THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1956

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR): Sir, I beg to move:

> "That the Bill further to amend the Code of Civil Procedure of 1908, as passed by Lok Sabha, be taken into consideration."

As hon. Members are aware, this Bill to amend the Code of Civil Procedure was first introduced in Lok Sabha on 7th May 1955, and a motion to refer it to a Joint Select Committee was moved by me in that House on 2nd August 1955, and the said motion was passed on 4th August 1955. Subsequently, on 16th August 1955, a motion was made in this House that this House should concur in the recommendation of the Lok Sabha that the Bill should be referred to a Joint Select Committee and the said motion was passed by this House on 17th August 1955. The Joint Select Committee very carefully considered all the provisions of this Bill and submitted its report to Lok Sabha on 12th December 1955. A motion to take this report into consideration was made in the other House on 14th November 1956 and that House passed this Bill on the same day accepting all the recommendations made in the report of the Select Committee.

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

Clause 2 of the Bill related to an amendment of section 34 of the Code of Civil Procedure. That section empowers a court to award further interest from the date of the decree upto the date of payment on the aggregate sum which comprises of principal sum with interest. Clause 2 was provided to limit the rate of interest which a court can award on the decretal amount to 6 per cent. per annum. The present provision goes further and decides that interest not exceeding 6 per cent. should be allowed only on the principal sum and not on the aggregate sum which does include some amount of interest. This is based on the equitable principle that interest ought not to be allowed on the amount of interest itself, in other words, to prevent compound interest.

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

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

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

Courts in former Indian States were foreign courts before the commencement of the Constitution. All decrees passed by such foreign courts were not executable by courts in India under section 39 of the Code. The position has become anamalous after

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the commencement of the Constitution. It is now sought to be made clear that *ex parte* decrees passed before the 26th January, 1950, by such courts shall not be executed by courts in India under section 39 nor any *ex-parte* decree passed before that date by any court in India shall be executed in any former Indian State.

This clause was subjected to a good deal of discussion in both Houses and was the subject-matter of considerable discussion in the Select Committee also.

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

It is arguable that a decree passed by a Court after the commencement of the Constitution is similarly executable, though the Allahabad High Court has taken a different view.

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

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

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

The Bombay High Court has taken the view that a decree passed by an Indian court before the commencement of the Constitution is executable in an Indian State after such commencement. In coming to this conclusion the Bombay High Court does not rely on article 261(3) of the Constitution. According to the Bombay High Court, section 20 (c) of the Civil Procedure Code, which is a local Act, confers jurisdiction on Indian Courts to entertain suits against non-resident foreigners. A decree so passed is not a nullity and its enforcement or executability was limited to Indian Courts and it could not be executed or enforced in a foreign country because the defendant has not submitted to its jurisdiction. But by subsequent political events, the character of the defendant has undergone a change. On account of the merger of the Indian States and the passing of the Constitution, the residents of

Indian States are no longer foreigners *qua* courts in India. The impediment which was there in the enforcement of the decree has according to that High Court, therefore, disappeared by reason of the change of the status of the defendant and the decree which was unenforceable before has become enforceable and executable now. According to the Bombay High Court, this decision does not in any way violate the principle of private international law.

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

The latest decision on the subject appears to be that of the Allahabad High Court which was delivered on the 11th April 1955. This discusses the earlier cases on the subject. According to this High Court, a court can exercise jurisdiction over foreigners if they reside within its jurisdiction and if neither of those two conditions exists, the decree passed against a foreigner is an absolute nullity outside the court of the forum by which it was pronounced. Within that country it will be a good decree, if there is a special local legislation empowering the courts to exercise such jurisdiction. If there is no such special local legislation, the decree will be a nullity even within the country in which the court passing it is situated.

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

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

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

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

There are two possible alternatives which arise for consideration, in view of these decisions of the High Courts. They are .

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

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

(a) to the views expressed by the Bombay High Court and the other High Courts which agree with Bombay ; or

(b) to the views expressed by the High Courts of Calcutta and Allahabad and other High Courts agreeing with them.

If effect is to be given to (a) above, namely, to the views expressed by the Bombay High Court, then the question arises whether the defendant should be given the right to set aside a decree sought to be executed against him on the ground that the decree, when passed was not binding on him.

If, however, effect is to be given to (b) above, a provision may have to be made to the effect that the decree-holder should be allowed to file a fresh suit on the same cause of action, the period between 26th January, 1950

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and the commencement of the Code of Civil Procedure (Amendment) Act being excluded for the purpose of limitation.

This matter was exhaustively considered in the Select Committee as well as in the other House and strong views were expressed in favour of views held by both the groups of High Courts. The main question before the Select Committee was whether interference by legislation at his stage was desirable. It is to be noted that it is now more than six years after the commencement of the Constitution and the law with respect to the execution of these decrees in different States has now come to be settled by the decision of the different High Courts in those States. It is possible that any interference by legislation at this stage is likely to upset the existing state of law on the subject in the different States. There is also a possibility or even likelihood that if and when the matter comes to be decided by the Supreme Court, that itself might create some sort of uniformity throughout India in respect of the legal position. The Select Committee and the other House have, therefore, come to the conclusion that a uniform procedure as envisaged in that clause as it was sought to be put in the original Bill would neither be practicable nor desirable and that that clause should, therefore, be dropped. In conformity with this decision, the original clause 5 of the Bill has been dropped. This matter was again exhaustively considered when the motion to take into consideration the Report of the Select Committee was placed before the other House and though there were some speeches made opposing the proposed deletion of this clause 5, there was not much opposition and ultimately no amendment was even pressed and so the clause was agreed to be dropped in the other House.

Clause 6 of the original Bill sought to provide expressly that the principles of *res judicata* should be applied to execution cases also. There is, however, a decision of the Supreme Court reported in 1953, that the principles of *res judicata* are also applicable in execution cases. The Select Committee and the other House have, therefore, thought that in view of this decision, provision of this clause has become unnecessary.

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

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Clause 14 of the original Bill (now clause 12) was also subjected to a good deal of discussion in both Houses on the last occasion and the the necessity for a clause like this was also explained by me in detail on the last occasion. This clause gives a list of persons who will be entitled to exemption from personal appearance in courts. The Select Committee thought that the Judges of the Supreme Court and the Judges of the High Courts should also be entitled to such exemption. This clause was accordingly suitably modified by the Select Committee by the addition of these names and this modification has also been agreed to by the other House.

As a result of the reorganisation of States, Part 'B' States and their Rajpramukhs have disappeared. Part 'C' States have also disappeared and we have Union territories and Administrators thereof. Sub-clause (1) (vi) of clause 12 was, therefore, suitably modified by the House. These are of the main changes made by the Select Committee and the other House

in this Bill and I hope they will be accepted by this House also. As I pointed out on the last occasion, the amendments proposed fell into the following categories:

(1) those necessitated by the change in Constitution. They are continued in clauses 5, 12 and 14 of the Bill;

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

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

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

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

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

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

The Bill has been subjected to a good deal of criticism on the ground that it does not go far enough with respect to the question of making the administration of justice speedy. As hon. Members are aware, the larger question of suitably overhauling the entire system of civil judicial administration is before the Law Commission and that Commission is likely to take some time before it will finally make its recommendations regarding this matter. I am sure that when those recommendations are made, Parliament will duly take them into account and effect necessary changes in this part of the administration. There is, however, no reason to postpone the present measure, though limited in its scope, as it will give some relief in the meantime. This aspect of the matter was also clearly expressed by me at the time when I made the motion to join in the Joint Select Committee. The House by passing that motion has accepted the necessity of this measure though limited in its sope. The provisions of this Bill are simple and most of them are non-controversial.

Sir, I commend my motion to the acceptance of this House.

MR. CHAIRMAN: Motion moved.

"That the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Lok Sabha, be taken into consideration."

SHRI J. S. BISHT (Uttar Pradesh): Mr. Chairman, I welcome this Bill in so far as it goes. Among the great Anglo-Indian codes, the Code of Civil Procedure and the Code of Criminal Procedure have been recognised by all the lawyers as the most important pieces of legislation along with the law of evidence. These two Codes along with the law of evidence have regulated the procedure of civil and criminal courts in India for more than the last fifty years. This Civil Procedure Code was enacted in 1908 and we have had the experience of fifty years' working of this Code. All people who are conversant with the draftsmanship of legal enactments admire the draftsmanship of this particular Code. I am really very sorry and disappointed that the Ministry of Law has not taken upon itself the task which the Ministry of Home Affairs under Dr. Kailash Nath Katju took in revising the whole of the Code of Criminal Procedure. That was a very important piece of legislation which has been very carefully redrafted after a period of nearly thirty years. This Code, however, has been in operation for nearly fifty years and by this amending Bill, a very good attempt has been made to redraft, here and there, a few important provision but no attempt has been made to over-

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haul the Act, Act V of 1908, in order to bring it in line with modern conditions, conditions both economic and social. These conditions have changed rapidly in the last half century and we, who have had long experience of the working of these courts believe that the Code of Civil Procedure has now become the instrument for dilatory tactics in courts. It becomes very difficult in the first place to obtain a decree but the greatest difficulty begins when a plaintiff has obtained a decree. It becomes almost impossible to have that decree executed. In fact, years and years, may be spent in that process. A father may have obtained a decree which his grandson may be able to execute some time. So, there are so many loopholes and so many difficulties. I should have thought that when there was a Law Commission sitting, this Bill would have been sent to them and the whole Code revised so that the disposal of civil cases could be expedited and our civil courts, right from the court of the Munsiff to the Supreme Court, would have been relieved of the terrible congestion from which they are suffering today. For instance, in the Uttar Pradesh High Court or the High Court of any Pradesh, you may file an appeal today, the first appeal, let alone a second appeal, and you are lucky if the first date is fixed in four or five years. In a Sub-Judge's Court or a District Judge's Court, you are lucky if the case is decided in about three years' time and when you go in appeal, you are lucky if it is heard in five years' time. Now, justice delayed is justice denied. Therefore, it would have been very proper for the Ministry of Law to have examined all these things, to have found out from the opinions of the Judges, of the Lawyers of the High Courts, etc., as to what were those provisions that were made use of in order to delay justice.

Now, Sir, having said so much, I welcome certain provisions of the Bill. There is a very welcome provision, for instance, clause 2 which has specifically defined the rate of interest that a court can grant in case of any decree. It is said that the interest shall not exceed 6 per cent. That is a very welcome change and it is to be confined only to the principal sum, not to the aggregate sum because the aggregate sum might include costs and other things. In the old provision, it was left undefined and the courts could order any amount of interest 9 per cent., or 12 per cent. or 18 per cent., as they deemed fit. This is a very welcome provision which limits the rate of interest.

