REPORT OF THE CIVIL JUSTICE COMMITTEE

1924-1925

Appendix No. 1—MEMORANDA WRITTEN BY CO-OPTED MEMBERS

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Memoranda written by co-opted Members of the Civil Justice Committee.

Babu DURGA PRASAD GHOSE, Sub-Judge and Assistant Sessions Judge, Alipore (now District Judge, Rangpur).

Devolution of powers and the more extensive application of the summary procedure.

It is a general complaint that there is delay in disposal of cases in the civil courts and according to most of the witnesses it is mainly due to insufficiency in the number of judicial officers. As, however, according to the Resolution of Government of India the Committee cannot enquire into the strength of the judicial establishments maintained in the province, the attention of the Committee has been directed to finding out remedies other than the increase in the strength of the judicial establishment. When the work is heavier than what can conveniently be managed by the existing staff something must be done to reduce it in volume in order to attain more expeditious disposal of cases, and the reduction in volume would be possible only by devolution of powers and the more extensive application of the summary procedure.

Munsifs.

Taking the munsifs' courts in Bengal into consideration, it is found that they get about 3 lacs of *ex parte* rent suits in the year for disposal. Though the hearing of *ex parte* rent suits does not take much time the munsifs have evidently to devote from one to one and a half hours each day during a period of four months, from June to September, in disposing of *ex parte* cases and that is a fairly long time which can be better utilized if some means can be devised either to relieve them of that work altogether, or to minimise their labour in that connection to an appreciable extent.

Under the Village Self-Government Act introduced in Bengal in 1919 there are now union courts in many sub-divisions for trial of civil suits. (*a*) My first suggestion is that *ex parte* rent suits based on the record of rights, or registered patta or kabuliat, may be safely given to them.

(*b*) The next suggestion that may be made in this connection is the more extensive use of the Public Demands Recovery Act in respect of cases arising within zemindaris where there has been the record of rights and it has been kept up-to-date. The Act has application to all estates in the hands of the Court of Wards and has recently been extended to some zemindaris where there has been the record of rights under the Bengal Tenancy Act. If the operation of that Act is extended to several other zemindaris or estates it would not be necessary to increase the number of revenue officers, as it would only mean an addition to the work of the ministerial staff.

(*c*) The third suggestion is that the High Court should frame a rule to prevent claims for damages at 25 per cent. being made in cases other than those in which the arrears are for a period

shorter than three years, and claims for cesses in excess of the usual rate of 6 pies in the rupee being made without the plaints being accompanied by the valuation roll, and that *ex parte* rent suits would automatically terminate in decrees if the summonses on the defendants are found to have been served. An affidavit may be taken in proof of the claim, if it is not charged for.

As regards rent suits in which the defendants would enter appearance, the provisions of Order 37, Civil Procedure Code, should be made applicable and the leave to defend a suit should be refused if after hearing the defendant in chamber the court is satisfied that there is no substance in the defence.

If the munsifs can be relieved of much of their work in connection with the rent suits, then there may be an all round extension of jurisdiction to all munsifs to try suits up to Rs. 2,000, and to a selected few at sadar stations to try suits up to Rs. 5,000 in value. In the Madras Presidency all munsifs exercise jurisdiction in suits up to Rs. 3,000 in value and in Bihar some munsifs have been given powers to try suits up to Rs. 4,000 in value. They should also be vested with small cause court powers up to a limit of Rs. 500 in money suits and with powers under section 153, Bengal Tenancy Act, subject to the existing restrictions, in suits up to Rs. 100. The extension of jurisdiction to try suits up to Rs. 5,000 in value to selected munsifs at the sadar stations will be productive of another good result; it would remove the anomaly of inexperienced civilian judges, who are quite ignorant of the civil law, sitting in judgment upon the decisions of experienced subordinate judges.

Subordinate Judges.

With the extension of the jurisdiction of munsifs and the conferment of more summary powers on them the subordinate judges would be relieved of much of the petty cases and I think they would in that case be able to pay closer attention to the more important cases and dispose of them more quickly than at present. They should also be vested with larger summary powers, namely, with small cause court powers in suits for money and on simple mortgaged bonds, when the question of priority of mortgages does not arise, up to Rs. 1,000 in value. Such mortgage suits would present no difficulty, if tried under the small cause court procedure, and a final decree be made at once as in other money suits. The small cause court powers should always be exercised by one of the subordinate judges at a station so that there may not be broken days with more than one subordinate judge on the small cause court day.

The congestion is the heaviest in the subordinate judges' courts at the present time and expeditious disposal of cases can be attained only by relieving them of the petty cases which now take a lot of their time. The proportion of subordinate judges to munsifs in Bengal is about one to six and they have to dispose of the major portion of the appeals from munsifs' decisions, and unless they are relieved of an appreciably large portion of their original cases I do not see how the complaint about the delay in disposal of the cases

can be met. A mere tinkering with the procedure here and there would not, I am sure, do much good.

District Judges.

The district judges should also be relieved of much of their sessions work and miscellaneous cases in order that they may have more time at their disposal to attend to more important matters. At present the subordinate judges always do succession certificate cases, both contested and uncontested, uncontested probate cases and at some stations, insolvency cases. They may also be vested with powers to try land acquisition cases, if the number is not large, contested probate and guardianship cases. If the district judges are relieved of such work they can personally attend to matters of administration and supervision of the work of the subordinate judiciary and hear larger number of appeals of all kinds from the judgments of munsifs and subordinate judges (if no change is made in the present system) regarding whose efficiency he has to report to the High Court. In the case of civilians of little civil experience they should have time to take up original suits of every type occasionally so that they may be better able to suggest improvements at the time of their periodical inspections and follow intricate cases in first appeal while on the High Court Bench. The district judges should have the same summary powers as have been suggested with reference to subordinate judges.

Procedure.

A stricter enforcement of the provisions of the Civil Procedure Code may have some effect in simplifying cases, but I do not think it would go a great way in expediting the disposal of cases or removing the congestions in courts. The examination of the pleadings in each case by the presiding judge as the plaints and the written statements are filed, and the fixing of the issues in each case after reading the pleadings, examining the parties and hearing the pleaders representing them at the first stage may simplify matters to some extent, but they are not calculated in the present state of things to reduce the volume of the work that has to be done by a judicial officer. Such a procedure would rather add to it and would occupy most of his time which he could otherwise employ in trying and disposing of cases.

Pleadings.

As to the examination of the pleadings, *i.e.*, the plaints and the written statements, in each case by the presiding judge himself the task would be impossible of performance in the present state of things, when the number of institutions is so large. The present practice is that the plaints and the written statements are examined by the sheristadar in order to see if they are in order, and when he draws the attention of the presiding judge to any matter which is

prolix or irrelevant or argumentative the judge asks the pleader concerned to amend the plaint or the written statement, if he agrees with the sheristadar. What generally takes place on such occasions is a discussion between the judge and the pleader concerned and a pretty lengthy argument by the latter. Then a middle course is adopted and some modification is made, but if ultimately the pleader does not comply with the orders of the court it is unable to enforce them, inasmuch as the Code does not provide for the rejection of the plaint or the written statement under such circumstances.

In the High Court also this work of the examination of pleadings is left in the hands of the office and the judges have not to worry themselves over it. If this work has to be done by the presiding judges they will spend two or three hours a day over it and instead of speeding up work it would cause a greater delay in disposing of such cases.

Issues.

The fixing up of issues at the first stage of the case after reading the pleadings, examining the parties and hearing the pleaders representing them will also occupy much of the judges' time and the whole day may be taken up in checking plaints and written statements and settling issues. As the law stands at present, the court cannot compel a party to disclose his evidence at the first stage (the other side may take an undue advantage of it), the issues will have to be raised on the basis of the pleadings only, and to cut out issues at that stage would therefore be next to impossible. Under the law every fact affirmed by one party and denied by the other would form the subject of an issue and if the judge is to go by the pleadings only, issues will have to be fixed with reference to all the pleas, which have been taken exception to by one party or the other. Amongst the mofussil suitors there are very few who can present the legal aspect of their case and so the examination of the parties would not be helpful in striking out issues. For the legal objections the pleaders must be questioned and they would always repeat the pleadings. As has been stated by some witnesses, parties do not bring in witnesses or adduce evidence in view of the issues but as they are advised by their lawyers and the fixing up of some issues by the Bar does not, as a matter of fact, lead to protracted hearing. At the time of trial generally some of the issues are re-cast and evidence regarding some of the issues is never adduced. Many cases, besides, are either compromised or decided *ex parte* or dismissed for default, and the devotion of much time to the settlement of issues in all cases at the first stage would be productive of little good result. In order to avoid the probable waste of time I suggest that the settlement of issues should be postponed as is the practice of the Original Side of the High Court till the trial comes off. If at the commencement of the trial the case is properly opened and the issues are fixed after hearing pleaders for the parties there would be the saving of good deal of time and the pleaders would experience no difficulty in presenting their respective cases and adducing evidence in support thereof.

Interrogatories, discovery and admission of documents and facts.

The provisions in the Civil Procedure Code, Orders X to XII, are not generally followed in the mofussil courts excepting at Alipore, the headquarters of the district of 24-Parganahs, and the reason for it is that those Orders are not within the syllabus of the B. L. examination of the Calcutta University, and the mofussil court pleaders are not coversant with the procedure laid down therein. The legal advisers of the parties to litigation in the mofussil courts being thus unacquainted with the usefulness thereof, there is a good deal of opposition from the opponent's pleader and nothing can be obtained by the court by the examination of the parties. As has been deposed to by witnesses having knowledge of the mofussil court practices, no party to a suit or a proceeding can be persuaded to admit any fact set out in the pleadings or the documents referred to by his adversary, as the case may be. This deficiency on the part of the mofussil pleaders should in the first place be remedied if those provisions of the Civil Procedure Code are to be used to any advantage. The remedy that has been suggested by some witnesses is the inclusion of those orders in the syllabus of the B. L. examination and a provision for a sort of training before a pleader is enrolled as a legal practitioner.

Service of Summons.

The staff of process-servers attached to the civil courts is undoubtedly corrupt and without tips they do not serve any process, but the plaintiffs and the decree-holders bent upon obtaining decrees on false or bolstered up claims and taking execution proceedings without the knowledge of the judgment-debtors are principally responsible for the suppression of the processes. They in such cases collude with the process-servers and obtain false returns of service. As many witnesses do not approve of the change of the agency altogether, and as I doubt if the employment of some other agency over whom the district judge would have little or no control would at all be a remedy, I suggest that the present system should continue but more effective safeguards should be provided for. The identifier at the service of a process rarely does his duty. He does more harm than good and that system may be altogether abolished. The process-server should in every case approach the president panchayat or in his absence, the collecting panchayat, or any other member thereof, or the secretary of the union board, where there is any, for giving him somebody to identify the person to whom the process is addressed and after service he (process-server) should obtain the signature of the identifier and of the person he approaches to the return and the diary. In addition to such service there should be service through the post office in cases in which the defendant would not appear on the fixed date. If in every case service through the post office is had recourse to, it would entail an additional expenditure in the postal department for additional staff. In case of service through the post office it is desirable that registered post cards should be addressed to the defendants.

Adjournments.

The number of adjournments is sometimes too many in a case and is indeed a source of harassment to the party to a suit. It is the heaviest in the subordinate judges' courts and the main reason for it is the shortness of the cadre. There is more work for them to do than what they can manage, and the inevitable result is the adjournment of suits for any ground good, bad or indifferent. However frivolous the grounds may be, the adjournment has to be allowed simply because the presiding judge is unable to take up the case.

Diary.

Another reason for it is the system of court diaries. According to the present system there is a classification of cases, and for each day are fixed some cases for settlement of issues, some for final disposal at the first hearing, some cases after adjournment, some for interlocutory orders and some execution cases. In the subordinate judges' courts there are some appeals in addition to those mentioned above. Some of the cases in the day's cause list are in the preliminary stages and the parties are in course of preparation, but there are some which may be treated as ready, though the parties do not come ready apprehending that the court would not be in a position to take up those cases. As the people of this province are by habit dilatory, and the witnesses do not come to court immediately after they are summoned, because of a wrong impression and a false sentiment that their position and importance would be lowered in the estimation of the court if they attended it readily, some adjournments are absolutely necessary. If they are allowed one long adjournment covering a period of six months instead of six monthly adjournments, the parties would very likely be in the same position as they were when the long adjournment was allowed. Besides, long adjournments for five or six months in munsifs' courts would rather impede speeding up of cases instead of helping it. The number of institutions is very heavy in most of the courts and unless a fairly large number of cases is fixed for a day there is not much chance of a large disposal. Many cases are compromised and such compromises always take place in court when the parties come with their witnesses and the latter suggest some sort of amicable settlement. Long adjournments may also lead to confusion. Sometimes cases may drop out and remain in some obscure corner of an almirah in the office unnoticed for a long time, if the bench clerk inadvertently omits a case in the advance diary. In munsifs' courts that happens sometimes even now if the parties are not very vigilant.

Ready list.

Unnecessary adjournments can only be avoided if the system of the ready list of the High Court is introduced and there is an arrangement for previous intimation being given to parties about a fortnight before the case is taken up. The introduction of the

prospective list as in the Original Side of the High Court will not be free from difficulties and I don't think it can be bodily introduced in mofussil courts. In mofussil courts parties and their witnesses have to come from a distance and they will have to be in attendance at the place where the court is at a pretty heavy expenditure, from day to day, as long as their turn does not come. The diary, of course, helps the inspecting officer in checking the amount of work that is done on particular days and should not be abolished altogether. So far as ready cases are concerned those that would be taken up should be brought on the diary and the progress should be shown from day to day till disposal. As regards other cases in course of preparation they should be shown in the diary as at present.

Inspection.

There should be periodical inspections by district judges and High Court Judges, if possible, but it should always be borne in mind that an inspection, in order to be of any use, must be made by officers well acquainted with civil work. The inspection of the registers and the work of the ministerial staff may be done by some responsible officer attached to the district judge's office, but the inspection of judicial work should always be done by a judicial officer holding a position higher than that of the officer whose work is to be inspected. Inspections by junior civilian judges who have had absolutely no civil experience and who are incapable of making any rational suggestions should rather be discouraged as productive of no good results. If any subordinate judicial officer requires driving that can be better done by a careful scrutiny of the returns and the periodical examination of records of contested cases received from the record-room.

Returns.

Judging of an officer's efficiency by referring to his monthly or quarterly returns should always be discouraged by the High Court, if district judges have ever done it. Experienced district judges have not, within my knowledge, done it, and I do not know if the remarks of some of the Bengal witnesses are well-founded. I know of district judges who have condemned disposal of cases in post haste and have spoken in unmistakable terms against sacrificing quality to quantity. The returns are no doubt good in one way as they check indolence, but are defective in many ways. They do not show anything but disposal and the result is that judicial officers neglect other work and pay their whole and sole attention to the question of disposal only. The returns should be continued, but there must be columns for showing every kind of work that a judicial officer has to do and a due consideration should be made of other kinds of work also. Interlocutory orders and orders in miscellaneous cases are never shown in the returns though much time has to be devoted to such work.

Registrars.

Judicial officers have at present to do some amount of office work daily and to attend to cases from start to finish. For want of time

they are unable to examine plaints and written statements. They are also unable to strictly comply with the provisions of the Civil Procedure Code regarding the preliminary stages of a suit and they naturally apprehend that their disposal would suffer if they have to pay more attention to the preliminaries. The only remedy that has been suggested by some witnesses is the appointment of a registrar at every sadar station and in heavy sub-divisions and chowkis. One of the senior subordinate judges should be appointed registrar at the sadar station and the institution of all cases should be before him. He should have a regularly equipped office and he will do all the preliminaries until a suit is ready for hearing and will attend to execution cases until matters become contentious. The ministerial staff at the sadar should be under his control and he will supervise the work of each section in the same way as the registrar in the High Court does. The other judicial officers should each have a bench clerk only and the bench clerk will have the records of the cases, which will be transferred to his judge in his charge during the hearing thereof. In the sub-divisions and the chowkis where there are more than 2 courts the same system should be followed and one of the fairly senior munsifs should be appointed the registrar. These registrars will also try cases to be given to them by the district judge, when possible. In the matter of distribution of cases also he should act according to the directions of the district judge. In the sub-divisions and the chowkis where there is such a registrar the posts of sheristadars, accountant and nazir should be abolished and the registrar should manage the ministerial part of the work with a superintendent and assistants so that there would be no additional expenditure on that account.

Commissions.

Commissions for examination of witnesses as also for local enquiry always cause an enormous amount of delay. Commissions for examination of witnesses are always issued to junior pleaders and they are at the mercy and full control of the pleaders for the parties. Those pleaders always abuse the right of examination and cross-examination and what ought to be finished in a few hours goes on for days. They again don't sit for long and try to increase their fees by insisting on short sittings also. In consequence of short sittings, long examination and cross-examination of the witnesses, and the inability of the commissioner always to get the pleaders for the parties to attend the commission enquiry on the day fixed by him, the commissioner sometimes takes several months to finish the commission. This has been the subject of general complaint and different witnesses have made different suggestions to remedy the evil. Some have suggested that the commissioners should be invested with larger powers and that they should disallow all irrelevant questions but there are some difficulties in giving much wider powers to the junior pleaders who work as commissioners. In the first place, they are not in a position to exercise such powers in consequence of their inexperience and their

ignorance of the facts of the case, and in the second place, their rulings would not be submitted to, and matters would be referred to the court issuing the commission, or to a court of appeal, if the commissioner be invested with powers co-extensive with those of the court. Those witnesses have also suggested the issue of commissions to senior pleaders only, so that there would be less chance of the discretionary powers being exercised arbitrarily, but the acceptance of such suggestions would mean a considerable increase of the cost of commissions, and the withdrawal of the little help that is at present extended to junior pleaders to enable them to carry on anyhow. At present the scale of fees allowable to commissioners is Rs. 4 in munsifs' courts and Rs. 10 in subordinate judges' and district judges' courts, and unless it is increased four times so far as munsifs' courts are concerned and doubled as regards the other courts, the fees would not at all attract senior pleaders of some position. It is no doubt a difficult question for solution, but I think, in order to follow the line of least resistance, parties on all such occasions should be asked to file interrogatories and cross-interrogatories. The party who is to cross-examine the witness must, however, be given the liberty to put some questions in cross-examination in addition to the cross-interrogatories that should be filed by him.

The delay in the execution of commission for local enquiry is sometimes due to the land to be surveyed and measured being under water during the rains, and this cannot be remedied. But sometimes it is owing to the court, which issues the commission, having no control over the commissioners. Under the present system only the district judge keeps the list of the men capable of executing such commission, and whenever there is an application for the issue of such a commission, the court concerned has to apply to the district judge for the nomination of a man, and after he has nominated a man which oftentimes takes some time, a writ of commission is issued to him. The commissioner then submits his diary to the district judge and the court which issues the commission has little control over him. When there is much delay the court has only to write to the district judge, and it is for him to take necessary action. The remedy that has been suggested by the witnesses is the transference of the controlling power from the district judge to the court concerned and it is quite practicable. Each court should have a list and it should make its own selection and should exercise all the control which is at present within the competence of the district judge alone to exercise.

Interlocutory Orders.

Applications for interlocutory orders are numerous in all courts, especially in subordinate judges' courts. On each application the court has to spend much time but that is not all. Just as the court makes an order, either making the rule absolute or discharging it, there is an appeal or a motion, as the case may be, and the court of appeal sends for the record of the case and stays further proceedings, and the result is that the case is held up for months. Many wit-

nesses admit this mode of interference to be one of the causes of delay in the disposal of suits, but they would not like the curtailment of the right of appeal or motion. They only suggest that the appellate court or the High Court should not in such cases send for records or stay proceedings beyond the execution of the orders sought to be revised. That suggestion may be accepted, if the curtailment of that right is not thought advisable. Some witnesses, however, have no objection to restricting the power of revision and it may be suggested that in a case of revision under the Provincial Small Cause Courts Act the decretal amount should be deposited in Court and that no revision petition under section 115, Civil Procedure Code, should lie against such interlocutory orders as can be attacked in an appeal against the decree in the suit.

Appointment of guardian ad litem.

Some delay is caused by reason of repeated notices being issued in connection with the appointment of a guardian *ad litem* of a minor defendant. Many witnesses have suggested the reversion to the old system of appointing the proposed guardian as guardian *ad litem*, if he did not object to it, as the remedy, and their suggestion may be accepted.

Recruitment.

Those who are in the know could not denounce the present system of recruitment, but many lawyer witnesses have, as a matter of fact, condemned it and have made different suggestions. As has been found from statistics, the average duration of contested suits before munsifs is 276 days, and even taking the average duration of contested title suits, where possession is sought to be recovered after a declaration of title, to be greater than 276 days, it does not generally exceed 12 months. For speeding up work, therefore, the system of recruitment of munsifs need not be changed. If, in view of the wishes of many witnesses, it be considered necessary to introduce a new system of recruitment, so far as munsifs are concerned, let the selection be made by a competitive examination amongst pleaders who were articled to vakils or senior district court pleaders. A few witnesses have suggested that 50 per cent. of the subordinate judges should be recruited from amongst practising pleaders of some standing. Such a suggestion means the marring of all prospects of the munsifs. In Bengal the proportion of subordinate judges to munsifs is about one to six and already the promotion of munsifs to subordinate judges is very slow and the taking in of some outsiders as subordinate judges would be throwing the munsifs overboard. In other provinces munsifs get to subordinate judgeships in 12 to 14 years, but in Bengal a munsif cannot aspire to the post of a subordinate judge in less than 18 to 20 years, and sometimes more. Such a policy would also be suicidal, inasmuch as the service would not then attract men of parts and ability. Under the present system vacancies in subordinate judgeship are filled up from amongst senior munsifs by strict selection, and mostly the subordinate judges are, according to

unbiased witnesses of eminence, hard-working men of experience and ability. Even the Privy Council have, on more occasions than one, found their judgments to be quite sound and made favourable remarks about them. Instead of discouraging them, higher appointments should be opened to them in larger numbers to give an additional impetus to their work. They are under the present system the worst sufferers, the difference in pay between a senior munsif and a junior subordinate judge being only Rs. 50 though formerly it was Rs. 200. They too get a biennial increment of Rs. 50 like the munsifs up to Rs. 850 and this is no improvement on the old system. At least half the district judgeships and two High Court judgeships should be opened to them in recognition of their services.

Execution of decrees.

As is very aptly said, a man's trouble begins when he obtains a decree. The decree-holder has so many difficulties to encounter in the execution of a decree that he cannot realise the decretal amount fully and gives up the balance as lost after some years' efforts. In the year 1922, there were 584,870 execution cases in the civil courts (other than small cause courts) in Bengal, of which 116,805 cases were pending at the close of the year. Decrees were fully satisfied in 149,781 cases, partly satisfied in 92,671 cases and the execution proved infructuous in 216,020 cases. Out of 216,020 cases in which the execution, according to the court records, proved infructuous, there was presumably a certain percentage in which the decree-holder realised the money out of court and did not choose to give an intimation thereof to the courts concerned. In a large number of cases, however, it really proved abortive, and it was due to decree-holder's failure to get hold of any property of the judgment-debtor. The institution of such execution cases is considered necessary only to comply with the requirements of the law of limitation, according to which there must be an execution of the decree once in 3 years, in order to keep it alive. Then in the year 1922 there were 81,987 miscellaneous cases which were only obstacles in the way of the decree-holder's receiving their decree money quickly. Those miscellaneous cases may be classified under two heads, one class of cases arise before and the other class after the sale of the immovable property that might be attached in execution of the decree. Cases anterior to the sale are under Order XXI, rule 2, Order XXI, rule 58, and under section 47, Civil Procedure Code, and those posterior to the sale are under Order XXI, rules 90, 97, 98, 99 and 100. The institution of such cases always causes delay in the recovery of the decree-holder's dues and when appeals from orders in some of those cases go up to the High Court the decree-holder has to sit upon his decree for years. Another cause of delay in the execution of decrees is the service of too many processes at that stage. Different witnesses have made different suggestions to simplify the procedure and I think such of the suggestions as would not arouse a storm of protest from the litigant public should be accepted.

Notices.

So far as the notices required to be served under the present Code are concerned, they should not be abolished, but some sort of simpler method of service should be adopted. It has been suggested by some witnesses that the full address of the parties to a suit should be registered and the pleader appearing for the defendant in the suit should be served with the requisite notices in the execution proceedings. The suggestion is undoubtedly very reasonable but certain alterations in the Code will have to be made, as for instance, Order III, rule 4, clause (2), which lays down that the appointment of a pleader, when it is accepted by any, shall be filed in court, and shall be considered to be in force until determined by the client, etc., or until all proceedings in the suit are ended so far as regards the client. In order that the power may be in force during the execution proceedings the words "and the execution case following it" or some such words ought to be added after "suit." The service of notice under Order XXI, rule 66, oftentimes leads to an enquiry regarding the valuation of the property under attachment and some witnesses have suggested the abolition of the notice altogether. I think the enquiry ought to be avoided but the notice should not be abolished. If at the sale of the property the valuations given by the decree-holder and the judgment-debtor, when there is a difference between them, are notified to the intending purchasers, neither the judgment-debtor nor the auction purchasers will have any grievance, and the requirements of the law would at the same time be complied with.

Writ of attachment and sale proclamation.

Some witnesses have, with the object of shortening the period that intervenes between the institution of an execution case and the sale of the attached property, suggested the simultaneous issue, as in rent execution cases, of the two processes, but I do not think that is possible. In rent execution cases claims cannot be preferred by anybody to the attached property but it is a contingency of frequent occurrence in other execution cases and between the publication of sale proclamation and the date of the sale, *i.e.*, 1 month (*vide* Rule 68, Order XXI), there would not be sufficient time for a claim being preferred and the case being disposed of. Besides, the execution of two processes separately at some interval would serve the purpose of advertising the sale better than the simultaneous execution of the processes. The people of the locality will be better informed of the sale if they are notified twice on different dates than in the case of a single notification. At present a copy of the sale proclamation is not served upon the judgment-debtor, but it is desirable that a copy of it should be served upon him.

Cases under Order XXI, rule 2.

The enquiry in a case under Order XXI, rule 2, is often somewhat elaborate and it takes a long time. When the applications in such cases are often, as the result of the enquiry shows, found to be

frivolous and made with a view to delay the execution of the decree, it is very desirable that something should be done to put a stop to it. Many witnesses have complained of the delay, and some have suggested the amendment of Order XXI, rule 1, clause (*b*), so as to render the taking of false pleas of payment an impossibility, and I think the words " by postal money order or on a registered receipt " should be added after the word " decree-holder."

Claim cases.

Claims to attached property are investigated under Order XXI, rule 58, Civil Procedure Code. They are no doubt summarily disposed of, but the claimant and the decree-holder have to be given some time to be ready with the necessary evidence and there is always some delay in the execution of the decree. The delay before the decision in the case, however, is negligible in comparison with the delay that inevitably follows the institution of a suit, by the party against whom the order is made, under rule 63, Order XXI. If the claimant loses the case and brings the suit, he applies for stay of the sale by an order of injunction and the proceedings in execution are stayed indefinitely. If the case goes up to the High Court in appeal then the proceedings may be held up for years. It is the order of injunction which results in the execution proceedings being held up indefinitely and I think there should be some provision in the law to put a stop to it. In the face of an order made by the executing court after an enquiry there should not be an injunction and the sale ought to take place. If ultimately the suit by the unsuccessful claimant succeeds the sale, as a matter of course, would be set aside and he would get damages.

Objections under section 47.

Cases under section 47 cause, I think, the greatest harassment to the decree-holders. Second appeals lie in such cases and the judgment-debtors very often make an abuse of the protection that is afforded by the section. Applications under section 47 sometimes are made even on the day of sale and the result is that the sale has to be stayed and the proceedings in execution are held up until the case is finally decided. Such applications are found to be frivolous in most cases and in those cases they are made only to delay or prevent the execution of the decrees. If the pleader representing the judgment-debtor can be communicated with, there should be a time-limit regarding the institution of cases under section 47 and that would save some harassment to the decree-holder.

Cases under Order XXI, rule 90.

Some witnesses have suggested the repeal of the rule altogether, whereas some others have suggested that its scope should not be restricted in any way. I think the repeal of the rule would prove disastrous to the judgment-debtors as there is no other provision under which the judgment-debtors would be entitled to challenge the sale. No suit would lie for setting aside

the sale and the judgment-debtors would be hard hit, if such a suggestion is accepted and no other remedy is provided for. I further think that the scope of the section should not in any way be restricted, even though sometimes such cases fail and the decree-holder is harassed. It has been sometimes noticed that valuable properties have been sold for a trifle in consequence of decree-holders' tricks and Order XXI, rule 90, gives the judgment-debtors a valuable remedy. It has been suggested by a few witnesses that the judgment-debtors should deposit the purchase money or furnish security to that extent before an application under Order XXI, rule 90, is registered. If such a condition be imposed upon the judgment-debtors the result would be the abolition of the remedy altogether. A man whose property has been sold in consequence of his inability to pay his debt would find it impossible either to deposit the purchase money in court or to furnish security to that extent. Nobody would stand surety for such a man.

Cases under Order XXI, rules 97 to 100.

These rules provide for a summary remedy and I do not think there should be any change in the law.

Limitation.

Many witnesses have suggested the reduction of the period of 12 years' limitation, as provided for in section 48, Civil Procedure Code, to 6 years and the amendment of article 182 of Schedule 1 of the Limitation Act. They are also for giving the decree-holders the liberty to execute the decree at any time within 6 years. I think their suggestion may be accepted, provided the decree in every *ex parte* case is in the first instance executed within a year of it. I would suggest the limitation of one year in the first instance in the case of *ex parte* decrees, to enable the judgment-debtor to prove the plea of fraud, if any, that might be practised by the decree-holder in obtaining the decree, with the help of the service return which under the High Court rules is destroyed after *3* (*sic*) years.

Appeals.

In addition to what I have suggested regarding the grant of summary powers to munsifs, subordinate judges and judges, I suggest that in order to check many frivolous second appeals there should be a curtailment of the right of second appeal. Some witnesses are for it and this would prevent unnecessary prolongation of litigation in petty cases. Second appeals should not I think be allowed in all cases of value up to Rs. 500.

Revision.

As I have already mentioned, 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 no revision petition under section 115, Civil Procedure Code, should

be entertained against such interlocutory orders as can be attacked in appeal against the decree in suit.

Change in substantive law.

All future partitions of immovable properties, all partnerships based on contracts and all transactions relating to immovable properties should be effected only by registered instruments. Similarly the discharge of obligations created by registered instruments and documents executed by persons who cannot sign their names should not be treated as valid unless they are registered.

Rai KAILAS CHANDRA BASU Bahadur, Senior Government Pleader, Alipore.

I have the honour to submit the following report for the consideration of the Civil Justice Committee. In submitting the same I feel that although it should be beyond the scope of my report to deal with matters not strictly special to Bengal, I must deal partly with some matters which are of general application.

2. The terms of reference of the Government of India are "to enquire into the operation and effect of the substantive and adjective law.....followed by the courts in India in the disposal of civil litigation.....with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for more speedy.....despatch of business and for the more speedy.....execution of the process issued by the courts." The Committee will not enquire into the strength of the judicial establishment.

3. It seems to be clear from the terms of reference, as also from the principle underlying the same, that the Committee has the power to suggest change and improvement in the substantive and processual law for the speedy and satisfactory and economical despatch of business.

4. Experience has shown that, in many cases, the administration of some part of substantive law is attended with necessary delay but the same has been placed in the present state with so much judicial consideration that any attempt to change the same with the object of getting at the result speedily may not be attended with success. For instance the law as to succession to an impartible estate, the transferability of impartible estates under the Hindu law and various questions arising as regards transfer and succession in the Mitakshara school of Hindu law and various other matters are subjects of much contest. The trials of these cases are generally very long, involving examination of numbers of witnesses and of numerous documents. Each case has its own importance. But I do not think anybody would approve of simplifying the law by codification.

I do not think it is the object of the reference to empower the Committee to survey the whole subject of substantive law and to suggest a change of the same with a view to have speedy disposal of matters. It would require a careful study and analysis of the whole substantive law of the land to suggest changes and the limited time at the disposal of the Committee is quite inadequate for the purpose, but at the same time there are certain very glaring instances in which interference seems to be requisite to put a stop to unnecessary prolongation of proceedings. I shall deal with the subject shortly later on.

5. But the most important branch of enquiry well within the terms of reference is with regard to change and improvement of the law of procedure including execution of processes. It is a subject of common complaint that there are meaningless rules of procedure and unnecessary requirements of the law. It is also evident that the rules of procedure as they are, which are undoubtedly the outcome of long experience, framed with the object of shortening proceedings, are not followed in practice.

6. But in order to deal with the subject it is necessary to bear in mind the nature of law suits and the machinery at present dealing with the same. Suits are generally divided into three groups:—(1) Title, (2) Money and (3) Rent. Besides them there are various cases of other kinds, *viz.*, (4) Probate and administration cases, (5) Guardianship cases, (6) Insolvency cases, (7) Succession Certificate cases, (8) Matrimonial cases, (9) Act XL (curators) cases, (10) Permission to lease and mortgage wakf estates, (11) Cases under the Indian Companies Act, (12) Lunacy cases and various other cases. The courts at present constituted to deal with these cases are (1) District and additional district judges' courts, (2) Subordinate judge's court, (3) Munsif's court and (4) the small causes court. Keeping the division of the courts as they are, the changes and improvements may relate to (1) the location of courts or arrangement in case of too much congestion of courts in one place, (2) redistribution and rearrangement of work amongst them and then (3) as regards the actual procedure in dealing with the cases.

