded if the testator had a right to make a will, and that the will in favour of the defendant was proved. It gave a good deal of trouble. In that case your remedy surely would have more effect.

A. Yes.

Q. Now so far we have been talking about a taluqdari case, which was an honest case. At any rate it was an honest contest. What do you think of other class of cases, that is dishonest cases brought by gamblers? Do you not think something ought to be done to demand security for the actual costs from that man before the case comes up before the judge?

A. He should be asked to deposit security.

Q. The real costs?

A. Yes.

Q. And what is your opinion about the Ajudhia case?

A. There were speculators behind.

Q. We do not want to mention any names, but it is a fact that there were speculators. Perhaps you know that in that case a respectable Indian lady holding a very high position and belonging to a respectable family was insulted and exposed to great humiliation.

A. Yes in that case the plaintiff was sentenced to several years imprisonment and we did what we could to punish him.

Q. I think you also remember the case of the Nanpara Estate?

A. Yes there were about thirteen or fourteen claimants in that case.

Q. Was not that case disgraceful? I should say that the law courts were really used in those cases more like gambling houses than anything else?

A. I would say that the Court of Wards was responsible because it did not recognise any one. Had it recognised some body, the trouble would have been less.

Q. Now I come to the next point. What is your experience as to the way in which these Court of Wards cases are put up in Oudh? Do you think that they are looked after by experienced legal advisers?

A. We experience great difficulty with regard to this. I know that in one case a document was proved at the last moment during the hearing of the appeal. That was a very important document.

Q. The reason being that the case was instituted without any study at all.

A. Yes. Unfortunately my idea is that in this province you won't be able to find more than half a dozen of men who are well versed in the Taluqdari Law. It is so difficult and requires a special study.

Q. Do you not think that the remedy would be that we should get a permanent legal advisor for the Court of Wards in Oudh.

A. We shall have to get really competent men. How would you pay them?

Q. We will pay them by fees and not by fixed salaries.

A. Yes, that will be a very good arrangement.

Q. What are we doing at present? We are spending a few hundreds before the case comes up and hundreds of thousands afterwards instead of spending a few thousands before and a few thousands afterwards.

A. Yes. Government advocates and Government pleaders who do not know much about these cases would not do. The Taluqdari Law requires special knowledge, and competent men must be consulted.

Q. Perhaps you know our system of registered addresses here in this High Court. At present I think it is not applied to execution. Don't you think that we can apply it to execution also?

A. I propose to abolish many of the notices, issued in the execution proceedings.

Q. But I am asking whether it could be applied to execution also?

A. Yes it might be applied. If the parties are required to file registered addresses much difficulty and delay can be obviated.

*Sir T. Desikachari.*—Q. I am going to trouble you with a few questions. In continuation of Mr. Justice Stuart's question with regard to champerty, I read you a passage from the report of your judgment relating to the Nanpara Case: "There is no law of champerty in India and owing to the large interests very often at stake, and the heavy expenses of litigation, where the estates are of much value, speculation by persons who make it their business to traffic in litigation, is one of the common features of taluka cases in Oudh. The expediency of devising some method by which persons who purchase shares in litigation, or in properties involved in dispute might be compelled to disgorge the same on receiving the price paid or the money actually spent in favour of the person in physical possession of the property might therefore be well worth considering." Do you still stick to that opinion?

A. I had then in view Section 135 of the old Transfer of Property Act which had been repealed. It is not possible to check champerty so long as the expenses of litigation continue to be heavy and there are poor claimants who cannot afford to pay them. They are obliged to seek the help of speculators to fight out their cases. Instead of purchasing a share in the litigation, these speculators take an out and out sale of a certain share of the property. The most notorious sale of that kind is that of the Birwa Mahnon Estate where a sale of an estate of considerable value without any real consideration, except the expenses of the litigation, was upheld. The difficulty can be easily got over.

Q. Do you think that it would be possible on grounds of public policy for this Committee to make a recommendation that a law should be passed to put a stop to these cases by ascertaining the actual consideration that passed between the parties?

A. Yes that remedy might be tried, but it is very difficult to ascertain the actual consideration, because the consideration mentioned is often nominal. If the speculator is paid the entire consideration, mentioned in the sale deed, he would be glad to walk away with it and be saved further bother.

Q. I think there is no doubt as to the fact that the evil is real?

A. Yes. I agree.

Q. So you must combat the evil somehow, and that could be best done by having some sort of legislative enactment that would tackle the question?

A. Yes; the method being to demand security for costs. I see some difficulty in the way of carrying out the other proposal.

Q. With regard to security, when should it be taken, in what manner and to what extent?

A. The costs should be assessed by the court with regard to the valuation of the suit, the time it will take, and the expenditure that is likely to be incurred, at any stage of the suit.

Q. Would you also insist upon the gambler being made a party to the litigation? Sometimes he keeps behind the scene.

A. Yes. He will either have to appear as a surety or as a party.

Q. Have you got any other suggestion in connection with this evil?

A. No.

Q. In connection with the recruitment of munsifs, I suppose at present there is a notion that a good deal is done by way of patronage?

A. Yes.

Q. You think that if there is a competitive examination of some sort, there will be candidates selected who would go by sheer merit for interview by the Committee?

A. Yes. Two distinct advantages will be gained: one will be to effectively stop canvassing. We say that canvassing would be a disqualification. But it goes on directly or indirectly. In fact in the examination for the posts of deputy collectors, there is no canvassing. Every candidate is allowed to go in and a certain number of candidates on the top are interviewed and out of them some are selected. The same should be done with regard to the selection of munsifs.

The other advantage will be, the application of a uniform test. The test at present applied is not uniform, because one set of questions is put to some of the candidates and another set of questions to the other candidates.

Q. I suppose you cannot assess the respectability, or commonsense or qualifications of a candidate by merely a *visà voce* set of questions?

A. We can assess intelligence and family status by *visà voce* questions. We can find out what his father is doing, what his grandfather was doing, etc.

Q. As regards his qualification for the post he seeks, I suppose *visà voce* is not likely to be a sufficient test?

A. It is not a uniform test. I will have an interview all the same after the examination. I am not making the selection dependent entirely upon the examination results.

Q. Perhaps you will not be in a position to abolish canvassing altogether, because the successful candidates will still begin to canvass?

A. There will be fewer candidates left. At present we have to spend a considerable time.

Q. You think that the present applicants for munsifs' posts are selected without any practice and merely on the strength of their academical qualifications?

A. Under the new rules now in force for the last 2 or 3 years, we interview them and examine them to ascertain how far they are fitted for their work, and we give preference to those who have practised.

Q. During the three years that this new Committee has been working, how many candidates have been selected?

A. The High Court has selected about 42 candidates.

Q. How many of them have been appointed?

A. About 30 at least. We are increasing the cadre, so we have selected so many candidates.

Q. Have you had an opportunity of knowing how they are working, and what sort of satisfaction they have given?

A. It is too early to say. But it is expected they would turn out good men.

Q. But would you turn out better men under your scheme?

A. Under my scheme, no man who has not merit in him will get in.  
 Q. In existing circumstances, it is just possible that people who have not got merit might also get in?

A. After all we give marks for different items.

Q. As soon as they are appointed district munsifs, are they promoted?

A. There is a time-scale. After two years they are confirmed. Then they get Rs. 30 every year as increment.

Q. And before they reach the grade of the subordinate judge, the increment goes on?

A. That is the anomaly we now have. A munsif often draws more pay than a subordinate judge, if he passes the efficiency bar.

Q. I should like to know what test is adopted in order to see whether a person is fit to do a subordinate judge's work?

A. We have knowledge of the work of the man and we get the report of the district judge.

Q. You are guided more or less by the district judge's report and the knowledge the High Court has of the decisions that come up for second appeal?

A. Yes.

Q. Is it a fact that people who had hardly six or seven years experience as magistrates and who never did any civil work, are made to decide appeals from the decisions of munsifs or senior subordinate judges?

A. That was not so before. But now owing to the liberal leave rules introduced by the Government, under which people go in largely for leave, these things are happening.

Q. Anyhow under existing conditions, very junior officers sit in judgment on the decisions of experienced district munsifs and subordinate judges. In such cases do these civilians have any real grounding in the civil law?

A. No. Some civil law has now been added to their departmental examination curriculum, but they have little occasion to use it.

Q. You will acknowledge that this is a real evil?

A. Yes. The remedy I would suggest is that every man, who wants to enter the judicial line, if he belongs to the Indian Civil Service, will have to make his choice early and undergo a departmental examination of the kind I have proposed for those who wish to enter the Provincial Judicial Service; and if he passes, I will bring him to the judicial line and give him the powers of a subordinate judge of the third class besides magisterial powers.

Q. I suppose the few subjects that are added in the training they get are not such as to make them sit in judgment over subordinate judges and munsifs?

A. Yes. They would have a good grounding in the civil law if they are given civil powers. The only objection is that it would be more expensive to the State.

Q. I suppose it would be economical and satisfactory if you have a good district judge to decide appeals coming from subordinate judges?

A. Yes.

Q. I was going to ask you about the possibility of transferring cases from munsifs' courts to honorary munsifs. What really is your objection?

A. There are three classes of honorary munsifs. There are some people who want to become honorary munsifs because they want to have certain prestige in the village. There is another class comprising men in a bad financial position. That matter was discussed at one of the meetings of the local legislative council, where several members spoke and denounced their work. Then there is a third class, which does not hanker for these appointments but may be persuaded by the district officer to accept them. These people turn out good work.

Q. I see there are three classes of honorary munsifs. - With regard to honorary munsifs I saw what is called the Greevan Committee's report and the remark made in connection with their work was fairly commendatory. No objection was taken to their work. I therefore wish to know whether the experiment of appointing honorary munsifs can be made more extensive.

A. It is an experiment at the present time and it should continue for some time more. We must wait till we get disinterested, industrious and public spirited men in larger numbers.

Q. I am told that if honorary munsifs are better selected, they will turn out better work. Is that statement a fact?

A. That is true; but able men are otherwise busy and they would not like to take these appointments.

Q. Regarding the introduction of the jury system in order to give finality to the decision of the first courts, I think these jurors will have to come from the city. Why should we not have benches of honorary munsifs or village benches?

A. These people will considerably delay matters and people will be put in great inconvenience.

Q. How many jurors will you have in each case?

A. This is a matter of detail. In England we have twelve, but I would not have less than seven and more than eleven. I will summon fifteen and select nine, eleven or seven according to the circumstances.

Q. That will necessitate the summoning of fifteen jurors for every case. There will be an amount of work which will be incompatible with the speedy disposal of a case.

A. But you have to consider the relief that we give to the High Court or the district judge. In most cases there will be an unanimous verdict as in criminal cases.

Q. Having regard to the number of contested cases—I suppose two to three hundred is the number of contested cases in the ordinary munsifs court.

A. There will be two or three hundred contested cases altogether, out of which there will be lot of title suits, which will go out. There will be no jury in small cause court suits; and the number of the rest might be anything between fifty or hundred per year. There are lots of easement cases and things of that kind which would not go to the jury.

Q. Even putting 50 to 100 for each territorial jurisdiction you will have to get a large number of jurors. There will be 750 every year. Even taking fifteen for each case there will be  $50 \times 15$ . That will make a very large number.

A. The jurors will not be required to attend more than twice a year.

Q. We have fairly an acute kind of difficulty in respect of jurors; we have to select these people every year and many of them want to be excused on account of age or infirmity.

A. In India there is a population of three hundred and twenty millions, I do not think the difficulty will be so acute.

Q. Now if you have a jury system that will effectually cut short the number of first and second appeals. That will be a real gain so far as the suitor is concerned.

A. Yes, it will give him greater satisfaction, for he will have his case decided by ten or eleven persons.

Q. I will take you to another question. It is regarding the appellate bench to be constituted for each district.

A. For each judgeship.

Q. What is your objection to that?

A. My idea is that it will be expensive and the district judge will not be in touch with the work of the munsifs and subordinate judges.

Q. Do you think there will be difficulty in making two judges work sooner than one judge?

A. If I were to decide a case alone I will decide it much faster. If two judges sit the case cannot be decided till both are satisfied. The difficulty is that each man works in his own way.

Q. On question of facts do you think they may take different views?

A. In some cases they may.

Q. Do you not think they will very often agree?

A. Yes, in the majority of cases there will be no difference of opinion. It is only in a small number that they may differ.

Q. Do you think the bar would object to this arrangement?

A. The people would be put to great inconvenience. The expense will be greater but there will be no corresponding gain. There will be no great advantage achieved.

Q. The real advantage will be that in the majority of cases which now make people spend their money and waste their time and ruin themselves they will acquit themselves once for all.

A. I will not make their judgment final, unless the finding is concurrent. The only satisfactory solution is a trial by jury.

Q. Supposing you have neither a jury nor an appellate bench and you cut down the right of appeal under certain limitations, say there should be no second appeal in cases which are under the value of five hundred rupees.

A. I would not cut it down. Take the question of easement. It may be a suit of the value of fifty rupees but it may have lasting or far-reaching effects on the rights of the parties.

Q. You will agree that there is a large number of frivolous appeals filed?

A. Yes, considering that in second appeals findings of fact are treated as final.

Q. If the appeals are frivolous why should parties come to the High Court? Would you not prevent it?

A. No, the man wants justice and he would not be satisfied with the finding of one court. Justice is more important than anything else.

Q. Supposing I suggest another thing. In cases where the findings of the two judges are concurrent the persons should be made to deposit the cost before they are allowed to go in for further appeal.

A. That can be done.

Q. Having regard to the amount of work in this province, do you think that the existing cadre can cope with it?

A. The existing cadre is insufficient. The judicial officers are working under great pressure.

Q. The cadre of to-day or to-morrow?

A. I am talking of to-day. Things might improve to-morrow.

Q. This Committee has nothing to do with that question and I have put you that question for another purpose. Do you think it would be possible to have the same work done by the existing cadre with more method and more system? Do you think that the existing cadre would be able to cope with the work, if officers were posted at proper places according to their qualifications? If things are carefully arranged, do you think the existing cadre will be able to cope with the work?

A. The whole thing will be all right if good men are selected.

Q. If that is done, do you think that the outturn of work will be good?

A. Yes.

Q. I come back to the point which Mr. Justice Stuart was discussing. Are there many cases which are conducted by the Court of Wards?



A. Yes.

*Dr. DeSouza.*—*Q.* With regard to the proposal of establishing first appeal benches, I think you gave an expression of your opinion which was rather adverse to their being formed.

A. Yes, I am against it.

*Q.* We have also heard criticisms of other witnesses who have appeared before the Committee, and I wish to have your opinion about that problem. Well it has been suggested that the appeals are only to be against munsifs' decisions, that is to say, decisions in suits of the value of Rs. 1,000.

A. Yes.

*Q.* Now do you think that these suits will represent the real value in dispute? The jurisdiction is according to the valuation of the suit.

A. In many cases it will not.

*Q.* In this province land suits, I believe, are valued at five times the revenue?

A. Yes, in some class of cases.

*Q.* But really speaking valuation of land is much greater?

A. Yes.

*Q.* So that for the purposes of litigation the market valuation will be more than one thousand?

A. Yes. Similarly in cases of ejectment of tenants, easements, etc., the valuation may be small but the cases may be of very great importance to the parties concerned.

*Q.* Therefore you will strongly oppose to have decisions of the first appellate bench made final, as the real valuation is far in excess of the valuation arrived at for the purposes of jurisdiction?

A. Yes.

*Q.* There is another point with regard to these benches. It is clear that the right of second appeal will be shut off. I think you have yourself said that about 80 per cent. of cases that go up to the High Court in the shape of second appeals are dismissed.

A. I cannot say 80 per cent., but a very large number of appeals are dismissed under the existing system.

*Q.* But the figures in the report say that it is about 80 per cent.