Sub-section (3) of section 35 is omitted. I should like the hon. Minister for Legal Affairs to inform us as to what is the purport of omitting this sub-section and I would request him to tell us as to what will happen with regard to costs in future. Section 35 reads :

> "Subject to such conditions and limitations as may be prescribed, and to the provisions of any, law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers."

Sub-section (3) of the same section reads as follows:

> "(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such".

I do not know why this particular sub-section has been omitted here.

Now, the change with regard to section 35A is a very welcome one because it includes special costs in cases of execution proceedings.

With regard to clause 6, it seeks to amend sub-section (1) of section 60 of the principal Act. This amendment lays down a special provision for the benefit of the female section of humanity; that is, in cases of decrees for maintenance they can

attach the salaries of their husbands to any extent beyond one-third. Ordinarily, the law was that you cannot attach the salary up to Rs. 100 and not more than 50 per cent. of the remainder. But now even Rs. 100 are not safe, so that a wife can attach the salary of a man even if he is getting only Rs. 100 beyond of course Rs. 33, five annas and a few pies. This is a liberalising provision probably in consonance with the new laws that we have passed with regard to marriage and divorce.

Now, by the next amendment sections 68 to 72 are being omitted. I should like the hon. Minister for Legal Affairs to enlighten us as to how the decrees that will be passed against immovable property would be executed, because up till now sections 68 to 72 contained powers for delegation of authority to the Collector who was actually in the know of things. The Collector with his whole staff of *tahsildars, patwaris* and others was in a position to have the propetry attached. If these sections were to be abolished, who will be the new authority to execute these decrees?

SHRI P. D. HIMATSINGKA (West Bengal): Courts.

SHRI J. S. BISHT: I know there are the Munsiffs in the case of Munsiff Court decrees and Subordinate Judges in the case of decrees of the Courts of Subordinate Judges but they have got neither *tahsildars* or *Peshkars* or *patwaris* at their disposal nor have they got *amins*. They have also not got the records. So what will be the machinery? Will the Collector place all his machinery at the disposal of the Civil Judges and Munsiffs to execute these decrees ? I hope the hon. Minister will enlighten us on this point.

With regard to clause 11, I would welcome change because formerly in suits of the nature of Small Causes no second appeal was allowed if the sum involved was less than Rs. 500 and now this has been put at Rs. 1,000.

With regard to clause 11. I would like to know from the hon. Minister as to why this redundant clause has been put in here. It purports to amend section 109 of the principal Act and I find from this book which is a Government of India publication that the amendment that is proposed to be put in now is already there. This amendment has been put in by the Adaptation Order of 1950. The words 'judgment, decree or final order' are already there in section 109 and I hope the hon. Minister will enlighten us as to why it is necessary to bring in this redundant clause here.

Now, I come to the next clause. There were certain provisions which were in the nature of privileges granted in the old days to certain personages granting exemption from personal appearance in civil courts. That has been done away; it is quite welcome but in their place we have substituted some new personages, namely, the President of India, the Vice-President of India, the Speaker of the House of the People, the Ministers of the Union, the Judges of the Supreme Court, the Governors of States and the administrators of Union territories and so on and so forth. But there is another provision which says that in case a man's evidence is required, a commission will be issued and that will be at the cost of the person. Will it be at the cost of the President or the Vice-President or will it be.....

SHRI H. P. SAKSENA (Uttar Pradesh): At the cost of the party.

SHRI J. S. BISHT: Now, the addition of rule 20A in Order V of the First Schedule is very welcome because one way of adopting dilatory tactics is by evading the summons. You pay a couple of chips to the person who comes to serve the summons and he says that the man is not at home. Now this is an improvement when you say that the summons may be served by registered post. I hope the postal peons will not fall into the same trap and write the same old thing after accepting a few chips.

With regard to Order XII, rule 3, the proposed new rule says:

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"Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document."

This is a very welcome provision and I must thank the hon. Minister for having put it there. Then there is another provision for production of witnesses without summons through court. The proposed rule 1A says that a witness may be brought in by the party himself if his name appears in the list. That is all very good but I think my hon. friend had quite a long practice at the Bar and I wish to known from his whether or not there will be any presumption in the court's mind that the evidence of such a witness who has been brought in without summons is not of much value. That is the one question which is repeatedly put to a witness—whether he has received the summons. If he has not, the court always writes in the judgment that he is a voluntary witness or it is argued by the counsel that the witness is at the beck and call of the other party and therefore his evidence is tainted and should not be relied upon. Therefore I wish there had been a provision that the court shall not make any presumption with regard to the veracity of the evidence tendered by such a witness merely because he is not a summoned witness otherwise this will not be of much advantage because I am afraid the courts will go on presuming the same old thing, people will be forced to summon them again and again and the same old dilatory tactics would be adopted.

Now, the amendment with regard to Order XX is a very welcome provision because we have had experience of many cases where certain judges who were very busy—not judges actually but munsiffs—fixed some date or other and delivered the judgment and nobody knew when it was delivered and it comes almost as a surprise. Now I am glad that it has been laid down that the court shall fix a day for that purpose of which due notice shall be given to the parties or their Pleaders. That is indeed a very welcome change.

SHRI P. D. HIMATSINGKA: Notice was given even before.

SHRI J. S. BISHT: But it was not very much observed. They did not care much anyhow. But now it is imperative and I think if this procedure is not observed, the judgment will become void.

The amendment sought to be made to rule 1 of Order XXV is again a welcome provision, because so many cases of a frivolous and vexatious type are filed knowing fully well that the suit will be ultimately dismissed and when it is dismissed the defendant finds it to his cost that he cannot get his cost from the plaintiff. Now it has been laid down that he will be called upon to furnish security before he proceeds with the case and that will bar all such vexatious and frivolous suits.

There is only one last thing I would like to refer to and that is clause 14 (9) (b) where a new sub-rule is being inserted, namely :—

"The Appellate Court, after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, and upon a perusal of the application and of the judgment and decree appealed from, shall reject the application, unless it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust."

I do not know why this word 'shall' has been put in here. I have not been able to understand why this sort of power has been given to the Appellate Court, to use this power to reject those applications. They may hear the parties and after hearing the parties they may reject the applications. Once you give such wide powers to a court, you know what happens. For instance, in the High Courts the second appeals are called 'slaughter'

appeals. Those appeals are filed. the Judge sits there, and probably in half an hour fifty appeals are disposed of He simply asks "what have you got to say on this point ?" and then the appeal is rejected. You are allowing these Appellate Courts such wide powers that people will have very little chance unless there is some big gun engaged whom the Judge will be forced to listen whether he has got any relevant remark to make or not Juniors come in and these applications are simply slaughtered out without any rhyme or reason.

SHRI P. D. HIMATSINGKA: It is only pauper appeal.

SHRI J. S. BISHT: Well, whatever it is, you should give him the same right as any other man.

SHRI P. S. RAJAGOPAL NAIDU (Madras): You only give the pauper the luxury of litigation.

SHRI J. S. BISHT: A man may be poor but he may have a very good legal right to enforce. You are loading the dice against him because the rich man will be there and the poor man's application will be shut off in no time. I submit that the hon. Minister may kindly reconsider the question because the poor people may have a chance. and if they have got no case on merits then their applications will be rejected. There is not much harm in that. Our experience of the Courts is that these pauper suits and pauper appeals have very little chance because they think that, being a pauper appeal, the Government has not received any stamp duty and therefore there is not much good in prolonging. The Government advocates there do not care very much to see if there is any proper cause of action or not. Therefore, I would appeal to the Minister, as his is a very merciful mind, to have mercy on these poor people. I would also appeal to him that the Code of Civil Procedure be referred to the Law Commission so that all those dilatory tactics which are adopted today in order to defeat and delay justice may be obviated, also cases both in the original trials and in Appellate Courts may be expedited.

श्रीमती सावित्री निगम (उत्तर प्रदेश) : अध्यक्ष महोदय, मुझे बडी प्रसन्नता है कि सिविल प्रोसीजर कोड में अमेंडमेंट करने के लिये यह बिल लाया गया है और इसका हम सब हार्दिक स्वागत करते है क्योंकि इस बिल का लाना लांग ओवरड्यू था ।

[MR. DEPUTY CHAIRMAN in the Chair]

श्रीमन्, आजादी के बाद और कांस्टीट्यशन के बनने के बाद जब कि सारे देश को राष्ट्रीय एकता के एक सूत्र में बांध दिया गया था उसी समय यह सोचना चाहिये था कि यह अमेंडमेंट तुरंत ही पेश किया जाय और तमाम सब गलतफहमियो को दूर किया जाय और जो सब तमाम अजीब व गरीब एक दूसरे को कांट्रैडिक्ट करने वाले डिसीजंस डिफरेंट हाई कोर्टस् से होते थे उनको एक प्रकार से रोका जाय और संयोजित किया जाय । जब कि देश के तमाम राजा महाराजाओं ने राष्ट्ररूपी देवता पर अपनी श्रद्धांजलि अर्पित करते हुए अपनी स्टेट्स को सरेंडर कर दिया था और जब कि कांस्टीट्यूशन पास हो चुका था तभी यह आवश्यक था कि इस तरह का अमेंडमेंट लाया जाता और जो गलतफहमियां थीं उनको दूर किया जाता । पहले जो प्रोसीजर चलता था उसमें बड़ी दिक्कतें थी, स्टेट्स की कोर्टस् को फारेन कोर्ट्स समझा जाता था और जब तक कि यहां कि कोर्ट्स में वह न आ जायं तब तक वहां की किसी डिग्री का एग्जीक्यूशन संभव नहीं होता था । उन दिक्कतों को दूर किया जाना आवश्यक था लेकिन, श्रीमन्, जब यह अमेंडमेंट पास किया जा रहा है तब हमें एक बात नहीं भूलनी चाहिये और वह यह है, जैसा कि पाटस्कर महोदय ने बताया कि क्लाज ५ को ड्राप कर दिया है, तो उससे उन सब तमाम लोगों की हार्डशिप बहुत बढ़ जायगी जिन्होंने कि समय के कानून को, ला आफ दि डे, को मान कर एक डिसीजन लिया था, उन लोगों को अकारण ही बहुत नुकसान उठाना पड़ेगा ।

बिष्ट साहब ने बहुत सी आवश्यक बातों पर प्रकाश डाल दिया है इसलिये मेरा काम बहुत हल्का हो गया है परन्तु मैं इतना अवश्य कहूंगी कि श्री ब्रज किशोर प्रसाद सिंह द्वारा पेश किया हुआ जो अमेंडमेंट है उसको इस स्टेज पर भी एक्सेप्ट कर लें तो बहुत से लोग अकारण की हार्डशिप से बच जायंगे । बिष्ट साहब ने मुफलिस लोगों को जो कठिनाई होने वाली है उसको

[श्रीमती सावित्री निगम]