7. With regard to the first point above referred to, I may observe that it has been suggested by some that too many courts in one place, as managed now, tend to unnecessarily prolong the duration of cases. The causes generally stated are (*a*) the want of time of the busiest senior most pleaders in dealing with too many cases and consequent prayers for adjournment of cases, (*b*) the vastness of the area of jurisdiction which necessarily delays the service of process and causes difficulty in the attendance of witnesses, and other causes which need not be specifically mentioned. It is not necessary to discuss the merits of these objections. It is sufficient to say that if a court is really ready to take up a case on a particular day, want of time of a pleader would not be taken into account, but the court generally has other and probably more pressing cases and

it does not mind to grant time on such ground. But at the same time it cannot be ignored that this, *i.e.*, the want of time of senior most pleaders, does occasionally cause some delay in the disposal of cases. The suggestion made by some of the Bengal witnesses that pleaders unnecessarily prolong cases for their personal gain is I think absolutely without foundation. The second cause suggested has also some substance in it. All the subordinate judges' courts are located at sudder; the parties and witnesses have to come from a long distance at great sacrifice of time and money; any accident or mishap in their family would necessitate an adjournment; whereas if the courts are nearer such would not be the case. Then again as regards service of summonses and processes, it may so happen that different peons may have to pass in the same way for their work and one may have to go a long distance to serve one process while others are entrusted with the service of other processes in intervening places. This means waste of time and also money. The remedy suggested is to decentralise the courts and bring them nearer the litigant's home. This suggestion has been made even in regard to the location of the munsifs' courts. Instead of locating too many in a *chowki* or sub-division, one such may be conveniently located in a central portion in a reasonable area. But, of course, this would mean present cost. If however the experiment can be tried without much cost, I think it may be given a trial. But with regard to the location of the court of the subordinate judge in one or two *chowkis* or sub-divisions, this I think may be tried without incurring much cost. The matter has been very exhaustively dealt with by Mr. J. N. Lahiri, subordinate judge, Bengal, in his notes submitted to the Committee which I had the advantage of perusing. It is certainly evident that the parties and witnesses will be in a very much better position and I doubt not there will be very few applications for adjournment and less difficulty in securing the attendance of witnesses if the last suggestion is accepted.

8. In a district like 24-Parganas where there are four district and additional district judges, four subordinate judges and occasionally an additional subordinate judge, and three or four munsifs in the sudder at Alipore, some attempt may be made as above indicated by locating at least two subordinate judges' courts, one at Diamond Harbour and another at Basirhat or Baraset, by assigning to them adequate jurisdiction, and I think the experiment will show better results.

9. The other remedy suggested to deal with cases of sudder stations of districts like 24-Parganas is to follow the system of the Original Side of the High Court with some modifications, *viz.*, a registrar or a judicial officer may be appointed whose duty it would be to receive all plaints, register them, deal with all preliminary matters, *i.e.*, attachment before judgment, injunction, receiver, interlocutory orders, settlement of issues, discovery and inspection of documents, interrogatories, etc., issue of commission for examination of witnesses and for local investigation, and then

when the case is ripe for hearing to send it on to one of the other subordinate judges.

10. I am inclined to think that this scheme will not bring about the result desired. If it so happens that a judge who has settled the issues and dealt with any of those preliminary matters were to hear a case, he will, when the case is heard by him, have saved so much time by having dealt with the preliminary matters. If a judge is to try a case when another has settled issues or done the other things, he necessarily will have to go over the same ground again. Also, in the disposal of preliminary and interlocutory matters the judge has an insight into the case which will be of use to him when he tries it and this means time saved; the parties also know that the judge knows all about the case and the trial is in consequence shortened.

Then again the registrar will do these things without the feeling that he will be called upon to hear the case. The issues may have to be resettled by the trying judge, he may not agree with the orders of the registrar as to the soundness of the orders made by him. If however it is proposed that the registrar should transfer the case the moment summons is served on the defendant to appear and file written statement, then I think it would be only adding an officer to do a thing which is automatically done in the office without any time of the judicial officer being devoted to it. Then again, with regard to transfer of cases to one of the courts, if the cases are on the file of the court already, it knows the nature of the cases, the time it might take (which is generally ascertained from pleaders engaged), the steps that are to be taken by the parties and hence it can arrange its file accordingly. A case may be ready on one day and ripe to be sent to any court, but none of them may have time and it would not be possible for the registrar to know when any of them will have time without consulting them, all which means further complications and necessary loss of time. I must not omit to mention that if it were possible to have a peremptory list or board of cases which must continue from day to day until all the cases are finished as is done in the High Court, the suggestion could have been accepted. But I am afraid such a procedure would be absolutely inconvenient to litigants of district courts. They and their witnesses have to come from long distances; there is not sufficient or comfortable accommodation for all of them for a long time; people cannot wait long at a distant place away from their house or places of business; accommodation of witnesses for any length of time means not only heavy cost and trouble, but also the danger of being won over by the other side. Such a list or board of cases would therefore be, in my opinion, unworkable and harassing and ruinous to the parties and witnesses. In Calcutta this scheme works well. And even in 24-Parganas, in Land Acquisition cases relating to land in Calcutta and its suburbs the system of peremptory list of cases was partially adopted; one of the judges fixed cases peremptorily, *i.e.*, fixed dates for cases allocating so many days for such cases when they are bound to be taken up. This system worked well, because

the parties and witnesses generally came from near and had not to put up at hotels and other places. Even if there is some convenience for stopping in Calcutta in regard to litigants of 24-Parganas the cost is too much for mofussil litigants. I am therefore of opinion that this system will not avoid delay.

11. The next question is the redistribution and rearrangement of work among the different classes of judicial officers. This is a subject of some importance. The general classes of cases and different courts that deal with them have been referred to in paragraph 6 above. The district judge and the additional judges are highly paid officers; next to them are the subordinate judges and then the munsifs. It is, I think, expedient that small and trivial and unimportant matters should be left to the lowest tribunal as far as possible. For instance the cases of the groups 4, 5, 6, 7, 8, 9, and other cases referred to in paragraph 6, may be left to be dealt with by the subordinate judge and the munsif with, if necessary, an appeal to the district judge. There is no reason whatsoever why a district judge should hear a case, for instance, of permission to lease wakf property for a number of days or a guardianship or probate case for a number of days, while other cases of greater importance are waiting for decision for months and sometimes for years. If the subordinate judges and munsifs can try complicated title suits, there is no reason why they should not be able to try these cases also and why the district judge should have special jurisdiction. Practically every district in Bengal has additional judges and the sessions work is generally done by them. I think it should be sound policy to leave as much time to the district judge as is compatible with general efficiency in order to enable him to inspect the work of the subordinate courts, hearing appeals from subordinate judges and review cases under section 153 of the Bengal Tenancy Act and miscellaneous appeals and munsif appeals as far as possible. While dealing with this matter one cannot lose sight of the almost general complaint which is made of the effect of what the High Court expects of the subordinate judicial officers in regard to quantity of work to be done by them and of the consequent subservience of those officers in the bringing about of the required standard at the sacrifice, sometimes, of quality and also with the result of congesting the file, leaving contested big and complicated cases which generally go up to the Privy Council to their successors and unduly delaying the trial of a great number of cases and generally increasing the volume of arrears of cases. This is however a matter on which I do not feel competent or called upon to give my opinion or suggest the proper course. The High Court will I doubt not consider this matter and lay down appropriate rules for guidance of subordinate judicial officers, if, as is suggested, the present rules as to the return of work of judicial officers have brought about the unsatisfactory results. I may however say that it can never be suggested that the High Court ever intended or encouraged the practice followed by the judicial officers to show a better result in the way referred to above. But it is indispensable

that the district judges should have sufficient time to inspect the courts under them thoroughly and point out the causes of delay and try to remedy the same. A sense of check brings salutary results. As a matter of fact, we find that district judges very rarely do this part of their duty. In my view this part of the duty of the district judge is as important, if not more than that of deciding cases, and I am inclined to think that a very large amount of delay in the subordinate courts may be avoided if this work is done by district judges regularly. It is also very necessary that the appeals which the district judge has to hear should be heard as speedily as possible. The subordinate courts will know the results soon and may have opportunity to modify their views as to law and procedure in the light of the appeal judgment. As matters stand, it only happens in a very small number of cases that a big title appeal is decided by the district judge while the subordinate judge or the munsif is still in the district. There is no reason as to why appeals should not be disposed of, if not on the first day fixed for the respondent to appear, at any rate on the next day within say about three months from the date of the filing of the appeal. In this connection, it would not be out of place to remark that frequent transfers of judicial officers very greatly hamper the speedy disposal of cases; one must take some time to get control over his file of cases and to know the amount of labour required to dispose of them and if he arranges his file accordingly, he would lose all this if he is transferred soon, and a new man would not get benefit of the work of the other officer. My first suggestion therefore in regard to redistribution of work of courts is to relieve the district judge of the other cases and to authorise the subordinate judges and munsifs with powers to try them. I do not, however, suggest that the land acquisition cases should be left to be dealt with in the ordinary way by the subordinate civil courts. The policy which prompted the law for the trial of these cases by the district judge or by a special judge was very sound and I would leave the practice and the law as it is now, *i.e.*, either the district judge or a judge specially authorised should try these cases. My experience bears out my view in this matter.

12. Before leaving the subject of relieving the district judge of some of the cases as set out above, a question of some importance may be disposed of. It is with regard to the suggestion that the district judge may be relieved of his administrative powers which consist of the control of the ministerial staff, the menial staff, including peons, accounts, copying departments, records and inspection of courts. As a matter of fact excepting the last, most of this work is done under the control of the district judge by the subordinate judges and munsifs. It would no doubt be better and much time of the courts concerned will be saved if this work may be done by any other officer, but that means additional cost. Much of the congestion may be avoided and the service of process may be made more satisfactory if more strict supervision is exercised over the proper departments. It may be said that at present there is

very little control. The nazarat does all the service and at least strict supervision should be exercised over that. As no other efficient agency can at present be contemplated I would say that the system should continue as it is, only that the district judge should take up the nazarat business himself and personally check the work. But in no case should the work of supervision of courts be delegated to any but the district judge himself. It has intimate connection with his responsibilities in judicial matters and in judicial duties as well.

13. The next subject to be considered in this connection is whether more munsifs and more subordinate judges should be empowered to exercise small cause court jurisdiction. I think the pecuniary jurisdiction may be enlarged, and a greater number of judicial officers should be authorised to exercise this jurisdiction, and instead of special small cause court judges, selected subordinate judges and munsifs may be given such powers. I think special small cause courts are unnecessary. I do not know if they would have enough work to do. The cases may be distributed amongst selected officers.

14. The next question is as to whether munsifs should be invested to try cases of more value than Rs. 1,000 or Rs. 2,000, say up to Rs. 3,000 or Rs. 4,000. This would no doubt lighten the file of the subordinate judges but would increase the files of the munsifs which are already sufficiently congested. I think in selected and proper places when the files of munsifs are not so heavy and the file of the subordinate judge is heavy, munsifs may be given power to try cases up to say Rs. 3,000 or Rs. 4,000. The suits may be filed in the subordinate judge's court and if the district judge finds that the subordinate judge cannot speedily dispose of those cases he may transfer them to the file of the munsif. In order to meet the necessities of a particular place, power may be given to selected munsifs to deal with cases of higher value transferred from subordinate judge's file. But I do not approve of the suggestion that as a rule senior or selected munsifs should be given such powers. The power should be given to meet such necessities as indicated above. The general impression seems to be that the quality of justice is higher in the subordinate judge's than in the munsif's decision, although I do not share in that impression, but popular prejudice should be respected. I may mention that the majority of cases in the subordinate judges' courts is of the value of Rs. 4,000 or Rs. 5,000.

15. With regard to the extension of jurisdiction of the courts, it has been suggested that the small cause court may be given power to decide cases on simple mortgage, suits on registered kabuliats in regard to agricultural lands and some other cases. In regard to the presidency small cause court I have no objection to extend the powers to suits on simple mortgages and partnership cases involving small value, cases relating to land of small value, and suits to enforce the right of easement, or right of way. The litigants will get relief more expeditiously and certainly at less cost. People are afraid to go to the Original Side of the High Court

in small cases. They rather forego their rights than ruin themselves by the costly machinery of the High Court. Whatever may be said by parties having vested interests by long enjoyment, the public feeling is and experience also shows that the machinery of the High Court is very expensive and generally ruinous. The system itself is responsible for this state of things. Instances are not wanting in which when there is ill-feeling amongst co-sharers and a suit for partition in the High Court is threatened, one of them would rush to the Alipore Court and file the partition suit there, before the threatened suit can be filed by the other side in the High Court to ruin him. Instances are also known of probate and administration cases and partition and account suits ruining practically the whole estate. This subject has been discussed often and often by the public and the ruin of many old families is attributed to litigation in the High Courts, and not very long ago a resolution was passed by the old Bengal Council to relieve the people of Calcutta from the inevitable ruin as a consequence of the litigation in the High Court Original Side by establishing a city civil court to try all cases of small values, say up to Rs. 5,000 or Rs. 10,000, as there is in Madras. If this matter is within the competence of the Committee I would have no hesitation in very strongly suggesting the creation of a city civil court to remove the congestion of the High Court and reduce the number of the judges of the High Court with the necessary reduction of establishment. Justice would be administered cheap and the courts would be open to the poorest of the poor and not to the rich only as in the High Court. I think the reduction of one or two High Court judges and the necessary reduction in the establishment will be more than sufficient for the establishment of the city civil court.

Failing this, and as an interim measure of relief, I would suggest the transfer of these cases or at any rate a large number of them to the presidency small cause court. But with regard to provincial small cause courts, I am not inclined to extend their jurisdiction, especially in view of my suggestion that the special courts may be abolished and selected officers may be authorised to try small cause court cases.

16. The next subject for consideration is the suggestion of any change or improvement in the procedure, to avoid delay. In considering this subject which is a vast one the following facts should be borne in mind. In Bengal, outside Calcutta in 1922, there were 21 district judges, 10 additional district judges, 43 subordinate judges, 235 munsifs and 3 provincial small cause court judges. The number of suits besides small cause court cases instituted in the district judges' courts was 483, in subordinate judges' courts, 645, in munsifs' courts, 438,490—total 445,424; so that on an average each munsif had 1,866, each subordinate judge 150, each district judge 16. Of these 329,446 were rent suits. The great majority of them is filed on the 1st Baisakh, *i.e.*, the 12th or 13th April of each year, and the file of the courts from that time becomes very congested and the work of the ministerial staff also becomes very hard.

What naturally occurs to me is to find out some means by which this large mass of cases may be speedily disposed of. They are not generally speaking complicated cases.

17. With regard to the rent cases, I would suggest the following for speedy disposal of the same. In cases which are based on various decrees, or registered kabuliyats or on the entries in the record of rights, I think the procedure prescribed by section 128 (2) (*f*) and Order 37, Rule 2, Civil Procedure Code, with necessary modifications may be adopted and a decree may be passed on the date of hearing without further evidence on the part of the plaintiff excepting proof of service of summons and a statement of the plaintiff's gomasta that no amount has been paid by the defendant since the date of institution and also that damages may be decreed or interest in lieu of damages. With regard to the other cases the ordinary procedure may be followed with the difference that the zemindar's recognised agent or gomasta may conduct the case. There is also a question as to whether the appealable limit of cases under section 153 of the Bengal Tenancy Act should be enhanced. It is suggested that the final jurisdiction of specially authorised munsifs may be Rs. 100 and that of the district judges and subordinate judges Rs. 200. I do not think, however, that it will bring in much benefit. I may mention here that ordinarily an *ex parte* rent suit should not take more than 2 months and contested suits more than 4 months from the date of institution.

18. Coming now to the other cases, the procedure is laid down in the Civil Procedure Code, excepting some peculiar provisions regarding rent suits and the execution cases as laid down in the Bengal Tenancy Act. I shall divide the main subject into two classes, (1) one relating to procedure up to the decree and (2) the other after decree, including appeals and execution cases.

19. With regard to the first stage up to the decree, the first and the most important thing is the service of summons, either (1) the summons is not served at all (*a*) through motives which partake of a fraudulent design or (*b*) through laziness or carelessness, or (2) the summons is not properly served. The Civil Procedure Code in Order V lays down very elaborate provisions as regards service of summons and cases have happened in which, although there has been a substantial compliance with the law, a technical flaw has been considered sufficient to declare the service bad. I think the provisions of rules 12, 16 and 17 may be modified partly in the light of the simpler mode of service as prescribed in section 106 of the Transfer of Property Act, excepting affixing summons on the property. Of the various alternative methods, any of them may be adopted without attempting in the first instance to serve personally and so on. This will save a great deal of unnecessary litigation and consequent delay in attempting to set aside *ex parte* decrees. This will meet the difficulties arising under point (2) above. In cases of doubtful service, a second summons may be sent by post but not in the first instance. But I do not approve

of the suggestion of making the post office the medium of service in all cases.

20. As regards point No. 1, there has been much evidence against and much comment on the present system in Bengal. The system that is prevalent in Bengal is that when summons is to be served the man entrusted with the service reports himself to the party or his pleader and an identifier is supplied to him and the two together have to serve. But the complaint is that they generally suppress and file false returns of service. The identifier has got the worst of comment. It is said that under law an identifier is not required and that service of revenue or criminal process is generally successful although no identifier is necessary and that the system should be abolished. For myself, I do not see how the presence of an identifier would tend towards bad practice. If the peon by himself would cause good service, the presence of the identifier cannot turn him from the right course. The peon, whether an identifier is supplied or not, would see the party and would make his own terms if he be dishonest and the presence of the identifier will not affect his work. If he is honest, the identifier cannot turn him. On the other hand, I think the affidavit of the identifier would be an additional check and the party takes the responsibility as regards proper service, whereas if the peon goes alone, he, when the time comes, may play false and there would be none to support the service. Practically the party would be at the mercy of the peon and if he has not been satisfied, he may do anything consistently or say anything, and at the time of hearing of the matter the peon will invariably avoid telling the truth by stating that he has no independent recollection of the mode of service. He does not know the party to be served—may not know even the village—and so the plaintiff would be placed at much disadvantage unless the peon has been paid his dues. The class of dishonest plaintiffs is necessarily small and even in their case the presence of the identifier would not affect the matter, but in the case of an honest plaintiff it would be of great hardship to him if he cannot secure some evidence of service under his control. On a consideration of all that has been said and of my own experience, I am inclined to think that the system need not be changed.

With regard to revenue and criminal processes the matters stand upon a different basis. Revenue matters concern people who are well known and in criminal cases there is none on the other side to influence the serving police.

21. In this connection I do not think it is necessary to consider what help can be obtained from the union boards or union courts formed under the Bengal Self-Government Act. The scheme of that Act cannot be said to be in good working order. It is itself an experiment in Bengal and some time must pass before any idea can be formed of its position in the country. However, I think, in order to ensure further certainty in the matter, a rule may be made for the peon to get the signature of a respectable man of the village or of the president or any member of the union or, failing that,

of the officer of the nearest police station. The latter procedure is partly followed in the service of notices under section 8 of Bengal Regulation VIII of 1819 (Patin Regulation). I think this should be sufficient for the purpose. It is not useful to condemn everything. All human institutions are more or less imperfect. We can only do the best under the circumstances. The pay of the peons is inadequate. Their education is practically *nil* and they are not above want or temptation, and one should not expect much from them; and as long as we cannot get better material we must work with some difficulty and inconvenience.

As regards the transfer of cases for trial by sub-registrars, honorary judicial officers and other bodies, I think they are all irrelevant. We must take the courts, as they are, to deal with the cases as they are more speedily.

22. After service of summons, the next stage is for the defendant to appear. If he does not appear, the case goes *ex parte*. Care must be taken and judicial officers may be instructed to see that unduly long time is not allowed for service of summons or for filing written statements. On the filing of the written statement especially in title suits my opinion is that the courts should follow the procedure laid down in the Code and settle issues. The practice prevailing in Bengal of the pleaders of the parties filing issues, some of which are accepted by the court, is bad and should be discontinued. The issues should be framed as prescribed in the Code by the court. It is said that the officer who may frame issues may not try the same and cases might be compromised, and so all this time for settling issue would be lost. But I do not think the objection is sound; unless the issues are framed it would not be possible to follow the subsequent procedure as to discovery, interrogatories, etc., and again the court in framing issues will know the cases and will be in a position to judge of the necessity for adjournments.

I am decidedly of opinion that the rules of the court regarding filing discovery, inspection of documents, etc., in Orders X, XI and XII, etc., should be very freely followed. It is very rarely followed in the mofussil. I am inclined to think that provision may be made for following them in title and money suits as a matter of course. They are of great help in shortening proceedings. The lawyers are fully prepared with their cases, litigants know what they have to do, and I think, if all this is done, there will be very few unnecessary adjournments.

23. It is said that mofussil practitioners are not so well versed in procedure in these matters and hence advantage is very rarely taken of these provisions of the Code. It is also said that the judges also do not encourage the adoption of the procedure laid down, either on the ground that they think it is mere waste of time and stands in the way of disposal of cases or that they also are not very familiar with the provisions of the law or the efficacy of the same. The objections are, I must say, partly well founded, but there are reasons for the same. In the majority of cases in the mofussil, the liti-

gants are men of very limited means and the fees paid to the pleaders are also very low. The suitors cannot afford to pay more than what they think is absolutely necessary. Generally, a fee is paid once at the time of filing pleadings, then when witnesses are cited and lastly at the time of trial. The scale of fees to which a pleader is entitled under the rules of High Court and which the party will ultimately get in case of success from the other party is only 5 per cent. up to the value of Rs. 5,000. In cases of small value say of Rs. 100 or Rs. 200 the fee allowed is only Rs. 5 or Rs. 10. I think therefore that in order to make the procedure attractive something should be done to ensure the payment of fees in these matters. Some scale of fees should be framed for these interlocutory matters as courts generally do not allow costs to the parties for the hearing of the interlocutory matters. With regard to the pleaders themselves, I think that if they know that they will get fees for these matters they will take interest in them and it would not require much time to study and get a mastery over the matter. It has been suggested that junior pleaders should have a period of probation with some senior pleaders to learn the practice of the court. The suggestion is very good, but I do not think that at present it is necessary to go into that matter. Probably in the near future the rules as to admission of pleaders may have to be reconsidered. If, however, the provisions as to those matters are not at present subject of study for B. L. students they may be so included, and that, I think, would be enough for the present. With regard to the judicial officers it has been suggested that civilian judges are appointed to be district judges without much experience of judicial work and the moment they are appointed they have to hear appeals from very experienced subordinate judges and munsifs. The system which brings out such a state of things is very defective. There is much to be said in support of this. The remedy suggested is to give the judges, before they are appointed as judges, some preliminary training. This was tried in Bengal once and I think the matter should be left to the High Court to take proper steps in the matter. That something should be done in this connection seems to be established. As to the recruitment of munsifs, the rules of the High Court seem to be very satisfactory and it seems that the matter should be left to the High Court to make such rules as they think necessary to further improve the system. I understand the matter is under consideration of the High Court. A period of probation seems to be a valuable suggestion.

24. I have omitted to mention a complaint which is generally made in regard to the drafting of pleadings. In cases in the subordinate judges' courts, the pleadings are generally carefully drawn. No doubt, in written statements generally, unnecessary objections are taken and issues are raised on the same which prolong and delay trial of suits. If the forms of pleadings given in the Civil Procedure Code are followed in substance and issues are framed as laid down in the Civil Procedure Code much of this irrelevant matter may be avoided. A little check by the court will also be very

helpful. Courts have the power under Order VI, rule 16, to check this and I think a moderate exercise of the powers of the court will bring about a change for the better. I must say that in complicated title suits which form the majority of contested cases there is necessarily some prolixity which I do not think matters much, but there is no justification for setting out grounds which it is known to all are absolutely without substance.

25. Whilst upon this stage of the proceedings I may mention a matter which has been the cause of much unnecessary delay in the disposal of suits. There are cases which can be disposed of at the first hearing at the time of settlement of issues either under Order XIV, rule 2, or under Order XV, rule 3. But the subordinate courts are rather reluctant to follow this course for the reason that the High Court discourages the disposal of cases on preliminary points when there are also questions of fact, because if the judgment on the point of law is reversed, there is necessity for remand which would cause greater delay; if there is a decision on all the points there would be no necessity for a remand. But I think in clear cases—and there are lots of them—the procedure in those rules should be strictly followed.

26. Some delay occurs under the Code in appointing a guardian for a minor defendant. No doubt the principle must be borne in mind that none but a fit and proper person should be so appointed and also that he must agree to be so appointed. I think therefore the plaintiff should name all likely persons and notices should be served on all of them together and the court should appoint one of them who is willing and considered fittest by the court and if such person is not available any other fit and willing person, preferably an officer of the court or a pleader, may be appointed then and there.

27. Delay also occurs when a defendant dies and his heirs have to be substituted. The heirs either do not know of the suit or sit tight without moving in the matter. I do not think, however, the duty should be cast upon them for substitution. And here, I think, the plaintiff should be protected if he is able to name only some and not all. In such a case the law should be changed in such a way that if the court makes an order that the substituted defendant would represent the deceased defendant, all others would be bound by the decree and proceedings thereon so that another heir turning up would not be able to render the decree invalid even in respect of his share.

28. The next stage is the examination of witnesses on commission or commissions for local investigation. It is a general complaint that the examination of witnesses on commission is unduly long and is sometimes scandalous. Apart from the fact that the examination of purdanashin ladies on commission is a farce, it is designedly delayed to give opportunities to the witnesses to prepare and think over any slip that may have been made. The commissioner who is paid daily fees would not feel inclined to be very speedy in ending the matter and the legal practitioners take up

this matter generally as a work for their leisure time after or before court work. Witnesses sometimes feign illness or on the excuse of some pressing matter ask for the adjournment of the sitting, which the commissioner and the pleaders too readily assent to. In this way a witness who may be finished in court in a day or two takes sometimes days or even months to finish. Then again much unnecessary and irrevelant questions are put; there is unnecessary discussion between the pleaders; much taking of notes of discussions by the commissioner. The commissioner not having power to disallow questions has no control over the proceedings. The result is long delay, unnecessary cost and also harassing of everybody. The system cannot be abolished. Therefore some scheme must be devised for its improvement. The suggestions I would make are these:—

1st.—An order being made for the examination of a witness on commission, the party calling should be required to file a set of interrogatories, which may not be exhaustive but which must show all that is wanted.

2nd.—After the interrogatories are filed, the court will ascertain how long legitimate cross-examination would last and will provisionally fix the time for examination-in-chief and cross-examination.

3rd.—The court will then fix the fees of the commissioner and the time for return of the commission after execution. The commissioners may also be empowered to disallow irrelevant and vexatious and harassing questions and recording notes of discussions or anything else besides the depositions. In a proper case, the court will have the power to extend the time for examination and cross-examination, but as a general rule the time limit and the commissioner's fees should not be exceeded. The time of work should also be ordinarily the court time, *i.e.*, 11 to 5 (with some interval), with no doubt exceptions in cases of very ill and infirm persons and other exceptions to be allowed by court for reasons recorded in writing.

I think this will save a great deal of time and money.

29. The next is the matter of commissions for local investigation, for partition and accounts. All big title suits in which local investigation is requisite are hung up for years on account of this. The same is also the case in regard to partitions and accounts. In the case of commissions for local investigation (excepting ascertainment of market value of any property or amount of mesne profits and damages) almost inordinate delay is caused by the commissioner being required to come to a finding as to the title and possession of the parties in a disputed boundary case or as to the disputed identity of land. I would suggest that in these cases the commissioner should simply make a plan of the locality and of the landmarks and relay other plans or show trijunction of villages or important starting

points according to the identification of the parties, recording only such evidence as bears upon the above work and leave the discussion of the accuracy of the respective matters to the decision of the court after evidence is recorded. It is the examination of a large number of witnesses with the help of pleaders that really causes the delay. As in the case of the commission for examination of witnesses, utter disregard of time also occurs. The commissioner should be paid a lump fee and not daily fees.

With regard to partition and account commissions also, if a lump fee is fixed for the commissioner and the number of working hours be 5 hours during a day there may be much saving of time. But in these cases, there must necessarily be some amount of unavoidable delay.

30. The next matter before trial is the attendance of witnesses. Sometimes witnesses are made to appear on numerous days without any reason. I think the best course is for the court to issue summons for a day when the case is likely to be taken up and to inform the parties beforehand if the cases are not likely to be taken up so that they may so arrange that the witnesses may not come. In the case of willing witnesses there is no difficulty, but in the case of unwilling witnesses the several steps for their attendance may have to be taken which necessarily causes delay. Generally speaking, in big and important cases the parties or their pleaders are generally consulted before a day for hearing is fixed and adjournments are not as a matter of fact granted in such cases.

With regard to the control of the district judge over the commissioners for local investigation, I think the present system prevailing in Bengal is the best under the circumstances. Here the district judge has a list of such persons and every subordinate court appointing a commissioner has to write to the district judge to name a person and after he is so named he is appointed. It is said that this hampers the work of the subordinate courts sometimes, but I do not think it really does create any inconvenience. On the other hand the district judge knows which particular person has sufficient work and which not, and he will also have an immediate check over the dilatory work of the courts. But in supporting this system I rely upon the principle underlying it, *viz.*, that the district judge should exercise an intelligent control over the work. If that is not and cannot be done I would leave the choice to the courts themselves rather than to the district judge.

31. Then with regard to adjournments, I think there are several unnecessary and harassing applications for adjournment. It happens in the following ways: First, a party who is not actually ready is compelled to make such applications. In such cases adjournments are granted. Secondly, a party whose object is to harass and delay, applies to injure the other party; it sometimes so happens that after months and years of such adjournments he fails to appear and the case goes off for default, his object being gained by lapse of time. Courts being otherwise engaged do not care to see

through this dodge. It is on account of this class of cases and to detect them that I think the court should itself know the nature of the case, and if it does, it will be able readily to rightly dispose of such applications. Thirdly, applications are often made at the instance of the court officer, when the court is otherwise engaged and the case would necessarily be postponed, to "keep the record in order" as the expression goes, the bench clerk gets it done. A large number of applications is of this character.

The remedy for all these is the devoting by the court of some of its time to control these matters and, secondly, the fixing of time of hearing cases in such a way that they may be taken up on that day and not to show short dates with some object.

32. Then comes the actual hearing of cases. Cases are very rarely opened. A good opening generally shortens the trial. There is examination and cross-examination of witnesses. I do not think any general rule is followed. Some officers would disallow questions and check unnecessary and long cross-examination; others would not interfere at all. Some are quick, some slow, some intelligent, some not, some are well versed in law and practice, others not; we have to deal with all sorts of judicial officers. Returns of work both in regard to quantity and quality therefore differ widely. Advantage is also necessarily taken of this by the parties and pleaders. In fact, if I may say so, the length of a trial may largely depend upon the temper and quality of the judge. These are personal characteristics which cannot be improved or modified by any amount of training or probation. As to the personnel of the subordinate judiciary, the best material available in the recruiting source so far as college examination is concerned, is secured, and if it is supplemented by some practical training on probation it would undoubtedly be the best under the circumstances. In fact I would suggest a period of probation for judicial officers before appointment. Under the present system a munsif is appointed when he has a few years' (4 or 5 years) practice as a pleader. I do not think he can gain much experience or insight into practical working in that period. Recruitment from senior practising members of the Bar to higher posts is no doubt one of the best remedies but that is not possible as a system in the present state of circumstances. The length of argument also is sometimes due to the above causes. The general remedy I can suggest is to impress upon the judicial officers their duties in these matters and their duty to sit in court in time to dispose of business and upon the legal practitioners also to do their duties to help in the speedy administration of justice.

33. Sometimes a case is lengthened by rather long arguments due partly to citation of too many decisions. At present there are lots of Law Reports and all shades of judicial opinion may be found in them and an industrious practitioner will not have any difficulty in securing a case in his favour by hunting up these reports and the other side not to be left behind would follow

the same process. No doubt under section 3 of Act XVIII of 1875, no court shall be bound to hear cited cases or shall receive or treat as an authority binding on it the report of any case other than a report published under the authority of the Governor General in Council, but as Sir Francis Maclean, C.J., points out in I.L.R. 28 Cal., at page 292, it does not prevent the judge from looking at an unreported judgment of other High Courts. At any rate these other judgments may be cited as arguments of the party. So I do not think citation of such authorities can be prevented. No doubt one is bewildered by the number of law reports, but I do not think this can be prevented. Take for instance the English Reports. I think nobody can suggest that these should be proscribed. But the remedy lies in the good sense of the lawyers, as also on the exercise of some discretion on the part of the judge. I remember having read the proceedings of a High Court in the United States of America; when a counsel was arguing at length a very rudimentary proposition of law, the learned judge intervened and observed that the counsel might give credit to the judge for knowledge of such an elementary proposition, whereupon the counsel promptly replied that that was also his idea before but he found on a recent occasion that he was wrong. (He argued a point before this very learned judge and lost on a wrong view taken by the judge of a very elementary point of law.) Sometimes arguments on elementary propositions are also necessary.

34. As regards judgments, some judges are rather fond of writing long judgments, some are laconic and others follow the spirit of law and take the middle course. I think if the courts bear in mind the provisions of Order XX, rule 4 (2), and are a little methodical the judgments need not be unduly long or unduly short. Remarks by superior courts on this matter will, I doubt not, have a salutary effect. Then again judgments are rarely delivered in court in the presence of the pleaders and the result is that in many cases mistakes creep in as regards many things including orders as to costs.

35. A very fruitful source of delay is caused by careless drafting of decrees. Sometimes they are vague, sometimes they do not describe with sufficient clearness the property dealt with, sometimes they do not contain the most important directions given in the judgment and the result is that the executing court is left to construe it and deal with it as best as it can, and a dishonest judgment-debtor puts the decree-holder at bay for a considerable length of time. Decrees are at present drawn in the office by a muharrir and the pleaders are supposed to examine the same and to sign them before they are signed by the court. I do not think anybody pays much attention to this subject, the judge never does. Pleaders do not take interest because their duties are over with the argument in the case. If provision is made for some fees to the pleaders and the judges are impressed with the duty of personally examining the decrees before they are signed, I think much of the litigation over imperfect decrees will be avoided.