A. My impression is that about 60 per cent. of the appeals are dismissed, because findings of fact block further hearing.

*Q.* Don't you think that in cases where the decrees of lower courts are concurrent, it is a severe hardship on the respondent that he should be deprived of getting the fruit of his decree? In spite of so much expense that he has to incur, do you not think that it is unfair on the defendant that he has to wait so long to enjoy the fruits of his decree?

A. When the decrees are concurrent, I have suggested that the appeals should be allowed on substantive questions of law, but where the decrees are not concurrent we can make the law stricter in the matter of further appeal.

*Q.* Before an appellant is allowed to file a second appeal, would you tell him that he should satisfy the decree?

A. It may be difficult for him to find the whole money within a short period.

*Q.* It is only right that he should satisfy the decree. It would save time and at the same time it would serve your purpose that the appellant was not denied the right of appeal.

A. When an application is made for stay, we ask him to give security for the due performance of the decree. We ask for security for the due performance of the decree which may be ultimately passed.

*Q.* Is that security of any real value to the respondent? Is it a fact that he cannot enforce the security for 2, 3 or 4 years?

*A.* It protects the respondent sufficiently and further protection is not really necessary now.

*Q.* What about the unnecessary costs which in 80 per cent. of cases, every respondent has to pay—I mean taxed costs, etc.?

*A.* About that the only possible remedy is to give the court authority to award double costs as in England.

*Q.* You will be in favour of that proposition?

*A.* In suitable cases, we would empower the courts to award double costs. If we say that the opposite party will have double costs, the whole thing will be simplified.

*Q.* If these powers were enforced, frivolous second appeals could be checked?

*A.* That would be more effective than the other proposal that they must pay the money.

*Q.* Would you combine the two?

*A.* No. I think that the demand for security for costs which is invariably made when an application is made for stay is quite sufficient.

*Q.* That must go towards the curtailment of the right of second appeal?

*A.* Yes.

**Lala JAI RAM DAS, Babu DWARKA PRASAD SINGH and Babu  
GUR PRASAD KAPOOR, Representatives of the United  
Provinces Chamber of Commerce, Cawnpore.**

*Written Statement.*

*(i) High Court.*

First appeals, one year.

Second appeals, six months.

Miscellaneous appeals, four months.

*(ii) District and Subordinate Courts.*

*Original suits.*

(a) Title, three months.

(b) Money, two months should suffice for money suits, three months time for regular appeals, two months for civil miscellaneous appeals against orders.

Small cause suits should not take ordinarily more than one month.

*(iii) District Munsif Court.*

(a) Title suits, 2 months.

(b) Money suits, 2 months.

(c) Rent suits, 2 months.

(d) Others, 2 months.

Small causes, 1 month.

1. B. One month should be allowed for claim proceedings in execution in district courts, subordinate courts and district munsif's courts.

2. Yes, we consider the period now taken exceeds the time reasonably required for the disposal of cases. The chief reasons in our opinion are as follows :—

(1) *Insufficiency of Judicial Officers.*

(2) The non-recruitment of proper officers and absence of a system of efficiency bar.

(3) Unsatisfactory service of process.

(4) Counsels, taking many cases in hand simultaneously, adopt various means known to them to get cases postponed thereby causing delay.

(5) Litigants with weak cases desire postponement.

3. We suggest the following remedies :—

(1) A copy of the plaint and the summons should in the very first instance be sent by registered post. Service on any adult member of the family residing with the party on whom summons are to be served should be deemed sufficient service.

(2) The department of process service requires strict supervision and cases of false services should be strictly dealt with. At present there is a good deal of corruption amongst the process-servers.

(3) The parties should be carefully and thoroughly examined before the issues are struck.

(4) All irrelevant evidence should be shut out and this can only be done if the courts are in full possession of the facts on record.

(5) The courts should be very particular in granting adjournments.

(6) The plaintiff should be required to put in the names of at least 3 relatives on whom notices should be served simultaneously as guardian, the acceptance of any one of whom should cancel the notice on the others. On the failure of all three to accept, a lawyer be appointed a guardian provided that he may be discharged from guardianship if before the date of hearing a relation turns up and undertakes to defend the case.

(7) In execution cases notice and warrant of arrest should ordinarily be issued simultaneously and the warrant should hold good until the judgment debtor is arrested. This should apply only to contested cases.

4. Lawyers of at least 5 years standing should be selected as munsifs and the maximum age of recruitment be raised to 30. The Selection Board should also test their knowledge of law.

9. Munsifs who have served for 7 years or more should have jurisdiction up to Rs. 2,000 and in small causes up to Rs. 100.

17. No, it is not desirable.

21. Yes.

25. Already replied under Question 3.

28. Answer to first part is in the affirmative and to the latter part in the negative.

29. Yes, it is very desirable.

31. Framing of issues after the examination of the parties and in the presence of the counsel for the various parties should be done.

33. No, that may lead to parties manufacturing evidence.

34. No. The easiest way is to issue instructions to the courts to comply strictly with the provisions of Order XVI, Rule 16 (1) and also to authorise lawyers to issue registered letters to witnesses to attend and this may be deemed equivalent to service.

35. The best way of dealing with cases in which a large number of witnesses are produced who prove nothing is to disallow all costs of witnesses uselessly summoned.

37. Strongly oppose the suggestion.
41. Already answered under Question 3.
42. The Chamber does not think much improper advantage is taken of it and as the provision is not seriously abused no remedy need be provided.
43. No.
45. Already answered.
46. Yes, pleaders should be consulted as a general rule.
47. The disposal of cases is sometimes delayed by examination of witnesses on commission but there is no practicable suggestion to curtail the length of such examination. We would not like to add anything to the powers of the commissioners. Written interrogatories may usually be sent and the oral examination may be treated as an exception to the rule. If the court issuing a commission appoints a local man to examine the witness, the objection under this head may be minimised.
48. Yes, the day costs allowed are sufficient to prevent frivolous applications, but half the costs should go to the party and half to the lawyers.
49. It should be clearly laid down as a rule that cases should be continuously tried day by day and the court should not devote any time to other cases until a case in hand is finished.
51. A special sub-judge should be appointed to deal with commercial suits in trade centres like Cawnpore. As far as possible a man of experience of commercial usage should be appointed.
63. Yes, one notice to the judgment-debtor at the beginning should be enough.
64. Yes.
72. It is not necessary to retain the provision regarding the calling of an attesting witness. The reply to the second part of the question is in the affirmative.
74. No change is recommended in the existing law.
75. We have nothing to add to the suggestion already made in reply to foregoing questions. There is only one suggestion we have to make in connection with execution of decrees. If the judgment-creditor so desires the certificate of decree should be handed over to him instead of being forwarded through the usual channel.
76. Yes, we favour this suggestion.
79. We are opposed to this suggestion.

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**Messrs. JAI RAM DAS and DWARKA PRASHAD SINGH, called and examined on Tuesday, the 1st April 1924.**

*Sir Tej Bahadur Sapru.*—*Q.* Mr. Dwarka Prashad Singh, I suppose you are a practising lawyer?

*Mr. Dwarka Prashad Singh.*—*A.* I was a practising lawyer. Now I am an executive officer of the Municipal Board.

*Q.* And you are a business man there?

*Mr. Jai Ram Dass.*—*A.* Yes.

*Q.* You come here as representing the United Provinces Chamber of Commerce. Will you please tell the Committee what that body is?

*Mr. Jai Ram Das.*—The United Provinces Chamber of Commerce consists of about one hundred and twenty members, mostly merchants, traders, manufacturers, landlords and bankers.

*Q.* And its headquarters are at Cawnpore?

*A.* Yes.

*Q.* I suppose many of its members are men who are in business at Cawnpore.

A. Practically all.

Q. Has the United Provinces Chamber of Commerce any system of arbitration of its own?

A. No.

Q. Have you much to do with the Delhi Association?

A. No. We are not officially connected with it but of course sometimes when any one of us has got anything to do with them we just render them all the assistance.

Q. But you know that the Delhi Association have got a system of arbitration.

A. If there is any difficulty with regard to our men they generally ask for our advice and we give them.

Q. From your experience as a business man in Cawnpore can you tell the Committee whether there is much resort to Indian Arbitration Act.

A. We had formal discussion among ourselves and we have suggested in our note that Indian Arbitration Act irrespective of its being applicable to Cawnpore should, with certain modifications, be made applicable to all the principal cities of the province.

Q. What is the advantage that you see in it?

A. Speedy settlement of all the differences.

Q. You think the judicial machinery for the working out of orders under the Indian Arbitration Act is quite sufficient?

A. Yes.

Q. Now what is the commercial litigation generally going on before the civil courts at Cawnpore?

A. There are all sorts of commercial cases.

Q. Can you describe to the Committee the nature of those suits?

A. Cases under the Contract Act and cases under the Negotiable Instruments Act.

Q. Is there a fair amount of litigation under the Contract Act?

A. I think so.

Q. And a fair amount under the Negotiable Instruments Act?

A. Yes.

Q. Are most of these cases below rupees five thousand or over rupees five thousand?

A. Mostly over rupees five thousand.

Q. So most of these cases go to the subordinate judge.

A. Yes.

Q. With regard to these cases which go before the subordinate judge is there any ground for dissatisfaction there in Cawnpore in regard to the manner in which these cases are disposed of?

A. It is the general machinery that is rather objectionable.

Q. What are the objections?

A. The first and foremost is that when we bring in any suit it is very difficult to get hold of the defendant. In certain cases where the men are practically known to each and every one, I know, the service has been returned that they are unknown or not to be found.

Q. What is that due to?

A. Corruption among the process-servers.

Q. You think that if the plaintiff sent an agent with the process-server that might be useful.

A. That might be in certain cases, but it would not obviate the difficulty inasmuch as the plaintiff would be put to unnecessary trouble. The process serving should be done through the post office.

Q. But the addressee might return it knowing that it is something from a court of law. Postmen are also corrupt and they may say "Addressee is not here." Then what will you do?

A. What we suggest is that simultaneously with the sending of the postal service there should be the ordinary service as well.

Q. What will you do when the defendant is living outside the court's jurisdiction?

A. In case he is purposely refusing, resort might be had to publication in a newspaper.

Q. What are your other grievances?

A. Then the delay is caused with regard to certain officers. The officer chosen for such a place should be a man who is thoroughly experienced and has the backbone to refuse irrelevant and lengthy cross-examination.

Q. Do you suggest that so far as irrelevant and lengthy cross-examination is concerned it is a speciality of the Cawnpore bar.

A. No, it is not the speciality of the Cawnpore bar but the people who come from outside Cawnpore also do the same thing.

Q. That is to say you would like the civil courts to exercise greater control over cross-examination.

A. Certainly.

Q. I suppose your experience has not been satisfactory with regard to examination of accounts.

A. Unfortunately people who are generally put up at Cawnpore are transferred as soon as they get to know something of accounts. A new man comes and he tries to pick up the case.

Q. What has been your experience with regard to the work done by these accountants, who are called Mubassir Bahi. Do you think that their work is satisfactory?

A. I do not think the work done by them is satisfactory.

Q. What is wrong with it?

A. Well leaving aside the question of corruption on that point I should certainly say that they are not well versed in the details which are necessary and required by the law.

Q. Do they take long time?

A. Certainly they take long time, but not always. It all depends upon the circumstances of the case.

Q. I find your suggestion to the Committee is that in future subordinate judges of experience in commercial cases should be appointed and that they should not be frequently transferred.

A. Yes.

Q. What is the nature of the work before munsifs in Cawnpore?

A. They try title suits, money suits and damage suits.

Q. What is your experience about the work done by district judges with regard to probate and succession certificate cases?

A. Well, I have no experience of that and at the same time I am not interested in that class of work.

Q. Are there many cases in Cawnpore relating to the Indian Companies Act?

A. Not many at present, but there is every likelihood of there being a large number of cases of that sort because the Joint Stock Companies' affair is getting popular.

Q. Do you think that there will then be a great deal of litigation with regard to that?

A. Yes.

Q. Is there any liquidation work in Cawnpore?

A. At present it is not much, but there will be because many companies are now going to be started.

Q. Now you suggest in your memorandum that you would not object to the pecuniary jurisdiction of munsifs being increased up to Rs. 2,000?

A. Yes.

Q. Would you increase it in all cases or in selected cases?

A. In selected cases.

Q. Is there any feeling among business people in Cawnpore with regard to delays in the disposal of appeals in the High Court?

A. Yes, there is.

Q. What is the nature of that feeling?

A. The nature of feeling is twofold. Nowadays in commercial cases defendants are mostly to blame. Knowing that their case is absolutely weak, they run up to the High Court in order to delay payment.

Q. You are speaking about cases known as first appeals or second appeals?

A. First appeals.

Q. Then what is your suggestion?

A. My suggestion is that the decree holder must be allowed to reap the benefits of the decree.

Q. In other words your suggestion is that the High Court should not allow stay of execution merely because an appeal has been filed?

A. Certainly.

Q. As a matter of fact it is not an easy job to get a stay order from the High Court unless security is furnished?

A. Yes, that is so, but even in that case they make delay.

Q. Do you think that before any stay order is given by the High Court, the High Court must insist on the whole of the amount of the decree being paid up?

A. Yes, if that is done it will greatly reduce the number of frivolous appeals. Many appeals are filed simply to gain time.

Q. Now with regard to appeals, I mean second appeals, the law at present is that they lie to the High Court from the judgments of subordinate judges or district judges. In the case of appeals from the judgment of munsifs the value of the appeal is generally one thousand rupees and in the case of appeals from the judgment of subordinate judges the value is generally from two to five thousand rupees. The High Court in these appeals can only try questions of law but it cannot touch questions of facts. Second appeals in big cases take a fairly long time.

A. Yes.

Q. Now instead of the present system of second appeals, if you have a system such as I shall describe, do you think that the business community would be satisfied? Suppose all appeals from the judgments of munsifs up to the value of Rs. 1,000 went before a bench of two experienced, competent and well tried subordinate judges who went thoroughly into questions of fact and questions of law and did nothing else, i.e., original suits, miscellaneous work, etc., suppose also that when their judgment is passed it should be considered as absolutely final with no second appeal at all? Do you think that people doing business in Cawnpore will be satisfied with this system?

A. I have only one thing to say and that is that questions of law are rather difficult and if parties are dissatisfied with the judgment of the bench they should be given permission to move the High Court.

Q. Let me explain to you this matter like this. As a matter of fact you do not get very good second appeals because findings of facts arrived at by

the district judge or the subordinate judge, as the case may be, must be accepted by the High Court, whereas under the system I am suggesting to you the subordinate judges concerned would be men of experience who have been accustomed to deal with questions of facts for about ten or fifteen years. If there is to be an appeal in the High Court against their decision, then there is no use altering the law. Why should not their decision be treated as final? If you allow a second appeal on questions of law from the decision of the appellate bench which I have just mentioned to you then there will practically be no saving of time and no saving of money and no particular advantage will be gained. There must be finality somewhere. Now that being the proposal what do you think would be the attitude of the Indian commercial community in Cawnpore with regard to that?

A. Personally speaking I will be satisfied, but I think there will be grumbling among the litigants.

Q. But you must remember that if there is a difficult question of law, the bench would stay the case so that it may get the opinion of the High court.

A. Yes, that will be very good.

Q. And whenever there is a difference of opinion, there will be an appeal to the High Court.

A. Yes, I approve of the suggestion.

Q. Now supposing that system was extended a little further and applied also to appeals above the value of Rs. 1,000 and up to the value of Rs. 5,000—to second appeals from the judgments of the subordinate judges—do you think that would be approved by business people and the general public there, or do you deliberately want it to be limited to appeals from munsifs?

A. I do not think the public would approve that if the judgment of the district judge is made final.

Q. Supposing appeals from the judgment of the subordinate judges were heard by two judges, both on questions of fact and on questions of law and they were empowered to state a case to the High Court whenever an important question of law arises, would you approve of that Mr. Jai Ram Das?