प्वाइंट आउट किया है। मैं चाहती हूं कि माननीय मिनिस्टर महोदय उस पर अवश्य ही विचार करें और उनको उसके सुधार के लिये भी कोई न कोई नुक्ता अवश्य निकाल लेना चाहिये।

अत में मैं इतना कहूंगी कि यदि श्री ब्रज किशोर प्रसाद सिंह जी का अमेंडमेंट स्वीकार नहीं किया गया तो आप यह समझ लें कि एक तो मुकदमेबाजी बहुत बढ़ जायगी और दूसरी सबसे कठिन बात यह होगी कि बहुत से लोगों को पता ही नही चलेगा वे लोग निश्चिंत बैठे होंगे और उनके ऊपर डिक्री की आफत आ जायगी। इसलिये, श्रीमन्, मैं और अधिक कुछ न कह कर इस अमेंडमेंट का समर्थन करती हूं और इसे बहुत आवश्यक समझती हूं। मेरी समझ में नहीं आता कि कैसे सैलेक्ट कमेटी ने इसको ड्राप किया और जैसा कि अभी पाटस्कर साहब ने बताया, कैसे उन्होंने डिफरेंट कोर्ट्स को यह इजाजत दे दी कि वे जैसा चाहें वैसा जजमेंट देते रहें चाहे वे एक दूसरे के कांट्रैडिक्टरी ही क्यों न हों। मैं सोचती हूं कि इस वजह से काफी असुविधायें लोगों ने झेली है और कांट्रैडिक्टरी जजमेंट की वजह से काफी नुकसान लोगों न उठाया है और अब इस अमेंडमेंट को स्वीकार कर के तमाम जजेज को जरूर ही एक लाइन देनी चाहिये ताकि वे उसी लाइन पर चल कर, उसी के अनुसार एक साथ ही, एक दूसरे से मिलता जुलता जजमेंट देकर के लोगों को उचित न्याय दे सकें। मैं पुनः श्री ब्रजकिशोर प्रसाद सिंह जी के अमेंडमेंट का समर्थन करती हूं। धन्यवाद।

SHRI P. D. HIMATSINGKA: Sir, most of the points have been touched by my friend Mr. Bisht, and I have one or two further points to make, and that is with regard to clause 3. I have not been able to follow why sub-section (3) of section 35 is intended to be omitted because, according to me, it was a salutary provision. When a suit which is filed by a party is opposed frivolously by the defendant, if the party wins the suit, why should he not be entitled to interest if the Court thinks fit to award it after hearing the parties? Section 35(3) which is intended to be omitted is as follows: "The Court may give interest on costs at any rate not exceeding six per cent. and such interest shall be added to the costs and shall be recoverable as such." Those who have some practice know in how many instances defence is frivolously taken as against the plaintiff and also how many frivolous suits are filed, and when the Courts find that the costs should be awarded, there is no reason why this sub-clause (3) should be omitted which gives the Court power to award interest also on the cost which sometimes comes to a very big sum.

Another clause to which I would like to refer is clause 14(7) which refers to an amendment of Order XXXIV, rule 11. It says that in sub-clause (a) sub-clause (ii) shall be omitted. Then it refers to sub-clause (iii) and there purports to limit the right of the Court to order payment of interest to six per cent. So far so good. But if you omit sub-clause (ii) which gives the Court the right to award costs, sub-clause (iii) also refers to costs. Therefore, it seems that there is some sort of anomaly, and it should be examined whether or not the omission of sub-clause (ii) will create some complication.

Sir, as regards sub-clause (8) in clause 14, it is a very welcome provision and I hope that the State Governments will take advantage of the provisions made therein and authorise some of the Courts to act under this new provision. That will enable the Courts to remove a lot of congestion which has at present accumulated in most of the Courts. While on this subject I would also request the Government to take into consideration the position of suits in almost all High Courts. So far as the Calcutta High Court is concerned, on the original side there are about 11,000 suits pending, some of them being as old as nine to ten years and unless some provision is made to give one or two additional judges, I am afriad this congestion will continue and rather will go on increasing. Now that the Constitution has made provision for additional judges who can be appointed temporarily, I think there should be no difficulty and it is high time that something is done to remove the congestion which is standing in the way

of even new suits that are being filed to be disposed of, because if suits which are pending for the last nine or ten years are taken up, the new suits which are now being filed will become old. Therefore, some provision should be made and the State Governments should be reminded for appointing one or two additional judges depending on the volume of congestion in the different Courts, so that persons who go to have remedies through Courts may get them in time and justice delayed may not amount to justice denied.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, the first question that I would like to raise in connection with this Bill is that the legislation suggested by it is of a piecemeal character. The Civil Procedure Code was passed in its new form in 1908. Now, much has happened between 1908 and 1956 to make it necessary for us to undertake a thorough revision of the various provisions of the Civil Procedure Code. The law's delays are notorious. Shakespeare in his days spoke of the law's delays. They are notorious not only in this country but in other countries also. But here I am afraid the process of litigation is so lengthy that unless speedy steps are taken to expedite justice, the system of justice which we have been administering—which I think is basically a very fine system of justice—might get discredited. It takes years for a litigant, an honest, *bona fide* litigant, to have his right established in a court of law. And the tragedy is that the litigant's troubles really start after he has obtained his decree, because numerous pleas of a frivolous character are made by judgment debtors and sometimes they prevail with Courts. Now, I personally think that it is very important that the provisions regarding the execution of decrees—and it is here that the Civil Procedure Code is perhaps most defective—should be revised.

Again, it is common experience with lawyers that delays take place in the service of summons and deliberately defendants sometimes or parties refuse to accept notice or summons. They get round the process servers to help them in this matter. There should be more strictness in regard to these matters.

Another defect of our judicial system is that parties when they go to Court are not prepared to admit anything. They put the other party to proof of things which should be accepted, which would be normally accepted by any decent person in a civilised country. Now, these are defects which undoubtedly tend to discredit our judicial system and the general tendency of the litigant public is to blame judges and counsel for these delays.

Now, Mr. Deputy Chairman, I know from personal experience that our judiciary is a very hard-worked one. I have very great sympathy with our civil judges and our munsiffs who do a magnificent job in unhealthy surroundings, in places where they do not even get the accommodation which is provided for executive officers only too readily by rent control officers, where they may not have dinners or breakfast or lunches free with *raises* and landlords and the new gentry which has arisen in this country. They do their work magnificently. It is not right for us to put the blame for the law's delays on these poor, hard-worked people. The fact of the matter is that the judiciary in this country is under-manned, understaffed. The administration of justice is one of the great attributes of any State—be it a socialist State; be it a welfare State; or be it a police State. It is one of the primary and one of the most important functions of the State. The State, in fact, exists to promote justice. And it is, therefore, scandalous that we should have in this country a system whereby you can purchase justice. If I am an honest litigant, then if I have not the means to prosecute a case, I may not go to Court except in so far as I am able to raise the money for doing so from some moneylender or other. That is to say, our law encourages by this system of court fees the maintenance of practices which are not recognised as right under the English or other

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systems of law. Therefore this Bill does not concern itself with that point also. All these are matters which are being considered by a high powered Law Commission. Now, I have very great respect for the Law Commission. It is presided over by one of India's most eminent lawyers and it has an able and competent personnel. But it is a part-time Commission. And if the Law Commission goes on at the snail's pace at which it has been going so far, it may take years for the Civil Procedure Code or for any other Code to be revised. I think speed is indicated. And you can have speed if you will have a full-time Law Commission, if it comes to that. I will put it like that.

Now, having said this, I may say that I have looked into this Bill and the Report of the Select Committee. Barring one very important matter to which I shall refer presently, I am in general agreement with the line taken by this Bill. Now, first let me say a word about clause 14 where a change has been made in the law relating to substituted service, as we know it today. Sub-rule (2) of rule 20A would run as follows :

> "An acknowledgment purporting to be signed by the defendant or the agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service."

I think on the whole it is a salutary provisions. It is liable to be misused, but even today, the laws are liable to be misused. This may help to expedite matters. But what I should like to see inserted here is something like this that the process server's words must not be accepted as *prima facie* evidence unless the process server's words are supported by an affidavit. I think the principle which we should insist upon is that it should be possible to start or initiate legal proceedings of a criminal nature against a process server if he comes out with a report which is false. That we can achieve by inserting the words, "on an affidavit filed by the process server." Those words should have been there in order to enable courts to take cognizance of the misbehaviour of a postal employee.

I may say that I am in favour of sub-clause (2) of clause 14 which will enable courts, on their own motion, to call upon any party to admit any document and in doing so, the courts will be required to record their own reasons therefor. I have no objection to this. In fact, I think, it is an improvement on the existing state of things. I have no objection to the other sub-clause which follows it.

I note that while a date has not been fixed so far by which a judgment must be delivered, a date has to be notified to the parties on which the judgment will be delivered. The provision that notice of the date on which the judgment shall be given is a salutary one. I would, therefore, support this. I know of cases where scandalous delays take place on the part of judges or Courts in delivering judgments. They are not to blame; they are heavily overworked. One can never be certain that the arguments which were actually advanced by counsel were present in the mind of the judge when he wrote the judgment. That is the trouble with long delays in the delivery of judgments.

So far as this clause for the payment of security for costs is concerned, I have a certain amount of sympathy with it, though I do not think that there is any valid reason for changing the existing law. I think that, even under the existing law, security for costs can be demanded from the appellant for suitable reasons and all that you want is that the Court should not hesitate to demand security for costs in suitable cases. Where you have suitable reasons, you cannot dispense with entrusting them with discretion. The tendency of our courts today is to demand security for costs in suitable cases. A change of law, therefore, I do not think, was urgently necessary. However, I have no objection to the clause as it has been worded now. Of course, there must be a provision for a demand for security for costs in suitable cases.

Some of the provisions in the new clause are due to the difficulties created by the partition. Where parties have gone to Pakistan it is necessary that there should be a compulsory provision to demand security for costs.

In regard to the clause about interest, I confess that I am not very much in love with interest or even for that matter with this provision. I do not know whether that would discourage interest very much. You have reduced the maximum rate at which interest may be paid from 9 per cent. to 6 per cent. I think it is just and fair that there should be this reduction. It is in consonance with our new thinking on matters of social justice.

Then there is some provision dealing with the procedure to be observed on an application for admission of appeals in a certain class of cases. It will, of course, simplify the law. But I am rather apprehensive of the words "the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust." They are far too difficult to be construed properly. I say 'far too difficult to be construed properly' because we have had experience of the difficulty of interpreting these words in connection with pauper appeals. At the time of the admission of an appeal it is very difficult, without hearing the other party, for a Judge to come to the conclusion that the decree is contrary to law or to some usage having the force of law. And the words 'or is otherwise erroneous or unjust' are even harder to interpret. These words do not make it easy for judges to make up their mind as to whether leave to appeal would be proper or not. Therefore, Sir, I am not very happy with the language employed here.