36. I think I should now deal with some special classes of suits, *e.g.*, suits on simple mortgage and touch an important class of litigation arising out of mortgage suits for sale. As the law stands at present a mortgagee bringing a suit is not bound to make the prior mortgagees parties to the suit and a sale in execution of such decree is made subject to prior mortgages. I think the principle should be accepted that in every mortgage suit the sale should be free of all prior and subsequent encumbrances, making all the encumbrancers parties to the suit and securing to the purchaser a good title, the result being that properties would be sold at their proper prices. I would accept the suggestions in questionnaire No. 66. The personal decree may be made along with the mortgage decree and the time of grace should be allowed as now to enable the parties to work out their rights and a final decree under the circumstances is almost inevitable. The procedure for suits for redemption or foreclosure must remain as it is now.

37. Then with regard to the class of cases, which must necessarily be very dilatory, *i.e.*, suits for partition, accounts, administration, etc., the delay generally occurs before the commissioner—specially in suits in which accounts are to be taken and adjusted. I do not think the present system of selecting commissioners from among pleaders or outsiders is quite satisfactory. Much time is taken in proving the entries in the account books formally, and in the examination and cross-examination of witnesses before the commissioner. If formal evidence of entries is dispensed with, leaving the other party to substantiate their objection, much time may be saved though this would subject the objecting party to the disadvantage of having lost the opportunity of cross-examination; but this may be met by tendering the witnesses for cross-examination only. As regards these cases, a commissioner has to be appointed either to partition or to take accounts and they are paid daily. I think in these cases also a lump fee should be fixed.

38. Then comes the consideration of interlocutory matters, *viz.*, appointment of receiver, issue of injunction, etc. With regard to the appointment of a receiver, I think the mofussil courts very sparingly appoint receivers unlike the High Court as far as my experience goes. One of the grounds for refusing such applications is the question of cost. There are several cases in which a receiver should be but is not appointed for that reason. If in sudder stations an officer or a pleader of experience is appointed the official receiver, I think courts will become more inclined to appoint receivers in proper cases and I think he will have enough useful work if in addition he is also given the receivership in insolvency cases.

Injunctions, I must say, are very lavishly granted by the lower courts but I can not suggest any limitation of jurisdiction in respect of the same and also in respect of any other interlocutory matter. I do not also approve of any limitation as to the right of appeal in such matters. In fact it is a very salutary safeguard against the arbitrary exercise of jurisdiction.

39. The next subject which I take up is in regard to execution of decrees. I had given a note (not printed) to the Committee while it was sitting in Bengal regarding the general working of the system showing need for reforms with a few suggestions. I shall now deal with the matter generally, submitting suggestions for shortening proceedings with minimum trouble to the parties, without much change in the present procedure prescribed in Order XXI of the Civil Procedure Code.

40. Before dealing with the details of the various proceedings in execution, I think the question as to whether the law which necessitates a very large number of applications being made every three years with a view only to keep a decree alive may not be so amended as to keep them down. Applications are oftentimes made simply with that object. No doubt there are applications which become infructuous because the decree-holder cannot find any property of the judgment-debtor or the judgment-debtor goes into insolvency or are unnecessarily prolonged by the conduct of the judgment-debtors. On a very careful consideration of this subject, I cannot approve of the change from 12 years to any lesser period of the time-limit prescribed in section 48 of the Code. That period has stood in the Procedure for a long time and instances are not wanting in which that period itself has been found to be rather short in cases where the decree-holder with all diligence has not been able to exhaust his remedies. It is a period which has been found in practice to be reasonable for either the decree-holder to realise or the judgment-debtor to pay. In the generality of cases the execution of a decree is finished soon. It is the interest of the decree-holder to get his money or to recover the property decreed as soon as possible. It is only in complicated matters that it takes some time. The fact of the time being 12 years by itself does not increase any burden on the court or prolong proceedings. I therefore do not think that it should be cut down. But the law necessitating successive applications within 3 years of each other may be abolished. I do not see any reason as to why these intermediate applications are necessary, it is certainly not for making the decree-holder look after his interests as he would do it himself; neither is it to benefit the judgment-debtor for as long as he is in debt he cannot complain of steps taken at any time. I think the safeguard of a service of notice on the judgment-debtor, if application is applied for after one year is sufficient. It may be said that the judgment-debtor would be in constant dread as it is not certain when the execution may be taken against him but he not having paid should not have that dread. It may be useful to remember that there is no period of limitation for High Court and Privy Council decrees if you execute it or keep it alive every 12 years, under article 183 of the Limitation Act.

41. I would suggest the following alterations in Order XXI:—

(1) In rule 1 (*1*) (*b*) *add* the words "On his receipt or to his pleader or by postal money order."

(2) In rule 16 in the words " The transferee may apply to the court which passed it " the words " which passed it " may be deleted to enable the transferee to apply either to the court which passed it or to the court to which it is transferred for execution.

(3) In rule 17 *add* a proviso to the effect " That the Court may at any time allow an application to be amended on such terms as to costs or otherwise as it may think fit." It is very inconvenient that under the present practice the courts do not allow an amendment after admission of the application. The judgment-debtors in many cases escape liability or prolong litigation by an initial mistake of the decree-holder and his inability to amend.

(4) I would suggest the repeal of rule 21.

(5) I think rule 22 should be amended by deleting 22 (1) (*a*) (*b*) and also appropriate amendment in the provisos. I think there should be only one notice to the judgment-debtor in every application for execution and not the other notices prescribed in the Code.

(6) There was some discussion over the usefulness of rule 41, which is seldom followed in practice in any case. I certainly strongly object to the appointment of a receiver for the properties of a judgment-debtor in default of his appearance on notice. Such a procedure is unworkable in practice and would open a vast field for oppression. It is also impossible for an outsider—a receiver—to collect the information of a judgment-debtor's property. It would be impractical and too costly and may be absolutely useless. The decree-holder knows about his judgment-debtor's property more than a receiver would. I think, however, the question may be considered as to whether the passing of a decree for money or the service of summons may not be given the effect of binding the immovable property of the judgment-debtor within the jurisdiction of the court by way of attachment. This is the law under the Bengal Public Demands Recovery Act III of 1913, section 8. The result of such a provision would be to prevent the fradulent transfer of property after decree and thereby to prevent a large class of litigation. I am inclined to think that this may be done.

(7) I think a copy of the order of attachment under rule 54 may also be sent to the judgment-debtor by post. If the suggestion made in sub-paragraph 6 above is accepted, rule 54 will become unnecessary.

(8) In rule 58, paragraph (2) I think a clause should be added like this " On such terms as to security for costs or otherwise as the court thinks just." This may have

some effect in collusive claim cases and may afford some protection to the decree-holder against delay in the prosecution of claim cases.

(9) I do not suggest any alteration of procedure in the claim cases under rules 58 to 63 excepting that there should be some time limit for preferring claims—say a week from the date of service. No doubt these cases very much retard the progress of execution cases but the rights of third parties must as well be protected. Cases are not uncommon in which the decree-holder and the judgment-debtor collusively cause attachment of a third person's property as also cases in which a third person's property is attached *bonâ fide*. Claims are put forward *bonâ fide* as also in some cases in collusion with the judgment-debtor. As it is not possible to distinguish one from the other class unless evidence is taken, I do not think it is desirable to limit the scope of such cases. But orders in these cases are not appealable; a regular suit lies under rule 63. I think therefore the enquiry should be of a summary nature and much time should not be devoted over them. At any rate they should be heard before the date fixed for sale. There is a regular suit in which there would be an elaborate investigation. I would also suggest that a claim based upon a transfer by the judgment-debtor after the institution of suit may be summarily rejected.

The question which arises in this connection is as to whether the execution should be stayed till the disposal of the suit. In a proper case, I think it is desirable that the execution should be stayed on terms. This will not affect the decree-holder as the property remains under attachment and he may follow other properties of the judgment-debtor if there are any and if he likes; whereas if the property is sold subject to litigation it will fetch less than its proper price and this will cause injury to all the parties concerned. The delay thus caused is inevitable and cannot be complained of and I do not think there can be any remedy for this.

(9) I would suggest some alterations in rule 66. In the first place, I do not think a notice under paragraph 2 or an application under paragraph 3 is necessary. It was not in the previous Code. The application for execution may contain all these particulars. Rule 13 may be so amended as to include all these. Paragraph 4 also may be deleted. These several paragraphs simply increase the amount of work without bringing corresponding benefit to any. The application for execution will contain all particulars and the judgment-debtor, if he likes, may take exception to any of the particulars.

In this connection it may also be considered if it is at all necessary to give notice to the judgment-debtor of each of these proceedings or whether it would not be sufficient if only the notice of execution is given to him by post and to his pleader only once excepting that in the cases of writs of attachment and sale proclamation in which cases copies of the same or of an extract of the same may also be sent to him by post. I think one notice in the first instance will be sufficient.

I think further that the writs of attachment and sale proclamation should be issued and served simultaneously as provided for in the Bengal Tenancy Act (VIII of 1885). If, however, the suggestion as regards non-service of a separate writ of attachment as made above is accepted, the proclamation only will be issued. There would be no prejudice to the judgment-debtor by this shortening of procedure. He gets notice in the first instance in every case; all the particulars are mentioned in the first application and if he has any real grievance, he will have ample opportunity.

My suggestion amounts to this—applications for execution containing all the particulars mentioned in rules 11, 13 and 66 are made, notice is given to the judgment-debtor by post and to his pleader, if any, and then writ of attachment, if any, and of sale proclamation containing the above particulars are issued and served simultaneously, copies of extracts of the same being also sent to the judgment-debtor by post. If a claim is preferred say within a week from date of service, the same should be disposed of before the date of sale. This would shorten the proceedings without causing any hardship.

(10) In rule 67 a provision should be added that a copy of proclamation or an extract of the same should be sent to the judgment-debtor.

(11) I do not see any reason to retain clause (II) of rule 72. There is no such restriction under section 174 of the Bengal Tenancy Act. I think clauses (1) and (3) may be deleted, thereby avoiding much delay, and clause (2) be retained by deleting the words " With such permission." The reason of this rule evidently was that the decree-holder may not purchase at an undervalue and the court in granting permission will see to that. As a matter of practice the court very rarely looks into this and there is also no evidence before the court to enable it to make any satisfactory order. Even if the decree-holder purchases without such permission the sale would not be set aside unless substantial injury has resulted to the judgment-debtor so that whether he purchases with or without permission the judgment-debtor cannot set aside the sale, unless he has suffered substantial injury. Hence permission is quite immaterial.

(12) In rule 73 I would delete the word " Other person " from it leaving only the bar as regards court officers. As there

is a remedy to set aside a sale on the ground of injury or fraud, I do not think there is any reason to extend the limitation beyond the court officers.

(13) Then comes rule 90—Application for setting aside a sale. An order under this rule is final and no regular suit lies —rule 92 (3). The order is appealable and necessarily therefore the proceedings under this section are of a regular character. It can be made by any person whose rights have been affected by the sale but not those persons who are not bound and therefore not affected by the sale. I do not think therefore that the rights conferred by this rule should be interfered with. Various suggestions have been made to shorten or to discourage these proceedings. A suggestion has been made that the applicant should either deposit the decretal amount or the amount of the sale price or at any rate should give security for satisfaction of the decree. There are cases in which such a condition would be almost prohibitive on the judgment-debtor. I am inclined to think however that the evil would be minimised and frivolous applications would practically cease if a receiver is appointed in respect of the property sold in default of the applicant depositing the money or furnishing security for the satisfaction of the decree. In fact I would go further and instead of deposit of money or furnishing security, if a receiver is appointed in every such case, the evil will be greatly minimised. Such an order would not at all be inequitable; under the law the title of the auction purchaser accrues on the date of sale and he may be kept out of the property for years, *i.e.*, till the application under section 90 is disposed of in appeal and the sale is confirmed and thereafter he gets possession. For all this period if the sale is confirmed ultimately he will have title to the property, but he cannot get possession. The property may deteriorate or be wasted or damaged by the judgment-debtor. By appointing a receiver his rights would be protected as also those of the judgment-debtor who if he wins will get back his property with accumulated profits. This procedure will have the further advantage of the court getting reliable evidence as to price of the property and also as to service of processes, because the property being in the hands of the court receiver, evidence of local witnesses would not be so biased. The receiver's report as to market value of the property may also be of help. I may observe here that the system suggested in the previous part of this report as regards the appointment of a receiver will embrace such cases also.

(14) With regard to resistance to the delivery of possession to the decree-holder or the purchaser—rules 97 to 103, I

would make the same observations as those made in regard to the claim cases. The orders are summary in their nature and are not appealable and are subject to a regular suit and therefore should not take much time.

42. As regards appeals and revisions, I would leave the right of appeal and revision quite unaffected. I would not also reduce the appealable value. They are absolutely necessary for efficient working of the lower courts. Complaints are common, no doubt, that, on frivolous matters, appeals or motions are made and that cases are held up for a long time and this complaint is more against the procedure of the High Court than that of the district court. I may observe that in the district court undue delay is not ordinarily possible. We generally hurry up the matters in which there is stay of proceedings of the lower court and there is no revision power in the district court, except under section 153 of the Bengal Tenancy Act which is allowed against decrees only. In fact I am inclined to think that these questions are outside the terms of reference. The question is how to dispose of these matters expeditiously with due regard to efficient and satisfactory work. In granting rules for stay of proceedings of the lower courts, the High Court no doubt takes into consideration all the facts, and whatever may be the case when the matter is heard *ex parte*, certainly the party aggrieved may try to bring up the matter as soon as possible, but if he does not and allows the matter to run its ordinary course, the court cannot be blamed for the delay. I am inclined to think that the parties are dilatory and hence delay occurs in the disposal of these cases and consequently the trial in the lower court is delayed. I do not think the right of appeal or revision to or by the High Court or the district court is responsible for this delay and therefore I would not cut down these rights. Try to improve the procedure rather than extinguish very valuable rights.

43. Appeals in the district court may be divided into 4 classes: (1) Title appeals, (2) Money appeals, (3) Rent appeals under Order XLI and (4) Miscellaneous appeals, *i.e.*, appeals against orders under section 47, which are deemed to be decrees as also other orders as set out in Order XLIII. There are appeals from subjudges in suits below Rs. 5,000 in value and from munsifs. The miscellaneous appeals are generally disposed of by the district judge and without much delay. I do not think there is any complaint of delay in these cases. In miscellaneous appeals Order XLI, rule 11 is generally followed.

44. With regard to the other appeals I do not think a liberal use of Order XLI, rule 11 will help much; on the other hand, I think the adoption of this procedure on the whole does not save much time. If the appellant cannot satisfy the court under rule 11, the same will also be the case if the appeal is heard in the presence of the respondent and in that case the respondent need not be called to reply, whereas if the appeal is admitted there will be so much waste of time.

45. There is no reason as to why appeals should not be disposed of expeditiously; I must say that appeals are very much delayed in their disposal. In this district (24-Parganas) the sessions work is very heavy and although generally there are three additional judges, two are wholly occupied with sessions cases and the other is authorised to try Land Acquisition cases—although he has also to take up sessions cases sometimes. The district judge has various matters to attend to in addition to criminal appeals and revision and has no sufficient time to dispose of appeals. But I think a re-distribution of work referred to above by relieving the district judge of practically all those cases which are referred to them will leave him sufficient time. The miscellaneous appeals are fixed on one day in the week and if the regular appeals are fixed for at least three days in the week, much work may be done. I would suggest that after the appeals are admitted and registered a certain number of munsif's court appeals may be assigned to the subordinate judges with instruction that they should be disposed of on the next date fixed after the appearance of the respondent. With regard to the remaining appeals the district judge should so arrange his file that they may be taken up on the next date after the respondent's appearance. The rule may be so modified that the subordinate judge may hear appeals even during the hearing of original suits, say at the end of the day. This will give them some relief from the heavy and monotonous work in recording evidence of witnesses in original suits. Their experience will also help them in speedily disposing of the appeals. Appeals are to be decided on the records. In the district courts no translation is necessary or made now-a-days. There should therefore be no reason for any adjournment as in original suits on account of witnesses and various other matters. If the appeals are heard soon, there will be a salutary influence on the lower courts.

46. If the above system is followed, there will be no hardship on account of stay of execution of the decree. Equity and justice require that in a proper case stay of execution should be granted. Terms are generally imposed and I do not think the appellant is really prejudiced.

47. I shall now deal with certain other matters; the first subject I take up is the case of *ex parte* decrees. As in all cases, there are *bonâ fide* applications for setting aside *ex parte* decrees and there are malafide applications too. It is not possible to distinguish between them. But generally speaking I am inclined to think that excepting a small proportion of such cases, the applications are *bonâ fide* and there is real grievance. As I have said before, advantage is taken of the words "duly served" in Order IX, rule 13 in many cases. In order to keep down frivolous applications, I would suggest that the court be invested with power to demand security or deposit in cash in a proper case before taking action on the application. This would especially be the case when the applicant applies for stay of execution of the decree. I do not think

beyond this there should be any curtailing of the right to make these applications.

48. With regard to the question of any definite enactment against champerty, I do not think that is feasible and desirable. The present law on this subject was laid down by the Privy Council in Ram Coomar Kundu *v.* Chunder Mukherjee (followed in subsequent cases) and is as follows:—"An agreement to supply funds to bring on a suit in consideration of having a share of the property if recovered is not necessarily opposed to public policy since cases may be easily supposed in which it would be in furtherance of right and justice that a suitor who had a just title to property and no means to support it should be assisted in this way. But agreements purporting to be made to meet such cases when found to be extortionate and unconscionable are contrary to public policy and ought not to have the effect given to them." It is evident therefore that by enacting a general law against champerty an honest and really needy suitor will not be able to assert and fight out his just claim, whereas by not enacting such a law such a suitor will not be left solely in the mercy of the champertor as he will have relief against him in an appropriate case, if the bargain is found by the court to be hard and unconscionable or against public policy. Considering the position of litigants in this country I think such a law will not conduce towards vindication of just and right claims; on the other hand will encourage illegal encroachment on just rights by unscrupulous men.

49. With regard to the law as to attestation of a document besides the case of a will, I would abolish the law as to attestation in regard to other documents and therefore necessarily the provisions of the Evidence Act relating to proof of such a document will be limited to the case of will only. In the case of a will the law should remain as stringent as it is now.

As regards secondary evidence, the law is already sufficiently comprehensive. I do not think it should be further enlarged so as to include other cases. Papers printed by the High Court in a particular case should not as a rule be admitted as secondary evidence of the original in another case, but if the loss of the original is satisfactorily proved, I think in certain cases—at least as between the parties in the former case—they may be so admitted, by way of secondary evidence.

50. I think the equitable doctrine of part performance should have proper application in this country. The equitable principle has been established by a long course of decisions and should not be lightly thrown away. Section 107 of the Transfer of Property Act with section 47 of the Registration Act has its own operation and necessarily the two are not inconsistent with each other. The subject was very recently and very elaborately discussed by Mr. Justice Rankin in a very instructive judgment in I. L. R. 49, Cal., 507. I am inclined to think that the two rules stand side by side to govern different course of facts.

51. I think it would be a salutary provision to require all partitions of immovable properties to be effected by an instrument in writing, to make the writing compulsorily registrable if the value of the entire property is worth more than Rs. 100. There is no reason as to why such transactions should not be in writing and registered when less important documents relating to land are required to be in writing. Much litigation may be avoided by this, as cases are known which have dragged long for the decision of the question as to whether there has been a partition and if so in what way.

52. I would also approve of the suggestion that the discharge of an obligation created by a registered document should be evidenced by another registered document. But I do not approve of the suggestion that an obligation incurred by an illiterate person should always be created by a registered document.

53. With regard to the question of *benami*, the subject is a very important one and requires very thorough examination and consideration, and I am inclined to think that before any law is contemplated the habits and customs of the country should not be ignored. It is an inveterate institution of this country and the law upon the subject has been settled with practical certainty by the numerous decisions of the High Courts. *Benami* transactions which are brought into existence to defraud creditors meet with very little success in courts and if the fraud is consummated, the real owner loses his right as against the *benamidar* and is estopped from pleading his own rights as against him. Then in auction sales either under the Civil Procedure Code or under the Revenue Sale Law, *benami* purchase is not recognised. The legislature and the courts too are against the system, but still the people resort to this. I think there is already sufficient safeguard against fraud and I do not think further interference by law at present is advisable or expedient. A time may come when probably this subject will have to be reconsidered with a view to change the law relating to it.

I have now concluded my report. The matter referred to the Committee for enquiry and report is very vast and is of very great importance to the people of this country and especially to the litigating public and the result is being eagerly awaited by them and I have no doubt that under the able guidance of the Hon'ble Chairman the Committee composed of persons of such eminence and experience will submit a report containing suggestions which if adopted will have the desired effect of bringing justice to the parties who seek them in a Court of Law in a more speedy, economic and satisfactory way.

Babu NARENDRA KUMAR BASU, Vakil, High Court, Calcutta

I take it that I am not expected to write an elaborate report on the numerous points of detail that arose out of the deliberations of the Committee. They must be left over for future discussion when the Committee has finished its tour. I have simply taken the main heads and given my views on them.

As regards munsifs' courts in Bengal, it is evident that the large mass of rent suits filed in April is primarily responsible for the congestion of the files. I have anxiously considered whether any relief could be obtained either by transferring them to some other agency or by adopting any other alternative procedure (that under the Public Demands Recovery Act or Order XXXVII, Civil Procedure Code) but I am of opinion that neither course would be feasible. The only way, to my mind, would be to employ additional munsifs —those who would be on probation under the scheme referred to in my notes—but I am afraid this is largely a matter of finance and probably excluded from the consideration of the Committee by the terms of the Government of India Resolution No. F-159—22-Judl. Another thing that occurs to me is that probably the people mostly interested, *i.e.*, plaintiffs in general *do not* mind the delay that occurs. If the plaintiff who has the carriage of the suit in his hands does care to have a suit tried quickly, it appears to me that he can, in most cases, have it tried much more expeditiously than is the case at present in subordinate courts.

From all accounts there is very little delay in commercial suits in the Original Side of the High Court and that I take it is because the litigants want the trial to be expeditious.

It is a matter for serious consideration whether any steps taken to *force* expeditious justice on parties might not result in denial of justice in many cases till the mentality of the litigant is altered.

Nor this is very much to be astonished at. The life of our people in the villages is usually so drab and uninteresting that when a title suit crops up which leads to a number of people going up to the sadar station at irregular intervals—as parties, witnesses and tadbirkars—they are loath to curtail their opportunities.

One other point that I would like to mention is the question of the curtailment of the right of appeal. I am all against *killing* litigation in order to make it speedy. The principle does not seem to me to be sound. The cry that interlocutory appeals hang up the disposal of suits does not appeal to me. I venture to agree with Sir Thomas Richardson that " when the High Court interferes with interlocutory orders it has a salutary effect." The difficulty pointed out by some witnesses may be obviated by the High Court sticking to its present practice of not sending for the records in all cases.

Another point of detail that I would like specifically to mention is the application of Order XLI, rule 11 by district judges. I would not have them in regular appeals or in miscellaneous appeals involving consideration of oral evidence.

The only other point that I would mention is that I think in simple mortgage suits, one decree (preliminary, final and personal) may very well be passed.

As I have tried to indicate in my notes, to my mind, the system of " returns " at present in vogue, which makes a fetish of " disposals " is responsible for a great deal of the present un-

satisfactory state of things. As I have found on personal inspection, they make the subordinate judiciary untruthful (no case is practically entered in the return as delayed for want of time by court which is obviously untrue) and apt to take up small cases for disposal and adjourn bigger ones.

This system has got to be changed forthwith and a system of personal inspection substituted.

Periodical visits by High Court Judges should also be insisted on.

I may mention that I have refrained from going elaborately over the grounds which we traversed during our several conferences. The small changes that I advocated in the Civil Procedure Code in the course of my memorandum (printed below) on the procedure of subordinate courts may be considered along with this note.

MEMORANDUM.

In order to provide for the more speedy and satisfactory despatch of the business in civil courts in Bengal, the first essential is obviously to enhance the efficiency of the Bench and of the Bar.

The present standard of qualification for admission to the Bar must be changed. The system by which graduates in law *ipso facto* become pleaders can no longer be maintained. I would propose one year's articles with some pleader of say 10 years' standing. Such period of articles to be *after* graduation in law followed by an examination in *practice and procedure* by written papers sent out from the High Court.

The period of articles for qualification as vakils of the High Court should similarly be *after* graduation in law and the examination mentioned in Chapter XIV, Rule 1 (16) of the High Court Appellate Side Rules, should be a real examination.

As for recruitment to the judicial service, I would suggest that the system proposed by the High Court, *viz.*, of having probationary munsifs *in the cadre* to be under training in district judges' courts (which Mr. Duval told us was under the consideration of Government) should be accepted without delay. I do not think it would be feasible to have a competitive examination or to appoint them after 7 or 8 years at the Bar. I would rather catch them young.

But the great thing is the supervision of their work by district judges.

Under the system at present in vogue regarding the recruitment of district judges and in view of the work they do as such, very few of them are really competent to supervise the efficiency of and give useful guidance to their subordinate officers. The wholesale recruitment of district judges from the Bar being for the present at least a counsel of perfection, I would insist on junior civilians being given 5 years' training in civil courts (2 as munsifs and 3 as subordinate judges) before being appointed as district judges. Then again district judges should be given relief from their criminal work as much as possible, by investing not only senior sub-judges but also senior deputy magistrates with the powers of assistant

sessions judges and empowering assistant sessions judges to hear appeals by amendment of section 409, Criminal Procedure Code.

The question of relieving district judges of the trial of administration suits, etc., will not then be so insistent. Moreover such devolution will not really relieve the congestion in the civil courts as a whole and there is no evidence that because of adjournments of many cases the subordinate judges and munsifs spend any appreciable part of the day idly without any work.

If district judges had more knowledge of civil work and had more time to utilize that knowledge to the benefit of the subordinate courts by more frequent inspection and guidance, I think most of the present evils (*viz.*, insufficient attention to the provisions of the Code of Civil Procedure, and unintelligent arrangement of the day's work) will disappear. The inspection however must be of courts not of the offices attached thereto.

The present system by which the efficiency of judicial officers is judged by their returns and disposals seems to be effete. It is impossible by these returns to judge of the real merits of the officers. As was pointed out by the High Court judges, a mechanical means of judging efficiency is impractical. This can only be done by the district judge *if he is really competent* hearing as many appeals as possible from the decisions of his subordinate officers, and also inspecting from time to time records of pending cases. It is no use inquiring how many books there are in the shelves and if they are properly dusted, and so on. All these matters may be safely left to the judicial officers themselves.

So far as I could make out, the remarks of the district judge in his annual report on the merits of his subordinate officers are not based on any intelligible foundation. He has far too little material to judge of their real worth.

The root cause of most of the delay at present occurring seems to be the system of service of processes.

As regards summonses on *witnesses* there seems no reason why they should not be made over to the party citing them who should be required to certify the service thereof by affidavit.

As regards summonses on *defendants*, I think the introduction of an *additional* notice by registered post card will be of great benefit. Affidavits by identifiers need not be insisted upon except in cases where the original service is not effective *and* the post card is also not delivered. Once the service has been effected, the system of "registered addresses" which I understood from Mr. Justice Stuart was in force in the United Provinces, may be adopted—the address being used throughout the case (suit as well as execution) with liberty of course to the defendant to give notice of change of address as it may occur.

The present system of levying process fees, which makes the peon's travelling costs a charge payable outside court, should be revised, and an inclusive charge for the service of process including peon's travelling expenses and postal costs, levied. This would

not entail any appreciable addition to the amounts payable by the parties, and if processes servable in the sub-divisions are sent to the sub-divisional nazarats and the ostensible journeys *on foot* by the peon from the sadar station abolished, it will be possible to appreciably reduce the number of process-servers and thus keep the Government's profit of 18 lakhs a year constant.

Another very important thing is that the procedure should be strictly regulated by the Code of Civil Procedure. This will be improved if the bench and bar are better equipped with knowledge of the provisions of the Code, many of which are now treated as dead letter.

The very liberal adjournments granted *for filing written statements* may well be curtailed.

The question of substitution of the heirs of deceased defendants or respondents is also important. I think the Original Side practice in this matter, *viz.*, making the substitution *ex parte* and leaving it to the substituted person to come in and object, if so advised, may well be adopted.

I would also insist on the scale of costs allowed being revised and to make the costs payable by an unsuccessful party have some nearer relation to the actual costs incurred. The scale of costs in miscellaneous cases should also be revised and the present maximum of Rs. 80 for subordinate courts abolished.

For the purpose of discouraging frivolous suits, etc., the provisions of Act IX of 1922 may well be extended to Bengal.

Commissions for examination of witnesses should be discouraged and granted only in rare cases. I do not think it would be of much use to extend the powers of commissioners in any way as any time gained thereby may be lost at a subsequent stage if the court disagrees with the commissioners.

As regards the execution of decrees, I think the necessity of keeping alive decrees may well be got rid of and the number of useless miscellaneous proceedings in subordinate courts thus minimised.

The scheme of having an *experienced* judicial officer to act as registrar of the district judge's court and be in charge of the offices as well as of the preliminary stages of suits sounds attractive, but will, I am afraid, be unacceptable on financial grounds. Putting a junior officer in the position indicated will obviously be of no use.

The question of discouraging frivolous appeals is a very difficult one. The proposal that in all appeals the appellant should be asked to deposit the decretal amount would work hardship in a considerable number of cases, and in suits other than suits for money would only entail the deposit of the amount of costs decreed which would not be sufficiently deterrent.

The object aimed at may probably be attained by the adoption of the system of penal costs together with the enhancement of the present scale of costs, as mentioned above.

As regards the Appellate Side of the High Court, the only substantive proposal before the Committee was to abolish second appeals in suits below a certain value. I do not think that would be proper. In many cases the question involved in a suit has no relation to its monetary value, and after all second appeals are allowed only on grounds of law. The appeal under section 15 of the Letters Patent may, however, be abolished when the case is valued at below Rs. 50 *and* there is no certificate by the judge hearing the appeal.

The preparation of paper books in *second* appeals, consisting only of the judgments and memorandum of second appeal may well be abolished in order to secure more speedy and economical hearing of such appeals.

Except what is indicated above, I would not curtail the right of appeal in any way.

Mr. R. E. JACK, I.C.S., District and Sessions Judge, Assam Valley District, Gauhati and Rai KALI CHARAN SEN Bahadur, Government Pleader, Assam.

We think that something could be done to improve the quality of the officers selected for civil work in the Assam Valley. It should be regarded as essential that, in view of the fact that these officers invariably have civil work to perform, they should have a good knowledge of law; and preferably those having B.L. degree should be selected as Extra Assistant Commissioners. From this point of view we think it would be a good thing if the judge is made a member of the Selection Committee. We also think that those officers selected to serve as munsifs should undergo preliminary training of 2 or 3 months working under the subordinate judge or a senior munsif, both to learn the methods of disposing of judicial work and also to become acquainted with the working of the judicial offices. We think that the judge should devote more time to the inspection of the munsifs' courts and particularly with a view to ascertaining whether each of the munsifs is adopting expeditious methods of work and instructing them where any improvement of method may be made, and in particular to see whether they are arranging their work in the best possible way. The work should as far as possible be so adjusted that the munsif is kept fully occupied and at the same time cases should rarely be adjourned for want of time. The order sheet should represent the real facts. If the parties are really prepared to proceed, cases should not be shown as adjourned on the application of the parties. The parties should never be asked to attend with witnesses on dates on which there is little probability of the case being taken up. It should be known that if the parties know that their cases will be taken up, they will attend as a rule on the dates fixed. As regards the out-turn of work we think that no general standard could be fixed. A standard will have to be fixed for each district according to the class of cases and the nature of the suits there. This should best

be done by the inspection of the work on days taken at random, and noting the outturn of work done by a good officer in that particular district. A munsif should ordinarily not be allowed leave without consulting the judge and without making any arrangement for his work. We think that a munsif should ordinarily not be transferred for 3 years, but we do not think that he should be retained much longer than that period in one particular place. In order to get more time for inspection the judge should be authorized to transfer to the file of the subordinate judges probate, succession certificate and guardianship cases and also land acquisition cases. In suits under section 92 of the Civil Procedure Code the judge may be authorized to ask the subordinate judge to take out preliminary steps and if necessary record evidence and either finally dispose of the case or should the judge wish he could pass final orders on the evidence recorded by the subordinate judge. We think that the ministerial staff engaged in the civil court offices should be under the control of the district judge. We think that if possible there should be a separate civil court nazarat at headquarter stations. If this cannot be arranged, there should at least be a naib nazir working directly under the district judge. In connection with the service of processes we think that the identifier system should be abolished, and the peon should go to the gaonbura of the village where the process is to be served and take his assistance in the service of the processes. The process should be endorsed by the gaonbura as having been served in his presence. The gaonbura should keep a register of the processes served and should receive a small fee for each process served in his presence. In order to check the working of the nazarat monthly returns showing the work done by each peon in the service of processes during the month should be made by the nazir and submitted to the district judge for the whole of the district. The suggestions apply more particularly to the Assam Valley. In the Surma Valley the conditions are very similar to those in Bengal. We think that the appellate jurisdiction of the district judge might be increased up to Rs. 10,000 as parties complain that the expenses they have to incur in first appeal to the High Court are very high and they would still have the opportunity of second appeal to the High Court for which the expenses would be much less. We think that the provisions of Orders VII and VIII are a good deal neglected, but this will be remedied by a better selection of officers and inspection. We think that in cases where the parties wish to do so, they should be given summonses for service on their own witnesses. The scale of allowances to witnesses of the cultivator class in Assam is too low. The minimum allowance should be 6 annas a day instead of 4 annas as at present.