Mr. Jai Ram Das.—A. Personally I will be satisfied.

Mr. Dwarka Prasad.—I think it will not be very popular. Personally I think it will be satisfactory. From clients' point of view it will not be satisfactory.

Q. What sort of clients? The ordinary fighting client?

A. Well, there are two classes. There are litigants who run to court for the very pleasure of it and the other who go to court because they cannot find any other remedy.

Q. What will be the feeling of the business people there?

A. They will like to get their cases terminated as quickly as possible.

Q. You say that one of the causes of delay is that counsel have too many cases simultaneously and that therefore they adopt various means to have cases postponed. Now suppose a rule was made to the effect that in all cases, or at any rate in a good many cases of certain description there must be two pleaders—a senior and a junior—and that the junior's fee must also be taxed. Do you think there would be any objection to this on the part of the business people?

A. When we put this up, there was a lot of discussion on this point. A discussion arose as to the position of the lawyers as well as the position of the bench. Lawyers—of course important lawyers—get important cases and they are paid high fees only to tackle these tricky points. Supposing I engage a senior counsel to-day and unfortunately he is fixed up in some other case and sends his junior. Out of the junior, I do not get any advantage of justice.



Q. Either you must have a junior to have the benefit of his consultation with the senior, and then if the senior is not free, you should allow the junior to conduct the case, or you must employ a senior and pay him well?

A. Yes. But the senior is also in an awkward position, because he finds out that there is a case in Court No. 1 which will take two or three days. But the presiding judge for obvious reasons postpones the case. Then the counsel is free.

Q. What is the remedy?

A. Once a case is taken up, it should not be left in the middle, unless for extraordinary reasons, till the case is finished. In that case the senior will be able to finish his work. But if all of a sudden he is called to attend another court, then he wants to get some postponement.

Q. Do you only engage a counsel to conduct your cases, or do you take the opinion of counsel before you enter into any big transaction?

A. When we are entering into a contract, we generally consult the pleaders.

Q. Who are the men who draft your agreements and deeds?

A. Generally lawyers.

*Chairman.*—Q. I understand you have got in Cawnpore a good deal of commercial cases and they are mostly done by the subordinate judge?

*Mr. Jai Ram Das.*—A. Yes.

Q. Do you find that you usually get a subordinate judge from some other part of the province for a short time or you find you get the same man for a substantial period?

A. Well, sometimes we get for a short time and sometimes for a long time.

Q. I think Cawnpore is the only place in the province where there is a lot of commercial cases. What I mean is this: Do you find sometimes you get gentlemen who are experienced in title suits and all that sort of thing, but who have not much to do with commercial cases?

A. Yes.

Q. And have you got any way by which it will be quite possible to give judges special commercial experience for commercial work?

A. I would certainly recommend in that case that a separate judge should be appointed. He should deal with commercial cases only.

Q. So you would have a judge permanently. Can you give us any suggestion by which that could be worked: to take a member of the provincial service and stick him at Cawnpore permanently, might be no great advantage to him?

A. But he has got a Government house.

Q. As regards the arbitration work you say as far as your Chamber is concerned, you have not much difficulty over that—the Indian Arbitration Act?

A. We have no difficulty, absolutely none.

Q. Do you have many suits on bills of exchange?

A. Yes.

Q. Would you like to see introduced in Cawnpore a system of summary judgment by which if a man is sued on bill of exchange, he has to come to court and by affidavit or otherwise show that he has got a substantial defence, otherwise he will not be allowed to defend?

A. Yes. If that procedure is strictly followed, it would be a useful thing.

Q. Do you have in Cawnpore many cases of ejection from houses, or tenants ejected before the end of their time?

A. Yes.

Q. Do you think such cases take a long time?

A. Not a long time, but there are a lot of cases.

Q. Do you think that they are decided with greater expedition?

A. Yes.

Q. Have you come into contact in Cawnpore with people in other provinces?

A. Yes.

Q. Do you ever have this sort of thing—that, while a man has sued in Cawnpore, he tries to bring another suit against the same man in any other province?

A. Yes.

Q. Is that problem tackled in a satisfactory way?

A. The man has to go there and put in an affidavit that the case is already pending in such and such court and that the case should not be tried till a decision is arrived at in the other suit.

Q. Do you find that it is generally stopped?

A. Yes.

Q. In Cawnpore itself, is there any difficulty in getting the specific address of the defendant?

A. The address is always sufficient.

Q. Do you think that something might be done when summonses are served in the ordinary way,—an additional precaution of sending the summons in the form of a letter by registered post?

A. Yes.

Q. If you do not send a letter by registered post but send it in a postcard stating that an action is filed against him, I think it is more effective than a registered letter, because it is not refused.

A. As a matter of fact ordinary postcards might be taken up by anybody and in such cases it is just possible that the real person might not have any real knowledge of it. If it is sent by registered post with acknowledgment due, then it will be a conclusive proof.

Q. In case of difficulty in finding out the defendant for service, would you be in favour of saying that a notice might not only be affixed on the door of the house where he used to live but also that the fact might be proclaimed by beat of drum, so that the neighbours may know?

A. In such cases generally the defendant knows about the action and there is no use in his neighbours telling him.

Q. On the other hand it is sometimes difficult to prove service. If you proclaim by beat of drum, the court might regularly presume that the defendant has been served.

A. For the satisfaction of the court that might be done.

Q. It is really for the satisfaction of the plaintiff; because, if there is any doubt about service I take it that the court usually sets aside the decree.

A. On the other side it is just possible that the defendant may not be aware at all of the publication because the plaintiff may give a couple of rupees to these drum people and say that there was publication while really there was no beat of drum, and the service may be deemed to have been absolutely sufficient.

Q. In Cawnpore, are there newspapers in which you may publish summonses or notices of suits against people—papers which are actually read?

A. Yes.

Q. In Cawnpore, are there some newspapers really in circulation so that substituted service by an advertisement will easily be a reality in Cawnpore?

A. Yes.

Q. You think that in Cawnpore more recourse might be had to publication?

A. Yes. We have got papers in Hindi and Urdu also.

*Ms. Justice Stuart.*—*Q.* I think the "Leader" circulates very freely in Cawnpore.

*A.* It will apply only to the English knowing people. There are a lot of people who do not know English.

*Chairman.*—*Q.* When a case of commercial character is filed in a subordinate judge's court in Cawnpore, do you find any special expedition given to it?

*A.* No.

*Q.* Do you think it would be possible that a separate list dealing with commercial cases might be kept with a view to get special expedition?

*A.* It can be arranged. I do not think there will be much harm in it.

*Q.* It is not likely to be gone into unless there is a claimant need for it. Do you think whether there is a claimant need for it?

*A.* The claimant need will be from only one side, from the man who claims damages.

*Q.* That practice does not obtain in Cawnpore.

*A.* It does not.

*Q.* Supposing I bring an ordinary suit on a contract in a sub court in Cawnpore claiming a sum like Rs. 5,000 and I do everything with regard to effecting service rapidly, how long will it take after settlement of issues, for hearing?

*A.* About 3 to 6 months.

*Q.* That means 7 months after the institution of the plaint?

*A.* It is generally more.

*Q.* As regards accounts, I understand that in Cawnpore there are some people who are given commissions to take accounts.

*A.* Yes.

*Q.* Do you find that they do it well?

*A.* I will tell you plainly that only the Cawnpore people can tackle the Cawnpore books and there are people who are very efficient in that sort of work. But the difficulty arises in regard to piece-goods. They have got a separate system of accounts. Of course there are experts in every accounts but there are none who are experts in all the accounts.

*Q.* When accounts have to be taken by commissioners, do the parties generally nominate somebody with experience in that particular work?

*A.* It is not the parties that nominate but only the presiding officers.

*Q.* Do the parties suggest suitable names to the presiding officers?

*A.* Sometimes they do.

*Q.* As regards commissions to take accounts, is there any improvement in practice or procedure that ought to be recommended?

*A.* Only one way. If a permanent man is kept as a paid man in the ministerial staff he might be able to go into the accounts. But then the trouble arises that one man will not be able to go into all the accounts.

*Q.* Do you find cases in Cawnpore where documents are not admitted when they should be and unnecessary time wasted and money spent in proving them?

*A.* Yes.

*Q.* What would you suggest to stop that?

*A.* The other party who obviously refuses for absolutely no reason but simply to harass and inconvenience the other party should be heavily penalised with costs.

*Q.* That means you let him waste the public time and you then penalise him for the benefit of the other party. Would it not be better to make him give security before he is allowed to trouble the other party?

*A.* Yes. I would like to put some sort of check.

*Q.* Do you find any special difficulty in execution of decrees?

A. Yes. We will suggest that the process-serving and execution court should be separate because most of the time of ordinary judges is taken up in that work. Secondly, the officers will have to show some justification for their appointment and they will be rather vigilant.

Q. You want the officer in the separate execution court to have control over the nazir.

A. Yes.

Q. How many courts have you in Cawnpore?

A. At this time, 2 sub-judges, an additional judge, a district judge, a small cause court judge and a munsif.

Q. Do you think there will be enough execution work at Cawnpore?

A. I think so. That will also obviate the difficulty of the trying judge whose lot of time is wasted in such small petty things.

Q. You will have to dispense with one subordinate judge or munsif. Is that possible?

A. Not at present.

Q. You say you had many voluntary winding up of companies.

A. Yes, in the last boom several companies were started and when their capital was exhausted they went into voluntary liquidation.

Q. A good deal of liquidation did not trouble the court at all.

A. Yes, but on the other hand there is a shareholder who is prepared to fight for his claim.

Q. You have not had cases of direction by the court for compulsory winding up?

A. No.

Q. In the case of voluntary winding up did the companies apply to the court for direction?

A. No.

Q. What sort of company work you have?

A. At present, for instance, there are certain companies which are managed by Englishmen and then there are companies which are managed by Indians. The companies that are started by Indians are at present nominally working under the Indian Companies Act because they have not got much capital outside their few families. But now it is getting rather popular and we expect formation of a lot of new companies.

Q. Now what has been the character of the work that was carried on by companies which have gone into voluntary liquidation?

A. Absolutely swindling.

Q. You mean the breach of trust—mostly cases of prosecutions for breach of trust. You had not had ordinary companies' winding up?

A. No.

Q. Have you found in Cawnpore many cases of companies managed by people who did not know anything about the companies and who had to be prosecuted for not putting in proper return?

A. Yes.

Q. You had certain amount of difficulty in such cases.

A. Not much but there has been some.

Q. Now as regards insolvency work; how does the insolvency work in Cawnpore?

A. There are lot of applications for insolvency.

Q. Many of them are from the traders who have got some assets.

A. Speaking from the point of view of commerce, I would say during the war people made lot of profit and consequently they invested their capital either in land or in building or in luxury. When the reverse came they had no money; they had property and they could not lay hand on liquid cash. Conse-

quently they had to go into liquidation and there were others who had nothing of their own and who were running their business on speculation.

Q. There were a certain number of people who simply applied for insolvency in order to keep out from going to the jail. In fact in many of the cases there is no receiver appointed.

A. We have an official receiver.

Q. But he is not appointed in all cases.

A. He is, appointed in all cases.

Q. Take a better type of insolvency—a concern which has not been successful or which has lot of its money invested in land. How are these administered?

A. By the receiver.

Q. Does the creditor take any interest in insolvency except that he comes and opposes the discharge?

A. That all depends upon the creditor. If he is a busy man then he does not care but if he is not a busy man he would certainly like to fight.

Q. You are under the Provincial Insolvency Act. There is no such thing as committee of inspection.

A. No.

Q. Would you like to see that introduced, that estate should be administered by the official receiver under instructions from a committee consisting of representatives of creditors?

A. Yes.

Q. Do you find that the receiver, when he is appointed, takes a good deal of trouble in investigating the past conduct of the insolvent and the value of his assets?

A. My view is that the receivers generally do not worry much about it.

Q. I will rather suggest that you never get the assets properly administered unless the creditor himself takes interest?

A. Yes.

Q. Do you find any difficulty in some creditors coming in and trying to get preference over other creditors?

A. Yes.

Q. Then about discharge, do you think that discharges are granted easily or too easily?

A. It depends upon the circumstances.

Q. Have you cases of debtors who for example are drawing monthly wages either from the Government or from a railway company. Do they go insolvent?

A. We have not many cases of that sort.

Q. You find the power exercised by the court to deduct certain amount of their pay. Supposing a man goes into insolvency. There is a special power in regard to that.

A. There are very few cases of this nature.

Q. Supposing we sue against "A. B." and before the suit comes up for hearing "A. B." is adjudicated insolvent. What is, in practice, done in a suit like that at Cawnpore?

A. These proceedings are stopped and the receiver defends the insolvent.

Q. That is what I know. Does the court say to you—if you are a plaintiff—that the defendant has gone insolvent; I stop the case here, now you go and prove your case before the official receiver?

A. Personally I have no experience of insolvency matters.

Q. I find in Bengal a great many cases where the defendant goes insolvent are very badly treated. Do you not think it will be possible to make it clear that, except in cases where the plaintiff has a claim over the mortgage, all suits may be sent straightaway for administration?

A. That will facilitate matters.

*Mr. Justice Stuart.*—I do not think this gentleman has any experience about these matters?

A. I have no personal experience.

Q. With regard to courts at Cawnpore, are you satisfied with them?

A. Yes we are absolutely satisfied with the present staff of subordinate judges.

Q. I think you come from the Punjab?

A. Yes.

Q. In what parts of the Punjab do you do business?

A. I do business in Lyallpore, Jullundhar, Amritsar, Lahore, Gujranwala, and Ferozepore.

Q. What business do you do in Cawnpore?

A. I do business in sugar, rum spirits, etc.

Q. How does the work of the courts in Cawnpore compare with that in the Punjab?

A. In what respects?

Q. In general businesslike methods. Do you think that you get work done more expeditiously in the Punjab than in the United Provinces?

A. It is done more expeditiously in the United Provinces.

Q. What do you think of the judicial staff in the two provinces?

A. Practically speaking I have got many friends who are holding posts in the judicial service. Some of them are my colleagues and some of them are my personal friends. I always find that people who join the service, I mean judicial service, by passing a competitive examination are far better than those who get appointments by nomination or otherwise. By saying this I do not mean any slur on those who are holding posts without passing any examination.

Q. With regard to waste of time in the court of subordinate judge at Cawnpore, I find from looking into the figures of cases tried by the subordinate judge there that there were only 59 cases pending in his court for more than one year. The court had only one case of 1918, two cases of 1920 and two cases of 1921. Excepting one case of 1921 all the other cases were held up by the High Court. No commercial cases were pending for more than one year. Do you think that bad?

A. I think that it is very creditable.

Q. Is it true that at Cawnpore there is not a single commercial case over a year old?

A. Yes.

Q. I think there is no serious delay in the disposal of cases in Cawnpore. I do not think you will be able to remember any case in which the average court has been to blame for hanging it up for years together?

A. I think that the courts at Cawnpore are doing their work very conscientiously.

Q. I am glad to find that you think that the courts located at Cawnpore are not slow in their work. But do you not think that even if the courts of Cawnpore dispose of their work in reasonable time we should not try to improve matters?

A. Although courts are doing good work, it would be a very good thing if more improvements were made.

Q. Perhaps you know that subordinate judges get Rs. 850 a month and that there are only three judges in the selection grade. Those who are in the selection grade are almost certain to officiate as district judges. Now you say that only experienced men should be posted at Cawnpore and that they should not be transferred. Now if you want to get competent and experienced judges at Cawnpore, you must represent the matter to Government that as men posted there would be specially selected ones who would not be promoted, for some time they must receive a special salary to compensate them for the loss they incur in this way?