Then, Mr. Deputy Chairman, I have pointed out so far what this enactment does. I have also suggested that something more needs to be done in order to make our procedural law a good one from the point of view of our needs today. There is, however, an omission, the reasons for which were explained by our esteemed and highly able Minister for Legal Affairs, Mr. Pataskar, which I have not been able to understand. That omission relates to the executability or otherwise of foreign courts' decrees. Well, it is principle of private international law that a decree passed *in absentia* by a foreign court is a nullity and may not be executed by the municipal courts of the country. Now the position before 1950 was this. The Indian States' courts were regarded as foreign courts, and they were, if I may say so, worse than foreign courts, because they were feudal courts. In many cases the Rulers interfered with judgments. No litigant could be sure, if the Ruler was directly or indirectly interested in the case brought against him, that he would get a fair deal from the courts of those Indian States. They had High Court Judges or other judges who were being paid Rs. 200, Rs. 300 or Rs. 400 only. These judges had hardly any qualifications, and they did not enjoy the reputation which a judge should really enjoy. Under those conditions it was understandable that litigants should hesitate to submit themselves to the jurisdiction of those courts. Well what happened was this. In their absence decrees used to be passed by those courts and our courts used to refuse to look upon those *ex parte* decrees as valid decrees for purposes of execution. Of course, if a litigant wanted that decree to be executable, he had to prove his case by a separate suit. In 1947, however, Sir, a momentous change came over the Indian scene, and fortunately for this country the work which had been left uncompleted by Lord Dalhousie was completed by Sardar Vallabhbhai Patel, and the Indian States disappeared not to be mourned by us for ever; and in 1947 we became a united country. But it did not follow therefrom that the merger altered the position of those courts. The law surrounding those courts until the 26th of January, 1950 was in a very unsatisfactory state. It was in an unsatisfactory state because there was on the one side the view of the Bombay High Court that as India was one and as the Indian States had been merged in the Indian Union, those courts could not be looked upon as

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foreign courts. And there was also on the other side the view which found favour with the Calcutta High Court and with the Allahabad High Court, and they said "No no. The position did not change. The position remained exactly as it was until the 26th of January, 1950." It was after 1950 that those Indian States' courts ceased to be foreign courts. In fact, as you know, there were many differences in the case of Part B State High Courts and Part A State High Courts. I do not think that the Federal Court or the Supreme Court could entertain appeals from their High Courts. I am just venturing to give a tentative opinion.

MR. DEPUTY CHAIRMAN: Mr. Sapru, how long will you take?

SHRI P. N. SAPRU: Sir, ten minutes more.

MR. DEPUTY CHAIRMAN: You may continue after lunch.

The House stands adjourned till 2.30 P.M.

The House then adjourned for lunch at one of the clock.

The House re-assembled after lunch at half past two of the clock. MR. DEPUTY CHAIRMAN in the Chair.

SHRI P. N. SAPRU: I was just explaining when we broke up that it was desirable to reinstate clause 5 as it was in the original Bill in order that justice might be done to those persons who had not submitted themselves to the jurisdiction of the Indian States Courts thinking that they would get an opportunity to prove their case when the decrees of those courts came up for execution by our High Courts. Now the points of view of the Calcutta and Allahabad Court and those of the Bombay Court and the courts which have followed the Bombay Court are there and I am not here going to say whether on a strict interpretation of the law, the Bombay view is right or the Calcutta view is right. That is a privilege which only the Supreme Court may exercise. I am going to suggest that it is possible to consider this question from the point of view of broad justice. From that point of view, the Bombay view entails hardships upon those who took the decision perhaps under competent legal advice, perhaps for very good reasons, not to submit themselves to the jurisdiction of Indian States' High Courts and who now find that there are decrees of Indian High Courts against them and that those decrees are executable. It is therefore a question of justice which the decisions of these Courts pose before us. It will be a mistake to take in these cases a highly technical view. I quite realise that the interests of the decree-holder have also to be safeguarded. That can be done by providing for him some extra period of limitation. But the judgment-debtor who did not submit to the jurisdiction of the foreign court for very good reasons, should not be penalised. Again anomalous situations will arise if the present state of the law is allowed to remain as it is. A decree of a foreign court will be executable in those parts of the country which have accepted the Bombay Court decision. That very decree will not be executable in those parts of the land where the Calcutta or Allahabad view prevails. Therefore, there will be no uniformity of treatment so far as decree-holders are concerned. The treatment that they will ultimately get will be determined by the High Court in whose jurisdiction they happen to be living. Now if there was an assurance that the matter would be righted or the law on this point would be clarified by the Supreme Court shortly, there might have been something to be said for leaving things as they are but as far as I know, there is no case pending before the Supreme Court in which this question has arisen. It may take years for this point to arise before the Supreme Court and the law will be in a fluid state or will be different in different parts of the country. Some persons will be affected differently from others by this law in various parts of the country. That is an undesirable state of things and that should not be allowed to continue.

May I, Mr. Deputy Chairman, suggest another reason why the law

on this point should be clarified. In the last session of this Sabha, I remember that we had a measure regarding the power of the High Court to grant stays in criminal revisions. A single Judge of a High Court had taken the view that while a court could suspend a sentence or fine, a court of revision had no right or power under the Criminal Procedure Code to suspend an order such as the one that might be passed under Section 144 of the Criminal Procedure Code. Now that single judge case was, in many respects, a unique one. That case had not been followed by other courts. Even the Calcutta case on which that case was based had been more or less overruled by subsequent benches of the Calcutta High Court and now in order to clarify a law about which there was not perhaps much difficulty—there was a point of substance raised in regard to that legislation by Mr. Dasappa but that was not the ground on which the legislation was actually promoted—but in order to clarify the difficulties which had been raised by that judgment, the Legislature took the step of stepping in to clarify the law. Is it not, therefore, desirable when there is a real conflict of views based upon sound reasoning on either side, that this House should take into view broad justice and intervene to see that we approve of the line taken by the Calcutta court, not necessarily because it is the legal view, but because it is ethically the sound view? This is a point of view which I would press before the hon. Minister for Legal Affairs. I know that during this intervening period, cases must have occurred where decrees have already been excuted. But then there are cases in which those decrees are yet to be executed and you may, if you cannot do full justice, do at all events partial justice, by amending the law.

Mr. Deputy Chairman, I would now pass on to another aspect of the matter. I am glad that this Bill does not touch the revisional powers of the High Courts in civil cases. In saying this, I am not suggesting that the existing law relating to the revisional powers of the High Courts is altogether satisfactory. Section 115—that section is not now before me and I am speaking from recollection—is in some ways very widely worded. It gives authority to the High Court to interfere in cases not only where there has been an excess of jurisdiction or failure to exercise that jurisdiction—I forget the exact phraseology of that section—I will see if it is here. Here it is and I will just read it out:

> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or
>
> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
>
> the High Court may make such order in the case as it thinks fit."

This last clause "to have acted in the exercise of its jurisdiction illegally or with material irregularity" has been the subject-matter of much case-law and even in the Privy Council they gave, within a few weeks, two judgments somewhat difficult to be reconciled, one with the other. Therefore, it strikes me that there is a case for re-wording this section so as to make the intention of the Legislature absolutely clear regarding the circumstances in which High Courts might interfere in the exercise of their revisional jurisdiction

I shall now pass on to another feature of this Bill. There is a list of persons who will be exempt from personal attendance before courts of law. That list contains a number of high State dignitaries, beginning with the President of India and ending with persons to whom section 87B applies. Among these high dignitaries are the Speaker of the Lok Sabha, Ministers of the Union, Judges of Supreme Court, Governors, Speakers of State Legislative Assemblies, Chairman of State Legislative Councils, Ministers

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in our States, Judges of High Courts and so on. Now, Mr. Deputy Chairman, one of the fundamental features of our Constitution is that it provides for equality before the law and equal protection of all persons before the law. Article 14 of our Constitution talks of equality before the law. This phrase—"equality before the law"—has been the subject-matter of discussions by many political and legal theorists all the world over. It is a phrase which we have borrowed—and there is a good deal of borrowing in our Constitution and we need not be ashamed of that fact—it is a phrase which has been borrowed from the Constitution of the Irish Free State. This is a phrase which is familiar to all students of the British Constitution. The point about this phrase—equality before the law—is that all persons whatever be the rank they occupy, howsoever exalted they might be in the official hierarchy, they are all subject, like ordinary citizens, to the ordinary laws of the land. Mr. Deputy Chairman, it may be said that we are not attacking the basic principle of the equality before the law, that this is really a procedural matter and therefore it is valid and constitutional. Whether it is valid or constitutional, I do not know. That may be a matter for courts of law ultimately to decide.

I would suggest that in these matters we should not merely go by the letter of our Constitution but that we should also have regard, especially when we are legislating as a Parliament, to the spirit of the Constitution and I venture to think that in these days we should cease to think of persons as either big or small. We are a State which has placed before itself the ideals of a socialist economy. We are a State which is pledged to work for a socialist pattern of society. Now, is it consistent with those broad notions of socialism and democracy which we accept as the fundamental that should govern this country that there should be clauses in our legislation which might suggest that there is inequality of status between one citizen and another? I know that this is not the purpose of this clause. The purpose of this clause is to ensure that high dignitaries of State who have arduous and responsible duties to perform are not harassed by irresponsible litigants by appearance before courts of law. I know that even our subordinate courts find it difficult to exercise their discretion properly when it is necessary to summon any person. That may be the reason for keeping such a clause here but I must confess that I do not like this differential treatment for any class of persons. I remember an occasion when a Chief Justice of the Allahabad High Court —a British Chief Justice he was and he was politically a diehard but in some ways he had a legal outlook—prosecuted a servant of his for theft. He went to the witness box. The Magistrate offered him a chair but he refused to accept the chair and said that he would rather give his evidence standing. This was to impress on everyone that everyone was equal before the law. Certainly, the President stands on a footing of his own because he represents the concept of the State; certainly the Vice-President, in so far as he discharges the functions of a Vice-President, represents that concept; it may be said that the State Governors represent that concept within their own States but I do not know, Mr. Deputy Chairman, whether it is necessary to have a very long list including the Ministers of the States.

SHRI KISHEN CHAND (Andhra Pradesh): Deputy Ministers also.

SHRI P. N. SAPRU : Will the Minister would include a Deputy Minister also. Therefore, I may say that while appreciating very much the reasons which must have influenced Mr. Pataskar in introducing this clause, while recognising that as democracy is new to this country, there may be something to be said for its inclusion in the Bill, I do not frankly like this class distinction in our statute book.