Answers to Questionnaire.

1. As regards the time required for the disposal of suits we think that in munsif's courts title suits should ordinarily be disposed of within 6 months and money and rent suits within 3 months, and

small cause suits in 6 weeks; in the sub-judge's and district judge's courts title suits in 9 months, money suits in 6 months, and appeals in 4 months. The period now actually taken does not exceed in very many cases.

34. Order XVI, rule 16 is not generally enforced.

35. In the Assam Valley there is not much obstruction of this sort. This could be remedied to a large extent, where prevalent, by a preliminary examination of the plaintiff and the defendant in the suit previous to the hearing of the suit and by giving the courts the discretion to check the number of witnesses called. We think that it is more prevalent in the Surma Valley.

41. Such delay is frequently caused and we think that the suggestion made is a good one.

42. No.

43. No.

44. Yes.

45. The dates are usually fixed by the peshkars in the munsif's courts. There ought to be more supervision by the judges in this respect. This probably leads to an unequal distribution of work.

46. Pleaders are not always consulted; and there might be some improvement in this respect.

47. We think that for local enquiries specially trained officers of the court of the status of a kanungo should be employed in the Assam Valley. In the Assam Valley there is considerable delay in the execution of such commissions. In Assam, cases are not generally delayed by the examination of witnesses on commission. We think it is not necessary to insist upon written interrogatories in every case.

48. We think that the adjournment costs of Rs. 2 ordinarily allowed in munsifs' courts are hardly sufficient to prevent frivolous applications for adjournment. We think it would be a good thing to insist that the adjournment costs should be paid on the day the application is made.

49. The suits are usually tried continuously day by day. We are inclined to think that where all the witnesses of the party on whom the burden of proof lies are present, their evidence should be recorded even if the witnesses of the other party are absent. In Assam, the delivering of judgments is often unduly delayed and we think that in every case in which an undue delay is made the officer should be required to make a note in the order sheet explaining the cause of the delay.

67. We do not think very much avoidable delay is so caused in fact and the court has ample powers by insisting on sufficient security to prevent any abuse of the procedure.

69. The working of the Insolvency Act is very unsatisfactory and in particular we find it very difficult in Assam to get receivers who can be relied on in the realization of assets. In the Assam Valley, such matters are disposed of by the subordinate judge. In

the Surma Valley, such work is done by the district judge and it might well be transferred to one of the subordinate judges.

70. Execution proceedings are not very frequently so delayed. But we think that arrest and attachment before judgment might be more freely resorted to.

Colonel B. O. ROE, District and Sessions Judge, Jullundur.

PREFACE.

When a physician is called in to prescribe for a patient, it is desirable that he should know not merely the symptoms of the patient, but also his past history. And it is also essential that the history that is told to the physician should be a true history. It only makes the task of the physician more difficult if the patient pretends that he has led a righteous and sober life, when he has really done nothing of the sort.

Consequently, in the present memorandum, I have endeavoured to set forth without fear, favour or affection such information as I may have regarding the history, past and present, of the administration of civil justice in the Punjab, in the hope that it may be of use to the physician, in this case the Civil Justice Committee, who has been called in by His Excellency the Viceroy to prescribe for the patient.

The average litigant in India is quite unlike the average litigant in England. There, a man only goes to law if he is compelled to, whereas in India, at any rate so far as the agricultural community is concerned, a man goes to law because he likes having a law suit, which provides him with an interest in life for the time being, and very often enables him to avenge himself on an enemy. It may also possibly result in pecuniary advantage to himself. It is difficult to realise what an enormous difference there is in the general outlook of life of the average Punjabi peasant and of a member of that portion of the community which is, I believe, referred to as the intelligentsia. A member of the latter class usually lives in a city which has certain amenities and amusement. He has a certain amount of education, at any rate he can read and write and has probably been up for a literary examination of a sort even though he has failed to pass. This is at the lowest estimate of him. At the highest he is as highly educated as any member of the similar section of the community in any civilised country in the world. The average agriculturist on the other hand leads much the same sort of life, and is probably much the same sort of person as his prototype was in the time of Abraham. He tills his land with the same sort of plough and the same type of oxen, while his children tend his flocks which are trying to pick up some grazing on the village waste land. He carefully observes all the ceremonies which are prescribed for births, deaths and marriages, and, by way

of recreation, he attends fairs at his own or neighbouring villages. When the English annexed the Punjab in 1849 he was provided with another source of interest and amusement, that of having law-suits. Up to that time there were practically no civil laws to regulate the rights of the people *inter se*. There were supposed to be certain customs prevalent amongst the different tribes and communities, but if any man chose to disregard the wishes of the brotherhood in any particular matter there was no court to enforce the rights of the offended party. The offender either departed this life suddenly and mysteriously or the matter dropped. At the annexation of the Punjab by the British Government in 1849, a civil code sufficient to meet the growing requirements of a commercial and agricultural community was compiled by the joint efforts of Messrs. Montgomery and Temple and revised by the Chief Commissioner. I doubt if India has produced three more distinguished men than Sir Robert Montgomery, Sir Richard Temple and Lord Lawrence; so at any rate civil justice in the Punjab had a good send off. This primitive civil code has expanded until the general civil law in the Punjab is much the same as in the rest of India, though every province has its special local laws. At first the volume of litigation was not very great. The ordinary agriculturist did not realise what 'a wonderful' gift he had received, and land which is the main subject of agricultural litigation had not acquired anything like its present value. Custom also had not been invented. If it existed, the right to enforce it in a court of law was certainly never contemplated.

In 1872 the Punjab Laws Act was passed. This laid down that practically all questions affecting the family and daily life of the ordinary agriculturist should be decided according to the customs of the community to which he belonged. The small stream of litigation started in 1849 and swelled by the Act of 1872, has now turned into a great flood, and I do not suppose that there is a family in the Province that has not had at least one law suit since the annexation.

Apart from the suits by the village money-lender to recover money advanced—a form of suit common to every peasant community in the world—the great majority of suits amongst the agricultural community are about land in some form or other. There is scarcely a sale or mortgage of ancestral land that the collaterals of the alienor do not contest as not being for necessity. Frequently the alienor himself puts up his own minor sons, with a nominal guardian, to bring a suit. He has himself described as a drunkard and a debauchee, and claims that the alienation is not binding on his children. The purchaser or mortgagee knows that he will have to face a suit and allows for the fact in fixing the consideration. I may note here that when in 1915 the question of dealing with the mass of litigation under customary law was under consideration, I wrote a memorandum for Sir Henry Rattigan on the subject, urging that any alienation by a male proprietor of ancestral land must be assented to by the two nearest reversioners who were of age,

and if they assented then the alienation was valid against all the reversioners. If they did not assent, then it was invalid so far as the rights of the reversioners were concerned. Sir Henry thought the suggestion too drastic, though he had my memorandum published as an article in The Pioneer. What was done was to reduce the limitation for suits to contest an alienation of ancestral land to six years and to confine the right to sue collaterals within the fifth degree.

In this class of suit nobody is in any hurry. The suit is generally for a declaratory decree and it will probably be years before it can be fructuous. In my experience, it is in this class of suit that there is generally the least difficulty about serving summons. All the parties live in the same village or close by and the suit is generally regarded as a friendly gamble. The consideration is made up of various items of expenditure and much ingenuity is expended in filling in the details.

About 1901 the then Chief Court decided that the purchase of bullocks and payments of revenue by an agriculturist could be classed as necessity. For many years afterwards scarcely an alienation was effected without a substantial portion of the consideration being debited to these purposes. One man who effected several alienations of his estate to different people at different times was found to have purchased thirty-seven bullocks. Later on a judgment came out throwing doubts on the necessity of unlimited bullocks, so they were rather off, and marriage expenses of children and putting a son into the army boomed for a time, as both of these items had been passed as necessity.

It has been laid down that the lender need not see that the money is actually applied to the purpose mentioned. It is sufficient if he makes inquiries as to whether there really is a marriage on the tapis. Consequently one such marriage will frequently enable a man who wants to raise money to borrow it from two or three different persons, hypothecating different pieces of land to each. It is not surprising that this class of suit is very popular amongst a people who want a little excitement in their lives and enjoy gambling. Another class of case which is fairly common is the encroachment case. These are generally started by the patwari. He gets a fee for all copies of extracts from his documents and naturally likes a nice healthy flow of litigation. Any sort of suit connected with land nearly always necessitates some copies being obtained from the patwari. When litigation is regrettably slack the patwari goes round to some man who he thinks is not on good terms with his neighbour, and tells him that the latter has probably taken two merlas of his land. The patwari says he has been measuring his friend's land and finds it two merlas short, which must have been taken by his neighbour. His friend being in funds and wishing to annoy his neighbour promptly brings a suit. The patwari supplies each party with a copy of the revenue maps and sundry other papers for which he is duly paid. And if he is lucky he may even be appointed a local commissioner to measure up the land

and if he isn't his evidence will carry considerable weight. So altogether a patwari's pickings in an encroachment case are considerable. There are of course many other kinds of suit, such as breach of betrothal, restitution of conjugal rights cases, etc. But these are not so common, though taken altogether they contribute considerably to the work of the courts. Having decided to start a suit we will now follow the litigant in his course to the High Court. Two things seem to dominate his mind, the first is to spend as little money as he possibly can, at any rate to start with. There is nobody more penny wise and pound foolish than the Punjabi peasant. The second one is a deep distrust of everybody he is brought into contact with in the course of the case, whether it is his own pleader or the other side's pleader and even the judges. The menials and hangers on of the court, usually referred to as the ministerial staff, he regards as messengers of Satan sent to fleece him. But these feelings do not in the least deter him from carrying on his suit. He first of all probably goes to a petition-writer, unless he lives in the immediate vicinity of the district headquarters when he may go direct to a pleader. The petition-writer will draw up a statement of the case which the litigant will take to a pleader, probably recommended by the petition-writer, or introduced to him in some way that had better not be too closely inquired into. Having got to close quarters with his pleader, he proceeds to try and bargain over the fee. To begin with, he generally engages one of the lesser lights of the Bar, who usually agrees to do the case, so far as the first court is concerned, for a certain fee. The fee having been duly paid—the members of an ordinary mofussil Bar almost invariably conduct their business strictly on the basis of cash in advance, otherwise they would probably never get paid at all—the selected lawyer proceeds to draft the plaint. This is frequently a process of some difficulty as his client generally tells him as little as possible, carefully suppressing any information that he thinks may not be in his favour, however important it may be for a correct apprehension of the case. In appeals, I have often protested against the slovenly way the plaint has been drawn up. But as the advocate for the plaintiff in the appellate court is practically never the pleader who drew up the plaint, all that happens is that the former cordially agrees and explains how very much better he would have done it. The plaint having been drafted and the correct stamp purchased, the plaint is formally presented. The next point is to get service effected on the other side. The defendant is probably perfectly well aware that the suit is going to be brought, but if he is actually in possession of land which he may have to give up, or if it is a question of having to pay up money, he is naturally not in any hurry for the suit to be decided. The process-server who is entrusted with the serving of the process, finds out from the plaintiff how much he is willing to pay to have the process served, and then his emissary finds out how much the defendant is willing to pay not to be served. The process-server acts according to the information he gets. We will, however, assume that the defendant has been served and the case has actually come into court.

According to law, the parties should bring with them, at the first hearing, all documents in their possession on which they intend to rely. Formerly this was never done, parties producing documents casually as it suited them and as the case proceeded. Latterly, owing to pressure from above, courts have taken to insisting on the production of documents at the proper time. We will assume this has been done, and the court having before it the pleadings of the parties and their documents should proceed to examine the parties. As a matter of fact this is generally a very perfunctory business. The court has a lot of work to get through, and it probably thinks it knows quite well what the suit is about, without any further discussion, and it suggests issues. If neither pleader objects, they are duly framed and a date is fixed for evidence. The law prescribes that when a case comes on for hearing, the evidence of the parties shall be taken without interruption, the court sitting from day to day until the evidence is completed. This is practically never done, and never will be done, until parties are made to understand that it is their business to see that their witnesses are present, the court giving them such assistance as it can by issuing processes, etc., as requested. At present it is considered quite sufficient if a party deposits process fee for a witness, and then takes no further interest in the matter which frequently happens if one wants to delay the decision of the case. One witness before the Committee said this was so in 75 per cent. of the cases that went into court. This witness was a lawyer in good practice and ought to know. All what the party that wishes to delay a case has to do is to give the name and address of a non-existent witness, and the case is adjourned while the process-servers hunt for a man that does not exist. There are comparatively recent decisions of the High Court that if a witness has been summoned and does not appear, a warrant should be issued for his arrest, and the absurd part is that when witnesses, after a great deal of trouble are got into court, their evidence very rarely carries any weight. Seventy-five per cent. of the cases are decided practically entirely on documentary evidence. Witnesses no doubt have frequently to be produced to prove documents, but beyond that they are generally useless. In an ordinary case for restitution of conjugal rights, an entry in a chowkidar's register of marriages will be considered better evidence than the statements of half a dozen persons who depose that they were present at the marriage. The difficulty of getting the witnesses into court is one of the main causes of delay in civil cases. Another cause of delay in the disposal of cases in the lower courts is the way adjournments are given for arguments. A lawyer raises some legal objection and instead of deciding it at once after hearing what the parties have to say, the subordinate judge frequently proceeds to give a date for arguments, though the point may be quite a simple one. And when a case is finished so far as the evidence is concerned, almost invariably a date is given for arguments. This is done usually to please the Bar. The case having been tried piecemeal the Bar is not ready to go through the evidence in argument until the counsel has had time to look it up. When argument has been

duly heard, judgment is delivered at some later date. The case being now finished in the first court, it may be convenient to consider what are the main causes of delay and their remedy. The first is the corruption and consequent inefficiency of the process-serving establishment. The pay of the process-servers has recently been raised, but, as one witness remarked, the principal result has been that the process-servers have put up their fees for service or non-service of processes as the case may be. The best remedy would I think be to pay process-servers strictly by results. Each process-server should get a small retaining salary and so much for each process he actually served. This would certainly stimulate zeal in serving processes and it would also put up the fee to be paid by any litigant who did not want any particular process served. If it was found that any process-server, over any reasonable period of time, had not served a fixed percentage of processes, say 80 per cent., he should first of all be warned and then dismissed if he failed to make good.

The next cause of delay is the constant adjournments that are given in cases frequently for every inadequate reasons. The only way to remedy this is to try and give the subordinate judges more self-confidence and to make them feel that if they do their work fearlessly and honestly they will be unhesitatingly supported by the courts above them. At present they are afraid of offending the local Bar association on the one hand and on the other hand of being thought harsh and hasty by the appellate court. In England the Bar council exists mainly to enforce a high standard of professional conduct amongst members of the Bar, the slightest deviation from that standard being severely punished. In India the Bar association is a sort of trades union whose main object seems to be to get the local judiciary under their thumb. I have been twenty years a divisional or district judge and have received dozens of deputations from Bar associations on various matters. I have never yet been asked by any Bar association to take official cognizance of any unprofessional conduct by any member of the Bar. Individual members of the Bar have told me truly astounding things that have been done by other members of the Bar. Things that must have been perfectly well-known to all the Bar, yet no complaint has ever been made.

Some illuminating evidence was given before the Committee by certain members of the Bar. One claimed that all appointments to the subordinate judiciary should be made from amongst the Bar by the Bar; and another that any subordinate judge should be transferred to another station if the local Bar association demanded it. It is not surprising that a subordinate judge regards the reasonably expeditious disposal of a case as of less importance than standing in with the local Bar. Also there is no doubt that subordinate courts feel or rather used to feel that it was useless refusing to restore a case dismissed in default or to refuse to set aside an *ex parte* decree. A party to a case does not appear and his case is dismissed in default. Probably it did not suit him or he thought he would

like to do something else. His case is dismissed. He applies for restoration and says he was ill and produces several witnesses who say that he was starting for the court when he was suddenly seized with an internal pain, and his case is restored almost as a matter of course. If the subordinate judge did not restore it himself, he feels quite sure that the appellate court would. It is not surprising that litigants treat the courts in the casual way they do. I quite realise that care would have to be taken to see that cases were not wrongly dismissed in default, simply to show a good number of disposals. I have known that even district judges do this. It was well-known that a certain judge, now retired, used to do this but no action was taken. We can only hope that the steady improvement in the subordinate judiciary which has been taking place in the last few years will allow more confidence to be placed in their discretion by the appellate courts.

Let us now follow the case to the appellate court, as the unsuccessful litigant usually appeals. Having succeeded in the first court the respondent naturally wants to put every obstacle that he can in the way of his being disturbed in his advantageous position, and he generally starts by avoiding service of summons. This would easily be stopped by directing each party at the beginning of a case to register an address to which summons and all communications connected with the case could be sent, and a registered notice sent to this address should be held to be good service. Assuming parties to have been duly summoned and to have put in an appearance, on the date fixed, the appeal comes on for hearing.

A case in appeal as presented to a district judge is in very different form to one presented to a High Court. There is no printed book, and probably the only documents in English are the copy of the judgment and decree presented with the appeal. There is no order sheet for the judge to see the various stages of the case in the first court. His reader in some miraculous way contrives to find his way about and more or less masters the contents of a voluminous vernacular basta. Any plans or English documents can of course be examined by the judge himself, but for the actual evidence, documentary or oral, he has to look to his reader. The counsel has very probably only been retained the day before. He is practically never the same as the counsel who appeared in the first court and his knowledge of the case is probably derived from a hasty inspection of the record. Fortunately, counsel seldom rely on oral evidence, and the case is generally argued on what documentary evidence there may be on record. In a case between Europeans there are frequently letters which have passed between the parties. These are almost invariably on flimsy paper which has got torn. They are fastened together in no sort of order, chronological or otherwise, and their correct appreciation as evidence is made as difficult as possible.

Before dealing with the actual hearing of the appeal it may be as well to consider the question of stay of execution of the decree of the lower court, an application for which

has probably been made by the appellant. The point is a difficult one. The respondent having won in the first court it is *primâ facie* unjust to keep him out of his money, his property or his rights as the case may be. On the other hand, if he gets his money he may very likely disappear with it. I have a case now in which a man got a decree *ex parte* for Rs. 2,500. He managed to attach and get hold of that sum out of the banking account of the defendant and he has disappeared. The *ex parte* decree has been set aside and the original plaintiff having disappeared the suit has been dismissed in default. The chance of the defendant ever getting back his Rs. 2,500 seems exceedingly remote. So far as money decrees are concerned, my practice is to make the judgment-debtor deposit the sum decreed in court and it is not paid to the decree-holder until the decision of the appeal. This is not generally very long in the district judge's court. If the period is for some reason likely to be prolonged, then it is better to let the decree-holder have the money and give substantial security for its return in the event of the appeal being accepted, as he is the person *primâ facie* entitled to the money. Some lawyers think or at any rate profess to think that a case should start *de novo* in the appellate court, with the parties on an equal footing. This seems to me an erroneous view. The party that has been successful in the lower court should at least be presumed to be in the right and should enjoy, if either party enjoys, the use of any money that may be in dispute between the parties. There should be no difficulty about his producing suitable security so that in the event of the appeal being successful, the appellant can recover his money again without any trouble. As regards a decree for possession of property, it depends on how long a period is likely to elapse before the appellate court passes its decree. If it is only a few months then possession might remain as it was. If it is a matter of a year or more then possession should be made over to the respondent, who should give suitable security for mesne profits in the event of the appeal being successful. Every case must be decided on its merits, but these general principles seem to be sound.

Coming now to the actual hearing of the appeal, both lawyers generally arrive with a huge load of books. This is borne in front of them by some myrmidon who ostentatiously deposits it alongside the seat his master is going to occupy, like an ammunition dump. This is done to impress clients. At least that is the conclusion I have come to, as usually only one or two books out of the goodly pile are referred to, and I can hardly believe that counsel of any standing can suppose that a judge is influenced by the number of books the counsel has had carried into court in front of him. The usual practice, I believe in most judicial systems, in appeals is for the counsel for the appellant to state the points on which the parties are at issue, the decision of the trial court on those issues and then to try and convince the appellate court that the original decision was erroneous, the counsel for the respondent in his turn contending that the decision was correct. This method did not commend itself

to Sir Louis Dane, when he was Lieutenant-Governor, who in his comments in the Civil Justice report of 1909, set forth what in his opinion was the correct method for hearing civil appeals. His ideas were somewhat curious and are worth repeating. After setting forth that a judge should thoroughly prime himelf with a case before starting to hear arguments Sir Louis Dane goes on to say: "A good grasp of the facts of a case before going into court often enables a judge to reduce the time spent over the case by more than half. An accurate knowledge of the facts and leading points of a case before going into court will not only enable a judge to detect at once how far a legal practitioner is master of his case and to prevent the drawing of many red herrings across the trail; it will also relieve the Bar of the necessity of addressing the court on the facts in the minutest possible detail. It is not infrequent to hear the Bar address the Bench in this country very much on the same line as a British jury is addressed at home. This would ordinarily be quite superfluous if judges knew their cases before going into court." Now these instructions are superficially plausible. But what would really result, if they were carried out, would be that the judge would, in the great majority of cases, make up his mind before he went into court as to what his decision was going to be and only hear counsel for the party against whom he was going to decide the case, and then only on those points on which in the opinion of the judge the case must fail. This procedure, if it could be carried out, might shorten the time spent on some cases, but I very much doubt if it would tend to increase the respect for the administration of justice, and the result of attempting to carry it out would frequently be that an unseemly wrangle between the Bench and the Bar would ensue. Some advocates are no doubt painfully long-winded, but so far as appeals in district courts are concerned, I do not think much time is wasted, especially when counsel realises that the judge knows his work. Give the counsel for the appellant a fair hearing, and then if there is manifestly no force in the appeal dismiss it without calling on the other side to reply. Many weak judges do not like to dismiss an appeal at once for fear of hurting the feelings of the advocate for the appellant, but judges' time is valuable and should not be wasted. The Privy Council not infrequently dismisses appeals without calling on the counsel for the respondent and there is no reason why district judges should not do the same.

The appeal having been duly disposed of by the district judge, the case is probably carried to the High Court. Whether there is good ground for an appeal or not is quite immaterial. I once asked an eminent Indian country gentleman why he had taken a certain case to the High Court when he had no possible chance of success. He said his "izzat" required it. If he had not done so, his neighbours would have jeered at him, whereas they now regarded him with respect for having fought his case to the bitter end. Reason and common sense take a very back seat in this country in comparison with unreasoning sentiment. Before considering the actual hear-

ing of an appeal in the High Court, it may be as well to consider the constitution of that body or rather of the Chief Court as it was up to a few years ago. It may be said at once that things are very different now and what I am going to narrate belongs to the past. The ordinary person would naturally think that to ensure an appointment to the Chief Court the best thing for a young civilian to do would be to study law and get appointed to the judicial service as soon as possible. In actual practice this was the most foolish thing he could do. Some thirty years ago the most cherished tradition of the Punjab Commission was that nothing mattered except revenue, and it was impressed upon every assistant commissioner that it should be his ambition to be put in charge of a settlement, then make a name for himself as a deputy commissioner, and finally, if he found prospects not particularly good he might go into the judicial, where he would be put into the Chief Court at the earliest possible opportunity as a matter of course. Before the inauguration of the High Court there was no necessary qualifying period of service as a district judge. The Chief Court itself was constituted in 1866 and it was not till about twenty years later that a separate judicial service was constituted. Before that the Chief Court was recruited from commissioners and additional commissioners, who used to hear first appeals from all decisions of the ordinary courts. When Sir Dennis Fitzpatrick was Lieutenant-Governor he considered the question of dividing the Commission into two separate sides, the executive and judicial, and of calling on officers of the Commission to decide definitely at some reasonable period of their service which side they would go into. So in 1893 he appointed a small committee, consisting of my father, who was then what was known as the senior judge of the Chief Court, Sir Charles Rivaz and Sir Lewis Tupper to inquire into the feasibility and desirability of the scheme. This Committee took the personnel of the Commission and divided it into three lists. In one list they put those members of the Commission whom they considered to represent the average capacity and ability of the Commission, and in another they put those who were considered above the average and in a third those who were considered below the average. On an examination of the lists it was found that almost all the members of the Commission who were then doing judicial work were on the third list. So it was decided that before any definite division was made between the two sides of the service, the judicial side should be strengthened by getting a number of officers in the top list to go across to the judicial side, and a recommendation was made to this effect. Theoretically no doubt the idea was very good, but the practical result has been rather curious. Any deputy commissioner of any standing was allowed to go over to the judicial side and become a divisional judge and it was assumed that because he had been a reasonably successful deputy commissioner, he was bound to be an efficient judge, a corollary that experience has shown to be totally erroneous. A deputy commissioner who has a competent head clerk and a good office can carry on for a considerable time doing remarkably little work. A judge on the other hand must

decide a reasonable number of cases, and his decisions have to stand the scrutiny of the appellate court. There have been cases in which deputy commissioners who became divisional judges, as they then were, were quite incapable of coping with judicial work at all.

The practice of putting deputy commissioners into the Chief Court, after very little experience as divisional judges, had another result. According to the Punjab Courts Act which was then the law, any application for revision which was preferred to the High Court might be treated as an appeal if the judge hearing it thought fit, and there was also a ruling of the Chief Court, which ruling has since been dissented from, that in a backward province like the Punjab, too much attention should not be paid to the original pleadings of the parties. Consequently when the case got to the Chief Court a clever pleader would make out that the lower courts had not rightly understood what the parties were really quarrelling about and start a fresh case altogether. And the judge, anxious to do justice, or what he thought was justice, and not having much regard for legal procedure would deliver a judgment, which was really an executive order such as a deputy commissioner would pass, in which the judge gave a decision which he thought settled the dispute as fairly as possible, and which frequently resembled the case as originally laid, as much as a butterfly resembles the caterpillar from which it originally sprang.

Consequently applications for revisions were made in almost every case. If by any chance the application was thrown out at once, only eight annas had been expended on a stamp, and if it was admitted as an appeal there was always hope. It is only just to say that matters are very different now. Judgments have been pronounced laying down that parties are bound by their original statements and admissions and may not shift their grounds of attack and defence. Orders have also been issued that documents in the possession of the parties must be produced at the first hearing, and not at any stage of the case. In the old days documents were sometimes kept and only produced in the appellate court where they were frequently admitted, in what was euphemistically described as the "interest of justice." There is one thing, I think, which greatly retards and impedes the speedy disposal of cases by courts and that is the readiness with which certain judges of the High Court issue orders staying all proceedings in any case. When a litigant gets an idea into his head that the judge is going to decide a case against him, his great idea is to get the case before another judge. I frequently get applications asking for the transfer of a case, on the ground that the judge has expressed his opinion on the merits of the case. These applications are generally accompanied by a request to stay proceedings as, if the case can be delayed, something may happen and there is always hope. I nearly always reject these applications but they seem to be attended with more success in the High Court. I was once directed to hold an inquiry into certain allegations against a pleader under the Legal Practitioners Act. I had barely started the inquiry when I got orders to

stay proceedings and show cause why the inquiry should not be held by another judge. I pointed out that the position of a district judge became a little difficult, when he was one day directed by one judge to hold an inquiry and another day called on by another judge to show cause why he should not do as he had been directed. After a delay of about three months I was directed to proceed with the inquiry. When I had examined between 50 and 60 witnesses, I was again directed to stay proceedings by a third judge. The pleader whose conduct was being enquired into was obsessed with the idea that I was prejudiced against him, and there being eight judges of the High Court and as each application delayed proceedings for three months, he no doubt thought he could drag them out for some two years, during which period anything might happen. I eventually reported that there was nothing in the conduct of the pleader that necessitated any action by the High Court. I mention this incident to show how easy it is for a party who desires to delay proceedings to achieve his object.

The reason why the arrears in the High Court are so great is outside the scope of this memorandum. But there is one other matter that may perhaps be profitably discussed.

Many witnesses have deposed that litigants take their cases to the High Court, not from an inherent passion to litigate to the bitter end, but because they have such confidence in the judges of the High Courts. Let us examine this assertion and see if it is based on actual facts. First of all it is manifest that if every litigant is so full of confidence in the High Courts there can be no justification for the establishment of a Supreme Court at Delhi, as has been suggested in the Legislative Assembly. I am bound to say that the lawyers who supported the establishment of a Supreme Court did so mainly on the ground that it might enable criminals who had been proved by irrefutable evidence to be guilty of some crime to escape the just penalty for their offence by some technical legal quibble. High Court Judges are recruited from two sources, (1) from amongst members of the Indian Civil Service, (2) from members of the Bar.

The Civilian is a district judge of some standing in some station, where apparently nobody has much confidence in him. He is appointed to the High Court and gets into the train and goes to Lahore and takes his seat on the Bench, and lo and behold, every one is full of confidence in him. Is it the journey to Lahore, like that of Saul to Damascus, that has wrought the wonderful change, or is it the atmosphere of the High Court? The question has never been answered.

Let us now take the case of the member of the Bar. I have been a great many years a district judge and was for some years at Lahore, where there are a number of worthy and respectable members of the Bar, who, at any rate in their own estimation and in that of their co-religionists and friends, are eminently suitable for an appointment to the Bench. I have sometimes suggested to parties

in very big cases that they should submit their dispute to the arbitration of one of these gentlemen, pointing out that a fee of Rs. 1,000 or even Rs. 2,000 would be a flea bite compared to the ultimate costs, and it would be rare and refreshing fruit to the legal gentlemen. My suggestion has always been treated with scorn and I have been driven to the conclusion that the litigant had no confidence whatever in any of the legal gentlemen, whose appointment as arbitrator I had suggested. Yet when one of them is actually appointed to the Bench, as sometimes happens, we are told that every litigant is bursting with confidence in him. The truth is that the litigant in this country will carry on his litigation so long as there is a court he can get to without unreasonable inconvenience. And if ever a Supreme Court is established at Delhi, in a very few years twenty judges will not be able to cope with the flood of litigation that will overwhelm it.

There remains the question of the execution of the decree, the final stage in a law suit. The statistics published in the reports on the administration of civil justice appear to show that only a comparatively small portion of the sums decreed are actually realised.

These figures do not in the least represent the true state of affairs. A leading money-lender of Lahore, by name Bulaqi Mal, giving evidence said that on an average he brought 100 law suits a year, and paid income-tax on an income of Rs. 80,000.

Yet nominally he only realised about 40 per cent. of the money legally due to him. As this is what has been happening for the last fifty years, he was an old man, it is manifest he would have been bankrupt long ago, if his realisations were so short of his advances. Whereas he has in reality been getting a steady return of from 12 to 15 per cent. on his capital. Very frequently where the parties live in the same village decrees are satisfied without the arrangement being certified in court at all. The decree-holder is generally satisfied with a reasonable return on the money actually advanced by him. And sometimes he prefers for private reasons to have some sort of hold on the judgment-debtor. If, on the whole, the people were not fairly well satisfied with our law courts, litigation would not be so popular as it is. Panchayats, arbitration and the various devices for keeping people from resorting to the courts, are not more successful than are the social gatherings organised by parish workers in the hopes of keeping the parishioners from the picture palace and the public house. A sensible suggestion was made by Bulaqi Mal, mentioned above, that when the relation of a judgment-debtor brings a suit, claiming that a house attached in execution of a decree is not liable to attachment, he should be compelled to stamp his plaint as if he were suing for the property itself. At present he can institute such a suit on a ten-rupee stamp regardless of the value of the property. In the great majority of cases these suits are fraudulent and only instituted to defraud the rights of the creditors and they should be made as expensive as possible.

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1. *Durations and delays generally.*

The average durations of civil suits in the various classes of courts in Burma in the year 1923 were:—

	Days.
Townships courts	51·64
Sub-divisional courts	91·22
Small cause courts	26·21
District courts	154·84
Rangoon small cause court	69·28
Original Side, High Court	225·82
Appeals, district courts	69·05
First appeals, High Court, Rangoon	359·97
First appeals, High Court, Mandalay	269·73
Second appeals, High Court, Rangoon	214·54
Second appeals, High Court, Mandalay	222·87

Apart from the High Court, much improvement in these figures is not possible; but preventible delays do occur, and if courts looked on these figures as maxima, not to be exceeded except in very special cases, considerable reductions of average duration could be effected.

I propose to deal with these preventible delays in chronological order, that is:—

(*a*) Delays prior to joinder of parties;
(*b*) Delays during trial;
(*c*) Delays in appeals and revisions; and
(*d*) Delays in execution.

I will then deal separately with the High Court, the recruitment and training of judicial officers, and some other matters.

2. *Delays prior to joinder of parties.*

The period taken in procuring the attendance of defendants before the courts is, especially in the lower courts, the cause of nearly all preventible delay. The evidence which was given before us pointed to general corruption amongst the process-serving staff, and also showed that the process-servers in this province are not in receipt of a living wage.

It is impossible here to hire an ordinary cooly for less than a rupee a day; yet the highest pay that any process-server can earn is Rs. 22 a month, and that only after a service of sixteen years. It therefore seems to be essential that the pay and prospects of the process-servers should be improved. The general

opinion of the witnesses we have examined was that the initial pay should not be less than Rs. 25 a month, and that it should rise by degrees to a maximum of Rs. 35. This, as I have already said, is little more than the earnings of an ordinary agricultural labourer. But it is doubtful whether even this increase of pay will have much effect on corruption. The witnesses generally overlooked the fact that parties are only too willing to pay a bribe to the process-server if they can thereby ensure that their process will be served, or that service on them will be prevented, as the case may be. No complaint is made concerning these small impositions, except when a plaintiff has paid the process-server to serve the process, and then the defendant pays him more not to be served, and so the plaintiff's bribe goes for nought, then naturally enough the plaintiff complains. But, if he can get his process served, he has no objection to paying an extra rupee or two to achieve that object.

Other matters also enter into the question of the successful service of processes; as, for instance, the position and influence of the person to be served.