A. Yes.

Q. With regard to the examination of account books do you think it would be possible for your chamber to select the best men to do that work in different branches? I think there are separate systems of preparing accounts and if you take two or three men to do the work of accounting for the different branches, do you not think that it would improve matters and save a good deal of time?

A. I will certainly put this proposal up to the chamber and I hope it will get through.

Q. Do you find that courts are always ready to give litigants assistance if they know how to do it?

A. Yes.

Sir T. Desikachari.—Q. I should like to put you a few questions. Well, you have fixed the average duration for title suits, money suits and other suits in munsif's court at two months. Do you think that that is the reasonable duration? Do you calculate that period after service or before service?

A. After service.

Q. For contested as well as uncontested suits?

A. Yes. For uncontested it will be much less.

Q. So you think that two months is the maximum time that could be taken in the disposal of cases before munsifs?

A. I did not say could be but should be.

Q. As it is, is it possible to achieve your ideal? Do you think that the number of courts is sufficient to dispose of the work within the time that you think is reasonable?

A. I do not think so. The cadre should be increased.

Q. Do you think that the number of judicial officers at present can dispose of suits within the two months' time which you think is the reasonable duration?

A. No.

Q. I should like to know what the opinion is of your chamber? Does your chamber think that the cadre, as it is at present, can dispose of these cases within the time suggested by you?

A. Yes, the chamber is of the opinion that these cases should not take more than two months.

Q. And with regard to small cause suits, you put it at one month?

A. Yes.

Q. That should be the highest time to be taken ordinarily?

A. Yes.

Q. In Cawnpore is there any other agency which can take up this work, say, honorary munsifs?

A. There is none at present.

Q. Don't you think honorary munsifs could be asked to do all petty work, that which is *ex parte*, that which is below Rs. 250, etc.?

A. Personally we are very much against honorary munsifs. You don't know anything, but we know all about them.

Q. Surely there must be some people available who would do honorary work of this kind efficiently and expeditiously?

A. Well, it is very seldom that brains and money combine together.

Q. Very well, is it the money that wants the honorary munsifship?

A. No, not that. The only people who are able to give time are moneyed people. First I said that money and brains do not generally go together. Of course in order to hold such honorary posts, the only people who could afford time and render honorary service are the people who have something to fall back upon. Therefore the people that are likely to be appointed as

honorary munsifs would not be a desirable set of people to work up such a thing.

Q. So you think that the appointment of honorary munsifs or benches would not be possible in Cawnpore?

A. It is not a question of possibility, it is a question of probability.

Q. Don't you think members of your Chamber will be in a position to select suitable men?

A. They might be able to select a few persons here and there. But as you have taken this question, you are generalising. In order to have a general view of this question, I do not think we can find so many people.

Q. How many people you think you can find in Cawnpore who can do this work?

A. Take our men in the Chamber: they have got their own drudgery that they would not touch these things.

Q. I want to know how many people you can get?

A. Very few.

Q. So that the experiment will not have any chance of success if tried in Cawnpore?

A. I am not against giving a chance. My personal view is that chances are very few.

Q. My only suggestion is that if a fair amount of the stipendiary munsifs' work could be taken and given to honorary munsifs, you would relieve munsifs of a considerable amount of work. As they stand at present, they cannot dispose of contested cases within two months of their institution.

A. In that case I suggest that the number of munsifs might be increased.

Q. Let alone the number. With regard to the qualification of munsifs, do you think that the munsifs are properly selected. I take it that your view is that people who have got at least five years' experience should be selected.

A. That is my Chamber's view.

Q. As a representative that is your view?

A. If I have to express my personal view, I would go still ahead. So far as experience is concerned, I am at one with my Chamber, but so far as selection is concerned, I want to have competition. For instance, the High Court wants 15 munsifs. Of course there will be recommendations coming on from all districts, but there should be a competitive examination with regard to procedure and law.

Q. You want a competitive examination amongst the candidates for the post of munsifs?

A. That is my personal view.

Q. Such candidates as are selected by reason of recommendations from district judges or for other reasons should undergo a competitive examination?

A. Yes. But before they sit for the examination, they should submit a proper health certificate.

Q. Why is that?

A. In the Punjab, for instance, they have to be examined by a Medical Board before they get into the competitive examination.

*Mr. Justice Stuart.*—Here we have to produce a certificate by the Civil Surgeon.

A. That would be quite sufficient.

*Sir T. Desikachari.*—Q. Do you think that it is essential to have competition in the selection of candidates in order to avoid canvassing?

A. Yes.

Q. With regard to the qualification of district judges, in answer to Sir Tej Bahadur Sapru, you said that you would like to have two experienced district judges to serve on an appellate bench. What is the experience that an ordinary district judge has?



A. It all depends on the selection. Suppose a civilian is put in, he has no experience.

Q. The district judges that you would have are people who are promoted as district judges from after a qualified service of subordinate judge.

A. Yes.

Q. With regard to second appeals supposing you have not got these benches, would you consent to this alternative, that there should be no appeals in cases below Rs. 500?

A. That would create dissatisfaction among litigants. That would not satisfy.

Q. I am referring to suits not of a small cause court nature. There are so many suits which are exempted from the jurisdiction of small cause suits. I am referring to suits of Rs. 500 and less. In these suits you need not have the luxury of second appeals?

A. Lots of people do it for the pleasure of it.

Q. Simply for the gamble of it?

A. Yes.

Q. And there are a number of frivolous appeals filed simply to delay the execution of the decree of the first court or the second court?

A. Yes.

Q. Therefore it is not good to make a hard and fast rule?

A. Yes.

Q. Suppose you ask the appellant in a second appeal to deposit the whole of the decree amount or the whole of the costs, do you think that would put an end to a lot of second appeals?

A. Of course that would deter the privilege.

Q. You were not in favour of limiting the value of second appeals of Rs. 500 and more. Supposing you say there should be no second appeal in cases of the value of Rs. 100 and less, why take it as low as that?

A. As a matter of fact, the principle is the same all over, whether the amount involved is Rs. 100, 500 or 5,000. If I have to follow that principle and if I were to stick up to that principle, I would certainly say that the penalty should be irrespective of the amount involved.

Q. Irrespective of the amount involved, whether it is Rs. 5 or 50 or 100 or 200 or 500, you must have a second appeal?

A. Yes.

Q. It is a piece of gamble as you put it.

A. They gamble only in execution cases but not in original cases.

Q. So far as I know and so far as you perhaps know, there must be a large number of frivolous second appeals and very few second appeals succeed.

A. Yes.

Q. In that case why should so much money and energy and time of your countrymen be spent in useless litigation?

A. Sometimes it is a vindication of their own rights. And, the law, as it is now administered all over the country, is something which the peasant or the ordinary litigant does not know as all of a sudden often crop up rulings from the Madras High Court. Generally the second appeals are on questions of law and when you find some support from some High Court then naturally he wants to file a second appeal.

Q. It is the very reason why we want to limit second appeals.

A. But then the position of the law is one thing here and another thing there. When a new rule comes in, the pleaders themselves say to the litigants "If you prefer an appeal, you are likely to succeed."

Q. I want the gentlemen of that order not to have a chance of doing so.

A. Let them live.

Q. With regard to benches, would you like to have these appellate benches in groups of districts or would you have them in each district?

A. In central places.

Q. That won't inconvenience the people?

A. Rather than running up to Allahabad they could easily run up to the neighbouring districts.

Q. Of the two things, running up to Allahabad and running up to a centre of a group of districts, which is more convenient?

A. Running up to a centre of a group of districts is more convenient.

Q. With regard to execution of decrees, the Civil Procedure Code gives 12 years for the execution of a decree.

A. Yes.

Q. Has your Chamber considered that question?

A. We have not answered that question.

Q. Why should you not limit that period to 6 years? If you get the money you get it in the first year. What use is there in keeping the decree alive with the off-chance of getting some money at some distant time?

A. When we have 12 years we think that this man might at least have a remote chance of getting some money from somewhere. I do not think that this reduction would in any way help us.

Q. It will prevent a large number of applications coming in and it will help the decree holder as well as the judgment debtor. The decree holder will come in soon enough when he knows that his money is likely to be realised.

A. At the present day people run into speculations and it is not known when a man will get money.

Q. You are not willing to curtail the period of 12 years to 6 years.

A. No.

Q. You know that every 3 years an application should be filed in order to satisfy the requirements of the Limitation Act?

A. Yes.

Q. Why should the decree holder come once in 3 years, put in an execution petition and then leave it without prosecuting it? Why should he not do it at any time he wants to execute, within 12 years?

A. I have not considered that position.

Q. With regard to the disallowance of costs for proving documents which are frivolously denied, you said that the parties may be penalised. Did your Chamber consider that question? How would you do it? Suppose a witness is called to prove a document which is frivolously denied. The same witness will be helping the party calling him on other points. It must be very difficult to decide whether a particular witness was called to prove one particular point and not another in a case.

A. So far as we take it, we take it in this way. Sometimes parties cite about 50 witnesses. Five of them turn up and 45 are absent. The case is adjourned. Then 20 of them come and 30 are absent. Then the case is adjourned; so on.

Q. Every time, I think, there would be allowed costs for the adjournment against the party who was not ready?

A. This is different with regard to different provinces. In the United Provinces costs would be given but not in the Punjab.

Q. Supposing a mortgage deed which is registered is denied and the denial is frivolous without any reason whatever and the person who has to prove the mortgage deed calls a witness who not only proves the mortgage deed but also many of his other contentions in the case, how would you apportion the costs of proving the document which is frivolously denied and the costs incurred in proving the other points in the case? Have you considered it?

A. I would certainly leave it to the discretion of the court.

*Mr. Justice Stuart.*—*Q.* When some witnesses are present and some are absent the rule here is that the court must proceed with the evidence of the witnesses who are present. If a judge does not do that he is not complying with the rule.

*A.* It might be so here but not in the Punjab.

*Q.* About your idea of competitive examination with regard to appointment of munsifs, I think you must know that although we carefully select our munsifs there are always complaints "Why have you not taken more of caste A or B?" If we have a competitive examination I point out to you that in my experience the circumstances are such in this province that one particular caste would get nearly all the appointments. I do not think that would be popular with the people.

*A.* Speaking for myself personally this system is working well in the Punjab.

*Q.* What are the results; do you get various classes of the community reasonably well represented?

*A.* There are two appointments of deputy collectors and two appointments of munsifs. There is a system of direct nomination.

*Q.* Supposing you want fifteen men you may have ten by competitive examination and five by nomination?

*A.* A man may be competent but in a competitive examination he might not be in the first nine places. He might be tenth or eleventh. The present practice affords sufficient guarantee that he is competent.

*Q.* But at any rate I may take it that what you want is that no man should be appointed to a responsible position if he is not competent to perform his duty and that an appointment should be made not as a matter of favouritism but as a matter of merit. If that result is arrived at otherwise than by a competitive examination you would not object to the other method?

*A.* If the ultimate object is achieved, I have no objection to the method.

*Q.* When you want a man for a particular post or trust, you do not select him by competitive examination. You make your own selection.

*A.* But in that case my personal observation is limited to a very small circle of knowledge. I would be a better judge and be able to realise the merits of the man.

*Dr. DeSouza.*—*Q.* I think you said that sub-judges who are sent to Cawnpore have only experience in ordinary class of work. I think you also said that after they have certain amount of experience and as soon as they begin to give satisfaction they are transferred. You also said that you object to their constant transfers but if they are retained for a long time it will be a punishment to them. That is exactly the position with regard to certain judges in my own province, for instance, in Ahmedabad. Have you considered the advisability of having a special class of judge for commercial centres? Have you considered the possibility of recruiting a special class of judges?

*A.* Yes, that can be done.

*Q.* Have you considered what class of lawyers you would select?

*A.* Lawyers practising on the civil side. In this High Court there are many lawyers who wonderfully do the commercial cases.

*Q.* Would you like them to be sent on deputation to English courts in England for training?

*A.* Instead of sending to English Courts, I should certainly suggest that they should be deputed to Bombay or Karachi, before they take up their permanent appointments.

*Q.* What will you send them as?

*A.* As additional judges.

*Q.* You will have to make them learn at the expense of the litigants?

*A.* They should not be put in charge of cases. They should be put jointly with the judge who is already working there.

*Q.* Well you have suggested that judicial officers who enter the service by passing some sort of competitive examination are in many respects better than those who join it directly by nomination or otherwise.

*A.* Yes.

*Q.* Have you found any difference between the two in the Punjab?

*A.* Yes, marked difference. Generally you will find that people who enter service with the help of their own intellect and qualifications prove better than those who get entrance through recommendations.

*Q.* Have you heard of such a thing as this? That young men of to-day value self-respect more than anything else and they do not like to approach either the district judge or even Judges of the High Court with a petition or a request to get themselves enlisted as candidates for the Provincial Service. They are very reluctant as regards that.

*A.* I have not personally had any experience of that nature, but I should say that when a self-respecting man knows that he has a chance to appear in the competitive examination, why should he approach the district judge or the Judges of the High Court.

*Q.* No, what I mean to say is that they do not care to approach the members of the Committee which appoint judicial officers. Is that so?

*A.* Yes, I should not be surprised if there are a lot of men of that nature.

*Q.* Have you heard that young men do not care to take their cap in hand and approach the higher authorities?

*A.* I should think so. They would like to sit in the examination, rather than to go abegging from door to door.

*Q.* Then in reply to the Chairman I think you said that you would improve substituted service by publication?

*A.* Yes.

*Q.* What class of papers are generally read in Cawnpore?

*A.* Hindi as well as Urdu.

*Q.* Are there any papers here in which the publication of any Government notification is prohibited by Government?

*A.* I do not know any such paper, but papers which are not read by the public would not serve any useful purpose. Publication in those papers would not help in any way.

*Q.* Do you not think that papers in which publication of Government notifications is prohibited, are generally read by the public?

*A.* Yes.

*Q.* And if it is so, do you not think that the method you suggest for substituted service would not help in any way?

*A.* Yes, in that way it won't help.

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**Mr. R. BURN, C.S.I., I.C.S., Member, Board of Revenue, United Provinces.**

*Written Statements.*

I.

GENERAL NOTE.

A large number of cases between landlord and tenant of agricultural land which do not arise in some parts of India, *e.g.*, in the Raiyatwari tracts, or which in others are disposed of by civil courts are in the United Provinces tried by rent courts presided over by assistant collectors. There are different laws in force in the province of Agra and in the province of Oudh. In both

cases the courts are governed by the Code of Civil Procedure, subject to certain modifications. Assistant collectors are of two classes. An appeal in Agra from an assistant collector of the second class lies to the collector and a second appeal lies to the district judge in certain suits where a question of proprietary title has been in issue in the first appellate court and is a matter in issue in the appeal or question of jurisdiction has been decided. An appeal from a decree of an assistant collector of first class lies in Agra to the district judge in the two cases which have been already mentioned and also in certain classes of suits in which the amount or value of the subject matter exceeds Rs. 100, or the rent annually payable by a tenant has been a matter in issue in the court of first instance and is a matter in issue in the appeal, or the amount of rent payable separately to one or more of a number of co-sharers in the proprietary right is in issue in both courts and in suits for profits in which the amount of revenue annually payable is in issue in both courts. In other cases an appeal lies from a decree of an assistant collector of the first class to the Commissioner. In Oudh cases of certain kinds the valuation of which does not exceed Rs. 100 are triable by assistant collectors of the 2nd class with an appeal to the collector. Other cases are triable by assistant collectors of the first class, and appeals in suits for arrears of rent, or compensation on account of illegal exactment of rent or withholding receipts, or contesting distraint and suits for profits lie to the district judge, if the value of the suit does not exceed Rs. 5,000, and to the Judicial Commissioner if it exceeds that sum. Appeals in other cases, e.g., contesting notices of ejectment or notices demanding enhancement of rent lie to the Commissioner. In both provinces there is a second appeal from the Commissioner to the Board of Revenue. In the province of Agra the Board also deals with a large number of applications for revision, while in Oudh it has been held that no right of revision exists.