SHRI H. C. DASAPPA (Mysore): But the courts can yet issue commissions. Whether we legislate here or not, the courts have complete discretion to issue commissions.

SHRI P. N. SAPRU: It is not the same thing. Examination by a commission is not exactly the same thing as examination in a court room. The essence of the judicial process is that there shall be public hearings.

SHRI H. C. DASAPPA: What I am saying is that in spite of the fact that you may remove this clause here, nothing prevents a court from directing a commission to examine any of these people or even others.

SHRI P. N. SAPRU: Yes, even under the present law, it is there but that is for certain grounds, not because of the status of the individual but because he is a very busy man or that he is otherwise pre-occupied or some such reason like that. I have no objection to your giving complete discretion to the court to do this for good reasons. I should think that there is a very good reason why a Minister should be examined by a commission. He is a very very busy man and he should not be called into any court in a light-hearted manner. We should not be called to any court for frivolous reasons but that is different from providing in the statute itself for special exemption for a certain class of persons. I do not know whether I have made my meaning clear. I am not saying that I am going to vote against this clause; that is not my point. I am prepared personally to reconcile myself to this clause as I think that in actual practice it will not make much difference but I say that I am not in love with it. I would like to work towards a classless society. May I say, Mr. Deputy Chairman, that when I was on the Bench, I used to feel honestly horrified when Counsel used to address us as "My Lords". I thought—and I said so from the Bench on one or two or three occasions—that the days of Lords in this country were over, that we were the President's Judges—we were not the King's Judges, we were not the Royal Court of Justice—we were Courts of Justice in a Republic. Now, I think that all these little things have importance bacause they enable a country to develop the right type of character. I just remember an incident which I read in "Life of Jefferson" by Sane. Jefferson, as you know, was a very determined Republican and he used to be a man of strict principle. As you know, he was the man responsible for the Declaration of Rights and he was very much opposed to the institution of Investitures and levees. He did not like levees and he did not like placing people at dinner tables in a certain order; therefore, he would have a round table so that people might sit anywhere. There used to be regular levees in his day in the While House. Jefferson made up his mind that the system of levees should disappear in the America of his day. On the date on which a levee was to take place, he notified that there would be no levee. Even after that the ladies appeared in their beautiful dresses but Jefferson was not there to receive them. Shortly after the guests had arrived, he came in a riding suit and said, "I am glad to meet you". Thus he finished the levee system. Now, in the United States which is a great Republic there is, as far as I know, no exemption of any person, be he high or low, from attendance in courts of law for the reason that he is occupying a certain position. You may get an exemption on the ground that you are an invalid.

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You may get an exemption on the ground that you are a very busy man doing a lot of work and that it will entail a lot of expense and trouble for you to go to court. There in U.S.A. you can be examined on commission but you cannot get in exemption on the ground that you are the Secretary of State or that you are a Judge of the Supreme Court of the United States. That, I think, is the democratic spirit; that, I think, is democracy; there you find the democratic mind at its best. I should like, therefore, this country to develop some such convention like that and it is solely from the point of view of the psychological effect that a clause like this is bound to have upon the people that I feel somewhat reluctant to consider it a very good clause to insert in an otherwise good Bill.

Mr. Deputy Chairman, I would like before I conclude, to say that the

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question of judicial reform must not be neglected. A connected view has to be taken of this question of judicial reform. There is nothing organically wrong with our judicial system. I think the defects of our judicial system are of a functional and not of an organic nature and we ought by thoughtful legislation, to make this judicial system serve the ends of justice. The first thing, Mr. Deputy Chairman, I would repeat before I sit down, is to have adequate personnel in our courts of law. Our courts of law are not properly manned. We have not got a sufficient number of judges. Criminal work has increased; civil work of a new type has sprung up and it is increasing. And constitutional cases are a new feature of litigation. All these things require that there should be planning in regard to questions of the administration of justice just as there is planning in regard to economic matters or social matters. We cannot afford to have a policy without a plan so far as judicial and legal matters are concerned.

Thank you very much; this is all that I have got to say.

SHRI B. K. P. SINHA (Bihar): Mr. Deputy Chairman, after the long and learned debate on this small and simple measure there is really little for me to say now. I heartily endorse the demand put forth by Mr. Bisht and my learned friend, Mr. Sapru, that it is time that we thoroughly overhaul the Civil Procedure Code. It has been in existence now for near about 50 years. There have been changes in the sphere of judicial administration in the economic sphere, in the industrial sphere and in the political sphere. These changes should be reflected in a new, simplified and improved Civil Procedure Code. But I feel that this should not be done in a hurry, for, the Civil Procedure Code is, as it were, the linchpin of the whole legal system. If we tamper with it in a hurry without adequate consideration, the judicial system may be affected and affected in such a way that it may affect the confidence of the people in the judicial system.

Sir, there is a Law Commission already in existence. Mr. Sapru has rightly pointed out that the Law Commission should be a permanent body functioning permanently. The Law Commission, as it is, has a temporary basis and a permanent basis. When it was started, it had two permanent members, ex-judges working all the time on the codification of the laws. The other members, including the Chairman, were of course part-time and are still part-time. I understand that of late there has been addition of one permanent member, an ex-judge. That is, three ex-judges now act as permanent members of the Commission. The laws are so voluminous and they require change in so many aspects that I feel that the number of permanent members of the Commission has to be increased. Mr. Deputy Chairman, I will take this opportunity to emphasise the necessity of making the personnel of the Law Commission more diversified and more broadbased. The codification or amendment of the laws is not a matter of mere technicality. It is not a question of merely culling out the various judgments or decisions and then framing a law in the light of those. Law-making, Mr. Deputy Chairman, is an organic process, connected organically with the society in which the law operates. Society exerts a tremendous influence on law. A law which suits one society may not suit another society. Apart from the narrow legal issues that arise in the codification or amendment of law, there are other more vital, more essential and more elementary issues involved. There is society; there is industry; there is economics; there is culture. Sir, I understand when a body similar to the Law Commission was established in the United Kingdom several years back, on it were represented not only lawyers, not only judges but scientists, psychologists, social workers; people who are adepts or experts in the various branches of learning. Unfortunately, here the Law Commission is composed only of

lawyers and ex-Judges or sitting Judges of High Courts.

SHRI J. S. BISHT: And many of them are very busy lawyers who have no time to spare.

SHRI B. K. P. SINHA: I have already pointed out that they are part-time members. Now, Mr. Deputy Chairman, I am myself a lawyer. I feel that a lawyer develops a sort of narrow outlook. His outlook is legalistic. The outlook of a Judge is more legalistic. They are guided more by precedents, more by the past and less by the future, less by the needs of society. Therefore in the fitness of things, the membership of the Law Commission should be expanded by including on its personnel men who have distinguished themselves in the various branches of learning, arts, science, literature, etc., etc. Only then can it be possible for law to have a reasonable quality. Mr. Deputy Chairman, my hon. friend, Shri Sapru, for whom I have great respect assailed a certain provision which gives exemption to certain dignitaries of the State on grounds of equality before law. Mr. Deputy Chairman, I had the good fortune or misfortune of being born twenty years later than my friend Mr. Sapru. As things are, I should have had a more progressive and liberal and, I should say, more revolutionary approach than my friend Mr. Sapru. Unfortunately I find myself more of a conservative and Mr. Sapru more of a revolutionary and a liberal. There is equality and equality. Equality of the law simply means equality in similar circumstances. If circumstances differ, the application of the law cannot be equal, and equality in such cases instead of advancing the interests of justice very often weakens justice. Mr. Deputy Chairman, my hon. friend has himself pointed out that it is just possible that in the absence of this clause, over-enthusiastic judicial officers may be prone to issue summonses to them on the slightest pretext. But I feel there are weightier reasons why there should be this exclusion. It has already been pointed out that if there dignitaries have to go and appear the interests of the State take precebefore the courts, the work of the State may suffer. Even the most die-hard individualist will recognise that dence over the rights of any individual, from whatever angle we look at it, whether of the individuals in question or individuals outside those individuals. So if the work of the State is likely to suffer, there is no reason why they should not be excluded. It has been rightly pointed out by Mr. Dasappa that even under the law as it is today, the courts have the right to exempt them from personal presence and examine them on commission. There is also a weightier reason why their personal presence would not be very desirable from the point of view of justice. Law, Mr. Deputy Chairman, I have already pointed out, is a reflection of society. It is born in a certain context. It serves the needs of society at particular moments. There is a historical school of jurisprudence which recognises that law varies and should vary from time to time, from day to day, from country to country. You cannot have the same law in different social contexts. Our courts have given a very good account of themselves. By and large they have been immune from any influence, direct or indirect. Our judicial officers have inherited a great tradition. But the fact remains that when a high dignitary of a State appears before a Court and gives his evidence before it, the Court is likely to be swayed by his words, to be prejudiced for the side for which the high dignitary appears. I know of cases where courts have been influenced by the personality of witnesses. Of course it may be pointed out that there is a provision for their examination, if they cannot appear in the Court, on commission But there is a world of difference if one reads something in cold print and if one watches a man appearing as a witness. If one watches a man appearing as a witness, he is likely to be slightly influenced in favour of the party for whom the high dignitary appears.

Mr. Deputy Chairman, I now come to a clause whose omission, I feel, has been unfortunate. There is a clause relating to the execution of decrees passed by courts which were