Process-servers naturally are averse to serving a penal process on a person of position, or on anyone to whom they are under an obligation. For instance, in a recent execution case in my own court no less than six warrants of arrest were issued against a village headman. These were all given for service to a process-server of long standing, in receipt of the maximum salary, and almost due for pension. Each and everyone was returned unserved, with an endorsement that the village headman was absent from his village. It afterwards came out in an enquiry in connection with another matter that, on at least two of the occasions when the process-server visited the village to serve these warrants, the headman was actually in the village; but, as the process-server now naively explains, he did not like to arrest the headman from whom he had received hospitality on many occasions, and so he returned the warrants unserved. In cases of that kind, no increase of pay will affect any improvement; and it is in such cases that the necessity for identifiers to accompany process-servers becomes apparent.

In this province there is no rule that an identifier, as agent of the party taking out the process, shall accompany the process-server; but, when a process has been returned unserved on two or three occasions, it is usual for courts here to insist that the party concerned shall take active steps to assist in the service of the process, and for this purpose shall send an identifier with the process-server. As a matter of fact, in matters such as warrants of arrest and service of summons on defendants, parties usually do send identifiers, principally for the purpose of seeing that the process-server does his duty. It seems to me that, to this extent, identifiers are necessary; but a rule such as that which I understand exists in Bengal, that an identifier shall be sent with the

process-server in every case, would impose an unfair burden on the parties. In many instances processes are, in this province, served without any identifier at all where the person to be served is known to the process-server.

The Questionnaire raises the question whether service of processes through the post would not be feasible. As regards towns, the evidence recorded by us suggested that such a course might be adopted. It would certainly not be possible outside the larger municipalities, for the village post in Burma is very uncertain and very infrequent, and large numbers of villages are not served by the post office at all.

I would suggest that a rule might be added to Order V, making it within the discretion of the court, when a defendant or a witness is resident within certain of the larger municipalities, to order service by registered post with acknowledgment, and the signature of the person to be served on the acknowledgment might be held to be proof of due service.

Another point raised is the matter of a registered address for all purposes of the litigation. It is suggested in the Questionnaire (Question No. 29) that parties should, on first appearance, be made to file a registered address which should be good for both the suit and execution proceedings in connection therewith. In this province it would not be possible to insist on such a registered address for the purposes of execution. The only address that could be given by the majority of litigants would be the address of their pleader, and it is not customary in this province for a pleader to be engaged both for the suit and for proceedings subsequent to decree. Generally speaking, the pleader is engaged for the suit only; but in many cases a succession of pleaders appear for a party at different stages of the suit itself. I, however, do think that it would be possible to insist on a registered address for the purposes of the suit only, and such an address would be useful for serving notices of interlocutory applications and similar matters.

But although these criticisms would suggest that the work of process-servers in this province is exceedingly bad, in actual practice this is not the case. As far as my experience goes, the only kind of processes, of which a large percentage is returned unserved, are processes issued by courts in the mofussil for service in Rangoon. These are all sent to the Rangoon Small Cause Court, and the process-serving work of that court is, in respect of this class of processes, very bad indeed. Large numbers of these processes are returned unserved, and without any effort having been made to serve them, time after time. It is, in fact, impossible to get a process served in Rangoon unless the party concerned, at considerable expense and inconvenience to himself, proceeds to Rangoon, calls out the process-server, and personally takes him to the person to be served.

Apart from this particular instance, the percentage of processes which are served at the first time of issue is in this province, I think, no less than seventy, and consequently it cannot be said that process-servers on the whole do bad work.

The suggestion put forward in Question No. 40 of the Questionnaire, that it should be the duty of the legal representative of a party to come forward and request the court to add him as a party to proceedings commenced against the deceased, is neither necessary nor desirable in this province. The addition of legal representatives causes very little delay here, and they are usually willing and ready to come forward of their own motion. It would, I think, be quite wrong to throw on them, in cases in which they did not come forward, the burden of proving that they were unaware of the existence of the litigation.

Similarly, in this province there is no difficulty in appointing a guardian *ad litem* for minor parties. In my experience I have but infrequently come across a case in which the person originally suggested by the plaintiff as guardian *ad litem* has refused to act, and I have only had in my time three cases in which it has been necessary to appoint the bailiff of the court to act as guardian *ad litem*.

3. *Delays during trial.*

The question of pleadings is one that, in my opinion, needs serious consideration. The non-official witnesses who appeared before us were of opinion that, generally speaking, pleadings were well drawn. As a judge, that has not been my experience. In the township courts a large proportion of the pleadings are drawn in the vernacular by petition writers, and it is obvious that, in suits where any questions of legal difficulty arise, it is impossible for such men to draw adequate pleadings.

In district courts, where pleaders of the higher grades are invariably engaged, the main fault of pleadings is their verbosity, particularly as regards plaints. The plaint generally does not confine itself to the material facts on which the party relies, but usually contains a long recital of preliminary facts, not essential to the plaintiff's case, which might have been left to be brought out, so far as relevant, in evidence. Further, in drawing plaints pleaders usually exhibit a desire to anticipate the defence and reply to it in the plaint. Practically no use is ever made of the rejoinder, and I have never yet met with an application for particulars under Order VI, rule 5.

Issues are, on the whole, well drawn; but frequently the real issues in a suit are obscured by the bad pleadings, and subordinate judges are thereby misled and, at times, do not understand what is the real point of the litigation.

I may here mention that legal issues, going to the root of the claim or the defence, are usually taken first before any evidence

is recorded; and if they are not it is because the judge has not understood their significance.

Orders X, XI and XII of the Civil Procedure Code are generally neglected in this province.

Referring to the matter of examination of the parties before the framing of issues, this is usually done in the lower courts, and there are stringent orders of the High Court that it must be done in all suits in which immovable property is concerned. But in district courts, where pleaders of the higher grades usually appear parties are not examined as frequently as they should be.

Applications for discovery of documents under Order XI, rule 12, are usual in district courts, and, in contested suits, it is the ordinary practice for both parties to make such applications. But I have never known this to be done in sub-divisional or township courts, probably owing to the ignorance of the pleaders.

Interrogatories under Order XI, rule 1, are exceedingly rare. In my experience I have only come across one case outside the High Court in which interrogatories have been administered.

Notices to admit facts or documents are never made use of. As regards documents, the usual practice is for the opposite party to produce the documents on which he relies when cross-examining his opponent, and then get them admitted in the course of the cross-examination. The matter of admission of facts is overlooked altogether.

There is no doubt that a proper attention to the provisions of Orders X, XI and XII, prior to the actual hearing of the suit, would, to a very great extent, tend to shorten the duration of suits; and these orders contain rules which should be strictly insisted on in all courts. There is an executive order of the High Court that, in every contested suit, the provisions of Orders XI and XII should be brought to the notice of the pleaders for both sides when the written statement is filed, but the order is a dead letter.

Issue of commissions for the examination of witnesses is the cause of considerable delay in the disposal of suits. In my experience, applications for the issue of commissions, made with the express purpose of causing delay, are rare in this province; but there is a good deal of unnecessary delay in the execution and return of essential commissions. Commissions issued within the province are usually returned with fair promptness. Most of our commissions for the examination of witnesses in other provinces are issued to Madras, and the Madras courts are exceedingly dilatory in returning such commissions. Ordinarily several reminders and, frequently, a telegram or two are required before the issuing court can extract any information as to the progress made towards the execution of the commission, and the date of its return is a matter of conjecture always. It is difficult to know how, without the co-operation of the Madras courts, these delays can be prevented. I would suggest that, in issuing a

commission, the issuing court should fix a definite date for the appearance of the parties before the court to which the commission is issued, and the commission order should contain an instruction that, in default of due appearance by that date, the commission should be returned unexecuted.

The service of summons on witnesses is liable to delays owing to the defects of the process-serving staff already referred to. In this province Order XVI, rule 16, sub-rule (1), is strictly enforced in all courts, and the issue of a second summons on a witness, who has already been served once, is a rarity.

With regard to evidence in the suit, the idea of examining the parties first as evidence in the suit before any other witnesses are examined, suggested in Question No. 33 of the Questionnaire, has generally met with approval from the witnesses examined by the Committee. Some advocates have objected to this suggestion on the ground that it would lead to a disclosure of the case of one party to the other party at too early a stage of the proceedings, and thereby allow the other party to concoct a case to meet the case so disclosed. This does not seem to me to be a sound objection at all. If there is anything in it, it can be prevented by insisting that both sides should file their lists of witnesses before the parties are examined, and refusing to allow additional witnesses to be cited, except for good cause shown. Such preliminary examination of the parties would undoubtedly tend to minimize the calling of witnesses unnecessarily at a later stage of the case, and would, to a certain extent, overcome the difficulty which arises through the neglect of Orders XI and XII.

A further matter, to which considerable reference has been made in the evidence given before us, is the use of evidence by affidavit in cases in which no appeal lies, as suggested in Question No. 36 of the Questionnaire. This suggestion met with general approval, with the proviso that the opposite party should be allowed to require any defendant to be produced before the court for cross-examination.

In regard to the matter of secondary evidence, mentioned in Question No. 73 of the Questionnaire, I was always under the impression that, in civil cases, the parties could by mutual agreement arrange for evidence to be given in any form, and apparently most of the lawyers whom we examined were of the same opinion. If the present law does not allow of this, then an amendment should be made to allow of evidence being given in any form with the consent of both parties.

With regard to the summoning of an unnecessary number of witnesses, it is difficult for the court to interfere in this matter, and it is largely a matter which must be left to the good sense of pleaders. One suggestion that I would make on this point is that any party, who desires to add to his original list of witnesses, should be required to prove, before summonses are issued, that such additional witnesses can give relevant and necessary evidence.

All the witnesses examined by us were agreed that little can be done to shut out irrelevant evidence, or limit the length of cross-examination; and some of the judges with whom we discussed stated that the hearing of objections to the relevance of evidence often wastes far more time than the actual recording of that evidence, and for this reason courts are inclined to let in irrelevant evidence rather than enter into arguments with the Bar as to its irrelevance. In my opinion a great deal in this direction can be accomplished by making pleaders open their cases and so tie them down to a definite claim or defence and a definite method of proving it. In this province, outside the High Court, the opening of a case is rare. Order XVIII, rule 2, on this subject is imperative, and it should be strictly enforced. Both sides should be made to open their case, and should then be made to adhere to their case as set out in the pleader's opening speech.

Turning to the record of evidence, it is really absurd that an officer of the standing of a district judge should be required to record the statement of witnesses in his own hand, or laboriously strike them out on a typewriter. It is even more absurd that, even in the High Court, an assistant registrar should be employed for the same purpose. Apart from any question of waste of time, it is far more important that the judge should be able to study the demeanour of the witnesses and to consider the effect of the questions asked and the answers thereto, than that his whole attention should be concentrated on the paper on which he is writing down the statements.

In the High Court, my experience as registrar showed that the record of evidence made by an assistant registrar was often extremely defective. A man writing long-hand cannot possibly keep pace with the rapid interchange of questions and answers between the advocate and the witness, and he is consequently bound to fall behind, unless he from time to time cries a halt, which an assistant registrar is loth to do for fear of incurring the displeasure of the judge. Consequently evidence recorded in the High Court at times shows the most curious gaps.

In my opinion there should be a shorthand-writer in every district court, and many more than there are in the High Court. These officers should be employed for the record of evidence and, at least as far as civil work is concerned, the English rules of evidence and the use of judges' notes should apply.

As far as the High Court is concerned, a shorthand-writer would be cheaper than an assistant registrar, and would be equally useful. Most of the other duties, besides record of evidence, that the assistant registrars perform could be performed by a competent man.

In the district court, the value of a shorthand-writer would be inestimable. As far as I am concerned, had I such an officer I could deliver more than half my judgments and orders from the Bench immediately on the conclusion of a case; whereas

it is now necessary to postpone every case in order that the judgment may be written. This, no doubt, applies equally to the High Court, and I am sure that other district and sessions judges have felt the same inconvenience as I have. Moreover, his usefulness in assisting in the administrative work of the Court, by dictation of correspondence, etc., cannot be over-estimated. He would save his pay over and over again in the saving of the time of the district and sessions judge. I would willingly give up one of my clerks for a shorthand-writer, and I am sure all other district and sessions judges would also do so.

In the High Court, Judges have, to my knowledge, frequently to write out their own judgments in long-hand merely because a shorthand-writer is not available.

This system could not, of course, be made applicable to sub-divisional and township courts, where the judges probably have not sufficient judicial experience to make their notes reliable, and consequently in these courts I am afraid the present system of record of evidence will have to continue.

The provisions of the proviso to Order XVII, rule 1, as regards the hearing of suits from day to day are generally neglected. No doubt, something could be done in this matter by a better arrangement of the pending files of the courts. I am, of course, speaking of courts subordinate to the High Court, for in the High Court fixed dates for hearing are unusual, and each case, when it comes on for hearing, is completed before the next case is called. But, apart from any arrangement of files, there is no doubt that judges in this province, particularly in sub-divisional and township courts, are much overworked, and it is impossible for a judge to contemplate a blank day owing to the suit, which he has fixed for hearing on that day, falling through. Unavoidable causes do occur to make essential an adjournment of a suit which is down for hearing, and consequently judges are obliged, unless they are to be overwhelmed, to fix more cases on each day than they can possibly get through, so that, if one case falls through, there shall be another ready to take its place.

There is an executive order of the High Court that, when a case has once been adjourned for want of time, it must be given preference on the next date fixed, and by strict adherence to this rule judges might be able to try a case to its conclusion when once it has been taken up, without any grave delay or inconvenience to the litigants in other suits which had to be adjourned owing to the continuance of the hearing of that suit. Insistence on obedience to this order might perhaps cause some improvement. But a far more serious matter than this question of overwork, and one that can hardly be avoided, is the interference of criminal work. District judges have sessions cases to try, and, when a sessions case comes on, it has got to be heard; consequently a civil suit, even if partially heard, must give way. Criminal appeals and revisions are very heavy, and they cannot be put off

indefinitely. The sessions judge, apart from his sessions, must have his regular criminal days. Most of our subordinate judges are also magistrates—sub-divisional judges invariably are, and not more than a quarter of the township judges are wholetime civil men. Prisoners cannot remain in custody for indefinite periods. In these courts, again, civil work has to give way to criminal work.

In this province, delays owing to the concentration of civil courts at district headquarters and the consequent waiting for pleaders are rare, outside Rangoon. In Rangoon, in my own court I experience some difficulty, as most of the advocates, who appear before me are also advocates of the High Court, and the High Court naturally has preference in regard to their services. This means that I get far more of my work to do on Fridays and Saturdays than I should have, for these are the days when these advocates are most likely to be free from the High Court.

Outside Rangoon, I have occasionally noticed remarks in the diaries of suits of sub-divisional and township courts that a case has had to be adjourned owing to the pleader for one party or the other being engaged before the district judge; but such cases are unusual.

Under the executive orders of the High Court, dates for original and adjourned hearings are invariably fixed by presiding judges themselves, and pleaders are ordinarily consulted by the judges in fixing dates, and the time required, for hearing. It seems to me that when pleaders have been so consulted, and have chosen their own dates, they should be made to adhere to them, and adjournments, on the ground of a pleader being engaged in a higher court, should not be granted. It is for the pleader to arrange his file so that such clashing of dates should not occur. As I have mentioned, some difficulty arises in Rangoon, owing to the fact that cases in the High Court do not come on fixed dates, and therefore here some leniency must be shown in the matter.

One of the worst features of civil litigation in this province, as regards this particular matter, is the fact that successful advocates are prone to take far more cases than they can conveniently handle. They seem to be unable to bring themselves to refuse a brief, or to pass it on to their less successful brethren, and they then rely on the leniency of the courts in granting adjournments in order to cope with the excessive amount of work that they have taken up.

As regards the question of costs for adjournments, witnesses generally were not in favour of increasing the amount of day costs, and for good reason. These costs fall on the parties and are not paid by the pleaders; yet in many instances applications for adjournments are made by pleaders to suit their own convenience, without the cognisance or consent of their clients.

Judgments are not usually too long, and there is really, in this province, no unreasonable delay in passing judgments.

Nearly all commercial contracts for the whole province are entered into in Rangoon, and consequently commercial suits are rare outside Rangoon, and there is no object in giving them special expedition. There is a special board of commercial cases in the High Court.

4. *Delays in appeals and revisions.*

The witnesses examined by us were unanimous in the opinion that, under present conditions, the right of appeal could not be safely curtailed. In this province there is a special right of second appeal to the High Court under the Burma Courts Act. The evidence showed that this right of appeal is necessary, and I agree. The district and sessions judges' scheme has not long been in force in Burma, and our district and sessions judges vary very much in experience and ability. We have the old divisional judges, who are officers of long experience on the Bench. We have also the old district judges, who have considerable experience of civil work. But, besides these experienced officers, there is a considerable leaven of inexperienced barristers recently appointed to the superior judicial service, and officers recently promoted from the provincial service. Consequently, the right of second appeal on facts, when the first appellate court differs from the court of first instance, is still necessary in this province. But, although the lawyers whom we examined were generally adverse to any curtailment of the right of appeal under the Letters Patent of the High Court, I fear that they were, to some extent, actuated by a regard for fees, and in my opinion the Letters Patent appeals could be safely curtailed. For instance, the suggestion made in Question No. 19 of the Questionnaire, that there should be no Letters Patent appeal in revisions and appeals of the value of Rs. 1,000 and under, is, I think, feasible; but I would increase the sum mentioned to Rs. 3,000. Again, quite a number of Letters Patent appeals are now being filed against the decisions in special second appeals under the Burma Courts Act. This appeal is a special right outside the Code of Civil Procedure, and it seems to me that no further appeal therefrom should be allowed under any circumstances. I would therefore do away with any right of appeal under the Letters Patent from decisions in special second appeals. Furthermore, I think that in all cases, before an appeal under the Letters Patent is allowed, the appellant should be made to give ample security for the decretal amount. In fact, in my opinion, security should be demanded in the case of all second appeals.

As regards revisions, it seems to me that, by judicial decision, the High Courts have largely extended the application of section 115 of the Civil Procedure Code, beyond the scope of the section as originally intended. I think that applications for revision should not be accepted, unless they fall strictly within the terms of the section. Revisions against interlocutory orders, which can be

attacked in an appeal against the final decree in a suit, should not be allowed under any circumstances; these revisions of interlocutory orders have become much more frequent of recent years.

As regards revisions of the decisions of small cause courts under the Small Cause Courts Act, I am afraid that a fairly liberal right of revision is necessary if justice is to be done, and consequently the suggestion made in clause (*i*) of Question No. 23 of the Questionnaire, that the decretal amount should be deposited before a revision petition can be presented, is not feasible.

In district courts, there is no delay in the disposal of appeals. The average duration of appeals in 1923 was 69·05 days, and I doubt if this figure can be improved on.

Order XLI, rule 11, receives too much attention in district courts rather than otherwise. In most district courts, every appeal is put down for argument for admission, and it is a rare thing for an appeal to be admitted without argument. This should not be so. A large number of appeals must, on a reading of the memorandum of appeal and the judgment of the lower court, be admitted, and it is the duty of the judge to read these documents on the presentation of the appeal, and then admit the appeal, at once without argument, if he can do so. Only in doubtful cases should argument for admission be required.

As regards the High Court, there is great delay in the disposal of appeals, whose average duration is approximately a year. A most unfortunate result of this delay, in my opinion, is that the judge, who decided the suit or first appeal, rarely sees the judgment passed by the High Court in appeal from his decision, and consequently loses the benefit of any criticisms which the High Court may have to make on his decision. I mean that, in most cases, before an appellate decision reaches the district court, the judge who tried the suit or first appeal has been transferred to some other station. For instance, I myself was at my last station for two years and four months; yet, when I left the station, only three second appeals from my appellate decisions, of which I had tried some four hundred, had come through. It would be very simple for an arrangement to be made to strike off an extra copy of the High Court's judgment and despatch it, addressed by name, to the judge who decided the suit or first appeal at the place at which he might happen to be stationed at that time, and, in my opinion, this would be a most salutary reform.

5. *Delays in execution.*

Of the applications in execution presented during 1923, the percentage of partial or complete success was 41·89. Taking into account the fact that a large number of applications are made merely to keep the decree alive, or go by default because the parties have compromised the decree outside the court, it cannot be said that decrees in Burma are ordinarily infructuous. In fact, I

think it can safely be said that about seventy per cent. of the decrees of civil courts in this province are ultimately satisfied.

The main point concerning executions, which was impressed upon us by nearly all the witnesses, was the fact that warrants of arrest are rarely issued without previous notice to the judgment-debtor, thereby giving him notice of the fact that application for a warrant has been made, and allowing him time to abscond from justice. And, further, that a warrant of arrest in a civil case is only valid in the jurisdiction of the court that issued it.

It was pointed out that the procedure under section 136 of the Code, whereby, if it is desired to execute a warrant outside the jurisdiction of the issuing court, it must be sent to the district court of the district in which it is desired to execute it, gives the judgment-debtor ample notice of the fact that a warrant is issued against him, and consequently time to abscond. Pleaders in the Rangoon Small Cause Court said that it was a common thing, when a warrant was issued against a judgment-debtor by that court, for the debtor to transfer himself to Insein—a matter of twenty minutes by railway—and thereby render the warrant null, he being, of course, at liberty to return to Rangoon after sunset, when the warrant could not be executed against him.

There is, no doubt, a great deal of justification in these complaints, and it seems to me that the suggestion generally made by the witnesses, that warrants of arrest should be capable of execution outside jurisdiction merely by endorsement of the presiding judge of the local court, as is done in the case of criminal warrants, is a good one. There is also very considerable reluctance on the part of judges of subordinate courts to issue warrants immediately on application for the same without previous notice to the judgment-debtor. Their fear is that their superior officers may censure them for not exercising a proper judicial discretion, if they issue warrants too freely. This was the case some years ago, and called for adverse comment from the old Chief Court, with the consequence that subordinate judges have now gone to the other extreme and refrain from issuing warrants at once in cases in which they should do so.

In connection with this matter of warrants, the suggestion made in Question No. 65 of the Questionnaire, that village headmen might be employed for the execution of warrants of arrest and other processes, is not feasible in the province. Apart from the fact that village headmen are already overburdened with executive duties, any such system would, without doubt, lead to a great increase of corruption.

The suggestion made in Question No. 54 of the Questionnaire, that a court to which a decree is transferred for execution should have the powers of the court which passed the decree, in regard to such matters as the addition of legal representatives, recognition of assignments, etc., met with general approval from the wit-

nesses, and, should, I think, be adopted. Under the present rules in Order XXI the court to which a decree is transferred has, in practice, little power to take adequate steps to execute the decree without continuous reference to the court which passed the decree.

Another suggestion which met with general approval is that made in Question No. 56 of the Questionnaire, for curtailing the period for execution of money decrees. The suggestion in the last part of this question met with most general approval, namely, that the period for execution given in section 48 of the Civil Procedure Code should be reduced to six years, and that the decree-holder should be allowed to apply for execution at any time within that period, without having to make annual applications, as now required by Article 182 of the Limitation Act. It is undoubtedly true that if a money decree is not satisfied within twelve months of its being passed the chances that it will ever be satisfied are remote, and that if execution is not obtained within six years it will certainly not be obtained at all. Also courts are flooded with infructuous execution applications made solely for the purpose of keeping the decree alive under the Limitation Act, without any expectation on the part of the decree-holder that the application will be successful; such applications usually end in the issue of a single notice to the judgment-debtor, which is returned unserved, and the decree-holder then closes the application. By repealing Article 182 of the Limitation Act, all such useless applications would be abolished.

Order XXI, rule 21, giving the court a discretion to refuse execution against the person and property of the judgment-debtor at the same time, may well be deleted. I do not see why a creditor should not be allowed to pursue at the same time every possible method of recovering his debt from his debtor.

Order XXI, rule 22, regarding the issue of notice when the decree is more than a year old, or application for execution is made against the legal representative of the judgment-debtor, seems to me to be necessary, and most of the witnesses were agreed that it is so necessary. A judgment-debtor, without doubt, deserves notice of such delayed executions, and he frequently has good cause to show why execution should not be granted. In the case of a legal representative it certainly cannot be presumed against him that he is aware of the existence of a decree against his ancestor's estate.

Stay of execution is, in my opinion, much too frequently granted and puts a grave obstacle in the way of judgment-creditors.

In Order XXI, rule 26, it seems to me that the imperative nature of clause (*i*) is unnecessary, and that for the word " shall " in the first sentence of the clause the word " may " might reasonably be substituted, so as to give the court to which a decree has been transferred a free discretion in the matter of allowing stay.

Stay of execution is frequently allowed by appellate courts on insufficient grounds. This is a matter which can, without doubt, be dealt with by executive order. But it seems to me that such stay should never be allowed until an appeal has actually been admitted, and then very rarely, except on good security. Security is but infrequently demanded in such cases.

In this province it is the invariable practice, when a claim suit is filed under Order XXI, rule 63, for all proceedings in execution to be stayed until the decision of the suit. This appears to me to be quite wrong. A person who files a claim suit has, usually, already made a claim under the summary procedure of rule 58, and his claim has been dismissed. If he has not done so, he has had the opportunity to do so, and has himself deliberately chosen to file a regular suit without making an application under rule 58. Consequently, if he has been unsuccessful in obtaining removal of attachment under rule 58, or has not attempted to obtain such removal, logically he cannot have any claim to a stay of execution while his regular suit under rule 63 is being heard.

Execution of mortgage decrees is dealt with in Question No. 66 of the Questionnaire. The evidence recorded was to the effect that the suggestions made in this question are, generally speaking, not feasible. I agree with the witnesses that it would be throwing far too heavy a burden on the plaintiff in a mortgage suit to make it incumbent on him to file an incumbrance certificate in respect of the property and to join as parties all other incumbrancers, on pain of dismissal of his suit for non-joinder.

The suggestion made in paragraph (*c*) of this question, that the plaintiff should, at his option, be allowed to join other incumbrancers as parties, and that all parties so joined should then plead their rights to the mortgaged property and should have their respective rights determined in that suit, might be brought into effect. Apart from this, I think that the other suggestions made in that Question are not practicable.

6. *Delays in the High Court.*

The evidence of advocates of the High Court was to the effect that the delays in the High Court are mainly due to the insufficiency of the administrative staff. Special reference was made to the translation and copying departments. Without doubt, both these departments require considerable strengthening, and at times there is great delay in obtaining translations and copies. But during the two years that I was registrar of the old Chief Court there were always a considerable number of cases ripe for hearing, and no judge was ever idle owing to lack of cases. Consequently, if the delays in the High Court are to be prevented, an increase in the staff of judges is quite as necessary as a strengthening of the administrative departments. This is particularly so, I think,

as regards the Original Side, where suits, which occupy only a few hours in the actual hearing, are delayed many months before they come before a Judge.

One of the great causes of delay in the High Court is the "jockeying" with cause lists which continually goes on. The system is that, when a case is ripe for hearing, it is transferred to the weekly list under its proper class, and gradually creeps up that list until it gets to the top, when it is transferred to the daily list of cases warned for hearing. It is a common thing when such a case gets to the top of the weekly list, if the advocate on one side is not ready for hearing, for him to arrange with his opponent's advocate to have the case put back. It is also equally common, when the advocates desire to get a case heard more expeditiously, for arrangements to be made for the case to be put over the head of other cases.

This system seems to me much to be deprecated, and it would be, I think, a good thing if, on the Original Side at least, definite dates for hearing could be fixed as soon as the preliminaries have been settled. Whether such a system, which is the one practised in district and subordinate courts, would be feasible in the High Court, I am unable to say.

Sir Desika Acharyar questioned all the witnesses as to the feasibility of establishing in Rangoon a city civil court similar to the one in Madras. That suggestion was opposed by the High Court advocates whom he examined, and, on previous occasions by the commercial community of Rangoon. No doubt the commercial firms like to see their cases tried by a judge of the High Court; but I doubt whether, in view of the free right of appeal that exists, there is much good reason in their objections. The objections of the advocates are, I am afraid, to some extent, actuated by selfish motives. As pointed out by Sir Desika Acharyar, more than half the suits filed on the Original Side are under Rs. 5,000 in value, and it seems absurd that a Judge of the High Court should be engaged in the trial of such petty suits, which, outside Rangoon, would be tried by a sub-divisional or township judge. I myself cannot think of any logical objection to the establishing of a city civil court with powers up to (say) rupees ten thousand. The additional judge of the Hanthawaddy district court is now also additional judge of the Insein district court. His Insein work is light, and, if he were relieved of it, the district and sub-divisional judges of Insein, between them, would have little difficulty in coping with it. This additional judge is always either a provincial officer of long experience, or a young I. C. S. officer, who is on the verge of getting his own district. It therefore seems to me that a city civil court might be established, and the additional judge of the Hanthawaddy district court might well be made the judge of that court. If he were relieved of his present duties as additional judge of the Insein district court, I do not think he would have any difficulty in coping with the work.

7. *Insolvency.*

Without doubt the law of insolvency does stand in the way of a decree-holder getting the fruits of his decree, but this is not due to any defects in the law of insolvency, but to defects in the manner in which it is worked. Creditors generally are exceedingly apathetic. Their attitude is usually that any money spent in prosecuting insolvency proceedings is good money thrown away, and when a debtor obtains an adjudication they usually give up all hopes of ever realizing their debts, and ordinarily do not even enter an appearance in the insolvency proceedings. The consequence is that the conduct of insolvency proceedings is left entirely in the hands of the judge.

District judges in Burma, I regret to say, appear to take but little pains over their insolvency cases and show a surprisingly scanty knowledge of insolvency law. Recently I saw a case where a debtor, having gone bankrupt, showed debts amounting to over Rs. 60,000, and his assets, when realized, came to a sum of about Rs. 9,000. Out of some twenty creditors, only three appeared and proved their debts, amounting to about Rs. 5,000. Out of the assets the district judge paid the claims of these three creditors in full, and then, without issuing the notices required by section 64 of the Provincial Insolvency Act to the remaining creditors, handed over the balance of the assets to the insolvent, and discharged him. This was, of course, an extreme case; but almost equally bad cases occur with frequency.

The point is that, owing to the apathy of the creditors, orders in insolvency cases are very rarely the subject of appeal, and, consequently, the High Court rarely sees an insolvency proceeding of a district court. Strict superintendence over the manner in which insolvency law is worked in district courts is required, and it seems to me that the High Court should exercise its powers under section 115 of the Code of Civil Procedure to call, on its own motion, for insolvency cases of district courts in the same way as it calls for records of criminal cases.

Mala fide applications for the protection of the Insolvency Act are, I am afraid, of frequent occurrence in district courts. It is quite a common thing for a debtor, who is being heavily pressed, to dispose of his available assets and then apply for insolvency, trusting to the apathy of his creditors that his disposal of assets will not be disclosed.

As regards the working of the Presidency Towns Insolvency Act, we received from the Chamber of Commerce a strong indictment on the manner in which this Act is worked in Rangoon. The main complaint of the representatives of the Chamber was against the work of the official assignee; but I believe this matter has already been dealt with by the Hon'ble Judges of the High Court.

8. *Benami transactions and part performance.*

Benami transactions are referred to in Questions Nos. 57 and 81 of the Questionnaire, and the doctrine of part performance is referred to in Question No. 78. No doubt the recognition of *benami* transactions is a serious blot on the administration of civil justice in India. These cases are not of frequent occurrence in Burma, but they do occur from time to time. The doctrine of part performance has been given such wide scope by judicial decision that it has practically negatived the provisions of section 54 of the Transfer of Property Act. But, as regards both *benami* transactions and part performance, it seems to me that, however desirable it might be to do away with both, they have now become so firmly embedded as part of the law of the land that they cannot be interfered with.

9. *Champerty and maintenance.*

The evidence recorded by us was against any steps being taken to prevent either champerty or maintenance. It was pointed out by some witnesses that good claims would tend to be shut out of the courts if champerty or maintenance were made illegal in India. It seems to me that this argument must apply equally well to England, where both are penal offences, and that the number of good claims which are brought with the aid of champerty or maintenance must be very small compared with the number of unsustainable claims set up thereby.

In this province, it is a very common thing for a man, who, many years ago, when land was cheap, sold his land for a small sum on an oral agreement (which was then legal), to enter into an agreement with some financier to bring a suit, claiming that the transaction was merely a mortgage and asking for redemption, all expenses being borne by the financier: the agreement further adding that, if the claim succeeded, the property should be transferred by registered deed to the financier for a very small sum, which would be the actual litigant's only proceeds out of the litigation. Such speculation in litigation should, in my opinion, be prevented at all costs. And I am afraid that the advocates and pleaders, who said before us that no steps could safely be taken to prevent these evils, had their eyes turned rather towards the fees to be earned than the cleanliness of justice.

No doubt, a good deal could be done to prevent these abuses by a strict application of the new law as to frivolous suits contained in Act IX of 1922; but the difficulty is that, under this Act, the court cannot take steps against the plaintiff on its own motion, and the opposite party never, in my experience, makes an application under this Act, probably for fear of being some day in the same situation himself.

I would certainly make champerty, if not maintenance, a criminal offence.

10. *Enhancement of jurisdiction—village courts.*

The evidence recorded shows that at present it is not, in this province, feasible to enhance the pecuniary jurisdiction of subordinate courts. Suggestions were made by some witnesses that sub-divisional courts might be given large small cause powers, but these suggestions were made without any knowledge of the organization of the courts in Burma.

In this province jurisdictions are territorial and not personal, and the granting of small cause powers to sub-divisional courts would make their powers overlap those of the township courts and would thereby confuse the present simplicity of the territorial organization of the courts. But it would, I think, be feasible to set up in the larger towns, such as Moulmein, Mandalay, Bassein and Akyab, a small cause court with jurisdiction confined to municipal limits, similar to the Rangoon small cause court. Such courts would, no doubt, be very useful institutions, and the existing judges of the local sub-divisional courts, or the additional judges, if any, of the district courts, could be made the judges of these small cause courts in addition to their present duties.