2. These cases, as has been indicated above, are really of a civil nature and in number far exceed the cases decided by ordinary civil courts. Thus in 1922 the civil courts in Agra decided 212,000 cases and those in Oudh 68,000 cases, making a total of 280,000 cases, while in the revenue year 1922-23 the total number of cases disposed of by the revenue courts under the Rent Acts amounted to 450,000 cases. In addition the same courts dealt with a very large number of cases under the Land Revenue Act. Most of these related to mutation of names of proprietary numbering nearly 274,000 cases, but the greater proportion of these are uncontested and are disposed of by assistant collectors of the second class. These orders simply affect entries in the registers and though they are often accepted by parties as settling their disputes they are not final so far as proprietary rights are concerned as they can be set aside by the civil courts. The number of cases to correct the records in regard to tenant right is not recorded separately but is considerable. In such cases, as in cases under the Rent Acts, orders of the revenue courts are final and not open to appeal in the civil courts, nor can the issues raised be retried there. In recording answers to the questionnaire I shall refer chiefly to those cases as my personal experience as presiding officer of a court has been, that of assistant collector, collector, commissioner, and in the Board of Revenue.

3. In addition to revenue work, however, I have had a good deal to do with civil litigation on behalf of Court of Wards' estates, both as collector and commissioner and in charge of Court of Wards as a member of the Board of Revenue. This branch of administration is a very considerable one in the United Provinces, where at present about 150 estates are under management having a total income of over two crores. Those estates which are in debt owe nearly 1½ crores while the solvent estates in addition to investments of 74 lakhs in Government paper and other securities have 42 lakhs out on mortgage. In addition to suits for title brought by or against the estates the liquidation of debt and the collection of money due involves a good deal of litigation in civil courts. All claims lodged against an estate newly taken over are enquired into by the collector and reported for confirmation by the Court of Wards. A good deal of litigation is avoided by compromise.

4. It is perhaps a platitude to say that one of the most considerable factors in litigation is due to the nature of the people. Professor Jadur Nath Sarkar in his account of Mughal administration after criticising the defective organisation of law courts under Mughal rule and the lack of any scheme of distribution of courts in proportion to the area to be served by them remarks "The Indian villager in the Mughal empire was denied the greatest pleasure of his life in our own times, namely, facility for civil litigation with Government courts close to his doors and an abundance of courts of appeal rising up to the High Court at the capital." In Court of Wards litigation this feature is continually pressed upon my notice. Where wards or their relations are of an age to be consulted regarding appeals, I am constantly pressed to file appeals even in cases in which my regular legal advisers assure me that there is no prospect of success. I have even had cases in which wards or their connections have undertaken to finance an appeal entirely from their allowances or to find money outside so that there should be no charge on the ordinary funds of the estate. In rent and revenue appeals coming before me, and more particularly in cases of revision, it is obvious from a mere summary perusal of the papers that there was no possible chance of success. One of the largest estates under management during the year 1922-23 was either a plaintiff or appellant or applicant in 680 cases which were decided. Of these it won 666 and lost only 14. It was also concerned as a defendant or respondent in 338 cases decided, of which it won 315 and lost only 23. In 1921-22 the Court of Wards was engaged in 33 original suits and in 28 appeals exceeding Rs. 10,000 in value. Of these 23 were decided in the year and the Court of Wards won 16, lost 3 completely and one partially. One was withdrawn, five were compromised and the Court of Wards was neutral in two. Thus out of 20 cases adjudicated the Court of Wards won completely 80 per cent. In cases of smaller importance the success is greater, and it is considerably higher than the success of the ordinary litigant in either courts of first instance or of appeal. These figures are quoted to show that a careful supervision of litigation and a reasonable attitude towards compromise would do much to decrease the total volume of litigation.

5. Another general factor is the attitude of the legal profession. It has been said that in England a man goes to a lawyer in the hope of keeping out of court. That is very different from the attitude in this country. A young Indian barrister told me of the great surprise he experienced during his time of work in the chambers of an English barrister. He was a man who had been engaged in different professional work in India before he decided to go to England to be called to the Bar and he had had some experience of court work in this country. A case was made over to him to note on and he advised contesting the case on the ground that it involved a principle of law, which had not, so far as he could ascertain, been clearly decided. He was surprised to receive back his note on the brief with the remark by the barrister that it was his business to get his client out of a threatened suit as cheaply as possible and not to get doubtful points of law decided at the cost of the client. He therefore advised a compromise. I do not suggest that the Indian bar as a whole busies itself with fostering litigation. It has a comparatively short history behind it and such organisations as in England keep strict control over the members of the various branches of the profession are of recent growth and still immature in India. In the lower grades of the profession there are no doubt men who thrive by touting and by supporting impossible claims or defences, but I do not forget that Sampson Brass was an Englishman and his time is laid nearly 100 years ago. My argument is that the Indian bar even in the higher stages might do much to reduce litigation by discouraging the taking of a case into court when a reasonable compromise might be effected. Here also my experience shows that efforts which they may make in this direction are frequently thwarted by their clients. One of the largest title suits with which I have had to deal had as its main basis a challenge against two compromises which had been drawn up with the assistance of eminent lawyers. In another estate I am still engaged in the work of settling fresh compromises of family claims

which have twice been settled with legal advice. But the fact remains that a great deal more could be done than is done to settle disputes out of court.

6. No direct remedy can be suggested to correct the vitiated taste for litigation or the reluctance of lawyers to advise settlement out of court rather than doubtful and prolonged litigation, but I hope that the attention which has been directed to the matter by this Committee will do something to move public opinion in the matter. The few detailed suggestions which I am in a position to make for reducing the duration of cases or simplifying procedure will be stated in reply to questions.

## II.

### ANSWERS TO QUESTIONNAIRE.

1. The Board of Revenue which corresponds to the High Court in revenue cases usually decides appeals within six to eight months after their institution. Each Member has some executive duties and is also a Member of the local Legislative Council. Appeals are invariably tried at the headquarters of the division in which they have arisen with two exceptions, namely, that appeals from both divisions in the province of Oudh are tried in Lucknow and the appeals of the Allahabad division are tried at two places in that division according to the districts in which they arise. The Board of Revenue as a rule decide all appeals which are ready before proceeding to the hills for two months' recess in May and June. During July, August and part of September they make another circuit and again clear their file. Between October and February they hold fresh sessions in the intervals between Council meetings. A Commissioner should ordinarily be in a position to decide an appeal in 6 to 9 months after institution. In two divisions in these provinces institutions for some years have exceeded the number of appeals which a Commissioner can dispose of in addition to his executive work. Additional Commissioners have from time to time been appointed for judicial work in these divisions, but at present owing to financial stringency almost two years' work is pending in the court of one Commissioner.

Work in the court of assistant collectors of the first class is affected by the provision that suits by landlords to eject tenants in the province of Agra or by tenants to contest notices of ejection in Oudh must be filed at certain seasons of the year (July to September in Agra and before 15th November in Oudh) so as to ensure the decision of most of the cases in time to enable ejection to be carried out, where this is decreed, by the beginning of the next agricultural year. Statistics are maintained for the revenue year running from 1st October to 30th September. Other cases may for the most part be filed at any time of the year. In 1921-22 only 1½ per cent. of the total number of pending cases in both Agra and Oudh taken together were pending for more than 3 months. This figure compares favourably with the statistics for courts subordinate to the High Court in Agra in 1922, which was 4½ per cent., or for that in Oudh, which was 2½ per cent. In the courts of assistant collectors most contested cases should be decided within six weeks. There are two exceptional classes of cases, namely, enhancement of rent, in which local inspection is usually required in the interest of the litigants, and partition cases under the Land Revenue Act, in which all the fields of a village have to be considered. Enhancement cases should invariably be decided within the revenue year in which they were filed so that enhancement may take effect from the beginning of the next year. For partition cases it is difficult to suggest a limit. If a question of title is raised, it may have to be remitted to a civil court or may go to a civil court in appeal. In an ordinary partition, in which no dispute as to title arises, the proceedings should be completed within 15 to 18 months.

As regards civil suits my views are expressed with some hesitation, but I think that district munsifs should be able to decide money and rent suits within six weeks and appeals should be disposed of within six months. It must be noted in comparing with Commissioners that the latter have to tour

during the cold weather and rains. In 1922 the average duration of appeals in interior courts was 177 days in Oudh, while in Agra the figure was as high as 243 days.

In this province the majority of deputy collectors recruited by direct appointment as distinct from promotion from the ranks of tehsildars are now selected by competitive examination. I think that the same system would be suitable for recruiting district munsifs.

5. It was formerly the custom to require deputy collectors to pass a departmental examination during the first two years of their service. For this has recently been substituted a training class, the results of which promise to be very beneficial, in judicial work specially. In this branch of their duties the training, though it includes instruction in substantive law, is most beneficial in the matter of procedure, specially in regard to the preliminary stages of a case and to the settlement of issues. The number of munsifs recruited annually is smaller than the number of deputy collectors and there may not be sufficient to justify a class for the officers of one province. I see no reason why in the case of civil law a central class should not be arranged for recruits from two or more adjacent provinces.

7. We have not found it necessary to prescribe a standard of efficiency for assistant collectors. Some years ago a committee examined the statistics of work arising in each tahsil in the provinces and having regard to variations in the complexity of work, which are considerable, they calculated the number of sub-divisional officers required for the administration of each district. Experience showed the need for some variations in the scale, but on the whole it worked well and the collector of a district was able to judge of the efficiency of an officer by the degree in which he coped with the work arising in that sub-division. Collectors are required to make a complete inspection of the work of their subordinates during the hot weather and the state of the judicial file is one of the matters looked into. In addition, the collector receives a fortnightly or monthly return showing details for each court of work pending, disposed of and in arrears. It is part of the duty of the collector to send for records which appear *prima facie* to be delayed and to examine the cause for it. A summary of these returns is sent to the Commissioner every six months and he takes similar action. During his inspection of offices the Commissioner also examines these matters.

8. There has been a deliberate policy of concentrating civil courts at headquarters, bringing them in from the mofussil with the idea of giving litigants a greater choice of legal advisers. The High Court at Allahabad has recently made rules which allow one member of the legal profession to transfer a case to another member if he cannot attend to plead without the substitute filing a fresh *vakalatnama*. This rule has just been adopted by the Board of Revenue for revenue cases and should tend to minimise delay owing to the engagement of counsel elsewhere.

9. A committee recently sat in these provinces to consider the question of abolishing Commissioners and they have made various proposals for reducing litigation under the Land Revenue Act. There is at present a third appeal in certain cases to the Board. It has been proposed to abolish this. Disputed cases for mutation in the record of proprietary right and also of tenant right are at present reported by the tahsildar to the sub-divisional officer. It is proposed that the tahsildar should decide petty cases of mutation in regard to proprietary rights and that he should decide all cases in regard to tenant right whether disputed or not, but that any person dissatisfied with his decision might put in an objection before the sub-divisional officer, who would then deal with it as a case instituted in his own court. It also recommended that only one appeal should be allowed in ejectment suits where the area of the land in suit does not exceed three acres and the annual rent does not exceed Rs. 25 and in suits for arrears or distrains the value of which does not exceed Rs. 20. It is proposed that these appeals should be decided not by the collector, as at present, but by the sub-divisional officer, if the latter has exercised the powers of an assistant collector of first class for not less than five years.



14. Village munsifs were tried in this province for nearly 30 years but were not a complete success. They were replaced by *panchayats* under United Provinces Act VI of 1920, which has not yet been sufficiently long in force to justify a final opinion regarding its success. At present I am not prepared to advocate the grant of exclusive jurisdiction on these new courts, but I have great hopes that they may be a success in the future. Their jurisdiction at present is confined to civil cases and they are expressly forbidden from entertaining a suit on account of any dispute or matter in respect of which any suit or application may be brought or made in a revenue court. In one district in these provinces a special manager of Court of Wards estates has been extremely successful in organising *panchayats* to deal with matters arising in the estate's villages. His success has been such that proposals made by him to abolish rent collectors (zilladars) has been approved as the *panchayats* are now responsible for collecting rent and paying it into the estate. These *panchayats* have for some years been settling a large number of cases which might have come before the courts.

16. A draft bill to amend the Agra Tenancy Act has been under consideration for a considerable time. It contains a proposal for summary procedure in petty ejectment suits and suits for arrears of rent or suits relating to distraints. The committee which recently considered the duties of commissioners was not in favour of that proposal and substituted the limited right of appeal suggested above. The proposal was to give an assistant collector of first class, who had been specially empowered by Government, powers to try summarily cases of the classes mentioned, in which the area in suit did not exceed three acres and the annual rental value did not exceed Rs. 25. The assistant collectors of the second class were to be empowered to try summarily suits for the ejectment of tenants without a right of occupancy, for certain proceedings in regard to valuation of crops and distraint, and regarding the deposit of rent, where the amount claimed did not exceed Rs. 20. The objection to the proposal in regard to assistant collectors of the first class is that such suits are, where they relate to arrears of rent or distraint, usually decided by tahsildars or other assistant collectors with second class powers and the change would not mean much benefit. I may note that section 128 of the Civil Procedure Code cannot be introduced in the courts of assistant collectors without legislation as they are not subordinate to the High Court.

18. I have dealt with the question of curtailing appeals in revenue cases in the answer under Question 9.

20. A considerable number of frivolous second appeals are filed before the Board of Revenue. As a rule, cases so classed have no chance of success because they are based on questions of fact. It was at one time possible to check these appeals because appeals could be filed only at the headquarters of the Board of Revenue at Allahabad or before a Member, wherever he happened to be on tour, and it was the practice of some Members to hear counsel before admitting them where the judgments of the lower courts indicated that no legal question arose. Recently, however, permission was given for appeals to be filed before the head assistant of the Commissioner of the division. These cases are transmitted to the office of the Board of Revenue and it is usual now to summon both parties if the appeal is in order. If Members had time to read papers before sending for records, it would be possible to summon only the appellant in the first instance, but this is rarely the case. The old rule was to my mind preferable in the interest of litigants as a whole and the present rule is chiefly beneficial to the bar. On general grounds I would support the proposal that in civil cases no second appeal should be allowed where the valuation of the suit is Rs. 250 or less. If this procedure were adopted, High Courts would probably have to be rather more liberal in dealing with revision cases.

21. My experience of Court of Wards cases leads me to support the suggestion that the appellant should be compelled to deposit the decretal amount before a second appeal can be filed

22. I have dealt with this in my reply to Question 20. The difficulty of making full use of Order XLI, Rule 11, is that most appellate courts on the revenue side do not have the leisure to examine twice over.

25, 28, 29 and 30. The rules contained in Order V of the Civil Procedure Code regarding the issue of service of summons are modified to some extent by the rent laws of the provinces. Section 193 (f) of the Agra Tenancy Act gives the local Government power to make a rule for the service of summons or notice by registered post, but no rule has been made by the local Government to that effect so that notices and summonses are still served by process servers. In Oudh Section 136 of the Oudh Rent Act provides for substituted service where a person or an authorised agent cannot be found by posting the notice at the usual place of residence of the person to whom the notice is addressed or, if that person does not reside in the district wherein the land is situated, at the village *chaupal* or at some other conspicuous place in the village wherein the land is situated. The courts are required to be strict in the matter of substituted service and it is laid down in the Board's Circular 2-II. Rule 12, which is a statutory rule, that if the person summoned is a defendant and is merely temporarily absent from home when the process server calls, it cannot be said that the defendant cannot be found, so that service by affixation is not justified. I do not think that at present the post office could be safely used, especially in the case of defendants. These provinces are backward in education and the post office staff has been reduced. A committee which sat to enquire into the possibility of economies in the public service mentioned a suggestion, which was made to it, that the civil and revenue staff for serving processes and attaching property and selling it might be amalgamated. I agree with this suggestion. The revenue establishment is larger than the civil court establishment. I think that the result would be an economy and would also tend to expedite the work of serving civil court summonses. The only village establishment available is the patwari, but the staff of patwaris has recently been reduced. They are supposed to attend at the tahsil once a month and unless summonses were made over to them on the date they attended reliance will have to be placed on the post office, which is uncertain. Service through the revenue court process staff should be possible as a rule within three weeks to a month. A month is usually sufficient for serving notices of dates fixed by the Board, and the rarity of failure in this case, where there is no reason for delaying service, is some measure of the malpractices that occur in courts of first instance. I do not think it feasible that process-servers should report themselves to pleaders. Revenue process-servers are allotted partly to headquarters and partly to tahsils.