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then known as foreign courts. The hon. Mover of the Bill has pointed out, and that too rightly, that the High Courts have differed and differed violently. While one school led by Bombay is of the view that such judgments are executable, there are other High Courts like Allahabad, Calcutta and last but not least a Full Bench of the Punjab High Court, which have held that such judgments of a foreign court are not executable in a territory in which they could not be executed before January 26th, 1950. The conflict of opinion is there. The question is how to settle this conflict. Shall we wait till the Supreme Court passes its judgment and settles the law, or shall we intervene now and settle the law for the courts? In the past instances have not been wanting where in view of the difference in opinion of the various High Courts the Legislature has intervened without waiting for the Privy Council to pass its final verdict. The law on this subject seems to be in a hopeless mess. One view prevails in one State, another view prevails in another State. There is confusion. We do not know how long this confusion will continue. We do not know what time it will take for any case to come in appeal before the Supreme Court. At least no appeal referring to this particular issue is pending in the Supreme Court now. I know, Mr. Deputy Chairman, that if an appeal is taken to the Supreme Court now, it will take three years for the Supreme Court to pass its final verdict. Shall we then wait and allow the confusion to prevail in this country ? The hon. Mover of the Bill advanced two arguments in favour of the exclusion of that clause; firstly, if that clause which was deleted was introduced, then the law which was crystallized in various States would be unsettled; secondly, he had the hope that the Supreme Court would settle the law some day. I am afraid these two arguments are contradictory. If we do not want the law to be unsettled, what is the use of the Supreme Court sitting to settle it? If the Supreme Court can settle it, why should we not settle it here and now? After all what shall be the province of the Supreme Court in interpreting this law? Any Court, Mr. Deputy Chairman, interprets only the letter of the law, not the spirit. For the Judges it is the letter of the law that matters. The Supreme Court will take one view or the other and will base its decisions on the letter of the law. But here we are not concerned with the interpretation of the law as it is. As it has been rightly pointed out by my hon. friend Mr. Sapru, we are concerned with the equities of the case, with the demands of justice. What does justice demand in this case? What was the practice in regard to foreign courts before the Constitution came into force? India was divided into British India and so many native States, each one of them having its own judicial system. The decrees passed within those State could be executed by only the Courts in those States. They could not be executed by Courts in British India. Similarly decrees passed in British India could not be executed by courts in native States. We know, Mr. Deputy Chairman, that there was some judical system in India. We had regularly appointed Judges, appointed on the basis of merit, immune from all influences, even imperial, and with a thorough training. The Judges were appointed on merit. Unfortunately that was not the case in many of the native States—I do not want to run them down but facts are facts. Appointments sometimes went to people who did not have much of a training in law. Of course they were not immune from influences. Apart from that the private international law operated inside British India and the native States. The private international law laid down, lays down even now, that in a personal action unless a man is amenable to the jurisdiction of a court or submits to the jurisdiction of a court, any decree passed against him could not be validly executed outside the territory. That was an assurance as it were to many litigants of the Native States if there was a case against them in British India, and an assurance also to persons residing in British India if

there was an action against them in the native States. On the faith of this assurance many a man, because of the trouble, expenditure and harassment involved in going to distant places, avoided submitting to the jurisdiction of foreign courts. The Courts of native States had no Jurisdiction in British India and British Indian courts had no jurisdiction in native States. A few courses were open to the decree holder in such a case. He could bring a suit on that foreign judgment. That was, I think, the only provision. And after the decision of that suit, if it were favourable, he could execute that decree in the other territory, be it native State or British India. Therefore, in many cases, persons did not appear before the courts of the foreign territory. They waited for the decrees to come to their own region, in their own area, and when a suit was brought on those decrees they put forth certain defences and those defences were of a very limited character. The defences were not as wide as they could have had in a regular suit. The defences were limited in character, limited by section 13 of the Civil Procedure Code. On the faith of it, in view of that position they did not submit. Now, suddenly because of the political changes in this country they were faced with a new situation. In this new situation—if the Bombay view were to prevail—the decrees of one court would be executed in any court in British India which was, when the decree was passed, a foreign court. If the other view is to prevail, the Punjab or Calcutta or the Allahabad view is to prevail, the matter ends. But if the Bombay view is to prevail, would it be fair, would it be equitable to people who because of a certain structure of law, because of certain provisions of international law did not yield or submit themselves to the jurisdiction of the foreign courts? I think it would be most unfair to them, because they were not responsible for these political changes. These political changes have come to them, as it were, by surprise. They have been taken by surprise by these political changes. They waited for the opportunity for the foreign decree holder to bring regular suit on their judgment in the court and now because of political changes they are being deprived of that opportunity. I feel that if the Bombay view is to prevail, there will be a great hardship to the judgment debtors. And even now the resources of the law are not incompetent in this respect, because the foreign decree holders can bring a suit on the foreign judgments and obtain decrees and get them executed. There may be complications about limitation and other matters, but if the principle is accepted that in view of this change they should not suffer, they should not be taken by surprise, it would be inequitable, the position accepted by the Bombay High Court would work injustice to the judgment debtors, then it is possible to frame the law in such a way that we can get over the difficulties provided by the law of limitation and other ancillary matters. I feel, therefore, that the exclusion of clause 5 from the Bill was inopportune. I hope that even at this late stage, in view of the demands of justice, in view of the demands of equity, the hon. Minister for Law will see his way to accept at least one of the amendments that I have tabled

Thank you.

SHRI KISHEN CHAND: Mr. Deputy Chairman, I have carefully tried to go through this Code of Civil Procedure (Amendment) Bill and at the outset I may say that many of the provisions instead of being progressive are retrograde. It has been pointed out by hon. Members that there is a Law Commission and if it is made a whole-time body—after all our Code of Civil Procedure is not such a very big Code, it has only 158 sections and about 40 orders—in a hundered sittings the entire Civil Procedure Code can be revised and brought up to date. Similarly, the law of evidence, the law of tort, and various other laws can be thoroughly, examined and revised within one year if there was a whole-time Commission. And there is urgency for revision, because in 1908 we were a depen-

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dency of Great Britain and according to the social customs and environments of those days, the Civil Procedure Code was built up. Several hon. Members have pointed out that it was very good. It was very suitable for 1908, but since that time, during the last 48 years, our ideas about social justice, about equity, about the process of law have changed in many ways. The hon. Minister for Legal Affairs himself said that even in regard to international law the opinion has changed and when such changes have taken place, to bring forward this amending Bill, just picking out a few clauses, is in my humble opinion a retrograde step. I do not see any justification for such a great hurry. This could have waited for another one year and when the Law Commission as a whole-time body had completely re-examined the entire Civil Code, law of evidence, etc. then a comprehensive Bill could have been brought forward. At the present rate, the Law Commission with part-time members may not be able to complete its work even in ten years time. And then some hon. Member has suggested a permanent body, as if we want that the laws should be revised every two or three years, Sir, I am totally opposed to it. I think in this matter the law should have some permanency. Once every forty or fifty years you may revise it, but once you revise it let it have at least a life of another forty or fifty years. I do not want a permanent Law Commission revising our laws every two or three years and making amendments, because in law the most important thing is some sort of continuity, an assurance to people that their cases will be decided according to the law which is prevalent. And what is happening now? For the last thirty or forty years we regarded the courts in Indian States, which numbered nearly five hundred, as foreign courts. And in many of these five hundred courts, the High Court Judges were possibly with lesser qualifications than even Munsiffs in British India. And these High Court Judges were getting a salary of anything between Rs. 200 and Rs. 500. These Judges pronounced judgments. And if this was the calibre of the High Court Judge of an Indian State, you can imagine the calibre of the District Magistrates and the Munsiffs who were passing judgments. And what was the nature of the judgments? They were *ex parte* cases. They were cases which were not defended. No evidence was produced. Just on a mere statement, a decree was given—an *ex parte* decree. And you know that in Rajasthan where there were nearly a hundred princely States—feudal States . . . .

SHRI JASWANT SINGH (Rajasthan): In Rajasthan, there were only 22.

SHRI KISHEN CHAND: Well, including the small States which were in the neighbouring Gujerat and Saurashtra. If you include them also, then the number is four hundred. Out of this, 22 were in Rajasthan and the remaining 378 were in others.

SHRI JASWANT SINGH: All over India.

SHRI KISHEN CHAND: All over India, it was 523. Out of these, 400 were concentrated in Rajasthan and Saurashtra.

So what I was saying was that in such cases, those people were given *ex parte* decrees—undefended decrees—for very large amounts? And such decrees were kept dormant, and now suddenly on the 26th January 1950, there is a political change; all the States get merged into British India and become one Indian Union and suddenly all these decrees become executable. The hon. Minister for Legal Affairs said that the number of decress now in operation was very small, such an insignificant number that they could not be considered. I may say that in Hyderabad during the last two to three years at least half-a-dozen cases have been revived. As the Hyderabad High Court took the view that these decrees could be executed, I know, at least in half-a-dozen cases, the whole decrees have been executed and several decrees are now pending. I am just trying to illustrate that there are certain decrees

which are 30 or 40 years old. The persons over whom the decrees were to be executed were dead and gone and their grand children are now living and the decrees are executed against their grand-children. Possibly a very small property has been passed on to the grand-child from the grandfather. And on the basis of that small property which is personal, a decree is now going to be executed. I should like to know why. Sir, you have been an eminent lawyer and you can realise that it will involve a very great hardship on them. It is really against our concept of justice. Our concept of justice was based on a sense of continuity, on a sense that the thing will be decided as it was decided before and things will continue as in the past. If there is not that continuity, there will be no faith in the justice of law. Therefore, I submit, Sir, that the hon. Minister for Legal Affairs was convinced of the necessity of that law and when the original Bill came up before this House, that clause about the *ex parte* decrees of foreign territories being declared null and void, was there. That Bill then went to the Joint Select Committee. I would like to know from the hon. Minister what convincing arguments were placed before the Joint Select Committee which made him change his mind. Today, when he was introducing this Bill, he took a sort of non-committal attitude. He said that there were certain good points and bad points. He gave the pros and cons. But he did not give us any information as to why it was that the Joint Select Committee changed it. After all, the hon. Minister for Legal Affairs must have been convinced of this; there must have been overwhelming reasons which convinced him to change his opinion and incorporate it in the Bill as it came out from the Joint Select Committee. He has not given anything like that. He has only said that, because the number of cases is very small, he does not see any reason to interfere in the matter. I submit, Sir, that he is mistaken that the number of cases is small. Many people are waiting. Since this Bill is pending before Parliament for the last one year, people are waiting that, once this Bill is passed without that clause declaring it null and void, the old decrees will be revived and a large number of decrees will be executed. I submit that it is the duty of Parliament to make laws and not to wait for the Supreme Court to interpret the law which is already in existence. Of course, the law is in existence— some law is in existence— and it will be interpreted by the Supreme Court. But we in Parliament should see whether there is equity and justice in deleting that clause or introducing it so that the decrees from foreign territories are declared null and void.

As I pointed out, in view of the conditions in judicial courts in the Princely States and in view of the fact that the decrees were uncontested and proper evidence was not produced and they were given only as *ex parte* decrees, on account of all these reasons, as suggested by some hon. Member, it will be good if the limitation clause was omitted and they are permitted to file fresh suits. Because, as the law stands at present, there will be a time limitation and they cannot file a fresh suit. But because we are now considering this Bill and because we think that these *ex parte* decrees should be declared null and void, as a concession, Parliament can introduce a clause in this Bill by which they can forego the period of limitation which will mean that, within a certain period from the date when the Constitution came into force, that is, the 26th January 1950—they can fix some period for these holders, of *ex parte* decrees—they may file fresh suits and if they get decrees, well, they will be valid. You know, Sir, the case in which Sir Michail O'dwyer in U. K. filed against Sir Sankaran Nair a case for libel. Legal advice was given to Sir Sankaran Nair not to fight that case in London because that was a foreign court. Even if a decree was passed in favour of Sir Michail O'dwyer in London, it could not be executed in Madras. Of course, he did not follow the advice and he fought the case and lost it and paid very heavily for it. Almost his entire property was gone in that one single case.