The suggestion contained in Question No. 14 of the Questionnaire for conferring exclusive jurisdiction on village courts has met with general approval. Under a recent amendment of the Burma Village Act, popularly elected committees are to be associated with the headman of every village-tract in the exercise of his executive functions. Rules for the appointment of these committees are about to be issued. All the witnesses were unanimous in their opinion that in every village tract an honorary bench, consisting of the village headman and his committee, could be constituted and safely entrusted with exclusive jurisdiction to try, under small cause procedure, all suits of a small cause nature up to rupees fifty in value. The constitution of such courts should be strongly recommended. Even at the present time village headmen and elders act as arbitrators by mutual consent of parties in many matters of personal law, such as divorce, succession and partition of ancestral property.

The constitution of the village committee as an honorary bench would not prevent their continuing so to act when all parties consented, and would give them additional prestige and probably enhance the use made of them in such family disputes.

11. *Codification of personal law.*

Some witnesses were of opinion that Buddhist Law generally could be codified; but I think the majority of the witnesses agreed that general codification would be impossible. This is my opinion.

Buddhist Law, although to a large extent now settled by judicial decision, continually brings forward fresh points that have not come before the courts previously, and is continually

changing in the changing customs of the people with the advance of western civilization. But it was generally agreed that in some particular matters the interference of the Legislature was desirable; for instance, as regards making a registered deed necessary for adoptions and partitions of immovable property, where, in the latter case, the property is of more than rupees one hundred in value.

The question of giving Burmese Buddhists the power to make a will was raised by a few witnesses. This has been the subject of discussion for many years, but no general desire has been evinced by the population of this province to obtain the power to make a will. If the non-official members of the local Legislative Council expressed any definite desire in this direction, no doubt the necessary legislation would be introduced.

12. *Recruitment and training of judicial officers—Superintendence.*

I have already provided the Committee with a note (not printed) on the recruitment and training of judicial officers in this province. I think it was observed by all members of the Committee that the rules in this province on this subject are superior to those in any other province. The difficulty is that, owing to the exigencies of the public service, the rules are, in numerous cases, abrogated, and officers are appointed to independent posts before they have undergone their full period of training, or passed the whole of their examinations. Strict adherence to the rules should be insisted on in all cases.

As regards I. C. S. officers, the rules for their training in actual bench work are, I think, adequate, but, here again, there is at present, owing to shortage of officers, a tendency to place a young I. C. S. judge in independent charge before he has undergone his full period of training. The rule that I. C. S. judges should pass the High Court examinations in law might, I think, be very usefully substituted by a rule that they should obtain a call to the English Bar and should read for at least one year in the chambers of a practising barrister of standing in England before the end of their tenth year of service. I think it is generally agreed that where an I. C. S. judge fails is in a lack of knowledge of the principles on which the law is based, and a too strict adherence to the letter rather than the spirit of the Acts and Codes under which he works. Such a knowledge of principles can only be obtained by a study of English Law, particularly Constitutional Law and Legal History, Common Law and Equity. I would, therefore, suggest that every I. C. S. judge should be obliged to obtain a call to the Bar, if possible, before he obtains independent charge of a district; that, for this purpose, sufficient leave should be granted to him; and that, if he obtains not less than a second class in the Bar final examination, this leave should be counted as study leave. The present rules

as regards advances for payment of Bar fees and rewards for distinction in the Bar examinations are generous and should be retained.

In this connection I should like to point out that the interpretation placed on sub-section (*4*) of section 101 of the Government of India Act, that the Chief Justice of a High Court must be a barrister who has actually practised at the Bar for not less than five years, is not, in my opinion, in accordance with the wording of the section. According to the section, it seems to me that if an I. C. S. judge is a barrister of not less than five years' standing he is equally eligible for the office of Chief Justice with a barrister who has been in actual practice. In view of his knowledge of the vernacular, and his actual experience of the working of subordinate courts, I suggest that an I. C. S. judge should make as valuable a Chief Justice as a practising barrister—certainly one whose experience at the Bar is confined to India.

As regards the superintendence of subordinate courts, it seems to me that the system of district and sessions judge is not as efficient as the old system of divisional judges. Under the old system there were a small number of divisional judges of long judicial experience, each in charge of a number of districts and stationed close to the courts over which they had control. They were able, through their appellate jurisdiction and by frequent tours of inspection, to keep a close watch over the work of the district courts, as well as of subordinate courts.

Now we have a considerable number of district judges of varying experience. In their civil work the district judges are, to a large extent, uncontrolled, for the Hon'ble Judges of the High Court have not the leisure to inspect district courts more often than once every three or four years, and the control of a district judge over his subordinate courts must vary greatly with the experience of that officer himself. Consequently it seems to me that control and supervision, both of district courts and of subordinate courts, has been greatly relaxed by the introduction of the system of district and sessions judges.

13. In reading over this note, one other matter, concerning the remuneration of process-servers, which I have regrettably omitted from paragraph 2, occurs to my mind. This is the question of the grant of a daily allowance to process-servers when travelling. Formerly, in this province, before politics become synonymous with opposition to the established Government, whenever a process-server visited a village he was certain of obtaining free hospitality. Now a days, he almost invariably has to pay for his board and lodging. This factor has made a considerable difference to a man on a small wage, probably with a wife and family at headquarters, and it is obviously an incentive to corruption. In the case of the police this has been recognised, and now a police-constable receives a daily allowance, in addition to his actual travelling expenses, whenever he is required to proceed more than five miles from his headquarters. A similar proposal, made on behalf of process-

servers about two years ago, was negatived on the score of expense. Yet all the expenditure involved in increase of the pay of process-servers and granting them a travelling allowance could be covered by a small increase in the fees charged for processes, to which increase no one could reasonably object. In my opinion there is a strong case for giving process-servers a daily allowance of (say) four annas a day, in addition to their actual travelling expenses, for each day's absence from their headquarters, whenever they are required to travel more than five miles from their headquarters.

Mr. P. N. CHARI, Vakil (now Judge) High Court, Rangoon.

Pendency of civil suits in this province is so favourable, compared with other provinces that the enquiry practically was confined to any avoidable delay there may exist in the disposal of civil suits in this province.

1. *Method of Recruitment.*—There has been a great improvement in this matter and a consequent improvement in the tone of the whole judiciary. As regards the training received by the persons recruited for the subordinate judiciary there is room for some improvement, but the matter does not call for any detailed suggestions.

2. *Distribution of Courts.*—There is not much delay on this head. As far as possible the headquarters for subordinate judiciary are located in the centre of the district or township over which the court has jurisdiction. In some places on account of the small quantity of work, more than one court is situated in a single headquarter and the same judicial officer presides over all the courts. But these are rare cases.

3. *District judges to have powers to transfer certain classes of work to subordinate judges.*—There is no need to introduce any such provision in this province. The general feeling is against investing the lower courts with more powers than they have at present. Moreover, almost every district judge has an additional district judge attached to his court to whom we can transfer any suit or class of suits or any other kind of work, which the district judge may choose to do.

4. *Village Courts.*—Though there was some conflict of evidence as regards this suggestion, I think it would be worth while to give it a trial. In the beginning, the village courts may be invested with jurisdiction up to Rs. 50 or Rs. 100, such courts to be presided over by benches of village elders appointed by the Government. Such courts will have concurrent jurisdiction with the regular civil courts, and if the system works satisfactorily then they may be given exclusive jurisdiction.

5. *Summary Procedure.*—The summary procedure provisions contained in the Civil Procedure Code, may be extended to the

Court of Small Causes at Rangoon. I do not think the other courts in the province are fit to exercise these powers nor should this procedure be extended to suits other than the suits now provided for in the Civil Procedure Code.

6. *Curtailment of the right of Appeal.*—To judge from what evidence there is on the subject, public opinion seems to be averse to the curtailing of the right of appeal, at least, so far as Burma is concerned. It is true that some frivolous second appeals are being filed in the High Court of Judicature. A prospective appeal is a great check on the subordinate judiciary, and in this province the check on the subordinate judiciary should, as far as possible, be preserved.

7. *Other suggestions as regards Appeal.*—Appeals are fairly and expeditiously disposed of and the provisions of Order 41, rule 11, are applied as far as possible. A great deal depends upon individual judges, some being very expeditious, others not quite so quick. On the whole, there is no ground for complaint that appeals are unduly delayed. In the High Court there is some delay; but this is due to the necessity of having translations and bench copies. If the delay caused by the necessity for having translation and bench copies is taken into account, the appeals even in the High Court are disposed of fairly expeditiously.

8. *Service of summons.*—There have been many suggestions on this point and conflicting opinions. I think the service of summons by registered post in the larger towns may be given a trial. I have no reason to suppose that this will lead to hardship; on the other hand, it may save a good deal of trouble to the litigants. As regards service in the villages, the suggestion that summons may be sent to the village headmen for service, may also be given a trial. These two modes of service may in the beginning be tried along with the usual mode of service till experience is gained as to how they work. The system of insisting upon the parties having registered addresses for service should be given a trial.

9. *Commissions.*—The issue of commission, particularly in suits instituted by the Chettiar money lenders is to a certain extent a cause of delay. But this is inevitable, as in all likelihood, when the suit is filed the agent and the clerks of the Chettiar firm have gone back to India. I do not think any change is called for or any change can possibly improve matters.

10. *Execution Proceedings.*—The evidence on this point is not uniform. There does not seem to be any great delay in execution-creditors realising the fruits of their decrees. The only suggestion that could be made is that the necessity for repeated applications under Article 182 of the Limitation Act may be dispensed with, and a single period of limitation fixed, altering section 48 of the Civil Procedure Code by reducing the period from 12 to 6 years. Opinion being divided on this point, a change may be made by reducing the period to 9 years. The necessity for repeated notices in execution matters may also be done away with by the

issue of a single notice in the beginning of the execution proceedings notifying the fact that such proceedings have started, and warning the judgment debtor to be present on all subsequent occasions when his presence is necessary.

11. *Changes in the Substantive Law.*—There was some evidence given as to the necessity for simplifying the law of adoption among the Burman Buddhists and making it necessary to have a registered deed of adoption before allowing adoption to be proved in court. Many persons are in favour of the suggestion but as the matter is one affecting the personal law of the Burman Buddhists it will be better to leave the matter in their hands. The leaders of their community may move if they think fit to do so. The same remark would also apply to the suggestion that marriages should be registered.

Diwan Bahadur C. V. VISVANATHA SASTRI, District and Sessions Judge, South Arcot.

The Civil Justice Committee has been constituted "to enquire into the operation and effects of the substantive and adjective law followed by the courts, with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory despatch of the business transacted in the courts." The "changes and improvements" to be suggested by the Committee should, in my opinion, be of such a nature as not to arouse in the minds of the litigant public the least suspicion that the "satisfactory despatch of the business transacted in the courts" is sacrificed for the sake of "speed and economy." In suggesting "changes and improvements," this important principle should be borne in mind, and nothing should be done which would have the effect of "making law triumphant and justice prostrate." Another guiding principle which I would suggest is that the prime consideration should be the interests of the litigant, and that no heed should be paid to such considerations as the vested interests of the Bar and the Bench. For, it is the litigant that pays; it is his money that enables the Bench and the Bar to thrive, and it is but fair that his interest should be their sole concern.

A great deal depends on the personnel of the Bench and the Bar, and unless they work in harmony, forgetting and forgiving each other's faults, and always realizing that their common object is to have justice done, the end in view cannot be attained.

Recruitment and training.—(Questions 4 and 5).—The qualities required of a judge are: (1) commonsense; (2) intelligence; (3) clearness of conception; and (4) tact. These qualities are not necessarily existent in all graduates in law; and any method of recruitment that is adopted, should have for its aim the ascertainment of these qualities. In 80 per cent. of cases district munsifs are recruited from those who have had not less than 3 years' experi-

ence at the Bar; the remaining 20 per cent. going to graduates in law who have been drafted into the ministerial departments of courts. The Public Services Commission (Islington) was against this latter method of recruitment, but its recommendation on this point has not been adopted in Madras. Law has become a highly technical subject, and the legal knife has to be sharpened daily on the grinding stone of practice. Graduates in law who enter the ministerial department lose all touch with the actual practice of the law; it now takes 10 to 12 years for them to become district munsifs; and the majority of them have, by that time, lost all touch with law. I would therefore suggest the adoption of the recommendation made by the Public Services Commission; making of course exceptions in the case of those who have already entered the ministerial ranks.

The age limit in the case of district munsifs is 35; and, as matters now stand, it is only after 8 or 9 years at the Bar that a practitioner has the chance of acting as district munsif. The Public Services Commission recommended recruitment at a very early stage of one's career at the Bar; and I would strongly advocate this view. During the time the late Justice Davies was in sole charge of the judicial portfolio, he always selected those who were 30 years of age and less. The majority of those appointed in his time were aged 27 and 28. At present the majority of those that get in have been failures at the Bar. Government service has lost much of the "Halo" that attached to it years ago. Now a days few who get Rs. 300 to Rs. 400 a month at the Bar, would care to become district munsifs. Such being the case, it appears to me that there are greater chances of getting eligible candidates if the recommendation of the Public Services Commission is adopted.

In my opinion no special training is necessary for district munsifs. Three years' experience at the Bar is enough to give them a good working knowledge of procedure. And a month is quite enough to get acquainted with office work. I would suggest that their first posting be to stations where there are permanent sub-judges or senior district munsifs; and that they be required to give them facilities for learning office work. So far as I know, no district munsif has felt any difficulty in acquainting himself with administrative work.

In my opinion there should be no direct recruitment of subordinate judges from the Bar, and the entire *cadre* of subordinate judges should be filled by promotion from among efficient district munsifs. It already takes 15 to 16 years for a district munsif to become a sub-judge, and any system of direct recruitment will only increase this period—district munsifs and subordinate judges are included in the *cadre* of the Provincial Judicial Service; and one who enters as a district munsif must have a fair chance of becoming a subordinate judge and rising to the selection grade among subordinate judges and being there for 3 years to earn the maximum pension that would be permissible in the case of officers of the Provincial Judicial Service. The fear of direct recruitment which

involves the certainty of younger men being placed over their heads will not conduce to a contented state of mind which is essential in every judicial officer.

At present district and sessions judges are recruited (*i*) from the I. C. S.; (*ii*) from among subordinate judges; and (*iii*) from the Bar; out of the present *cadre* of 25, 6 have been listed; and out of these 6, 2 are being held by persons directly recruited from the Bar and 4 by persons who have been subordinate judges. The question of direct recruitment from the Bar was raised before the Lee Commission, and witnesses were examined and cross-examined on the point. The report does not recommend any direct recruitment from the Bar, and the note of Sir Reginald Craddock is emphatically against any such recruitment. This is what he says: "Wherever these Services (Provincial Judicial Services) are of long standing there is no guarantee at all that direct appointment to the post of district and sessions judge from the Bar will provide candidates who are in any way superior to those obtainable from the ranks of the subordinate judiciary. The pick of the senior Bar is not likely to look at the emoluments of a district and sessions judge; for, the acceptance of such appointments by members of the Bar would, if they were able men, actually reduce their prospects of elevation to the High Court. If the best members of the Bar are not available for appointment to district and sessions judgeships, it would be a serious injustice to the most deserving judicial officers if they were to be passed over for the sake of men of mediocre talents whose promotion owing to their young age would also cause a permanent block in promotion." Experience in Madras shows that direct recruits from the Bar are in no way superior to those promoted from among subordinate judges. District munsifs have been members of the Bar, and there is no advantage in direct recruitment from the Bar either to subordinate judgeships or to district judgeships, when you have officers possessing experience at the Bar, *plus* considerable judicial experience, coupled with a high degree of administrative experience, to choose from.

I am not one of those who think that members of the I. C. S. should be debarred from becoming district and sessions judges. Our judicial system has, to a great extent, been built up by I. C. S. district judges, and we have had exceptionally good High Court Judges from among them. Moreover, so long as the Letters Patents of the various High Courts require a certain proportion of the judges being I. C. S. men, it is essential that there should be I.C.S. district judges. The fault in the Madras system is that I. C. S. men receive no judicial training. I would suggest that the selection should be made in the 5th year of service, and that they should be made to do the work of district munsifs and subordinate judges for 5 years, before being appointed as district judges. To an I. C. S. man who has been called to the Bar 3 years would be enough.

In the selection of High Court Judges, the criterion should be merit and merit alone. The best men available, either at the Bar or from among district and sessions judges, should be chosen. The

cry that recruitment should be only from the Bar is one that is raised by interested parties. There have been and are I. C. S. and P. C. S. High Court Judges who have been an unqualified success, and there can possibly be no reason for excluding them. Sir T. Muttuswami Iyer and Sir T. Sadasiva Iyer in Madras, Mr. M. G. Ranade in Bombay, Justice Mahmood, Sir P. C. Banerjee and Mr. Justice Kanhaiya Lall in Allahabad have all been subordinate judges, and any system that would shut out such men, must stand self-condemned. No doubt the English system depended on the Bar alone; but unlike England, India has a very big judicial service; and if the very best men are wanted for these services, you must hold out to them prospects of promotion to the High Court Bench.

Questions 1 and 2.—The following statement will give the average duration of suits and appeals in the various classes of courts during the year 1922:—

(1) *District Munsif's Courts.*

O. S.		S. C.	
Contested.	Uncontested.	Contested.	Uncontested.
345	63	93	45

(2) *Sub-Courts.*

O. S.		S. C.		Appeals.	
Contested.	Uncontested.	Contested.	Uncontested.	Contested.	Uncontested.
541	100	155	47	353	260

(3) *District Courts.*

O. S.		Appeals.	
Contested.	Uncontested	Contested.	Uncontested.
510	130	377	278

(4) *High Courts.*

O. S.		First Appeals.	Second Appeals.
Contested.	Uncontested.		
432	160	463	646

My experience of 27 years suggests to me that in munsifs' courts 3 months is a reasonably fair period for contested small causes; 2 months for claim proceedings; 3 to 6 months for contested money suits; and 6 to 9 months for title suits. In subordinate courts and district courts the periods will be 3 months, 3 months, 6 to 9 months and 12 months respectively.

As regards appeals, the period allowed by the High Court is 6 months, and this is reasonable. If only district judges transfer appeals to subordinate courts as and when they are filed instead of transferring them in batches of 50 to 100 at the end of every quarter or half year, it will be quite possible for subordinate courts to dispose of appeals in 6 months and less.

My experience as city civil judge tells me that a contested money suit can be disposed of in 3 to 4 months, and a contested title suit in 6 to 8 months. In the presidency small cause court, there is no reason why the average duration of a contested small cause suit should exceed 50 days. The average between 1915 and 1917 was only 32 to 37 days; whereas it was 107 days in 1922. This is all the more surprising when the file in 1922 was less than the file in 1915 by nearly 4,000 suits.

On the Original Side of the High Court, the average duration of contested and uncontested suits, in 1922, was 432 and 160 days. It is a matter for surprise that this is so in spite of the provisions as to discovery and inspection, which are a dead letter in the mofussil, being strictly followed; and inspite of the existence of provisions for the hastening of the trial of the A class of suits (commercial suits). In 1922 out of a total of 399 A class suits, only 4 were tried under the special procedure; and in 1923 out of a total of 596 only 7 were so tried. This shows that although facilities are given to enable a plaintiff in a commercial suit to have his case speedily adjudicated upon, he does not choose to avail himself of them.

There can thus be no doubt that the period actually taken now is far in excess of the period reasonably required in the case of contested proceedings. In the case of uncontested suits (original and small causes) there is no room for complaint, so far as this presidency goes.

In my opinion, "the main causes of the delay" are:—

(1) Failure of the judge to control the case till the trial actually begins; (2) careless postings; and (3) piecemeal trials.

(*i*) The provisions of Order X, Civil Procedure Code, are a dead letter, and although rule 1 of Order XIV casts upon the judge the duty of framing and recording issues "on which the right decision of the case appears to depend," the system of getting vakils to file joint issues, and adopting them wholesale, is almost universal. The result is that issues are not narrowed, numerous irrelevent issues are recorded, evidence is got ready at the expense of considerable time and money on these issues; the period for getting ready is prolonged, as also the time occupied for trial. The following of the provisions of Orders X and XIV will no doubt take some time and will certainly require thought and care. In I. L. R. 28, Bombay Series at page 424 the learned judges observe:—"we make it the occasion for insisting on the importance of defining with precision at the outset, the points on which a decision must turn. This no doubt requires thought and care but the time is well spent, while vague and general issues for the most part mean that the case is approached without a clear idea of its essentials."

(*ii*) A great deal depends on the care taken in posting cases. If what I have stated in the previous paragraph is followed, a judge must know the approximate period the trial of a case is likely to take up. And if he only posts cases himself, the chances are that he will not post more cases than are likely to be heard. At present posting is, in the majority of cases, left to the bench clerk, and the result is heavy postings, without the least chance of the majority of cases posted being heard.

(*iii*) Piecemeal trials are becoming the fashion now a days. To my personal knowledge, cases are numerous where the entire time that could be devoted to the trial of part heard cases is not so devoted. A little firmness coupled with tact can overcome all the supposed obstacles that are said to stand in the way of day to day trials. Piecemeal trials only help the parties to cook up evidence, and make the judge lose control over the case. The result is that instead of there being a clear steering till the port is reached, the ship is allowed to drift and enter port after taking a round about course.

The remedies I would suggest are:—

(*i*) A close application of the provisions of Order X and rule 1 of Order XV, resulting in the points for decision being narrowed, and the volume of evidence minimised.

(*ii*) A strict enforcement of rule 14 of Order VII requiring the plaintiff to disclose in the plaint the documents in his possession or on which he intends to rely; as also similar documents not in his possession.

(*iii*) The enactment of a rule similar to rule 14 or Order VII in Order VIII, imposing a similar duty on the defendant.

(*iv*) The enactment of a rule requiring the parties to give a list of their witnesses within 10 days after the settlement of issues; and also a rule requiring each side to admit or deny the genuineness of documents produced or relied upon by the other side. (The disclosing of the names of witnesses will not cause any hardship as, even now, each side knows the witnesses the other side is going to call as soon as the first batta memo is put in.)

(*v*) The insisting on the provisions as to discovery and inspection being followed.

(*vi*) The enactment of a rule empowering the judge, in cases where he thinks it proper, to examine when the trial begins the parties as their witnesses in all cases where the parties intend to call themselves before the other witnesses are called; and forbidding their examination at any other stage when once the judge has ruled that they should be examined first. (The recalling of the parties after the witnesses have been examined can be allowed.)

(*vii*) The proper posting of cases ready for trial by the judge himself, and

(*viii*) The continuance of the trial from day to day.

Service of processes.—The rottenness of the process service establishment, and the difficulty experienced in serving processes, is put forward as a reason for the law's delays. There is no doubt corruption in this department, but the persons through whom the corruption mainly goes on are the vakils' gumastas; their masters frequently come to know of such cases but they never bring the matter to the notice of the judge, and never assist him in the investigation of such cases even when the judge comes to know of a case and holds an investigation. The corrupting influences are made to operate mainly when execution is sought; the judgment-debtor through the gumasta of his quandom vakil, trying to put obstacles in the way of the decree-holder. Unless the Bar co-operates with the judge it is idle to expect improvement in this direction. Any improvement in the pay of process-servers and amins will only make them increase their demands, and the recent

improvement in pay has not improved their morale. In some districts statements are called for showing the percentage of personal service and this should be made universal. Process servers and amins who do not show a good percentage should be adequately punished.

Any system that relieves the party of the need to have recourse to the process service establishment should be welcomed. I would suggest the imposition on parties of the duty of serving their own witnesses, as is done on the Original Side of the High Court, in all cases where the witness resides within the jurisdiction of the trial court. Each party will have to present in court *sub-pœnas* for witnesses duly filled in, on forms supplied; the chief ministerial officer should be required to sign them and return them to the party, with the seal of the Court affixed; and the party should serve them. A fee of say 2 annas per *sub-pœna* can be charged. The party can have the option of getting his witnesses served through court, but this will be only on payment of a heavier fee (it is 8 annas per process) and the court should have power to disallow it in taxation.

I am against any system of service by post because, in cases where the defendant is set *ex parte* or an *ex parte* decree is passed, it will be difficult to examine the postman to prove service when application is made to set aside the *ex parte* decree. The frequent appearance of postmen in court to prove service will dislocate the work of the postal department; and the department will certainly object to this. Moreover, this system is likely to corrupt a class of public servants who have not been contaminated yet, and bring them to the level of process servers and amins.

Execution of decrees.—Questions 52 and 63.—The real difficulties of a litigant arise in execution; and it is my emphatic opinion that the provisions of Order XXI afford greater facilities to unscrupulous judgment-debtors who want to cheat the decree-holder of the fruits of his decree than to an honest decree-holder who wants to realise the fruits of his decree. The machinery now existing, for the working of the Provincial Insolvency Act, adds to his difficulties and there is a further addition owing to executing courts thinking that execution work is thankless work (thankless in the sense that it does not count for much in returns). The result is that every kind of technicality afforded by the Code and Rules of Practice is eagerly availed of to dismiss petitions. Such cases are rarely brought to the notice of appellate courts because, the decree-holder finds it cheaper to present a fresh petition, and set the ball rolling again, rather than waste his time and money over an appeal. The following observations of *Straight J* in I. L. R. 12, Allahabad Series at page 183, apply with greater force to-day than they did at the time when they were made. "Now I desire to say emphatically, and the subordinate courts will do well to take notice of it, that procedure in execution is not to be conducted in a slipshod and slovenly fashion as if it were a very unimportant branch of the work they have to do in the administra-

tion of justice. It ought to be conducted with as much gravity, care and decorum as the procedure in suits and, if anything, with more care and attention, because of the difficulties that so frequently arise."

An examination of the execution records of any court will show that a number of execution petitions are put in for the execution of the same decree. Petitions have to be admitted before any process is issued; and before they are admitted they are returned a number of times for some reason or other. After admission an order has to be made directing the party to pay batta in 3 days, and after this is obeyed, the first real advance is made. When a petition is dismissed for one or other of the numerous reasons allowed by Order XXI or by the Rules of Practice, a fresh petition is filed, and the same process of checking, admitting and entering in the registers, is gone through again. All this can be done away with by keeping on file till execution is complete an execution petition once filed and admitted. The petitions can be amended or added to by filing memos, or in the manner allowed for the amendment of pleadings. Any step the decree-holder wants the court to take can be had by filing a memo. The "notes paper" attached to the execution petition will give in chronological order the various steps taken, and a sheet called the balance sheet can be attached showing the amount realised and the balance remaining due after each step is taken. When suits and appeals can drag on for years, there is no reason why execution proceedings which are really a continuation of the suit, should not be kept pending till execution is complete. The adoption of this suggestion will do away with the irreconcilable case law that has sprung up around Article 182 of the Limitation Act, and section 48 of the Code.

Another change I would suggest is the doing away with the service of notice on the judgment-debtor at every stage, in all cases where the decree is passed after contest; and where it is passed *ex parte* after personal service on the judgment-debtor. I fail to see why any consideration should be shown to one who is aware of the decree, and yet would not pay. It is the duty of such a person to keep himself informed of what is going on; and it will always be open to him to get copies of orders passed, or to inspect the record. He can intervene at any stage and protect his interests, if any undue advantage is taken by the decree-holder. Under Order XVI, rule 16 (1), it is incumbent on a witness once summoned "to attend at each hearing until the suit is disposed of." When such a duty is cast on a witness, I fail to see why a similar duty should not be cast on a party to the suit.

Mortgage decrees.—Question 66.—I will do away with the need for passing final decrees; and in all cases where a personal liability is stipulated for in the mortgage deed, I will allow the decree-holder to have the judgment-debtor arrested in execution, without waiting till the hypotheca is sold. I would also do away with the giving of time to the judgment-debtor, for payment. Even after decree it will take not less than 2 months for the decree-holder to

bring the hypotheca to sale, and this is ample. Why should a mortgage decree for Rs. 500 specify a time for payment, when a money decree for Rs. 50,000 can be executed all at once, on an oral application by the decree-holder under Order XXI, rule 11 (1).

Insolvency Law.—Question 69.—It is sad to find in practice that the Provincial Insolvency Act has only added to the difficulties of the creditor; and has afforded greater facilities to dishonest debtors to cheat creditors. The complaint is mainly against the machinery for the working of the Act. Official receivers here are not whole time officers, and have liberty to practise. They have no public place to hold Court in; and no regular hours of business. The result is that creditors are put to considerable loss, both in time and money, in getting them to act in their interests. Every witness whom I questioned on this matter, has given it as his emphatic opinion that the Act can be repealed if official receivers are not made whole time officers. I have personal experience of the work of official receivers in 3 very heavy districts (Tanjore, East and West and Ramnad); and I endorse every word of what the witnesses have stated. I would therefore recommend the appointment of whole time official receivers, in all districts where the commission now earned by them is Rs. 200 and more. I would add these officers to the cadre of district munsifs; and appoint as official receivers only district munsifs who have put in 3 to 5 years' service. To such officers I will give wider powers, such as adjudication on claims to property worth Rs. 3,000; and applications to set aside alienations. A proper working of the insolvency law will afford a wholesome check on unscrupulous debtors, and improve commercial morality to a high degree. An Act which cannot be worked properly owing to the absence of the machinery needed, should not be allowed to disgrace the Statute Book.

Appeal, Second Appeal and Revision.—Questions 18 to 23.—I am against the curtailment of the right of first appeal, to even the smallest extent. The figures available do not show that this right has been abused. In the case of district munsifs, the percentage of appeals filed to appealable decrees passed has varied between 12·50 to 10·52 between 1911 and 1922; and the percentage of decrees confirmed to decrees varied has varied between 61·04 and 70·76. In the case of subordinate courts the percentage of decrees confirmed was 61·22 in 1921 and 57·67 in 1922; and in the case of district courts it was 46·43 and 64·71. There has thus been interference in a substantial number of cases. The filing of appeals merely to get execution stayed can be checked by insisting upon security being given for the amount of the decree and costs. And in the case of money decrees, if only courts are allowed to award interest after decree, up to a limit of 12 per cent., another remedy in this direction will also be found.

There can be no doubt that the right of second appeal is abused to a large extent; the percentage of appeals dismissed being 65·02 in 1921 and 45·59 in 1922. It appears to me that an amendment of Order 41, rule 11, in its application to second appeals, by adding

the proviso to rule 1 of Order 44 and the insisting upon the costs in the lower court and probable costs of second appeal being paid into court, would, to a great extent, shut out frivolous second appeals.

I am against curtailing the power of revision given under section 25 of the Provincial Small Cause Courts Act. In 1922 the number of small cause suits disposed of was 169,248; and the number of revision cases filed was only 432. In 1921 the number was only 348. So, it cannot be said that the right is misused. The possibility of the case going up in revision acts as a very wholesome check upon the autocratic tendencies of judges.

With regard to revision under section 115, Civil Procedure Code, 938 petitions were filed in 1921, and 943 in 1922. Considering the volume of litigation in the presidency, these figures cannot be considered large. The mass of irreconcilable case law that has sprung around section 115, has given rise to the filing of a large number of these petitions. If only the scope of the section is laid down with greater precision, the end in view can be attained.

The percentage of Letters Patent appeals dismissed, was 32·35 in 1922, and so it cannot be said that there is much abuse.

Questions 6 to 11.—The frequent transfer of judicial officers does dislocate work in heavy Courts. As a rule district munsifs are transferred every 3 years, and a munsif who has been in a station for 2½ years can regulate his work during the next 6 months, so as not to leave any part heard cases. The evil arises where a munsif who is made to act as subordinate judge has to revert. In such cases, if he is posted to a heavy court, only to be sent out again as a subordinate judge in a few months, there is a lot of dislocation. This is especially so when the court has had a judge invested with enhanced small cause powers. I would suggest that munsifs who have to revert after having acted as subordinate judges, be posted to light stations. The rule that district munsifs should be transferred every 3 years is, in my opinion, a very wholesome rule. I would advocate a similar rule in the case of subordinate judges and district judges.

Since practice always shows a disposition to accumulate in the hands of a few, I would not advocate the concentration of courts in one place. The accumulation of practice in the hands of a few practitioners leads to adjournments being asked for.

There are light courts and heavy courts; but it is not possible to equalise the work in all courts, as it is not possible to equalise the outturn of each individual judge. Work in the same class of courts in one district is now being equalised by transferring suits, and this expedient is working well. Frequent changes in jurisdiction are always annoying to the Bar and litigant public.

I am against giving special enhanced jurisdiction to selected district munsifs because confusion is created as soon as a munsif with enhanced powers is transferred and one who has no enhanced powers is posted. There is already this difficulty in the case of

enhanced small cause powers, and I would not extend it to original suits. All district munsifs have now small cause jurisdiction up to Rs. 100, and some are specially invested with such powers up to Rs. 200. The extended powers may be raised to Rs. 250. All subordinate judges have small cause powers up to Rs. 500, and it is not desirable to raise this figure. In Madras a bill has been introduced to raise the original jurisdiction of district munsifs from Rs. 3,000 to Rs. 4,000.

"A standard efficiency of an officer as regards amount of work done" can best be fixed by taking the figures of each court for 10 years, and dividing it by 3. During this period the Court is likely to have had good, bad and indifferent judges. The standard fixed should be reconsidered every 10 years.

Questions 12 and 13.—A great deal has recently been done in Madras in this direction, so far as judicial work goes. With regard to administrative work, I would suggest the placing of the central nazarat at headquarter stations, under the senior subordinate judge in that station.