31, 32 and 33. In revenue courts one of the weakest points hitherto has been the failure to examine parties under Order X and to frame definite issues. Orders XI and XII are practically dead letters. A considerable improvement in this respect is to be hoped for from the training class mentioned above. The officer who conducts that class spends a very considerable time in dealing with the question of framing of issues. Cases not infrequently come in appeal before the Board of Revenue in which the plaint consists of a statement that the defendant is a tenant without occupancy rights and ejectment is sought. The written statement merely asserts that the defendant has occupancy rights and the issue is 'has the defendant acquired occupancy rights.' Such pleadings and such an issue are absolutely useless as the claim to rights may be based merely on occupation by the defendant for a period exceeding 12 years or on rights by inheritance which raises a variety of issues, while the plaintiff may claim and the defendant may deny that the land is *sir* (home form in which occupancy rights are not allowed). The work of appellate courts would be immensely decreased if the courts used their powers under Order X more freely and intelligently. The preliminary training is very useful in this respect and appellate courts should take more notice than they do of omissions and faulty practice. I also think that litigation would be much shortened if the courts, both revenue and civil, used their powers in regard to costs under Order XII, Rules 2 and 4 more freely. I have never seen a case in which a subordinate revenue court used those powers and my

experience of civil litigation is that they are not used sufficiently freely in civil courts. Here also the preliminary training is far more valuable than the issue of circulars. The circulars of the Board of Revenue contain very clear instructions regarding examination of parties and the framing of issues, but have not been very useful. Where a revenue officer persistently offends, action has occasionally been taken by noting unfavourably in his personal record, which affects his promotion. In a great many revenue cases summonses are issued to the defendant for appearance and decision of a case on certain date. It would not be possible in such cases to lay down that steps for the summoning of witnesses should not be taken till parties have been examined. Where questions arise from the examination, which make it reasonable to grant postponement for further evidence, courts have discretion to give this.

34. I am not aware that revenue courts as a rule issue fresh summonses to witnesses when a hearing is postponed.

35. In rent and revenue suits the number of witnesses called is not as a rule excessive and I think this depends to a large extent on the personality of the presiding officer who exercises more authority in these cases than the presiding officers in civil courts as the bar is stronger in the latter than in the former. Another point to be considered is that in many classes of rent cases the remuneration is fixed by the case, as each case lasts much less than one day, while in civil cases remuneration is fixed by the day more frequently. If Orders X, XI and XII are used more carefully the number of facts which require proof will certainly be reduced and the number of witnesses will fall. I have no doubt that cases are prolonged because of the system of daily fees. An English barrister told me that in a certain case he was surprised that his opponent who was also an English barrister was omitting to take a number of points which were arguable and that his cross-examination of witnesses was very much curtailed. He discovered that the reason was that his opponent had accepted a fixed fee and was anxious to get back to his headquarters for other cases. I feel very strongly that an extension of the practice of fixed fees would very much reduce the time taken over cases and it would at the same time be profitable to the able lawyers, who would be in a position to take up more cases. In recent litigation, with which the Court of Wards is connected I have tried to arrange for lump sum fees so far as possible. In one big suit in which the Court of Wards was recently a party 640 witnesses were examined and their examination occupied the whole or part of 290 days. I think courts should consider this question in decreeing costs. They have power under Order XII, Rule 9, to give costs against a party who has given a notice to admit or produce unnecessary documents. The principle is the same in regard to witnesses but is rarely or never observed.

47. In revenue cases commissions are rarely issued and are not the cause of much delay. I have been examined as a witness in a civil suit on commission and was very much struck by the length of time taken to record my examination. The commissioner had no power to deal with objections to questions and as a number of objections were raised, all these had to be reduced to writing. The time of the court which dealt with that evidence must have been seriously wasted and it would in fact have been a convenience to me to have attended the court and been examined in its presence.

56. I am in favour of altering Articles 182 of the Limitation Act by substituting one year for three years. Under the Agra Tenancy Act an occupancy tenant, against whom an unsatisfied decree for arrears of rent exists, may be ejected on application. The application may be filed within three years from the date of the decree and there is no limit to the number of adjournments which may be given by a court. In the draft Bill to amend this Act it has been proposed that time may be allowed on not more than three occasions and that the total period to be allowed may not exceed six months. At present it frequently exceeds that period. If

the landowner consents, further time could however be allowed.

67. In revenue courts orders staying execution are very rarely issued. In civil cases I think that the hope of getting stay of execution is a frequent cause of filing appeals. Sir Edward Chamier, who was formerly Judge of the High Court at Allahabad and had experience of two other High Courts, once said to me that an increase in the number of courts of first instance tended to increase litigation because at present some people abstained from filing suits owing to delay in their disposal and still more in execution proceedings. On the other hand, an increase in the number of courts of appeal tended to decrease the number of appeals filed because a great many hopeless appeals were filed as the appellate courts, knowing that they would not be able to reach the appeals for a considerable time, were inclined to be easy about granting stay of execution.

76. I am strongly in favour of the suggestion that future partitions of immovable property should be evidenced by a registered document. A very common reply to suits for arrears of rent or suits or applications for ejectments is that either the rent has been paid or is payable to a different co-sharer from the plaintiff or that the plaintiff is not entitled to sue alone. Such a reply is again met by the plaintiff asserting that he has the exclusive right under a private partition. Much time is wasted in suits over deciding such questions.

82. I am doubtful whether frivolous suits would be stopped *ab initio* by raising the rate of court fees. The recent rise effected in this province as a financial measure does not appear to have checked litigation, but I see no reason why courts should not be empowered to increase court fees in frivolous cases or to grant compensation as is done in criminal cases. In revenue courts there is already a provision in the case of partition to this effect. Ordinarily the costs of making a partition (as apart from cost in court) are paid rateably by all co-sharers in a mahal (unit for payment of land revenue) according to their shares but the collector who finally confirms the partition has power to order that any co-sharer who obstructs or delays the partition by frivolous objections or other means shall pay as costs any sum not exceeding double the amount due on his share. I would also draw attention to Order XXII, Rule 2 (i), which gives power to a court to direct that a pleader or other person who has presented a suit in the name of a minor without a next friend shall pay the costs to the defendant if the plaint is struck off the file.

84. Champerty is very rife in these provinces. Some 12 years ago it was brought to notice by a district officer that three champertous suits claiming large estates were pending in his district. Enquiries followed and it was found that a banker residing in another province in India made a business of such suits. Later, statistics were kept by courts of first instance in Oudh over a period of six months and it was reported that 33 cases in which champerty existed had been before the courts in that period. A suit was actually filed by one person against another to recover profits arising out of a partnership to finance litigation. An officer was put on special duty to examine the matter and he examined a large number of cases. The most definite suggestions then made had reference to amendments of the Legal Practitioners' Act. It was proposed to make the definition of unprofessional conduct include—

- (1) the purchase by lawyers of property which was the subject of litigation within the jurisdiction of the court within which they practised;
- (2) the advance of money on mortgage on such property; and
- (3) lending of money for purposes of litigation.

Such a definition would be of advantage and with the formation of Provincial Bar Councils a distinct advance might be made in the matter.

Another suggestion made was that legislation should be undertaken to provide that before a suit could be brought for disputed property, where funds for litigation had been raised on land the contract or mortgage should

be filed in a district court, and a certificate obtained from the judge to the effect that the claimant had an arguable claim. Without such a certificate no suit should progress. The suggestion is based on the English law regarding pauper suits and it might do some good, but a very considerable change is needed in public opinion in regard to the whole question. At present the purchase of a claim is in no way considered disreputable. Besides the banker, whom I have referred, I have known landowners of unimpeachable honesty engage in such speculations. The law might also be amended to provide that a court of first instance may for recorded reasons require security for costs. This would apparently need an amendment or expansion of Order XXV, Civil Procedure Code.

**Mr. R. BURN, C.S.I., I.C.S., Member, Board of Revenue, called and examined on Thursday, the 3rd April 1924.**

*Mr. Justice Stuart.*—*Q.* What is your experience of talukdari cases in the United Provinces? You have seen a large number of them.

*A.* I have seen a good many.

*Q.* Had you any special knowledge of the Nanpara case?

*A.* That case is known to me. The estate still remains with the Court of Wards.

*Q.* Had you anything to do with Ajudhia case?

*A.* Yes, a good deal of that.

*Q.* As Chief Secretary?

*A.* Yes.

*Q.* In the last two or three years when you have been actually advising in those cases, are you satisfied with the way that these cases come up to Government, or with the spade work that is done before they reach the Board of Revenue?

*A.* I do not think they are at all well prepared.

*Q.* If better work was done in the beginning, is it not your opinion that very much of time and money would be saved in the end?

*A.* Yes, a good deal.

*Q.* It is not the fault of the Court of Wards managers. They cannot be expected to put up a case as a solicitor would put up the case?

*A.* No. I think sometimes they might do something more than they do. In one big estate, we keep a fairly big establishment. I think that is pretty new.

*Q.* What estate is that?

*A.* Balrampur. We have a legal department.

*Q.* Is that new?

*A.* That is comparatively new.

*Q.* Who is in charge of that?

*A.* A vakil—a qualified vakil.

*Q.* And when a case goes on now-a-days, is there some attempt made to really go through the whole history and old papers and sift what is valuable from what is not valuable?

*A.* I think in that estate there is.

*Q.* Only in that estate?

*A.* Well, as regards other estates I am not certain. We generally get the opinion of the Government pleader.

*Q.* That varies very much in value?

*A.* Yes.

Q. Have you any particular difficulty now with the litigation from Kheri?

A. It is particularly bad.

Q. When I was in the Judicial Commissioner's Court, I frequently had to comment upon the very inferior manner in which the cases were put up by the Kheri Court of Wards. I had to remark that the Government pleader was not up to the mark and that he was not good enough to advise on that sort of work. What is the name of the man who is kept to look after the conduct of cases?

A. We have the mukhtiyar.

Q. In Kheri I remember there was a small man drawing Rs. 100, who had a lot to do with the Court of Wards work?

A. That may be the man I dismissed the year before last for bad work in connection with litigation.

Q. I see that the Board of Revenue are working now as I recommended: that the cases should be properly sifted, that the documentary evidence should be very carefully gone through and that all the previous decisions which bear on the subject should be carefully looked into before a case is put into court.

A. Yes.

Q. What is your view as to the extent of champerty in these talukdari cases? Do you think there is a very strong element of champerty in many of the cases?

A. In the case of big title suits, I think the majority have an element of champerty.

Q. Now with regard to that a suggestion is being made that the following procedure might be enacted in suits to the succession of talukas in Oudh. That if the defendant wishes to apply he should ask the court to take special action because the case is of the nature of a gamble in litigation and if the court is satisfied that the plaintiff is a man of straw, who is being utilised by other people for their own ends, it should be open to the court to demand, as a condition of proceeding in the suit, security for the taxed costs and that those costs should not be the ordinary costs, as given by the courts usually, but actual taxed costs. Do you think in a case like the Ajudhia case, the plaintiff would have been allowed to proceed if he had not given security for a matter of 3 lakhs? What do you think of that suggestion?

A. I would support that very strongly.

Q. How far do you think that would go to remedy the present evils?

A. I think it will have a very good effect in deterring people from taking up these cases. A certain number of these cases are taken on speculation and if the case is not going on successfully the man who is financing the case is often willing to get out and if he had to give security for a large amount, I think he would be more chary of taking it up altogether.

Q. Can you suggest any remedy to reduce the expense and time taken up generally in talukdari litigation where the plaintiff is not a man of straw and he is fighting for what he believes to be a good claim?

A. If the courts exercise their powers under Orders XI and XII, I think it would shorten the cases.

Q. Do you think the situation is serious enough to justify the suggestion that a special trial bench should be appointed to decide cases of succession under Act I of 1869 presided over by superior officers? It might be by way of original jurisdiction in the Chief Court or by a special tribunal.

A. Yes. There may be a bench of two judges with no appeal to the Privy Council except on a point of law.

Q. Would it not shorten the proceedings very much if you had men who really understood their work? In the interests of the province of Oudh do you think the Government would be justified in trying to

improve the machinery by which these cases are heard by spending more money?

A. I think the suggestion recently made to me by the Commissioner in regard to a big succession case which is going on in Oudh is that I should move the High Court to take this case on to their file and decide it as a court of original jurisdiction.

Q. As things are, the suggestion is hardly possible. It would be unfair to other litigants that their cases should be held back to be heard by one judge of this court. I particularly want your opinion as to whether in your opinion the committee is justified in putting forward a proposal, which may involve extra expense to Government and whether the situation is a serious one.

A. I should welcome the proposal.

Q. I think you will agree with me that any attempt to alter the law is not likely to lead to very good results from the point of view of further litigation. The more you improve the law, the more the litigation increases as to the interpretation of the new procedure.

A. But one or two things have been successful—the registration of adoptions in Oudh. I think it is a good thing.

Q. I agree with you there. But I meant the alterations in the Talukdari Act I of 1869. I think the subject is such that it will tax even the best brains.

A. Yes. I think so.

Q. What is your opinion on the best method of training to be given to civilians before they take judicial office? Did this come before you as Chief Secretary?

A. I remember seeing this discussion.

Q. I think you will agree with me that the present system is not very satisfactory. In fact it is not as satisfactory as it was 30 years ago.

A. I think 30 years ago the preliminary training at Home was very much better than it is now. In fact there is no training in England except reading a few of the Codes.

Q. At present the training certainly wants improvement.

A. Yes. It is capable of improvement.

Q. Have you anything to add to the present Government proposals—a certain amount of study, reading a number of cases, attendance in courts and in the Government Advocate's office, before one is appointed? Do you think anything could be done to improve them?

A. I think the present training helps to a very great extent. A great deal of time is devoted to the examination of parties and framing of issues.

Q. What is your opinion on a suggestion that was made in 1914, which seems to be dropped since, of sending officers who are intended for judicial department on study leave to read in chambers in England? Do you think that this is a good idea?

A. I think that is quite a useful idea.

Q. Of course that will involve some cost but the expenses would not be very very great. I mean it would not run over a few hundred pounds for a man's training.

A. I do not think they get very much during the study leave.

Q. They get their fees paid.

A. Yes, I am not sure whether they get any extra allowance.

Q. They do not get any compensation for devoting their leave to study. You will be ready to leave that on the same basis as the study leave is granted to medical officers.