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So, I am trying to point out that there was bound to be prejudices in those days in the small Feudal States and under a prejudice, they passed these decrees and they are now executed. The whole of South India does not have the same number of Princely States and probably, it will not have the same problem that others have got. They do not realise the gravity of the problem as it exists especially in Uttar Pradesh and Punjab which are near Rajasthan. There, the decrees of Rajasthan are executed—in Punjab, in the neighbouring areas and possibly in Hyderabad also. So for these areas, the problem is very acute, being surrounding areas. But in other places, say, in Bengal and possibly in Madras and Mysore and all such places, the problem may not be acute. So, I think that it is very essential that that clause which found a place in the original amending Bill should be reinstated here and I fully support the amendment which has been sent in by Shri Sinha.

Now, I come to one or two other clauses and in particular to clause 12. Shri Sapru has very rightly laid stress on the fact that there should be absolute equality before law and another hon. Member pointed out that the courts even now have discretion to exempt a person from appearing in person before them. But I submit that the discretionary power which vests in the court is quite different from statutory exemption. I may point out that we have nearly 14 States and each State has got about 15 Ministers and will probably have 10 Deputy Ministers. So, each State will have nearly 25 people and in all these 14 States you will have a good batch of 300 or 350 people. And there are about 40 Ministers at the Centre. Thus, there will be four hundred people. These people are special, sacrosanct people. And you know, they are busy.....

SHRI H. C. DASAPPA: May I know where it is stated that Deputy Ministers come.....

SHRI KISHEN CHAND: They say 'Ministers of State'. When I asked the hon. Minister for Legal Affairs about it, he said, "Naturally they are included". The Ministers at the Centre are of three categories. They are Ministers with Cabinet rank; there are Ministers of Cabinet rank (but not Members of the Cabinet). Then there are Deputy Ministers. I submit that the Minister for Legal Affairs may verify and say that Deputy Ministers are not included, and that among the Central Ministers, Ministers who are Members of the Cabinet only are included and others are not included, there will be some sort of a clarity. But till this clarity is forthcoming, I cannot answer the hon. Member who raised that question. He should really not have asked me; he should have asked the Minister for Legal Affairs about it.

SHRI H. C. DASAPPA: The hon. Member proceeded on the assumption.....

SHRI KISHEN CHAND: No no. I asked the Minister for Legal Affairs and he kept quiet. Naturally, when I asked him whether they were included in this, he should have refuted it. Deputy Ministers are included in it.

Sir, I was saying that they were probably carrying on their legal profession or business or trade. After all they are not Ministers for the whole life. They are public men who were carrying on their normal profession before they became Ministers, and immediately they retire, they will go back to their profession. Naturally a Minister does not get life pension or anything of that sort. He has got to be engaged in some job. So before he became Minister he was carrying on his job, and after he retires from his Ministership, he will carry on the same job, and probably he will have several litigations pending. He may have only a few or only a small number, but there is every possibility that there will be litigations going on. Immediately he becomes a Minister, he becomes immune from personal presence. One hon. Member said that if a Deputy Minister goes to a District Magistrate's court, the District Magistrate will get overawed and the ends of justice will not be fulfilled. I fail

to see any argument in it. If salary is any measure of the high status of the Deputy Ministers, they do not get much higher than what the District Magistrates get. In many cases they get a much smaller salary. Therefore to say that the moment a Deputy Minister comes to his court, he will pass a judgment in favour of the Deputy Minister is quite wrong. Our courts are absolutely immune from any kind of.....

SHRI J. S. BISHT: The question of a District Magistrate does not arise. This is a civil court.

SHRI KISHEN CHAND: Well then I should say 'District Judge' instead of 'District Magistrate'.

SHRI J. BISHT: A District Judge is never overawed.

(Interruptions.)

SHRI KISHEN CHAND: Sir, what I want to say is that but for the President, the Vice-President and possibly the Prime Minister of India, I do not see any reason why anybody else should be included in the exemption list. Even in the case of Governors, they are people who become Governors just for a period of five years, and before they become Governors, they were carrying on their normal avocation of life, and so if they are required outside their own States, they should be prepared to come. In their own States you might exempt them for the period that they are Governors. And now there is a very healthy convention. A person, appointed as a Governor of a State, does not belong to that State; he belongs to some other State. I think if he is called in his own State where he was normally living, there will be no harm done if he tenders any evidence. Why should we have a list of nearly 400 or 500 people out of 36 crores of people? Formerly there were feudal lords who were not required to be present. But now the times have changed and in place of feudal lords we have these new V. I. P.s and I cannot understand why we should create a separate class of these V. I. P.s when we are absolutely against it. I therefore oppose it, and I think that it is a retrograde step.

I am trying to point out clause by clause how retrograde steps have been introduced in this Bill. Instead of making it an amending Bill by which these laws are improved, we are really introducing feudal elements in it and thus giving encouragement to the things which we have dropped.

SHRI P. S. RAJAGOPAL NAIDU: What are the feudal elements?

SHRI KISHEN CHAND: The judgments of the feudal courts of pre-Constitution days are now valid and applicable. That is item No. 1. Then the second feudal idea is that formerly the feudal lords were exempt from the law courts, and instead of those feudal lords we have got new V. I. P.s. Of course, the same persons do not continue; different persons take their places.

Then, Sir, there are one or two good points in this Bill. There are certain improvements. For instance, I do not agree with Mr. Bisht. I certainly say that the law courts' time is very valuable, and the idea behind the applications made on the basis of paupers is geenrally harassment.....

SHRI J. S. BISHT: Pauper suits are harassment?

SHRI KISHEN CHAND: Kindly hear me. I will certainly explain it in a minute or two.

Sir, in most cases the 10 or 11 per cent. court fee is a great deterrent. People do not institute frivolous cases because they have to bear the burden first of all investing 11 per cent. on the stamp duty, have to pay to the lawyer and for every process of law a fee has to be paid.

SHRI J. S. BISHT: Sir, I may correct my hon. friend that a pauper suit has to be certified by the Government Advocate that it discloses a proper cause of action before he can file a suit.....

SHRI KISHEN CHAND: Let me proceed with my argument and I think I will reply to the hon. Member's objection in its course.

As far as that suit is concerned, he has got to get the permission, and after the whole process has been gone through the judgment is given. Then comes the question of appeal. Now in the matter of appeal he has nothing to pay. He just puts in an application. I know that in Delhi there are several cases where people are occupying houses unauthorisedly. They are in the unauthorised occupation of so many things. They cook up some evidence and they just go on postponing the day of judgment. They say "After all, we have got to vacate the house. What does it matter if we continue in this house for another six years by way of appeals?" If one appeal is rejected, there will be some other appeal. So what I understand is that this clause is only about appeals, not about the original case, and in the matter of appeals no stamp duty is to be paid. And there is a clause which says that it shall be rejected until and unless some other provision is there. I think it is a very healthy provision and a very good thing. Our idea is to reduce the period of litigation. Sir, it has been pointed out that there are certain cases which are pending for eight or ten years. Now the trouble arises that whenever cases are admitted, their turn will come after five or six years. I wish to suggest is that we should change our system in such a way that the cases which are instituted should be decided within one year, and the old cases may be taken up by one judge. In regard to this matter, Sir, I might humbly submit that in the Andhra High Court the Chief Justice has instituted five single judge benches, and in that way the High Court hopes to dispose of all the old cases within two or three years. So, if some such procedure is adopted, that the cases which are instituted now should be decided within one or two years. I think that will definitely be better. Regarding the old cases, the High Courts may set apart two or three judges on a single bench basis. Otherwise what will happen is that even the present cases will be postponed for the next seven or even eight years because the old cases will have to be decided first. This state of affairs will continue eternally and always there will be huge arrears. In order to get out of the arrears the only solution is that the present cases should be decided immediately or within a limited period.

Sir, there are some good clauses in this, Bill but I would once more request the hon. Minister to carefully examine clause 5 which found a place in the original Bill. It should be reinstated, and if necessary, this whole amending Bill may be kept pending till the Law Commission has submitted its report. The Law Commission should have whole-time members and it should be asked to submit its report within one year. Thank your, Sir.

SHRI P. S. RAJAGOPAL NAIDU: Mr. Deputy Chairman, I support this Bill though it does not go far enough in amending the Civil Procedure Code. I join some of the previous speakers today in observing as to why the Code of Civil Procedure is to be amended in such a piece-meal way as this. This Code, in its amended form as it is now, is there for the last 48 years or so. The times have changed but still we are following the same old Code in the matter of administration of civil justice. Especially when the Civil Procedure Code is in the Concurrent List we have to be very careful when we bring forward any amendment of this nature. I know that various State Legislatures have made their own amendments particularly with regard to the First Schedule though I find very many amendments have not been made with regard to the substantive law of the Code namely, sections 1 to 158. But when we come to various

orders. orders 1 to 51 of the Code of Civil Procedure, we find that various State Legislatures have made amendments in their own way. I find that the very amendments which we now seek to make in this Bill have already been made in the years 1950 to 1952 by the Madras Government. In particular, I would mention that in the matter of giving notice before the pronouncement of the judgments, there was no provision before that if the judgment is pronounced after hearing within 14 days notice will have to be specifically given to the advocates concerned or to the parties concerned. But now we find that an amendment is being sought that if the judgment is pronounced after the date of hearing, within the limited period of 14 days or so, notice will have to be given to the parties concerned. But this very same amendment, with the very same wording, was made so far as the Madras Government is concerned, as early as 1950. We find in the State of Madras that notices are given if the judgment is pronounced after the parties were heard, say any day after the date of hearing. Suppose the parties are heard today and the judgment is reserved and it is pronounced on the 7th or 8th or 9th day, due notice is given to the advocates concerned who had appeared in the case and also a notice is fixed on the notice board of the date of pronouncement of judgment. We are seeking to amend the same thing. I don't see why such sort of concurrent amendments have to be made by the States as well as by the Centre. It is high time that we tried to bring the Code into the Union List and made amendments to the Code so that the law in the country will be uniform throughout. But so long as the Code is in the Concurrent List, there will always be this difficulty of the State proposing certain amendments and the Centre proposing certain other amendments and God alone knows what the law courts would do, particularly when the administration of justice is a State subject.

Now as very many previous speakers have observed, this sort of piecemeal amendment will not do. The Code of Civil Procedure is a very important piece of legislation. I remember as a law student that when we were not allowed to use books when we wrote the law examination with regard to the other subjects, when it came to the subject of answering the Code of Civil Procedure we were given the very book when we answered the papers and yet very many students had failed. I, for one, can say that I never failed in my classes right through till my B. L. but when I came to answer this Code of Civil Procedure even with the book before me, I failed twice. Sir, we have to be very careful in proposing amendments to a Code of this nature. Now it has been observed that the judiciary in the country is very much under-staffed. So far as the States are concerned, it is only the judicial departments that fetch the maximum income. They take away by way of court fees something between 7 to 11 per cent. I know if at all there is any single department in any State, it is only the judicial department that is the most paying department so far as the State Government is concerned and yet no State Government is prepared to increase the number of judges or increase the number of law courts. On the other hand, the State Governments are engaged in abolishing even the courts that are already existing for several years. Such sort of things should not be encouraged particularly when the judicial department fetches such a lot of income to the State Governments.