Village and panchayat courts.—Question 14.—I am in favour of giving exclusive jurisdiction to panchayat courts, up to Rs. 50 or Rs. 100, giving power to district munsifs to transfer cases from one panchayat court to a neighbouring panchayat court, on proper grounds being shown. The bogie of factions and communal jealousies is often trotted out against this proposal. These factors do exist, but not to the extent supposed. And if one has to wait till the evil ceases to exist, the end will never come. On the contrary, the conferring of responsibilities, and the throwing of the villagers on their own resources, will have the effect of ending factions and infusing a co-operative spirit among them.

Question 15.—I am against the proposal contained in this question. A mortgage decree passed by a small cause court must be executed on the original side, and it would be an anomaly if every order passed in execution is appealable whereas there is no appeal against the decree itself. "Partnerships with small capital" may have extensive liabilities, and suits relating to them cannot be satisfactorily tried on the small cause side.

Questions 34 to 37.—The suggestion that courts should have a discretion "to fix a time limit for the examination and cross-examination of witnesses," borders on the ludicrous. The mental power of each witness and his powers of quick expression vary; so also the powers of vakils to put cut and clear questions capable of eliciting clear answers.

"Much unnecessary and avoidable oral evidence" is now being let in; but the only means of checking it is by examining the parties at the commencement of the trial, and before other witnesses are examined. At present vakils invariably call the party after all the other witnesses are examined, and the judge has no power to insist on his being called first. If only the parties are examined first, and they have stated their case in one way, witnesses will be

called only to corroborate what they have stated. At present conflicting oral evidence is let in even on the same side; and the party is called at the end to corroborate what one set of witnesses on his side have deposed to and to explain away what his other witnesses have stated. So also, if a plaintiff has to begin and he has examined himself and it is made incumbent on the defendant to examine himself before plaintiff calls his other witnesses, it will happen in many cases that there will be no need for him to let in much of the oral evidence he intended to let in.

I am against affidavit evidence in the cases referred to in Question 36. Considering the amount of illiteracy prevailing here, and the difficulty of having safeguards to ensure the proper swearing of affidavits after the contents are properly understood by the deponents, the introduction of this system will lead to disastrous results. Already, even to the limited extent allowed, it is not infrequent for blank affidavits being sent and filled in by vakils' clerks.

The provisions of Order XVI, rule 16, are being enforced in some courts. If only judges make it a point when adjourning cases to call the witnesses and inform them of the adjourned date and see that the batta is paid to them, the need to summon them again can be avoided. I have always been following this course, even prior to the coming into force of the present Code, with excellent results.

Questions 38 to 41.—I would extend the application of Order 37 to suits for money on a settlement of accounts, where the settlement is in writing and signed by the party. I would also do away with the 6 months period.

I am afraid the principle of representative suits if applied to the class of cases referred to in Question 39 will work injustice upon members of Mitakshhara families and Malabar tarwads, and upon co-owners.

There is no reason for throwing on a legal representative the duty of coming forward and getting himself added. It is the duty of the plaintiff to get him added, and so far as I am aware, no difficulty has been experienced in this direction. In many cases legal representatives are minors, having no male guardians, and it will be doing them great injustice if any such duty is cast on them.

There is some difficulty felt in appointing a guardian *ad litem*. This can be minimized considerably by allowing a party, in one petition, to name all eligible guardians, and to pray for the appointment of one of them, or of an officer of the court if none of them is willing to act. At present a petition is put in naming one person, if he is not willing to act the petition is dismissed and another petition is put in naming another person, and so on till an appointment is made. The procedure adopted in a petition under the Guardian and Wards Act may well be followed.

Inspection of Courts.—Question 50.—All that is now done is that in the Administration Report, figures are given as against each district judge, of the total number of courts in his district and the number of courts inspected by him. I have known of courts which have not been inspected for 5 years, and there are district judges who cannot, or rather would not inspect even courts at headquarters. I think the High Courts must take effective steps to get district judges to inspect all the courts in the district, once a year.

Commercial Suits.—Question 51.—I have already pointed out how in the High Court (Original Side), no advantage is taken of the special procedure laid down for expediting the trial of commercial suits. Since the introduction of the special procedure, the numbers of cases in which it has been availed of are, 1 in 1920, 7 in 1921, 4 in 1922, and 7 in 1923. The number of suits classed as commercial suits was 399 in 1922 and 596 in 1923.

Questions 76 and 77.—The law being that a division in status can be expressed orally and evidenced by unilateral acts, there will be very little gained by insisting on partitions of immovable property being evidenced by a registered document. In the case of partnerships, some sort of compulsory registration can be tried where the partners are more than 2 and where the capital brought in exceeds Rs. 500 but even here I would not visit any such penalty as excluding oral evidence in cases where there is no document in writing and registered.

Question 78.—The mischief referred to in the section does exist, but I will not do away with the doctrine of part performance. It can be enacted that whenever the right of any person who claims the benefit of the doctrine is disputed, he should file a suit to have his rights established, within a year of his being aware of the fact.

Questions 79 to 81.—In my opinion the proposals contained in these questions will, if adopted, work more harm than good.

Question 82.—Court fees have already been enhanced, and any further increase will involve a denial of justice to many.

Questions 86 and 87.—The multiplication of law reports has caused considerable harm, and steps should be taken to minimise their number. The number of conflicting decisions makes it impossible for a vakil to advise his client with any degree of certainty. It appears to me that the question of codification of law should be left to a body of eminent lawyers, and that the materials available to this Committee do not warrant the giving of any definite opinion.

Mr. V. RADHAKRISHNAIYA, High Court Vakil, Madras.

Before dealing with the causes which contribute to delay in the disposal of suits so far as such delay is attributable to want of diligence on the part of the litigants or to defects in procedure or faulty modes of trial adopted by courts, it is necessary to emphasise

the fact that the main cause of delay in the disposal of suits and appeals is the great accumulation of arrears in every court in the province from the highest to the lowest. From the statistical statements contained in the Administration Report for 1922 and from figures furnished to the Committee by the Registrar of the High Court, it is clear that in the High Court, both on the Original and Appellate Sides, the arrears are very heavy. There are on the Original Side hundreds of cases which are on the ready board and which could be disposed of to-morrow, if there was a judge to try them. The sole reason why those suits are kept pending is that earlier suits have to be tried by judges, and there are not enough judges to dispose of all cases which are ready. On the Original Side as soon as a case is ripe for hearing it comes into the general list. After it comes into the general list, it takes from 18 to 24 months before it comes into the daily list. No part of the delay thus caused can be attributed to the parties, and it is solely due to the fact that the judges sitting on the Original Side have more work to dispose of than they can cope with. On the Appellate Side things are even worse. From a statement prepared by the Registrar of the High Court, it appears that on the 31st July 1924, there were pending 1,244 first appeals, 178 original side appeals, 167 city civil court appeals, and 3,554 second appeals, besides miscellaneous appeals and revision petitions. Of course not all of these are ready for hearing. But a large percentage of them is ready for hearing and more of them are capable of being made ready by expediting the printing. Those which are ready for hearing do not come up for hearing because earlier suits have to be disposed of, and the number of judges who can devote their time to the disposal of appeals of different classes is not enough to cope with the arrears. Something has been said by some witnesses of the delay in printing on the Appellate Side of the High Court. No doubt printing does take a much longer time than one would like. But it must not be forgotten that the delay in printing is due mainly to the fact that there is no object in expediting printing when hundreds of appeals in which printing has been completed are still remaining unheard. The printing on the Appellate Side of the High Court is now done by the Government press and if the High Court thought that the hearing of any appeal is being delayed on account of the delay in printing, I do not think that there can be the slightest difficulty in making arrangements with the Government press to put more men to do the printing of the High Court and in getting through the printing much more expeditiously than is now done. As a matter of fact so far as criminal appeals are concerned, printing is done very expeditiously. That is because criminal work is given preference in the matter of disposal and I do not think it has ever been found that the disposal of criminal appeals was unduly delayed by the delay in printing. But with regard to civil appeals it has never been found necessary to hurry up printing because there are always plenty of cases in which printing has been completed.

In the district courts, subordinate judges' courts and munsifs' courts in the province the arrears are equally great. The figures given at pages 4 and 6 of the Administration Report for 1922 bear out this fact. From the statement given at page 4 of the Administration Report, it appears that there were on the 31st December 1922 in several munsifs' courts in the presidency, some suits of 1916, 1917, 1918 and 1919 and a large number of suits of 1920 and 1921; and in the subordinate judges' courts also suits of 1916, 1917, 1918 1919 and 1920 were found pending at the end of 1922.

Unless this state of affairs is remedied by the creation of more courts and the addition of more judges to the existing courts and the file of each court is reduced to such a condition that a judge can normally dispose of a year's institutions within one year, I think that the suggestion of any remedies for curtailing the delay which is attributable to the parties is utterly futile. For instance, if all possible expedients for serving the summons upon the defendant expeditiously, for the settlement of issues, administration of interrogatories, discovery and inspection have been completed and the suit is ripe for hearing by these methods, say within three months of its institution, what good is it from the point of view of avoiding delay if the suit has to wait for two or perhaps three years before it can be taken up for hearing and disposed of? It must be remembered that when parties and courts know that there is no likelihood of contested suits being disposed of within two or three years of their institution, there is no incentive to anybody to use every effort to bring the case on the ready board within the shortest possible time. The delay that is brought about by a suit not being made ripe for hearing by using the most up-to-date and expeditious methods is a drop in the ocean compared to the delay caused by the court not finding time for taking up the case. If, on the other hand, the state of the file of a court is such that the parties could be sure that if they get the case ripe for hearing, the suit will be disposed of within six weeks or two months, there can be no doubt that the parties will leave no stone unturned to get the case on the ready board. It has been said that Indian litigants and their methods are dilatory and that they rather love to have everything put off as long as possible; but though there is a certain amount of truth in the observation that an ordinary illiterate Indian may not be as alert as an Englishman of business, still I do not think that human nature in India is so different from human nature elsewhere, that a plaintiff who files a suit for recovery of money or recovery of property would not like to have his claim decreed and to recover the amount or property as quickly as possible.

It must also be remembered that the consciousness that when once a case is contested its final disposal will be a matter of two to three years has also a tendency to encourage frivolous and dishonest defences. Take the case of a person who is in possession of a property to which he has no title; the rightful owner files a suit for possession. The defendant knows he has no shadow of defence but he thinks that if he puts up some kind of defence and the

suit is contested he can continue to be in possession of the property for about three years and even if he is defeated in the original suit he may file an appeal, obtain stay of execution and get another three years. This naturally induces the defendant to put foward defences which he would never think of putting forward if he knew that the case would be disposed of in a month or two, and by putting forward frivolous defences he will be incurring unnecessary costs. Thus it will be seen that the very fact that there is a great delay in the disposal of cases which are contested, increases the number of contested cases; defences are put forward, which ought never to have been put forward and a much larger percentage of cases is contested than would be the case if suits were speedily disposed of; and of course the larger the percentage of contested cases the greater is the delay in the disposal of cases in general. Thus the maxim that delay begets delay is illustrated every day in the state of litigation in this province.

Another evil result arising from the long delay in the disposal of cases which are ready is that the courts of the first instance do not devote as much attention to the preliminary stages of a suit as they ought to. The evidence adduced before the Committee both by the judicial officers and by the members of the Bar in the mofussil is unanimous that very little attention is paid to settlement of issues, by the judges, that no trouble is taken to examine the parties at the first hearing so as to narrow the point in controversy, that orders for discovery and inspection are rarely made, and that when a written statement is put in setting forth some defence, issues are raised as a matter of course and it is rarely that either the practitioners or the court take the trouble to find out whether the written statement discloses any defence at all and whether the suit may not be disposed of on some preliminary point without evidence. The judicial officers who gave evidence before the Committee frankly admitted that they were so oppressed by the idea of old suits which were awaiting final disposal, that they could not think of devoting any time to cases posted for issues. Another reason why the courts do not devote sufficient attention to the earlier stages of a case is that owing to the system of transfers prevailing in this province, it is almost certain that a munsif or a subordinate judge who frames issues in the case will not be there to try the case when it comes up for final disposal.

Another crying evil which results from this long delay in disposing of cases which are ready has been spoken to by several witnesses from the mofussil. A suit, after settlement of issues, is posted for final disposal to some day—six weeks or two months thereafter. In almost every court in the province no suit is taken up for final disposal on the date on which it is first posted. What happens in 90 per cent. of the cases is that the suit is adjourned a dozen or more times covering a period of two to three years before it is actually taken up for hearing. During the several days to which the suit is adjourned from time to time the parties and the witnesses are

expected to be in attendance, on the off-chance of the case being taken up. We have been told that, in practice, although the parties are in attendance, all the witnesses are not kept ready because the party believes that the case is not likely to be taken up. But I think it is clear that some witnesses at any rate have to be kept ready for hearing and it may be that if the party has no witness ready, some judges might insist upon the case being taken up and proceeded with and the party may suffer by reason of his witnesses not being ready. It is easy to conceive the amount of expense and worry to which the parties are subjected by reason of these endless adjournments before the case is actually taken up for hearing.

It has been suggested that this could be avoided by doing away with the present system of posting cases for final disposal to dates when the court knows they cannot possibly be taken up, and by putting them in a *sine die* list from which cases might be posted to fixed dates as soon as the prior cases are disposed of and there is a reasonable prospect of the case being taken up. Something like this system prevails on the Original Side of the High Court; but even there after a case comes into the daily list, it sometimes remains on the board for weeks together and sometimes for months, and every day the suit is on the board the parties and their witnesses are expected to be in attendance. In practice the system does not work great hardship in the city of Madras because the parties and the witnesses are ordinarily residents within the city and do not care to hang about the courts every day the case is on the board and if there is a reasonable prospect of the case being taken up, intimation is given to them by pleaders, and witnesses can be fetched at short notice. But I doubt very much whether such a system can be of much use in the mofussil courts where witnesses have to come from great distances. The only true remedy for these evils is the minimising of the delay in the disposal of ready cases and the posting of the cases for final disposal to dates on which there is a real chance of the case being taken up.

Although it is not within the province of the Committee to suggest any increase in the number of courts or of judges, I think we should be failing in our duty if we do not point out that unless and until the arrears now existing in all the courts in the province are cleared off and files are reduced to a normal condition, no remedies suggested for avoiding delays can be of any avail.

I shall now deal with some of the points raised in the questionnaire in the light of the evidence adduced before the Committee at Madras.

I have already dealt with the state of arrears in the High Court on the Original Side as well as on the Appellate Side. The only remedy I can think of for speeding up disposals on the Original Side is an increase in the number of judges. With regard to the Appellate Side I think the following suggestions may be useful.

1. Appeals from interlocutory orders on the Original Side or from the mofussil should be disposed of without printing within three

months from the date of filing. So far as appeals from interlocutory orders on the Original Side are concerned the late Chief Justice Sir Walter Schwabe introduced a rule that Original Side appeals should be disposed of within three to four weeks without printing, and I think that system worked very satisfactorily and was welcomed by the Bar. I am afraid that the system fell into desuetude since Sir Walter Schwabe left the High Court; but I think it is desirable to revive it and to make it applicable even to mofussil appeals against interlocutory orders. It is clear that in many of these appeals, proceedings in the lower courts are hung up on account of the defendant coming up in appeal, and it is therefore necessary that the appeals should be disposed of as quickly as possible.

With regard to the civil revision petitions, the system now in vogue needs modification. The discretion to issue notice or post civil revision petitions for admission before a judge is now vested in the deputy registrar of the Appellate Side. I think it is a matter which ought to be dealt with by a judge of the High Court. Further even in cases where civil revision petitions are directed to be posted before a judge for admission the papers are printed. This seems to me to involve unnecessary delay and expense. I think a rule that all civil revision petitions should be posted for admission without printing before a single judge would be an improvement on the present state of affairs. A large percentage of these civil revision petitions are eventually thrown out.

Another matter in which there might be an improvement is stay of execution. On the Appellate Side of the High Court where stay of execution is granted *ex parte*, it sometimes takes several months before the application is heard after notice. This encourages many applications for stay of execution being made *ex parte* because in any event the applicant is sure of stay for some months. The discretion to grant stay on an *ex parte* application is exercised in different ways by different judges. I do not think it is possible by any rule to arrive at uniformity in that matter. But some effort can be made to insist that all petitions for stay of execution in which interim stay has been granted should be posted for hearing within a month.

Where stay of execution is ultimately granted after notice, the hearing of the appeals should be expedited. Unless this is done the appellant to whom stay of execution has been granted may enjoy the benefit of the stay for some years, and the decree-holder may be prevented from reaping the fruits of the decree for a like period, although ultimately the appeal may be dismissed.

With regard to second appeals, the present system of disposal is unsatisfactory. A second appeal is circulated to a judge and if he orders notice, it is posted for disposal before a single judge. Against the judgment of the single judge there is a Letters Patent appeal before two judges. If the judge to whom the second appeal is circulated does not think it a proper case to issue notice, it is posted before a Bench of two judges, one of whom being the judge to whom the second appeal has been circulated. If after hearing

the appellant's vakil the Bench orders notice, the second appeal comes for final disposal again before a single judge and against the judgment of the single judge there is a Letters Patent appeal to two judges. The system of posting second appeals for final disposal before single judges has been recently resorted to in this High Court because there are such heavy arrears in second appeals. But unless the right of appeal under the Letters Patent to a Bench of two judges is taken away in the case of second appeals disposed of by a single judge the present system is not likely to give much relief in the way of disposal. A suggestion has been made that there should be no Letters Patent appeal from the decision of a single judge in a second appeal. The suggestion is, however, not acceptable to the Bar, and considering that in appeals from one judge of the High Court to a Bench of two judges the percentage of reversals is pretty large, I think that the right of appeal under the Letters Patent should not be taken away. From figures given at page 19 of the Administration Report for 1922, it will be found that of 34 Letters Patent appeals which were disposed of in that year, in 23 the decision of the single judge had been reversed, while only in 11 it was confirmed.

I have no special suggestions to make with regard to the city civil court.

With regard to the presidency small cause court, some of the witnesses complained that the delay in the disposal of suits in that court has increased of late years. This is a fact; the explanation for it as stated in the evidence of the chief judge of the small cause court is that a larger number of suits is now contested than formerly; and that a good portion of the time of the court is taken up with land acquisition cases, which have to be tried by the chief judge and also with applications regarding assessment under the City Municipal Act and objection petitions regarding elections under the same Act. It is also pointed out that the number of applications for new trial has increased very largely in recent years owing to a recent decision of the High Court. Formerly it was necessary for an applicant for a new trial to deposit in court the amount of the decree passed against him before his application could be entertained. This obligation was imposed by a rule framed by the High Court for regulating the procedure in the small cause court. In a recent decision of the High Court it was held that the rule was *ultra vires*, and since that date the number of full bench applications has considerably increased and a good deal of the time of the judges of the small cause court is taken up in hearing such applications.

I think there is a good deal of force in the reasons urged by the learned chief judge of the small cause court for the accumulation of arrears in that court. At the same time it is very essential that suits in the small cause court should be disposed of very speedily. Otherwise the very object of having the small cause court is frustrated. I would suggest the following remedies for the purpose of clearing off the arrears in the small cause court and reducing the time taken up for disposal:

The system of new trials by a full bench of judges may be done away with and the unsuccessful party may be given a right to apply to the High Court for revision on terms similar to section 25 of the Provincial Small Cause Courts Act. Not only would this suggestion relieve the judges of the small cause court of work which occupies a good deal of their time at present, but it has also the additional advantage of giving to parties a more satisfactory remedy than the present new trial application. Almost all the witnesses who have any experience of the small cause court have stated to the Committee in their evidence that this system by which an aplication for new trial from the judgment of one judge of the small cause court is heard by a full bench of two or three judges, of which the trial judge is himself a member, has been found to be unsatisfactory. Formerly the new trial applications were heard by all the three judges, the trial judge being one of them. Recently the practice has been altered and new trial applications are heard by two judges, one of whom is the trial judge. I can say from my experience of the small cause court that I entirely agree with the opinion given by the witnesses who gave evidence before the Committee that a system by which a judge who has tried the case sits as a member of the appellate tribunal is most unsatisfactory. The system has led in some instances to unseemly wrangles between the trial judge and the vakil for the appellant, and some trial judges, though not all, have displayed while sitting in the full bench a violent tendency to support their own judgments. I think this is good neither for the judges nor for the litigants and should be abolished.

Another suggestion that can be made for remedying the state of affairs in the small cause court is increasing the jurisdiction of the registrar to try suits up to the value of Rs. 50.

It is also worth consideration whether the trial of land acquisition cases may not be taken away from the chief judge of the small cause court and given to the High Court in its Original Side. If this is done, the chief judge would have much more time for trying small cause suits.

Alteration in the jurisdiction of courts.

I do not think that the enhancing of the jurisdiction of the district munsifs is likely to speed up disposals. I am not against the proposal to enhance the jurisdiction on its own merits. But it seems to me that as almost all the district munsifs have already heavy arrears to dispose of, the enchancement of their jurisdiction would only increase their arrears and thus cause greater delay in the disposal of suits. I am against the proposal to increase the jurisdiction of the presidency or provincial small cause courts. I do not think it is desirable to add to the class of suits which are disposed of summarily. The proposal to make suits relating to mortgages triable by a small cause court is open to the serious objection that such suits very often involve complicated questions of law,

and further small cause courts have no machinery for selling immovable property. Suits relating to partnership, however small may be the capital of the business, are necessarily long suits, because the taking of the accounts of the partnership which may extend over a long period and which may cover very large assets must take a considerable time.

Right of appeal.

On the question whether it is desirable to curtail to any extent the right of appeal which now exists, I feel very strongly that any attempt to curtail the right of appeal would be a retrograde measure. The opinion of almost all the members of the Bar who were examined before the Committee in Madras was against curtailing the right of appeal, and I was glad to notice that Mr. Hughes, district and sessions judge, Chingleput, who acted for some time as a judge of the High Court has also distinctly disapproved of the suggestion. In the first place, it seems to me that no case has been made out for taking away the right of appeal. It is said that because a party to a suit in the district munsif's court has a right of appeal to the district court and a right of second appeal to the High Court, litigation takes a very long time to come to a termination and therefore it is necessary for the purpose of cutting short the period during which a litigation is pending to curtail the right of appeal. This view seems to me to be based on an entire misconception of the causes which tend to prolong the period during which a litigation is pending. It is not because the party has a right of first appeal to the district court and a second appeal to the High Court that a litigation which is instituted in a district munsif's court is kept going on for a period of 7 or 8 years, but it is because, owing to heavy accumulation of arrears in every court, the suit has to wait for 2 or 3 years in a district munsif's court after it is ripe for hearing before the judge can find time to take it up. It has to wait another 2 or 3 years in a subordinate court and when it comes to the High Court in second appeal it has to wait another 2 or 3 years. It is illogical and unjust to base on these facts an argument that it is the right to file a second appeal that is responsible for all this delay. In England there is a right of second appeal in almost every case. From the judgment of a single judge of a High Court there is an appeal to the Court of Appeal and from the judgment of the Court of Appeal, there is an appeal to the House of Lords. I have been examining carefully some of the recent parts of the English Law Reports and I have noticed with surprise the expedition with which suits and appeals are disposed of in England. Taking the cases reported in the August Number of the English Law Reports for 1924 Chancery Division, I find that in the case reported in 1924 (2) Chancery, page 76, which was an appeal against an order of the registrar, the order of the registrar was passed in January 1924, the appeal was disposed of by the Court of Appeal on the 5th March 1924. In the case reported at page 101 of the same part the judgment

of the trial judge, Romer J. was delivered on the 27th July 1923 as appears from 1924 (1) Chancery Division, page 15. The appeal was decided by the Court of Appeal on the 6th March 1924. In the case reported at page 123 of the same part, which was an appeal from an order, the court of the first instance passed an order on the 23rd January 1924, and the appeal was heard and disposed of on the 10th March 1924. In the case reported at page 140 of the same part, the order of the first court was passed early in 1924—the exact date does not appear—and the appeal was disposed of on the 19th March 1924. Turning to cases reported in August part of the King's Bench Division, in the case reported in 1924 (2) King's Bench Division, page 114, the judgment of the Division Bench of the High Court on appeal from the County Court, was delivered on the 22nd November 1923 and the appeal to the Court of Appeal which was a second appeal was disposed of on the 20th February 1924. In the case reported at page 143, the County Court disposed of the case late in 1923—the exact date does not appear. The King's Bench Division disposed of the appeal on the 9th April 1924. At page 149 of the same part is reported another County Court appeal in which the County Court decided the case some time after the 31st October 1923 and the King's Bench Division disposed of the appeal on the 14th April 1924.

It is no doubt true that a party does complain that he has to wait perhaps 10 years to get a final decision upon some right which he claims or disputes and that the complaint is justified; but it seems to me, with great respect, that the remedy for the evil lies in speeding up disposal of suits and appeals and not in curtailing the right of appeal. I think the unfortunate litigant who asks to be protected from the delay involved in litigation will feel that he gets a stone instead of bread if he is told that the remedy is a curtailment of a right of appeal. In dealing with the proposal to take away the right of appeal under the Letters Patent from the judgment of a single Judge of the High Court, I have pointed out that the percentage of successful Letters Patent appeals is so large that it must be assumed that the Letters Patent appeal is a desirable safeguard against the vagaries of a single Judge. If this remark is true with regard to single Judges of the highest Court in the province, how much truer is it of judges of subordinate courts. I am not suggesting anything against the calibre, character, or capacity of the subordinate judiciary as a whole. I have great regard for them as a body. But I think it would be idle to deny that in several cases judgments or orders are pronounced by subordinate courts which are obviously wrong. The large percentage of appeals that are successful bears out this fact and I think that if a right of appeal is considered valuable in a country like England where all cases of importance are tried in the first instance by Judges of the High Court, it must be considered to be much more necessary in a country like ours where judges of the courts of the first instance are certainly not men of the such high calibre. Without meaning any offence or disrespect to judges of the subordinate courts, I must

say that not all of them are possessed of that intimate acquaintance with the principles of law and decisions which you may expect in the Judges of the High Court and I think it would be a bad day for the litigant if more judgments of the subordinate judicial officers are rendered final than at present.

It follows from the above remarks that I am entirely against curtailing the power of revision and curtailing also the right of second appeal.

With regard, however, to the scrutiny of second appeals under Order 41, rule 11, I think it might be desirable that a more stringent test is applied by the judge or judges admitting the second appeals than is usually the case. I think there is a good deal of force in the complaint that the respondent in a second appeal is often made to come from a distant part of the province for the purpose of contesting the second appeal and puts himself to trouble and expense in defending an appeal which is ultimately decided in his favour. The only remedy for it is that the judges should be more strict in issuing notice in second appeals. But where two judges after carefully scrutinising the merits of the second appeal consider that it is a case in which a respondent should be called upon to support the judgment of the lower court, I do not think that the mere fact that ultimately the second appeal is dismissed by a Bench differently constituted or by a single Judge is a sufficient reason for thinking that the respondent has been unnecessarily brought up. It is impossible to be quite certain about the result of a second appeal and I think that the hardship to individual respondents who may happen to live in a district far from the metropolis should not outweigh the general consideration that the appellant should have his second appeal heard when two judges of the High Court think that he has a *primâ facie* case.

A suggestion has been made that first appeals below a certain value should be tried in the mofussil by a bench of two subordinate judges with the idea that the decisions of such a bench should be final both on facts and law except where the two judges either differ or consider it a proper case to refer it to the High Court for its opinion on a question of law. I must say that when the suggestion was being discussed in the sittings of the Committee, I was at one time attracted by it. There is a considerable amount of dissatisfaction with the present system by which the findings of fact of a subordinate judge or district judge in the first appeal are made final even where he reverses the judgment of the district munsif. The High Court is powerless to interfere on question of fact. Where the appeal is heard by two subordinate judges who may be selected on the ground of their possessing considerable experience or ability, the decision of such a tribunal on questions of fact may be more readily acquiesced in as final than that of a single subordinate judge, perhaps a junior subordinate judge or of a district judge with very little of civil experience. But though from this point of view the establishment of such benches would be an improvement on the

present system, still I do not like the idea of making their judgments final on questions of law. I think it is very necessary that on questions of law, the final word must rest with the High Court. Not merely because I feel doubtful about the capacity of judges in mofussil stations with perhaps ill-equipped libraries and not a very efficient Bar to investigate and decide questions of law with the same thoroughness with which the High Court can, but also because I think it necessary that on questions of law there should be uniformity at least in one province. It is well known that owing to the fact that there are several High Courts and Chief Courts, and Judicial Commissioners' courts in different provinces in India, differences of opinion have prevailed in different provinces, and on several questions the law in one province is very different from the law in another province. If the decisions of the benches of the subordinate judges on questions of law are final, we should arrive at a state of affairs when different views of law would be prevailing in different districts, and as there are 25 districts in this province, there might be endless diversity of opinion on points of which there is no authoritative ruling of the High Court. I think such a state of affairs would introduce an amount of confusion as to the law on many subjects and would make litigation much more of a gamble than it is at present.

I am against curtailing the power of revision to the High Court. I agree that many of the revision petitions that are filed have no substance in them, but the remedy for that state of affairs is to post such petitions for admission before a single judge and be very strict in admitting them; but there are some cases in which the power of revision is rightly invoked by the parties and the High Court has to exercise it, and it would be dangerous if the power of revision is taken away altogether or curtailed.

Trial of original suits.

After hearing considerable evidence on the question as to the improvements that can be effected in serving summonses upon the defendant, I feel that not much improvement is possible over present conditions. The judge should exercise a certain amount of discretion in holding the service good. If the judge is very strict and technical and insists upon personal service in every case, in several cases the defendants who may be aware of the institution of the suit and who are evading service can manage to keep off the trial to an indefinite length of time, the remedy is that the judge should either accept affixture as good service in cases where he thinks the defendant is evading service or be liberal in granting substituted service. I have said that very little trouble is taken about properly framing the issues so far as subordinate courts are concerned. I think it is necessary that at the stage of issues, the judges should read the pleadings and where the pleadings are defective, make orders for further and better particulars, examine parties for the purpose of getting information on points upon which pleadings are

defective, weed out unnecessary issues that might be suggested by the parties, narrow the points of controversy and make orders for discovery and inspection. In all these matters the practice on the Original Side of the High Court is in accordance with the provisions of the Civil Procedure Code and helps considerably in narrowing the points of controversy and enabling the parties to be better prepared with their cases when the trial comes on.

The suggestion in question 33 that as soon as one party is examined, the other party should be examined before the witnesses of the first party are examined seems to me to be not calculated to help the ends of justice. It would do away with all the rules of the burden of proof. It would make the art of advocacy useless. From the evidence given by many witnesses it appears that a very pernicious system is in vogue in the lower courts as regards the trial of suits. When a suit is taken up for trial, it is very often shown in the " B " Diary as being heard from day to day, but in fact though it may be heard every day it is heard only for a very small fraction of the day. A munsif or a subordinate judge devotes an hour and a half every day to interlocutory work and issues and then takes up short suits posted for final hearing. He then comes to his regular work. He has 2 or 3 part-heard cases in each of which a portion of the evidence has already been recorded. It would appear that some judges are in the habit of taking up each of the part-heard cases posted that day, going on with it for half an hour or an hour, examining witnesses, and then taking up another part-heard case and dealing with it in the same manner. At this rate 2 or 3 part-heard cases are supposed to be going on each day for several days. A system like this deserves the severest condemnation. It is evidently resorted to for the purpose of getting round the rule in the Civil Procedure Code that if a suit is taken up for trial, it should be heard from day to day. The lower courts seem to have found a way of observing the letter of the rule while breaking it in spirit. I cannot conceive how any efficient cross-examination can be made of a witness whose examination-in-chief has extended over a number of days. No wonder that when such system is prevailing new witnesses are added to from time to time as the case progresses. I do not see why the system prevailing in the Original Side of the High Court that when once a case is taken up, it should go on continuously and no other case should be taken up till that is disposed of should not be observed in the mofussil.

Supervision.

In the matter of supervision of the work of inferior courts, I think there is a good deal of scope for improvement. From the administration report for 1922 at pages 11 and 12, it will be seen that some of the district judges did not inspect some courts subordinate to them. Even where a district judge inspects subordinate courts, we are told by the witnesses examined by us that such inspection is very often prefunctory, that the sheristadar or some

clerk who accompanies the district judge inspects some registers shown by the sheristadar of the court that is inspected and nothing further is done. If the work of inspection of subordinate courts by the district judges had been properly conducted, I think it would be impossible for many of the abuses of which we have heard complaints to grow up or flourish. We have heard complaints that some of the judges and munsifs are unpunctual in attendance and that some of them keep their judgments in reserve for very long periods. Some of the witnesses, in their evidence, complained that some district judges are incompetent to exercise effective supervision over the work of munsifs and subordinate judges, because they are very often quite inexperienced in civil work. It was stated to us by one of the Judges of the High Court that there are some district judges who never try an original suit. If the state of affairs is to be remedied I think that there will have to be more constant, effective and thorough supervision by the High Court judges over the work of the district courts as well as of the courts subordinate to them. At present the High Court's supervision is only nominal. Returns are submitted by the district courts of the state of their files and of the work turned out by themselves and the courts subordinate to them. These returns are scrutinised by individual Judges of the High Court, but owing to the fact that the Judges of the High Court are considerably overworked and their purely judicial work takes up not only all the time they sit in court but a considerable portion of their time on holidays, the scrutiny of these returns is not done as carefully as it should be. If the powers of superintendence vested in the High Court under section 107 of the Government of India Act and the Letters Patent are to be effectively exercised it would be necessary for the Judges to be given some time to do the work of inspection by visiting personally the courts concerned and judging for themselves the manner in which the subordinate judicial officers discharge their work and the causes for the accumulation of arrears or other evils in different courts.

Execution.

I am in favour of any suggestion which will have the effect of enabling the decree-holder to realise his money more expeditiously. I am against the proposal to reduce the period of limitation under section 48, Civil Procedure Code, to 6 years. I think that the decree-holder will not sleep over his rights after having taken the trouble to obtain the decree, unless he finds that the judgment-debtor is concealing his property. Further, there are cases in which the judgment-debtor becomes entitled to a legacy or inheritance several years after the decree is passed, and in such cases the decree-holder has now the chance of recovering the amount provided 12 years had not elapsed. I do not see there is any equity in depriving him of that right.