A. Yes.

Q. I now come to the question of patwaris. Would the Board of Revenue be ready to assist in making an experiment?

A. May I just interrupt, the control of patwaris has been taken away from the Board of Revenue.

Q. Who has got it?

A. The Government.

Q. But who is the particular officer who governs the patwaris?

A. The Hon'ble the Finance Member.

Q. In addition to his other duties?

A. Yes.

Q. Then we must put the matter not from the point of view of the Board of Revenue but from the general point of view. The point is whether patwaris can be used as process servers. My idea was not to utilize patwaris in all instances. It appeared to me quite unnecessary to employ him for a place which is at a reasonable distance from the headquarters except as a check to identification. But it struck me that there was a great deal of waste of time and money in the method in which we try to serve a process in certain outlying places. I will give you an illustration. Supposing one has to serve a process from the subordinate judge's court in the Thunthibari circle in Gorakhpur. I think I am right in saying the distance is about seventy miles along bad kacha roads and even if the man takes a lift it would be a hard job for him to arrive there in four days and he might then find that the man had gone to another village. So not finding him there he fixes the notice on the door of his house and goes straight-away. The result is that nine days were taken up and there was no service. Instead of that if the process was sent to the Maharajganj tahsil and handed over to the patwari when he came on his monthly visit, he will be out with it for a month and he will certainly serve it. I admit that my scheme would not get speedy service—it will take six weeks or two months—but it would be effective. Is that a good idea? I am only talking about outlying parts.

A. I think you would be certain of getting the service if you strengthen the process serving staff at the tahsil. In that particular case which you mention the summons would be sent by post and would be distributed by the clerk in charge there to the process-server of the tahsil. That would save thirty to forty miles.

Q. Then what would be the check over the process-server of the tahsil? He can always say what our process server says—I went out to the village and the man was not there. My point is that the patwari cannot say that because he lives there and it very rarely happens that a man absents himself from the village for a month. If you find a patwari saying that the man continued to be absent from the village for a month then you can ask as to who was looking after his crops. What the process-server says it is difficult to check, he gives a glib answer—I went there and could not find the man. My suggestion about the patwari was really to get over that difficulty of the untruthful answer that the man was not in the village though he was there.

A. I think that possibly the controlling authorities in these provinces would object on the ground that patwaris' work has now increased owing to reduction in circles. We recently had good many reductions. If you are going to allow six weeks for the service of a summons, I think the number of process servers who would be available in the tahsil might be made to join the revenue process-servers, under the Board of Revenue, and it would be only in exceptional cases that you would get a chance of second attempted service in time. The chief objection now would be that the patwari has no time.

Q. My suggestion is that the patwari would receive a fee for the service of processes, he would not be asked to do it for nothing.

A. They have reduced the number of patwaris now and increased the number of circles.



You have considerable experience of the attitude taken up by all sorts of people on the question of right of appeal. I mean that question looms quite as large in revenue matters as in civil. A suggestion has been put forward—rather it has been revived—that it would save a considerable amount of time if all the appeals from munsifs, I mean to say all appeals in suits of which the value does not exceed one thousand rupees, should be heard by a bench of two selected subordinate judges or officers of that status, and that that appeal should be final on law as well as on fact, with two provisos (1) that it should be open to such a bench to state the case to the High Court on a particular difficult point of law as is done in Ajmer and Kumaon and (2) that if the two judges differ there should be an appeal to the High Court as a right. The main question which I want to ask you from your experience is, would it be violently opposed by people or would it be accepted as a fairly reasonable suggestion?

A. It would certainly be opposed on the start and I think it would be opposed by the High Court bar.

Q. Curiously enough the leaders of the High Court bar are rather in favour of it.

A. I do not think there would be a very great popular outcry. We have got a suggestion now in regard to revenue cases also, that in certain petty cases there should be an appeal to the selected sub-divisional officer and that his orders should be final. That suggestion was made by a committee on which non-officials were in majority.

Q. There is another suggestion on which we very much like to have your opinion. The suggestion is whether it would be advisable to appoint in district courts an officer who would be called a Registrar or Master or some such name, who would be a man of legal attainments and to whom would be handed over all the office work, all the accounts and certain actual and *quasi* judicial work, such as execution, preliminaries in execution and disputed execution still to go to the court concerned. He could also be in superior charge of the process serving establishment and would act in other words very much as the Registrar of the High Court acts towards the High Court. Do you think that this system would work well in those districts where the work is sufficient to justify the appointment of such an officer?

A. Of course I have no knowledge of the details of miscellaneous work done by courts at headquarters, but from the class of duties which you have mentioned, I should not like to see it tried by a ministerial officer.

Q. No, my suggestion is that the man would be specially appointed and would probably be promoted to a munsifship?

A. Yes the man must have reasonable expectations.

Q. Yes he would not remain there for the whole of his life, but he would be a gentleman of the type from which we recruit a munsif at the present day. He would be a man of legal attainments?

A. Yes.

Q. How are you appointing tahsildars and deputy collectors?

A. Tahsildars as a rule are promoted naib-tahsildars who are chosen by selection.

Q. And no tahsildars are appointed direct?

A. Practically none. Deputy collectors are taken half by promotion from tahsildars in the same way and nominated by commissioners and collectors and half by direct appointments. Those who receive direct appointments are only one quarter and those who are taken by competitive examination are three quarters.

Q. Well, in the case of competitive examination, do you not find that there is a great difficulty of one particular community or caste flooding the whole service?

A. Yes in practice I should think that half the number of appointments go to one particular community each year, but this is being run only for two years.

Q. Our idea in the High Court was that if we had competitive examination, it would be almost impossible to prevent one particular caste filling up the whole of the judicial service. There is one class which stands very much higher in educational qualifications. I think you will agree with me, that it would not be a good thing from the point of view of the people of this province to have all the judicial appointments filled up by one caste, however eminent and excellent that caste may be.

A. That is so, but the examination for deputy collectors includes *visà voce* in which marks are given not only for general alertness but for family claims and for the candidate's personality.

Q. Well what we have been doing in the High Court in selecting munsifs is to take a list and go on interviewing as many as we can find time to give interviews to. Last year we interviewed 54 candidates, we could not interview others as we had no time. In these interviews we examined the candidates upon points of law and practice and took into consideration their previous history, their record of usefulness in college as organisers, monitors or prefects or captains of games and so on. We also took into account services in the military department, if any. We do not necessarily select exactly according to the number of marks allotted, but very nearly. Do you think that is a good system of recruiting munsifs?

A. I think that is quite a good system but I do not see why you should not have competitive examination. I would like to have all that you have just enumerated as part of the competitive examination.

Q. So you would include this *visà voce*, as part of the competitive examination?

A. I should have this as one of the subjects as *visà voce* test in the examination.

Q. After you have appointed a munsif I think you will strongly favour the idea of putting him into something in the nature of a training class?

A. Yes.

Q. Do you not think that a considerable amount of training might be given to him by attaching him to an additional Government advocate, or Government advocate?

A. Yes I think that will be the best sort of training.

Q. Government pleaders and advocates bitterly complain that they have much to do and that they get no help in the preparation of briefs which, they say, are rushing in large numbers. Do you not think that to attach them to Government advocates would be a very good thing and useful at the same time?

A. Yes, that will be a very useful training.

Q. Could they also be attached with Legal Remembrancers?

A. Legal Remembrancers have got their assistants.

Q. In your opinion, is there anything like sufficient supervision over the work of the civil courts?

A. I do not know the details.

Q. I am wondering whether in the course of your experience as deputy commissioner and commissioner, you never came across cases (when you were on tour) where you found that an officer in an outlying munsifi did very much what he liked?

A. I repeatedly came across these kinds of things in Court of Wards—complaints about individual cases. I had one case not long ago which I brought to the notice of the High Court. The question of disciplinary action against a pleader. This pleader was frequently employed by the Court of Wards. I wished to know whether we should go on employing him and when that case was running on for 15 months and when I found nothing had been done. I brought it to the notice of the High Court and it was settled in a month. That was the case of a subordinate civil court.

Q.—You feel very strongly on the subject of the daily fee which you consider is one of the curses of litigation in this province. Have you found in your experience that the practice does not obtain everywhere but it obtains in some places and not in others?

A. In civil courts in these provinces, I am generally pressed to settle the daily fee.

Q. I was told the other day by one of our subordinate judges that the outturn of work in the western districts was very much higher than in the eastern districts. The reason he suggested being that the cases in the eastern districts were much more complicated than in the western districts. Apparently that is one reason. But he also said that they charge the daily fee in the eastern districts but not so much in the western districts.

A. I should say it is difference in the mentality of the litigants also. The patwaris are better in the west than in the east.

Q. Of course if a patwari goes beyond a certain point in the western parts he may be murdered. Is that not so?

A. Yes.

Q. Is it not your experience last year that the raising of the court fees materially affected institutions in this province?

A. I do not think it did in the revenue cases. I have not seen any figures for civil cases yet. I do not think it appreciably affected ejectment suits, the principal thing that is concerned.

Q. What is your experience of the working of the courts of honorary munsifs in the provinces of Agra and Oudh?

A. I practically know nothing except odd stories.

Q. Is it not a fact for very many years that it has been the deliberate policy of Government to extend the system of honorary munsifs and honorary magistrates?

A. Yes.

Q. I mean to say if this Committee was in favour of extension of the system of honorary munsifs, do you think that the Government would be able to extend it very much with the best will in the world?

A. No, not very much.

Q. My point is that they have extended it as far as they can?

A. It is to be impressed on these officers that only suitable men should be selected. I find that these honorary munsifs, honorary collectors and honorary magistrates are constantly attacked in the Legislative Council, on the ground of ignorance of law, sometimes ignorance of English, and irregularity in court hours, and things of that kind. I think during the war some officers made a mistake. They proposed the appointment of certain persons as honorary magistrates as a reward for good service in collecting war loans and general war service, but those have been gradually weeded out. We cannot make any very large increase in honorary munsifs.

Q. As a practical question, do you think that whatever efforts the Government have made, they would succeed appreciably in relieving the paid courts by the creation of honorary courts?

A. Not honorary munsifs. Of course the panchayat system would succeed, but it has only just been taken up.

Q. Is it not too early to say one way or another whether that would be a success or not?

A. Yes.

Q. Are you hopeful?

A. I am hopeful if it is extended cautiously.

Q. To sum up the question of Court of Wards, we may take it that the Board of Revenue is already alive to the necessity of a considerable better preparation of Court of Wards cases and is already endeavouring to meet that by the provision of very much legal machinery.

A. Yes.

Q. Would you be in favour of keeping a special legal officer of the status of a Legal Remembrancer in charge of the Court of Wards work?

A. I do not think it is necessary.

Q. It is not a whole-time job?

A. I do not think so. The great bulk of our cases are small cases.

Q. Are there many cases that would be handled in a Bengal zemindari by the manager himself without requiring any legal advice?

A. Yes. A majority of them.

Q. Have you any big cases on at present?

A. We have got one big title suit going on in the Mithauli estate in Gorakhpur.

Q. What was the result of the Balrampur case?

A. It was a suit brought by the owner of an estate which had been in the Court of Wards for a very long time to tear up two compromises which had been effected during the Court of Wards management. He sued the person who got a portion of the taluka under those compromises and he also sued a number of people who got property during the Court of Wards management on the ground that the property had been sold for inadequate prices. That was how it came in. He lost everything. I have allowed the ward to appeal as regards family custom.

Q. Was the Court of Wards a plaintiff?

A. I was a plaintiff, a defendant and a witness.

Q. Was this man's property under the Court of Wards at the time when the suit was instituted?

A. When the suit was filed none of the property was under the Court of Wards.

Q. Do you think that there might be some legal improvement to prevent such things happening again?

A. I should be very glad to see them.

Q. How is it that this suit is not barred by limitation *ab initio*?

A. The plaintiff was a minor and he said that limitation did not run until he attained majority which was about 1909 or 1910.

Q. Was there anything champertous about that suit?

A. I don't think so.

Q. At any rate it was a case of very bad advice of people who wanted to make something for themselves.

A. Yes.

Q. Could you give me an idea as to the costs in that case?

A. Balrampur spent about 3½ lakhs.

Q. And the plaintiff?

A. 3½ lakhs.

Sir Tej Bahadur Sapru.—Q. So far as the province of Agra is concerned is there any such thing as having a permanent legal adviser among the big zemindars to advise them when they enter into big transactions?

A. I think probably they have a local vakil for their ordinary cases. I don't know whether they retain them.

Q. I make this distinction. My experience has been that when a zemindar in the province of Agra is actually involved in a law suit, he does not mind spending any amount of money. But, before he enters into a transaction relating to the sale, or pledge of a property or before the execution of a will, he does not consider it worth while to spend a small sum in consulting his vakil. From your experience is that not so here?

A. I think that is so. There is nothing like a family solicitor.

Q. Whereas in the province of Bihar it has been my experience that almost every zemindar has a counsel to advise them as to whether they should or should not enter into a particular transaction. That is not the ordinary case in this province nor is that so in Oudh.

A. I should say no.

Q. And generally the result of this to my mind is that these people enter into transactions which they have subsequently to defend in courts of law and for which they have to spend about thousands of rupees.

A. Yes.

Q. So far as the Court of Wards is concerned, when they have got to file a suit or defend a suit, they generally engage Government pleaders.

A. It is part of the Government pleader's regular remuneration that he has a right to Court of Wards work.

Q. Now I put it to you whether it is not a fact in this province that the position of a Government pleader—I am not casting reflection on any particular individual—is not the same as it used to be twenty years ago. Twenty years ago only the leader of the bar was considered eligible for it and now it is the failure who applies for Government pleadership.

A. That is the general impression. I think the standard of appointment of a Government pleader is distinctly low.

Q. If the standard of the Government pleader is distinctly low, am I right in saying that the Court of Wards does not get the best legal advice that it ought to get.

A. Any important case goes to the Legal Remembrancer who has the Government pleader's advice.

Q. Which Government pleader—in the High Court or in the district?

A. The District Government pleader. The procedure is that in all suits, except the simple suits, the Government pleader is asked by the collector to advise and the collector sends his advice to the Legal Remembrancer.

Q. Some of the big cases, in which the Court of Wards are interested, are really extremely difficult questions of Hindu and Mohammedan law—take for instance the question of establishment of special questions of Hindu points of law—of which even a leading practitioner in the High Court would not be very dogmatic, and it is precisely on that matter that one has to find whether the Government pleader is right or not.

A. Of course we often get a statement of opinion in addition to the Legal Remembrancer's opinion. In big cases special counsel's opinion is taken before giving a decision.

Q. I think Mr. Justice Stuart's suggestion was—I wish really to pursue the point—whether you think the Court of Wards would save a great deal of trouble and money if they appoint a whole-time competent legal adviser to advise them instead of depending upon the Government pleaders who are by no means classed as competent men.

A. We have the Legal Remembrancer and we take up a very great deal of his time. Of course we do not worry him for petty cases.

Q. Now you have under the Legal Remembrancer a munsif as an assistant?

A. Yes. The case goes to the Legal Remembrancer with a note of his personal assistant's opinion and then I am asked whether I want to appeal or to come to a compromise.

Q. You have not got any post as a Deputy Legal Remembrancer.

A. No. If the Legal Remembrancer feels doubtful about a point he does not hesitate in inviting certain opinions and in that case we get one.

Q. Now perhaps you will tell us whether it is not a fact that an ordinary zemindar in this province does not spend as much as he ought to do on the management of his estate. He does not employ a well competent manager. He has only got an ill-paid 'karinda.'

A. Certainly they do not employ suitable men.

Q. Apart from the big maharajas, the rest of zemindars employ very ill-paid agencies and perhaps your experience as a revenue officer has been that the existence of these ill-paid agencies has increased the litigation between the landlords and the tenants a good deal.

A. Yes a good deal.

Q. So that you will agree with me that the landlord must thank himself that he is so much involved in litigation in these provinces.

A. I think a talukdar with a total collection of a lakh of rupees a year would grudge spending hundred rupees a month on management.

Q. I have known a big talukdar having an estate of three lakhs of rupees spending only twenty-five rupees a month and he was managing to get a teacher for his boy, who was to become his heir, on a salary of fifteen rupees.