There is one other matter about which I should like to say a few words. There are certain suggestions in the questionnaire and

in the evidence given by some of the witnesses the object of which is to impose additional restrictions on the nature of the evidence which can be given in proof of certain facts. I refer to the suggestions contained in Questions 58, 76, 77, 78, 79, 80 and 81. I may say generally that I am against all suggestions of that nature. The reason given by persons who favour such suggestions was that a good deal of time of the court is taken up in hearing conflicting evidence on questions like whether a family is divided or undivided, whether there was a partnership agreement between certain persons, whether a payment pleaded in satisfaction of a decree or a document has really been made, whether a property which stands in the name of " A " really belongs to " B " and so on. It is said that if a rule was made that no evidence can be given in a matter unless there was a registered document evidencing it, the work of the court would be considerably lightened and I suppose the delay in the disposal of cases would be lessened. I must protest against the idea that the object in view in making the suggestion should be to lighten the work of the courts. I should think that the sole object of all suggestions regarding rules of evidence should be the ends of justice. While no doubt it is desirable that as far as possible there should be written evidence of transactions and in some cases such writing should also be registered, still the law as it now stands deems it desirable not to impose the necessity of writing or registration in a large number of cases. For example, in the case of promissory notes and other mercantile documents registration is not necessary. No doubt, as suggested by one witness, if there was a rule that all promissory notes should be registered, you might hear less of the defence that a promissory note has been forged. But a restriction like that would paralyse trade and commerce; similarly in the case of many transactions, either owing to the fact that the parties are illiterate or the parties have confidence in each other, a writing is not resorted to as often as it is desirable that it should be. In such a case the enactment of a rule that in the absence of a writing no oral evidence can be given of such a transaction would result not in furthering the ends of justice but in defeating them, because when you say that no evidence can be given of a payment unless there is a writing to evidence it, are you not really saying that you will not have the truth, and you will not give effect to it? The same considerations apply with regard to what are known as benami transactions. A good number of witnesses deplored the existence of such transactions in this country and suggested that a provision may be enacted refusing to recognise such transactions from some future date. Now, I am unable to see the justice of such a provision because when you say that you have got evidence that the property which apparently stands in the name of " A " really belongs to " B " and you refuse to hear it, are you not really refusing to hear the truth and to help the rightful owner? If you will allow the man who has, by obtaining the confidence of another, come to be the ostensible owner of the property to cheat the man who has

imposed trust in him, are you not thereby helping the dishonest benamidar and refusing to assist the honest real owner of the property? I fail to see how anyone who has the interest of truth and justice at heart can favour such a proposal. It is one thing to deplore the prevalence of benami transactions, but another thing to make a hard and fast rule that where a benami transaction has been entered into, the court will not help the honest man, but will maintain the apparent title of the dishonest man. It seems to me that any alteration of the law in the direction of making it more technical than it is now will, while perhaps making the task of judicial officers in arriving at the truth less difficult than it is now, tend to defeat and deny justice. Some of these proposals are calculated to do away with the doctrines of equity that the Court of Chancery in England thought necessary in the ends of justice to develop for the purpose of doing real justice between the parties where the common law by reason of some technicality felt itself unable to do so. Now if the proposals contained in these suggestions are carried out, the law in India would lose the benefit of all the doctrines of equity which the court of Chancery in England has evolved and which have become embodied in the Indian Law and we shall be going back to the rigid technical rules of the old common law days.

Diwan Bahadur C. KRISHNASWAMI RAO, retired District Judge, Madras.

I am of opinion that the period now taken for the disposal of civil judicial proceedings is in many cases unreasonably excessive. The main causes of the delay can be inferred from the remedies suggested below:—

A.—Courts.

1. In the first place, the Bar is getting stronger than the Bench. And it is therefore necessary to strengthen the Bench by devising suitable method of recruitment for the different grades of judicial officers:—(*i*) In the case of district munsifs, a judicious combination of selection and competition is essential. Subordinate judges should be appointed only from among the best of the district munsifs. Direct recruitment from the Bar for these appointments is by no means desirable as the field of selection will not differ materially from the field of selection for district munsifs. (*ii*) In the case of district judges, it is highly desirable that only those who have gained sufficient experience of civil work should be appointed. Direct recruitment, if any, from the Bar should be confined to men of exceptional merit who have made their mark at the Bar. To such men, appointments should be offered, and the system of calling for applications for these high appointments must be stopped. (*iii*) These observations apply with even greater force to High Court Judges and vested interests should not stand in the way of proper

selection. The rule of fixed proportions should be abolished. The provincial judicial service must be given a fair chance of aspiring to the High Court Bench.

2. A strong committee of selection from among the judges of the High Court should be appointed for the purpose of selecting candidates for the appointments of district munsifs, subordinate judges and district judges and a competitive test for the appointment of district munsifs should be determined by the said committee.

3. If the above system is adopted, no special training is necessary for district munsifs; but an officer newly appointed may be directed to watch for a week or two the proceedings in a higher court of original jurisdiction before he takes charge of his appointment.

4. It is impossible to fix a uniform standard of efficiency for the whole presidency or even for each district. The best method of prescribing a standard of efficiency for each court is to work out a chart of work done during the last 15 or 20 years in each court and a standard may be fixed on that basis. Similarly, a record should be maintained for each officer for work done by him in each of the courts presided over by him. That is bound to give an idea of the efficiency or inefficiency of particular officers. And furthermore, Judges of the High Court should make it a point to record their opinion as to the quality of work of the various officers as and when their work comes up before them for consideration on appeal.

B.—Devolution.

1. A certain amount of work done by the regular courts may be transferred to panchayat courts. The witnesses who have given evidence on this matter have laid stress on the fact that these courts are not properly constituted. Proper steps must be taken to see that the constitution of these courts is placed on a satisfactory basis; and there would then be no objection to confer exclusive jurisdiction on such courts. If that is done, there is no reason why they should not be vested with exclusive jurisdiction in suits of a small cause nature up to the value of Rs. 200.

2. Small cause jurisdiction of district munsifs may, in general, be raised to Rs. 200 and in the case of specially selected officers to Rs 300. Small cause jurisdiction of subordinate judges may be restricted, as at present, to a limit of Rs. 500 but in the case of specially selected senior officers, the jurisdiction may be extended up to a limit of Rs. 1,000.

C.—Trial of suits.

1. The delay which occurs at present in the trial of suits is after the settlement of issues and not before and may be minimised to some extent by adopting the following suggestions:—

(*i*) The provisions of Orders 10, 11 and 12, Civil Procedure Code, must be directed to be rigidly followed. But this

will not be done unless a penalty is attached. For instance, if a party fails to file his affidavit of documents, the court must have power, on application, to reject the plaint or to strike out the defence as the case may be.

(*ii*) The examination of parties at the time of the settlement of issues, in cases in which the court considers such examination useful, must be insisted on. Here again, a penalty should be attached to the non-appearance of the party whom the court wishes to examine.

(*iii*) A certain amount of responsibility may be thrown on the parties and their pleaders for the service of summons on witnesses.

(*iv*) There is no need to issue summons to witnesses where once they have been served and this practice must be stopped. Instead, it should be laid down that the witnesses should be bound over to appear on the adjourned date or dates of hearing.

(*v*) In order to afford pleaders an incentive to expedite trial of suits and to prevent possible hardship to them by reason of non-payment of fees,—it is often one of the sources of delay—greater facilities must be given to pleaders to recover their unpaid fees.

(*vi*) And in difficult or complicated suits, the court should have the power to certify fee for two pleaders.

(*vii*) The scale of pleaders' fees must be revised so as to approximate it as far as possible to the amount of labour involved in the conduct of the case. At present, the fee is not only low in most cases but is absurdly trivial in some cases.

(*viii*) The amount of day costs which the court can allow must be made sufficiently deterrent to prevent adjournments.

(*ix*) In cases where there is no conflict of interest among the members of Mitakshara family or a Malabar Tarwad, the managing member or head of the family or Tarwad should be allowed to represent the whole family or Tarwad in suits by or against them.

(*x*) *Ex parte* orders for interim stay of proceedings or for injunctions in original suits as well as in appeals have, in this province, become a source of great delay, inconvenience and hardship. And such orders are obtained more often to hang up proceedings than to redress a genuine grievance. Except in cases of very grave emergency where irreparable harm would be otherwise done, such orders should not be allowed to be passed and the law should be made clear on the point.

D.—Appeal and revision.

1. I am not in favour of the suggestions regarding the curtailment of the right of appeal to the High Court under the Code of Civil Procedure or under the Letters Patent, on the other hand, I would like to bring the law into conformity with the procedure in Burma by allowing a right of second appeal on facts in cases where the court of first instance and the lower appellate court differ. The suggestion to constitute special benches for disposing of appeals in the mofussil may be tried in one or two areas and if the result is found to be satisfactory, the system may be extended. As regards the right of making applications in revision in the High Court, the trouble is not so much that this privilege is abused but that the High Court is not consistent in its interpretation of the scope of its powers of interference. The remedy therefore lies in a clear statement of the law on the subject. The two suggestions mentioned in Question No. 23 of the questionnaire may be adopted.

E.—After decree.

1. The suggestions contained in Question Nos. 53, 54 and 55 may be adopted.

2. As regards execution of decrees, the law should be so changed as to dispense with the necessity for periodical applications to keep the decree alive. An application within the outside limit as at present prescribed by law must be sufficient and when once such an application has been made and entertained, it should be kept on until satisfaction is obtained or the decree has become barred. It follows that statistical returns in regard to execution applications are uncalled for. If the above suggestions are adopted, the Question No. 61 does not arise.

3. The suggestions contained in Questions Nos. 57, 58, 59 and 60 may be adopted.

4. It is sufficient that a single notice of execution is given to the judgment-debtor and he is bound to acquaint himself with all the subsequent proceedings in execution. A copy of the proclamation of sale may be served on the judgment-debtor.

5. The suggestions contained in Question No. 66, clauses, (*a*), (*b*), (*c*) and (*d*) may be adopted. There need be no preliminary decree nor is it necessary to provide for time for payment. There should be only one decree which may provide for personal relief as well in cases where the security is exhausted and the decree amount is not realized in full.

F.—Insolvency.

1. The system of appointing official receivers has not worked well and the duties now performed by them must be entrusted to regularly constituted courts. Protection to a judgment-debtor should not be given as a matter of course, but should be conditional on his showing that he was honest and *bonâ fide* in dealing with

his property and on his giving every facility in his power to the court in taking possession of his property; and nothing short of this should entitle him to protection. The right to apply for an order of adjudication in insolvency should be given only to creditors who have obtained decrees against the judgment-debtor. It is found in practice that a judgment-debtor is able, in collusion with a friendly pseudo-creditor who has not even a decree in his favour, to obtain an order of adjudication and thereby not only to secure protection for himself but also to evade just and *bonâ fide* alienations of recent dates.

G.—Supervision.

1. The prolixity of judgments, the failure to dispose of preliminary or technical points in the first instance, the piecemeal trial of suits, the division of suits into short and long causes, the irregular postings of cases and the expediting of special suits on application are all matters which can and should be corrected only by proper supervision. Such supervision should not be spasmodic or superficial but regular, periodical and thorough. The officer selected for the purpose should be of a rank not below that of a district judge and he should be in a position to devote his whole time to the work of inspection.

H.—Evidence.

1. As regards proof of mortgage-deeds, they may be placed on the same footing as sale-deeds. The suggestions contained in Questions Nos. 73, 76 and 83 may be adopted. As regards the suggestion in Question No. 81, it may be laid down that no party to a transaction shall be allowed to plead his own fraud even where the intended fraud has not been actually perpetrated.

I.—Law reports.

1. Law reporting should be placed on a more satisfactory footing and should be entrusted in each province to an incorporated society organized for the purpose and authorized by law. The nonchalant manner in which conflicting decisions are passed without resorting to references to a Full Bench is one of the potent causes for confusion and protraction of judicial proceedings, and it is essential that some method should be devised to develop a better standard of judicial etiquette for the benefit of litigants and subordinate courts.

J.—Codification.

1. There should be a permanent statutory body to take note of conflicting decisions and to make suggestions from time to time for amendment of the law in order to secure uniformity and certainty. Codification of special branches of personal law as well may, on their recommendation, be undertaken to facilitate the administration of the law with greater exactitude and satisfaction.

Mr. G. M. GUPTE, Advocate, Bombay High Court.

It is recognized that there are delays in the disposal of civil suits, appeals and execution proceedings and successful litigants are not able to obtain satisfaction of their decrees with reasonable despatch, and this state of affairs has tended to create a feeling of lack of confidence in the administration of justice in India. In centres of trade and industry, the development of commerce and industry has been retarded, by the inordinate delays in the disposal of litigation. In Bombay, cases have occurred where parties find it difficult to produce the evidence in proof of their cases, when the trial comes on after a number of years after the institution of their suits. In some cases the defendants have become insolvents and the plaintiffs, who stood some chance of recovering their claims if their suits had been disposed off earlier, are deprived of their just dues. The need for expedition is comparatively more pressing in commercial centres like Bombay and Ahmedabad. Prompt and speedy justice as well as efficiency in the administration is naturally demanded by the mercantile communities of Bombay. In the mofussil where the majority of the population consists of agriculturists many of them ignorant and illiterate and people given to leisurely habits, the problem is not so acute. Though the strength of the judicial establishments is not within the scope of the inquiry, it may be permissible to observe that in recent years the volume of litigation in some places (for instance in Bombay) has increased to such an extent that it is humanly impossible to dispose of with reasonable despatch the business in the courts with the existing establishments. (*Vide* the figures given in the evidence of Mr. Justice Marten.) Further it is absolutely essential for the disposal of business satisfactorily in the law courts that the judiciary should be manned by really efficient and experienced judges. Much of the dilatoriness which is to be found in some of the courts can be remedied by tact and firmness on the part of the judges and it is desirable that the present methods of recruitment to the judiciary are revised.

2. I will first deal with the litigation in the High Court of Bombay. As I have already observed, delays in the disposal of suits in the High Court have resulted in great hardship to litigants. Though the number of Judges has recently been increased, the administrative establishment to deal with the clerical work has not been proportionately increased. The establishments are both insufficient and inefficient. Whatever increase there has been made, is made long after a great congestion of work has taken place. I may be permitted to observe that the increase in the number of Judges has not eased the situation proportionately, as some of the Judges appointed to preside on the Original Side were members of the Indian Civil Service and comparatively speaking such judges occupied a longer time in the disposal of the Original Side work to the detriment of the litigants, involving them in heavy costs in petty cases. The nature of the litigation on the Original Side is

not of the same type as it is dealt with by judges in the districts and it is desirable that the Judges working on the Original Side should be, as far as possible, men recruited from practising lawyers either in India or in England. The appellate work in the High Court of Bombay has recently been much diminished, and it will be found that one division bench of two Judges and sometimes two division benches are quite sufficient to cope with the work. In this state of affairs I would respectfully submit that the fixed proportion laid down by the Government of India Act, section 101, clause (4), fixing the number of Civilian judges to one-third should be done away with. No doubt, we have had many Civilians adorning the High Court Bench who have been lawyers of great eminence and successful Judges. They are, as a general rule better equipped to deal with the appellate side and criminal work. The state of the work on the Original Side in the High Court of Bombay requires the constitution of more than 4 division benches presided over by a single judge. I respectfully submit that practising lawyers of proved merit should be appointed when an increase is deemed necessary to deal with the work on the Original Side.

3. One of the pressing problems which has given rise to much controversy is the remedy for the disposal of small claims up to Rs. 5,000 by the High Court. It is said that small partnership suits, suits by Hindu widows for their maintenance, and suits for administration of small estates cannot bear the burden of costs in the High Court, that the disposal of such suits by the High Court involves the parties in costs quite disproportionate to the claims and is ruinous to the parties; and it has been suggested that either the jurisdiction of the court of small causes in Bombay should be increased to Rs. 5,000 or that a separate civil court should be established to deal with such suits. In this connection it may be mentioned that the High Court has since January 1924 extended the summary procedure to claims for liquidated amounts, etc., and there is the facility which enables the plaintiff to file a suit as a short cause where there is not much of a contest. Calculating the suits up to Rs. 5,000 at 30 per cent. of the total number of suits filed in a year in the High Court, there would be about 2,000 suits of this nature filed in the High Court. Many of these suits are disposed of as short causes and some of them are summary suits. The costs of uncontested litigation in the High Court are smaller than what the costs would be in the small cause court where the court fees are paid *ad valorem* and the pleaders would be entitled to charge their fees on a percentage basis. Thus for the sake of a comparatively small number of contested suits the litigants, who get their decrees by means of a short cause or a summary suit, will have to pay more costs if the jurisdiction of the small cause court is extended. Further it will be necessary to apply the regular procedure prescribed by the Civil Procedure Code including the provisions regarding discovery and inspection to suits above Rs. 2,000 in the proposed extended jurisdiction of the small cause court. The judges of the small cause court, habituated as they are to summary methods and practice, are hardly the judges to deal satisfactorily with litigation

of this kind. As it is, there is much congestion of work in the court of small causes in Bombay. Cases are not heard from day to day and litigants choose to file their suits above Rs. 1,000 and below Rs. 2,000 in the High Court to avoid the inconvenience experienced in the small cause court. It will not be safe to sacrifice justice for the mere sake of speed and the increase in the jurisdiction of the small cause court will have that tendency. I submit that in view of the recent facilities given in the High Court and the speedy disposal of suits filed as short causes or summary suits, change is desirable in the direction of the extension of the jurisdiction of the small cause court. I am of opinion that for the purposes of reducing costs in claims below Rs. 5,000 a lower scale of taxation of costs should be prescribed in contested cases. If necessary, I should permit the attorneys to plead and act in cases below Rs. 5,000. Many of the attorneys now on the rolls of the High Court are B. A., LL.B.s and hold sanads as pleaders. Just as they are allowed to appear before the Commissioner of the High Court and the Judge in chambers, they should be allowed to plead in such cases before a Judge of the High Court. I am also of opinion that pleaders of some standing, say 5 years, should be allowed to plead in such cases so that litigants may have the option of choosing their legal advisers according to their purse. If these proposals are not acceptable, then I would rather prefer a city civil court presided over by judges recruited from the Bar with salaries sufficient to attract able men for the disposal of this class of litigation.

To deal with matters of account and other enquiries, I think the appointment of special commissioners should be encouraged.

4. Dealing with the procedure in the High Court as regards the service of summons, it is desirable that the form of the summons should be altered and should be brought into line with the English form. At present the High Court has got different forms for the short causes suits dealt with under the summary procedure, and the long causes. Those for the summary procedure and short causes require no alteration. For the long causes it is desirable to do away with the date of hearing mentioned in the summons and to substitute that the defendant should file his appearance on or before a number of days after the service of summons.

There is no necessity for translating the writ of summons when the defendant is a resident of Bombay.

The services of special bailiffs in the employ of attorneys should be more freely used or the attorneys may be allowed to serve the summons through their own agency.

Service by registered post should be permitted.

As regards interlocutory proceedings, the provisions as regards the discovery and inspection are availed of in the High Court, only interrogatories are not administered as freely as desirable.

Sometimes the hearing of the suits is delayed for want of translations. I think private translations made by responsible attorneys should be permitted. There is a rule in the High Court

rules which requires that every translation should be officialised. That rule should be modified.

With reference to the distribution of work and constitution of different benches, I think it is desirable that one Judge should deal with commercial causes unhampered by work of other nature, such as chamber work. It is found that the judge who deals with chamber work has not time enough to dispose of suits calling for speedy disposal. In this connection I may also mention that the preparation of the daily cause list requires more attention. Inordinately long boards are prepared and more cases are put on the daily board than can reasonably be disposed of in a day, with the result that the parties with their witnesses whose cases are not called on have to hang about the courts unnecessarily and have to suffer in costs, for each attorney is entitled to charge Rs. 3 per diem as his watching fee.

5. As regards causes in the stayed list, rules should be framed to dismiss the suit for want of prosecution if the plaintiff does not take any steps in the matter. As regards summary suits dealt with by summary procedure, I am of opinion that the period of six months mentioned in Article 5 of the Limitation Act should be increased to one year. I do not think it is desirable that plaintiffs who are not anxious to proceed by way of speed with reasonable despatch should be allowed this special procedure. Also as regards commercial causes, they ought to be filed with convenient speed, say not exceeding six months, in order to entitle the plaintiffs to avail themselves of this special remedy.

6. *Insolvency.*—At present creditors take very little interest in the affairs of the insolvents and I approve the suggestion that a meeting of creditors should be called by the official assignee and a committee of creditors should be formed under whose supervision the affairs of the insolvents should be managed.

7. *Execution Proceedings.*—Difficulties have been experienced in executing warrants for arrest outside Bombay and a doubt has been expressed that the High Court has no power to issue warrants outside Bombay. The doubt should be removed and the High Court should be declared to have authority to issue warrants for arrest in any place in British India for the arrest of a judgment-debtor, so that the debtor may not escape by merely shifting from one district to another. Special bailiffs should be empowered to execute such warrants.

8. *Litigation in the mofussil, service of summons.*—I am of opinion that in district towns service by registered post should be permissible. As regards service in villages, it seems that in recent years there has not been any supervision of the bailiff's work worth the name. I think some measure of supervision is absolutely essential, so that a greater percentage of personal service can be secured through such agency. I am opposed to the suggestion of employment of pleaders' clerks for effecting service. In districts where the evil of party factions is not notorious, I think the services of village officials should be availed of for effecting service.

It appears that proper steps are not taken to inform the pleaders promptly of the return of unserved summonses. Circulars should be issued making it incumbent on subordinate judges to put upon a notice board, at least once a week, the summonses which have been returned unserved.

Registered address.—The form of the summons should be altered, and instead of the date of hearing being mentioned in the summons, the defendant should be called upon to enter an appearance within a prescribed time after the service of summons. It should be prescribed that at the time of entering appearance he should give his address which will be the registered address for all future communications with him. It should be optional for the defendant to give his pleader's address as the registered address.

In the mofussil the provisions of the Civil Procedure Code as regards discovery and inspection are not availed of in this presidency with the result that time is spent at the hearing which could have been saved. A date should be fixed by the subordinate judges after the pleadings are closed for giving directions on such matters, and the pleaders of the parties should be given the necessary directions. In this connection it is desirable to provide extra costs by way of remuneration to the pleaders for such work. Such a provision will tend to encourage the pleaders to utilise these provisions and will enable the courts to award costs against the defaulting party. At this time also lists of witnesses should be taken from the parties and the parties should be confined to the witnesses mentioned in such lists as far as possible. Additional witnesses should be allowed only for a satisfactory cause. Though instructions have been issued by the High Court for the trial of suits *de die in diem*, the rule is not followed (*vide* evidence of Mr. Justice Fawcett). It is absolutely essential for the avoidance of inconvenience to litigants and their witnesses and also for the satisfactory disposal of cases, for more time is wasted by hearing a case piece-meal; the trial *de die in diem* should be the rule and only in exceptional cases the hearing of a case should be interrupted.

9. *Execution Proceedings.*—I am of opinion that Article 182 of the Limitation Act should be abolished. The step in aid of execution has given rise to unnecessary delays, and increased the number of applications. The period of 12 years now prescribed should be curtailed to 6 years. As regards the decrees granted *ex parte*, it should be provided that the judgment-creditor may issue execution within 6 years provided that the decree is served on the debtor say within one year of the date of the decree. As regards adjustments of decrees, I think it desirable that it should be permissible to get the adjustment recorded before a sub-registrar on the payment of a nominal fee.

10. *Recruitment and training of judges.*—As regards the recruitment of the subordinate judges, a welcome innovation has been recently made by the Government of Bombay by the appointment of a committee of selection. But it appears that so far the committee have not thought it desirable, before making selections, to grant

personal interviews to the applicants. In my opinion before making a selection it is desirable that the members of the committee should see personally the candidate, because a personal interview enables the committee to form an estimate of the applicant's fitness to discharge the onerous duty of a judge. The subordinate judiciary should be recruited from practising lawyers of at least 5 years standing and after their selection the candidates should be directed to work under an experienced first class subordinate judge for at least 6 months. Civilians who choose to join the judicial branch of the service should attend the High Court for, say, about 3 months and do original work for at least 3 months in the court of a first class subordinate judge, before they are put in charge of independent work.

11. *Evidence Act.*—No change in the Evidence Act is necessary. The delays that occur or the time that is sometimes wasted at the hearing of suits is more due to the non-observance of the rules and provisions of the Evidence Act. If the presiding judges use tact and firmness, much time can be saved if the Evidence Act is strictly followed. Whenever cases occur and are brought to the notice of the High Court of time unnecessarily wasted, directions should be given to the subordinate courts.

12. *Summary Procedure.*—I am of opinion that summary procedure should be introduced for the disposal of suits on negotiable instruments and claims mentioned in section 128, clause (*f*) of the Civil Procedure Code in the district courts and first class subordinate judge's courts in places like Ahmedabad, Sholapur, Surat and Karachi.

Guardians of Properties of Minors.—At present one of the officials of the court acts as the guardian of the properties of the minors and the time and attention of district judges and subordinate judges is to a certain extent occupied in attending to such matters. There is no inspection of these accounts by the accountant general. In my opinion attending to these matters is not within the sphere of a judicial officer and it is desirable to create in places of importance the appointment of an official who should be the guardian of the properties of the minors in the absence of relatives to whom the minors' properties could be entrusted. The accounts of such an official should be subject to audit by the official auditor. At present, in the district towns, there are no official assignees for the estates of insolvents and generally a pleader is appointed. This official should also be the official assignee of the insolvents' estates. If these matters are entrusted to one official, it will be possible to find men to do the work satisfactorily. A minimum salary should be guaranteed by Government and these officials should be remunerated by fees to ensure a satisfactory collection of the estates. Of course, these officials will work under the direct control of the district judge or a subordinate judge, as the case may be.

13. *Village Panchayats.*—I think the time has come to employ more freely popular agencies for the disposal of money claims of small value. For the disposal of such suits I suggest the formation

of village panchayats throughout the presidency. The constitution of such panchayats should, at the commencement, be partly nominated and partly elected. They should be empowered to try money suits up to Rs. 20 and I do not think that there is any danger of any corruption (*vide* the evidence of Mr. Allison, I.C.S.).

14. *Benami transactions.*—The evil of *benami* is not a very pressing problem in the Bombay Presidency, but its abolition is likely to do more harm than good because advantage would be taken of guileless, illiterate and confiding people by unscrupulous persons and as cases of the abuse of the doctrine of *benami* have been very rare, I am not in favour of its abolition.

15. *Suits against Government.*—As regards the proposal to relieve the district judge of the less important class of suits against Government, there does not seem to be any objection in principle in permitting suits of trivial nature to be filed in the courts of the subordinate judges. The only consideration which has been urged against this proposal is that the litigants have a reasonable apprehension that the subordinate judges will not be able to hold the scales of justice even, where the Government is a party on one side. In the Bombay Presidency the powers of transfer and promotion are with the executive Government and when proceedings are taken on the initiative of the executive officials of Government the public apprehend that the subordinate judges will not be able to do justice to their cases. In my opinion, from the point of view of the experience of some of the witnesses, these fears do not seem to be groundless, as sometimes subordinate judges who have occasion to displease the executive officials of the district have to suffer. From this point of view I should suggest that the powers of promotion and transfer should vest with the High Court; such a change is likely to create a more independent judiciary, and if this change is effected there will not be the least objection to transfer suits of comparatively less importance to the subordinate judges.

16. *Court Fees Act.*—If the summary procedure be introduced in the district towns of the presidency of Bombay, I think a modification of the Court Fees Act is expedient. Outside Bombay an *ad valorem* scale of fee is prescribed with the result that the higher the amount of the claim the larger the court-fee. The time taken up by uncontested summary suits will be inconsiderable and it will be just to reduce the amount of fees leviable in such cases. If the defendant does not obtain leave to defend, half the fees leviable on such claims should be refunded to the plaintiff. A similar concession should also be allowed in suits filed in the small cause courts which are not contested. I may also suggest that it will be desirable to consider the feasibility of the present method of calculating the court fees on claims with a view to levy a larger amount of fees in those cases where the time of the court is taken up for trying a case for a number of days. The present fees cover the trial of the suit right up to the passing of the decree regardless of the time or the number of days taken up for its trial. In my opinion the fees levied on the presentation of the plaint should cover up a

trial for a day and some additional fee per day should be imposed on suits taking up a longer time. Moreover, as I have already suggested, some fee should be levied when adjournments are applied for. This will tend to prevent unnecessary protraction of the trial.

17. *Pleaders' Fees.*—Similar observations apply to the remuneration allowed to the pleaders in the mofussil in the presidency. Pleaders are allowed fees in a lump sum regardless of the duration which a particular suit takes up before a decree is obtained. The fees are calculated on the amount of the claim and not on the amount of work involved in each particular case. On principle this method of remuneration is far from sound. I should suggest the scale of fees allowed to the pleaders should provide a different remuneration for the different kinds of work done in the progress of the suit. One fee should include the preparation and conduct of the case up to the first day of the hearing and a scale of daily fees should be prescribed for longer trials. Fees for applications for adjournments should also be prescribed, so that in cases of adjournments the courts might be enabled to award costs against the party who makes unnecessary applications. In cases of appeals a pleader gets the full fee, even though the appeal may be summarily rejected under Order 41, rule 11. If the appeal be summarily dismissed, the pleader should be bound to make a refund, say a moiety of the fee to the client. Pleaders are tempted to make applications for delaying the date for the admission of the appeal in order to enable them to exact from their clients the full fee before the appeal is summarily dismissed.

18. *Appeals.*—As regards appeals in the High Court, the delay that occurs at present is due in some cases to the delay in the Translation Department. This can be remedied by permitting private translations by the pleader, as has been done recently. It may be observed that sometimes the pleaders do not like to have the appeal placed on board for admission, as they do not receive from their clients the necessary instructions. As regards the proposal to curtail the right of second appeal and the creation of appellate benches for a district or a group of districts presided over by experienced subordinate judges, whose decision should be final both on law and facts, I have given careful attention to the question and with due deference to the members of the Committee who seem inclined to favour this proposal, as far as this presidency is concerned, I think this proposal will not be acceptable. Mr. H. C. Coyajee, an experienced advocate of this Court, has very ably put forward the reasons for not accepting such a proposal. The public have great confidence in the High Court as a court of last resort, and any proposal involving the shutting of its doors to any litigant will be opposed to the public sentiment. The right of appeal to the High Court works as a salutary check upon subordinate judiciary. They are likely to work with more care and zeal when they know that their work in cases of appeals will come under the supervision of the Judges of the High Court. The hardships on the successful respondents in having to fight a second appeal will be met by pro-

viding safeguards on the lines indicated by Dr. DeSouza when examining Mr. Coyajee. Stay of execution should not be granted except under exceptional circumstances. In the first place, as regards the constitution of appellate benches it seems doubtful whether we can get subordinate judges of the right type for presiding over such benches and whether members of the Bar in flourishing practice (and only such members can give satisfaction as judges of such courts) can be induced to leave their practice to preside over such benches.

The delays due to the system of appeals and second appeals, and the heavy costs consequent thereon call for radical change in the constitution of the courts in the mofussil. Instead of taking away the right of appeal to the High Court, I should suggest that the High Court should be the only court of appeal in the presidency, all the courts in the districts should be courts of original jurisdiction only.

In each district town there should be only one civil court, with the district judge, as the chief judge, who should be assisted, by an assistant judge, and sufficient number of subordinate judges. This court should take cognisance of all suits, except in towns like Ahmedabad where there should be a separate court for the trial of small causes. Registrar—who should be a subordinate judge of some experience should be appointed for each court in the district with power to pass decrees in contested suits. It should be his duty to deal with office work, and to arrange the cause lists of the several judges—having regard to the jurisdiction confirmed upon them. The small causes jurisdiction should be increased to Rs. 1,000. There should be no appeal in suits of the nature of small causes up to Rs. 1,000.

In money claims exceeding Rs. 1,000 and not exceeding Rs. 5,000 in suits of the nature cognisable by a court of small causes—provision should be made for new trial of contested cases by the civil court, similar to that contained in section 38 of the Presidency Small Cause Courts Act. Appeal may be permitted to the High Court, only on leave being granted, by the civil court hearing the application for new trial. On the application of any party, the court may make a reference to the High Court on any question of law.

In all other suits an appeal should lie to the High Court, both on facts and on law, and the provisions of Order 41, rule 11, should apply to such appeals and the power of summary dismissal should be used in proper cases.

The advantages of such a scheme are:—

(*a*) The time taken up in disposal of appeals by courts in the districts can be utilised for the purposes of dealing with original work, which can thus be disposed of with more speed and in places where there is not sufficient civil work, the subordinate judge can be empowered to try criminal cases.

(*b*) The costs of an appeal will be saved to the litigants.

(*c*) The litigants will have the satisfaction of having their final appeal—final both on facts and law by the highest tribunal with the aid of the best available legal talent.

This scheme would require the strengthening of the High Courts by the appointment of additional Judges for disposal of appeal work, but the number of first class subordinate judges with appellate powers can be reduced and thus to some extent a saving can be effected.

The High Court Judges, may sit for the hearing of appeals in district towns when they are touring for inspection of the subordinate courts. Any additional expenditure which this scheme may involve will be amply repaid, by the advantages enumerated above and above all by the confidence of the public in the administration of justice by the British courts. At present the Government is making large revenue out of the total receipts of courts, without providing the requisite and adequate machinery for the disposal of business in civil courts. (Thus for the year 1922 the total receipts in the Bombay Presidency amounted to Rs. 88,55,573 and total charges Rs. 44,16,168).

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