A. I think a talukdar who gets eighty thousand rupees a year does not spend more than thirty rupees a month.

Q. Then I should like you to state one or two facts with regard to litigation on some matters which go before the revenue court. There is a provision in the Rent Act that if in any civil suit a question is raised by the defendant that he is a plaintiff or the defendant the civil court must stay its hands and the plaintiff must be directed to file a suit in the revenue court and when the revenue court has given a decision it comes back to the civil court and the civil court registers its decree. Cases of that character frequently come to the High Court. What has been the result of that provision on the Tenancy Act? Has it led to a great deal of litigation in the revenue court?

A. A good many of these cases do come to the revenue court.

Q. And that results in delay in the disposal of cases in the civil court. The case has been filed in the civil court, then because the defendant has raised that plea—it does not matter whether the plea is on good grounds or on frivolous grounds—the civil court has no jurisdiction to go on with the case and it must refer to the revenue court for its decision.

A. Probably that thing would be settled in the revenue court earlier than in the civil court.

Q. That is, that provision in the Tenancy Act really leads to delay?

A. No, I think the civil court does not proceed with the case and the particular question whether "A" or "B" is a tenant is decided easily by the revenue court.

Q. I quite agree with you but under the law as it stands when that question is raised in the civil court the civil court cannot go on with the case and until the revenue court has given its decision it is shown on the pending case list.

A. The revenue court if it were trying a case would decide it earlier.

Q. Why should there be any necessity of the case being decided by the revenue court and then sent back to the civil court?

A. It is a provision under the new Tenancy Act. At present a landlord in these provinces in the case of agricultural lands can sue any man saying that he is a trespasser and he can sue him for rent. But he cannot sue him for damages, and if he does so he must go to the civil court.

Q. Is there any proposal to simplify the law with regard to partition cases where questions of title are raised before the revenue court?

A. In the case of partitions if one of the co-sharers raises questions of title, it is open to the Assistant Collector doing partition cases to decide it himself as a civil court.

Q. Is their any proposal to modify the law as it stands at present?

A. I do not think so.

Q. With regard to open competitive examination, which was held in India during the last three years for the recruitment of candidates into the

Indian Civil Service, what was your experience? Was the caste which Mr. Justice Stuart had in view very successful?

A. I do not remember the figures.

Q. I remember that in the first year there was not a single man of that caste?

A. Are you talking of the Civil Service or of deputy collectors.

Q. About the Indian Civil Service?

A. I do not remember figures.

Q. My recollection is that in the first year there was only one man from these provinces and he was not a member of that caste which Mr. Justice Stuart had in view?

A. I do not think one can argue from a single case.

Q. In the second year there were only two men who belonged to that caste and the third man belonged to a different caste?

A. Yes.

Mr. Justice Stuart.—But I am not talking of the Indian Civil Service. I am talking of students of the Law College.

Sir Tej Bahadur Sapru.—I should like to have the figures of the University Examination to know how matters really stand.

A. Yes.

Chairman.—Q. With regard to the examination of munsifs, I think it would be better if there was a practical examination and not merely a theoretical examination. That would be better, I suppose?

A. Yes, I think so. I think you select munsifs after they have practised for more than a year.

Q. A practical examination would test the man's ability. Is it not so? I do not think that any examination in which books are crammed would help in any way in getting really capable and good men.

A. Yes. Quite so.

Q. Would you just tell us something about ancestral property? I understand that here if property is ancestral then it is always sold by the collector. I also understand if the property is not ancestral then even it is sometimes sold by the collector. How does that system work?

A. The collector in the first place tries to find out some body belonging to the family who may pay up the decree so that the property may be saved. In the second place the collector is probably in a better position to sell the property at a reasonable price. He would always try to fetch adequate price. The whole idea of this is to save the property as far as possible.

Q. Does that also apply in mortgage suits?

A. Yes it applies to all decrees.

Q. But why the mortgagee who is entitled to get his money back should be told to wait for a substantial period of time while the collector thinks whether easier terms can be obtained or not? Do you think that the number of cases in which land or property is saved, is very great?

A. I do not think the actual number is very great.

Q. I think considerable time is taken by the collector in finding out a solution which may help the debtor?

A. Yes it takes nine months or a year.

Q. And do you not think that that is rather hard on the creditor to wait for nine or twelve months after his decree?

A. I think I have got some statistics showing how much time is generally taken in settling these matters?

Mr. Justice Stuart.—Q. Could you let us have those figures? Could we have them?

A. Yes.

*Chairman.*—*Q.* What is your view with regard to it? Do you think that on the whole the result is sufficiently good to justify interference with the ordinary rights of the judgment creditor in having his decree satisfied?

*A.* Well I think in many parts of these provinces it is necessary in the interests of the public peace. We had a case in which the Maharaja of Damraun got a decree. For full twenty years he went on paying the land revenue but he never got his rent from tenants. Some of the villagers were actually killed and nothing could be done. It was after all compromised by the collector. The commissioner reported that rents could be collected but it required a regiment.

*Q.* I think the purchaser in these cases gets his rent through the collector?

*A.* Yes.

*Q.* What is the difference? Why should not the property be sold by the civil court instead of by the collector?

*A.* Because there is time in the case of the collector. The man may be able to raise money.

*Q.* So you are not in favour of abolishing this practice?

*A.* Certainly not in the case of ancestral property.

*Q.* What about the property which is not ancestral? I take it that the collector is selling these properties under the High Court rules?

*A.* Yes.

*Q.* But the collector has a good deal of trouble in enquiring into the question whether the property is ancestral or is not ancestral?

*A.* Sometimes I think that is a very doubtful point.

*Q.* What is the advantage of making an enquiry? I am asking this for information only, what does it matter whether it is ancestral or not?

*A.* If the question is decided it may prevent future troubles.

*Sir T. Desikachari.*—*Q.* I read your interesting memorandum and I find that a large number of rent suits are disposed of by assistant collectors, deputy collectors and collectors. Are they satisfactorily disposed of?

*A.* I think so.

*Q.* Are they speedily disposed of?

*A.* Yes. I think I have mentioned in the memorandum that the number of cases pending at the end of a year for over 3 months is just over one per cent., 4½ per cent. in Agra and 3 per cent. in Oudh.

*Q.* Does the outturn of work as well as the speed with which the work is turned out compare favourably with the work that is done by munsif's courts in point of quality and quantity?

*A.* I cannot say of the quality. The civil courts cannot try a question between a landlord and tenant and the revenue courts cannot adjudicate finally on an issue of proprietary right.

*Q.* Now, in these provinces quite a large number of cases are got through by revenue agency.

*A.* Yes.

*Q.* The percentage of appeals from those decisions is very small.

*A.* I have not compared it with the percentage in civil suits.

*Q.* In connection with revenue appeals do you think that a large number of frivolous second appeals are filed?

*A.* Yes.

*Q.* You would prevent the filing of such a large number of frivolous appeals by the decree amount being deposited before an appeal is admitted. Do you think it would be an effective check?

*A.* I think it would be a substantial check. In about half the appeals that come before me I do not think it necessary to call on the respondent to appear.



Q. With regard to the disposal of these revenue cases I see that you employ a number of honorary assistant collectors. Are they doing their work fairly well?

A. Yes, quite reasonably well.

Q. If they were properly selected are there men available to get through the work in a large degree?

A. It is now difficult to get honorary assistant collectors and magistrates. We always begin by conferring the lowest powers on the man.

Q. What is the highest power that is exercised by an assistant collector?

A. There are two classes. The second class can only try suits up to Rs. 100. They cannot try ejectment suits. For the first class there is no restriction.

Q. Both classes of assistant collectors are doing their work fairly well?

A. Yes. We don't appoint men with first class powers before we are satisfied. Either he is a retired revenue officer or is a zemindar and he has exercised second class powers for sometime and has got some idea of the value of evidence and some idea of procedure and law.

Q. I think these people are selected from among the zemindars and people with influence.

A. Zemindars, retired legal practitioners, retired revenue officials and retired munsifs.

Q. Have you got any figures with reference to the number of honorary assistant collectors employed and the amount of work?

A. 129 were serving at the end of the year. 14 had no work at all. The total number decided was 51,000 cases.

Q. That was a substantial relief to the stipendiary revenue officials.

A. Yes. We have one man who decided 5,100 cases.

Q. There is every possibility of increasing the number of these people.

A. Not appreciably. I do not think that the individuals exist.

Q. I see from the Legislative Council proceedings that attacks are made on honorary magistrates; but I do not see anything against honorary assistant collectors. Are there not men available who can look about their work in proper manner?

A. I think most people will admit that criminal work is simpler than the work of an assistant collector and also there are many honorary magistrates. I think that probably accounts for the number of complaints about them. In the case of honorary assistant collectors as a matter of practice we aim at his having the legal attainments before putting the man on the bench.

Q. Before you make a man as an honorary assistant collector you insist on his having reasonable education.

A. Yes. Not so with regard to bench magistrates. I do not think the same standard exists. Education is very backward in these provinces.

Q. I suppose people who are doing assistant collector's work now may also be asked to do honorary munsif's work.

A. I think you may have the same man doing the both.

Q. And they would be capable of doing that?

A. I think so.

Q. Would the honorary assistant collectors be in a position to dispose of suits which are transferred from the munsif's file?

A. If they are given power to deal with those cases.

Q. I was just thinking of their capacity to do that work?

A. I think they have got the capacity.

Q. I see from your report that there is a particular place in which the village panchayat has done very good work.

A. In one of the districts the manager of the Court of Wards has been working with the village panchayat and he took the case up to simplify the management of the estate and he was successful. But that was done quite independent of the Government system.

Q. The panchayat in that particular estate, has been responsible for reduction of a good deal of litigation?

A. I have no doubt.

Q. There is no reason why such an experiment should not be tried in other districts?

A. It all depends upon the efforts of a man. That manager has been for more than twenty years in the district and I think he must be knowing most of the panches personally as he used to tour round the villages.

Q. Provided the panchayat is properly selected they will do very good work?

A. I think so, but I think it is no use applying the Panchayat Act to all the districts; it was tried and it failed. After that we used to appoint panchayats at tahsils only and the village munsif was appointed only when we got a good man.

Q. Could the village panchayats be elected? Could the panel of people who serve as panches be elected?

A. We hold a rough sort of election. The divisional officer goes to the village and finds out whether he can get a fairly good man. There is no regular election by ballot.

Q. With regard to process-servers there is a suggestion of yours that the revenue court process-servers and the civil court process-servers could be amalgamated to the benefit of both the revenue and the Judicial Departments. Is that what you mean?

A. I think it will be more beneficial to the civil court. The system would get more elastic. There is a number of process-servers in the tahsil and as Mr. Justice Stuart pointed out that there was difficulty in sending processes to distant places in that case they could be served through the process-servers in the tahsil.

Q. In regard to the execution of decrees you remember a provision in Section 48 of the Civil Procedure Code that after twelve years no execution should be taken. Are you in favour of curtailing that period?

A. I have not read that provision.

Q. You will avoid all the steps in aid of execution prescribed by Article 182 of the Limitation Act.

A. Yes.

Q. With regard to partition of immovable property you agree to our suggestion that all partitions should be evidenced by registered instruments. That will minimise a lot of litigation relating to partition of immovable property coming up before the revenue court.

A. Yes.

*Dr. DeSouza.*—Q. Are there many complaints about process-servers of the revenue department. Is their service generally satisfactory?

A. There are certain complaints but they are not brought to my notice prominently now.

Q. What is the general impression. The munsifs or subordinate judges who have given evidence before this Committee have complained about the scandal of the civil court process-servers. Has it been brought to your notice that the revenue court process-servers are of the same character or are they more satisfactory?

A. I have not gone into the question of service in the civil court and I cannot give any opinion as to whether the revenue court process-servers are better or worse.

Q. You have not heard of many suits having to be postponed mainly because the process of the defendant has not been served.

A. I am inclined to think the revenue court will take strong line about the case.

Q. What will they do?

A. If it appears to be the process-server's fault he will be punished. He will be sent to the collector who may dismiss or punish him.

Q. You have as many as nearly five lakhs of rent suits in the provinces of Agra and Oudh and about two and a half lakhs are title suits. I suppose these five lakhs suits involve a large number of processes to be served and has it never been prominently brought to your notice that the service has been improper or the process-server has been dishonest?

A. Complaints are certainly there, but I cannot say that they are worse or better as I have not gone into the matter comparatively.

Q. Can you tell us from what class the revenue process-servers are recruited?

A. I do not know.

Q. What are their pay and prospects; are they better paid than the civil court process-servers?

A. I do not know what is their pay but I might let you know afterwards.

*Mr. Justice Stuart.*—Second grade civil court process-servers get Rs. 9 a month and first grade Rs. 10-8. There is a difference of Rs. 1-8.

Q. Now with regard to recruitment of munsifs we understand that the practice has lately been changed because the Government insists that they should be selected at the age of 27 years so that it does not give them much time to put in practice before being selected. Is there any reason why the age limit should not be raised to thirty as is the case in Bombay or thirty-two as in Madras?

A. I do not know what was the reason to introduce that change.

*Mr. Justice Stuart.*—The main reason was that the man does not get pension as he is to retire at the age of 55.

Q. But still I suppose it would be better if men, who have got some experience at the bar, are taken for judicial service. I think they will be more useful than those who have got no practice at all.

A. I understand from what lawyers have told me that pleaders in the beginning have a very unhappy time and they are very uncertain whether they would succeed or not. They do not get any real work to do. There is nothing like the English law according to which juniors go with seniors to help them and to learn how cases are conducted.

Q. In other provinces we generally get people up to the age of 30 or 32 and so it is possible for them to have practice for five or seven years.

A. In these provinces it is not necessary. I do not think they can learn much in five or seven years.

Q. So you think that it is not good to recruit men who have practised for five or seven years because they get very little work and no important cases are given to them?

A. Yes.

Q. But would it be possible to select only those men who have conducted a certain number of important cases?

A. I am afraid, I have no knowledge of that. I cannot say anything whether they receive important cases at all.

Q. With regard to competitive examination, do you consider that competitive examination for deputy collectors has proved a successful experiment?

A. We have held that examination for two years. One this year and one last year. The impression of two or three members of the board was

that about half of the men who were chosen by nomination would have got through the examination and the rest would not have been successful.

Q. Do you not think that if an examination is held, or men are recruited by holding a competitive examination, those communities who are somewhat backward would be entirely deprived of any chance? Many people consider it to be a very serious objection.

A. Tahsildars are generally promoted naib-tahsildars and about half of them are selected and half of them are nominated. Then again tahsildars are promoted to deputy collectors.

Q. So it is possible to nominate a certain number of these men to the posts of munsifs and then promote some of them to higher offices?

A. Yes.

*Sir T. Desikachari.*—I would like to have figures with regard to duration and expenses of some of your big Court of Wards suits.

*Mr. Justice Stuart.*—Could you let us have statistics showing how long these cases lasted from institution to first decision, then again to decision of appeals and then again to the Privy Council and how much they cost? The figures, I think, are not confidential and we can have them.

A. Here are some of the statistics. Here is a family dispute between one ward and her husband. There were 42 adjournments lasting over three years and the costs were about ten thousand rupees. The case related to a Mohammedan family and was about restitution of conjugal rights. Then there is another case in which there were about 50 adjournments involving about three or four months and the costs were Rs. 9,600. Well I got these cases compromised.

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**Note, dated the 17th April 1924, received from Mr. R. BURN.**

When I gave evidence before the Committee on April the 3rd, I was asked to send further information on several points. One matter was the castes of candidates selected as Deputy Collectors by competitive examination. I have now got statistics for the two years in which the examination was held. They show that out of 9 Hindus taken in the two years two were Brahmans, two Kshattriyas, one Vaishya, one Khattri (a caste more common in the Punjab, which regards itself as Kshattriya but is regarded by some Hindus as Vaishya) and three Kayasthas. I should say that the proportion of the Kayasthas, namely one-third, is about the same as or probably slightly less than the proportion of Kayasthas taken by selection.