Charges have been levelled against the judiciary for delay in the disposal of cases. One reason is that they are under-staffed. The other reason is the way in which the work of the subordinate judiciary is being examined by the High Courts. For instance, the High Court looks to the number of appeals disposed of by the Judges or the number of suits that are disposed of. But they don't care to see how many interlocutory applications have been disposed of, how many miscellaneous petitions have been disposed of, how many civil miscellaneous appeals have been disposed of etc. They don't care at all. One can

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file a suit and get a decree but there is no question of High Court supervising as to the number of execution petitions that are disposed of by the subordinate courts. That is why there is such a lot of delay in the matter of administration of justice. I know that now to a certain extent the subordinate judiciary is geared up in several States. But to what extent? Only to the extent of the disposal of first appeals and also the disposal of several suits but there should be some sort of system by which the High Court will have to examine or judge the work of a subordinate judge or a district munsiff in the matter of disposal of the interlocutory applications execution appeals and civil miscellaneous appeals etc.

Coming to the provisions of this Bill, a lot of things has been said about the dropping of clause 5 as it stood in the original Bill, namely, the execution of foreign decrees. Some High Courts had come to the conclusion that these first decrees are executable. Certain High Courts like the Allahabad High Court have come to the conclusion that they are not exe-

4 P. M. cutable. This matter was considered by the Joint Select Committee and I am here to support the decision of the Joint Select Committee as they had dropped the clause in a very wise manner. Probably the reason which weighed with the Joint Select Committee was that this matter is now seized with the Supreme Court. Appeals had been preferred from both the Bombay High Court and the Allahabad High Court. I was told that the matter is ripe for hearing before the Supreme Court and the Supreme Court will be in a position to pronounce judgment in probably one or two months. When the matter is seized with the Supreme Court, when the Supreme Court is in a position to pronounce judgment on this very point of law which is involved here, I wonder why we should dabble in any amendment which may later be challenged in any court of law. This is the only thing which seems to have weighed very much with the Members of the Joint Select Committee and they are perfectly right in dropping this clause altogether.

Sir, I am going to touch on only a very few provisions of this Bill because much of it has been dealt with by the other speakers. I welcome the provision in clause 2 of this Bill which amends section 34 of the Code of Civil Procedure and which lays down that no interest on interest should be charged, but—interest can be charged only on the principal sum. This is a very welcome provision.

Then I come to the amendment suggested in clause 3, to drop sub-section (3) of section 35 which deals with the awarding of interest on costs. I had, as a Member of the Joint Select Committee, appended a Note of Dissent so far as this provision is concerned. We find that if a litigant is to file a suit, say for recovery of money, then according to the State laws, particularly here I can quote the example of the State of Madras, he has to pay 11 per cent. of the sum by way of court fees. Then by way of lawyer's fees he has to pay as much as 7 per cent. plus 3 per cent., that is to say 10 per cent. So in all he has to pay 21 per cent. initially before he files the suit. Suppose he files a suit for the recovery of a sum of Rs. 5,000. He has to spent nearly one-fifth of the amount, or more than Rs. 1,000 to start with, by way of court fee, and by way of payment of lawyer's fees. If the amendment that is now proposed is accepted by this House, it would mean that the litigant, after he gets the decree will not be in a position to get any interest at all for the amount that he has spent for institution of suit and for payment of lawyer's fees. Sir it is not as if everybody goes to a court of law out of love. One goes to a court of law only if he is driven to that necessity. It is not a pleasure to anybody to go to a court of law He waits till the last day of limitation and then rushes to the court of law, and there are several instances where the plaintiff, before he files the

suit finds he has no money in his pocket and he has to borrow the amount required. He borrows at exorbitant rates of interest of 12 per cent. and 15 per cent. Therefore, to deny the plaintiff interest on the amount that he has spent in the institution of the suit, by way of court fees and lawyer's fees, appears to me to be very unreasonable. As the provision stands under sub-section (3) of section 35, discretion is given to the court of law in the matter of awarding cost. I know several cases where the plaintiff in spite of getting the decree has been denied the court cost. There is complete denial of court cost, may be because he had come forward with false claims or some sort of a claim which did not appeal to the court. The court might have granted him decree but not the court cost. There are several cases in which courts have refused cost. Why should we fetter the discretion of the judge in this matter? I fail to see why litigants should be denied their legitimate share in the matter of getting interest on the amount they had spent towards court fees and lawyer's fees. Above all, it is not proper on the part of the legislature, on the part of Parliament to fetter the discretion of the judge in the matter of awarding interest on costs.

Sir, my learned friend Mr. Sapru had opposed the provisions that are contained in clause 12 of this Bill, that certain dignitaries in the country, namely, the President and others, should be exempted from personal appearance.

SHRI P. N. SAPRU: Not exactly opposed. I expressed my doubts as regards the desirability or wisdom of that provision.

SHRI P. S. RAJAGOPAL NAIDU: I am glad to hear that.

SHRI H. C. DASAPPA: It is not very different from opposing.

SHRI P. S. RAJAGOPAL NAIDU: It is but natural that an able jurist like Mr. Sapru should have that sort of a view on this particular clause. It is also my doubt whether such a provision could be there, particularly when in the Fundamental Rights of our Constitution, equality before the law and equal opportunities before the eye of the law are guaranteed, *viz.* whether any dignitary of our country, however highly placed he may be, can be exempt from appearance before a court of law. That certainly is a very valid issue. But after all, if their examination is required, there are other provisions in the Code of Civil Procedure probably it is section 133 of the Code—for examination of such persons on commission. You cannot expect the President to appear before a court of law. Suppose a certain person takes it into his head to file a vexatious suit against the President of India. If there is no such exemption, if there is no such provision as this then the hands of the court will be tied and the President of India will be compelled to appear before the judge for the purpose of being examined. I am sure when there is a provision for examination of people on commission, there is no reason why anybody should oppose such a provision as this, being made in the present amending Bill and in that view I support this particular amendment in clause 12.

Next I pass on to a small provision in clause 14, sub-clause (3), para (1A), where it is said:

> "Where any party to the suit has at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents".

I am sure this has been brought in with a view to see that no delay is caused and to see that justice is administered speedily. But there are certain dangers which I am sure, the framers of this Bill had not thought of. I can understand that on a particular day prior to the date of hearing

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the parties to the suit are allowed to file lists of witnesses either for giving oral evidence or for producing documents. That does not matter, as the opposing party will not be taken by surprise. But if on the very day of hearing list of witnesses is to be filed before the Court and immediately afterwards if the judge asks one of the witnesses to get into the box, then the other party will not know who this person is and what he may say. So I submit that there should be no provision made enabling any of the parties to the litigation to file lists of witnesses on the very day of hearing. There should be at least three or four days or a week's time between such filing of list and the commencement of the trial. If on the day of commencement of the trial any one party is allowed to file a list of witnesses, then naturally the other party will be taken by surprise. The other party may not even know whether the person in the box is the very person mentioned in the list. He may give his name as X son of Y and he will be put in the box and he will be examined. God alone knows what he will speak of. The other party will not know who that gentleman is. That will cause hardship and I am sure this provision which is proposed will be deleted, and on the date of the trial the parties will not be allowed to file lists of witnesses. The parties may be allowed to file lists of witnesses even without taking out summons through the court of law and undergoing the elaborate procedure. The parties may be allowed to give the list of witnesses a week before the trial commences. They should not, under any circumstances, be allowed to file the list of witnesses on the day the trial commences. That will cause great hardship to the parties in the suit.

I do not think I have got anything more to say. Though I would like to speak on certain other provisions which are very minor in nature, I shall not take the time of the House.

Thank you, Sir.

SHRI R. C. GUPTA (Uttar Pradesh): Mr. Deputy Chairman, I rise to support this Bill but, at the same time, I must confess that it is a very halting measure. The explanation given for the few amendments embodied in this Bill is that the Law Commission is engaged in revising this Code. But if we look at the Bill, we will find that the amendments suggested are not very urgently needed amendments except perhaps one or two. Therefore, this amending Bill could have waited. Anyway, the changes suggested in the Bill are desirable and necessary and, therefore, I support this Bill.

A question had been raised on the floor of the House as to whether the Law Commission should be a permanent or a temporary body. Mr. Kishen Chand suggested that all the laws could have been amended within a year if the Law Commission intended to do so and the Government had the intention of doing so. My submission is that he has really misunderstood the scope of the Law Commission. In fact, the valid argument is that such a Commision should be permanent. The volume of law is already enormous and it is increasing every day on account of the complexity of the society and it will still continue to grow. Therefore, the need for a permanent Commission is there. It is also not understandable as to how the present Commission or any other Commission could, in a very measurable distance of time, be able to revise all the laws. Supposing all the laws are revised within a few years, even then the need for a continuous revision remains. Mr. Kishen Chand's suggestion that if a law is once passed it should be allowed to continue for forty or fifty years without any amendment is, I think, beside the mark entirely. The changes in the law are made on account of the defects that are discovered in the actual working of the Act and they are necessary because they come in conflict with the declared policy of the legislation. Who declares the policy of the legislation? It is either the Parliament or the State Legislatures. If

a certain law is found to be defective on account of the interpretation by the Judges of the High Court or the Supreme Court then I think it is the duty of Parliament or the State Legislatures, as the case may be to amend the law immediately without waiting for forty or fifty years The amount of mischief would be enormous if we were to accept the suggestion of Mr. Kishan Chand. My submission, therefore, is that the Law Commission should be made permanent and the personnel of the Law Commission should also be expanded. I would agree with Mr. Sinha when he said that one or two persons who are not lawyers should also be on the Commission because the policy underlying a particular enactment cannot be the outcome only of the brains of the lawyers who have studied law or those who were on the Bench but also of those who understand the society and the different aspects of the society very well. This may prove very useful and at least the experiment is worth trying.

So far as particular provisions of the Bill are concerned, my submission is that there are two or three very important points which have been made mention of in this House. The first important point is the deletion of clause 5 as it existed in the original Bill which related to the executability of foreign decrees or judgments. It is a hard fact that the old British Provinces were bordering on the old Indian native States and transactions were going on continuously between one part and the other. Legal obligations were created and those legal obligations were converted in decrees before the 26th January, 1950. I do not know the number of such decrees but I dare say that the number of such decrees would be enormous. Therefore, some solution is necessary in order to equalise the position of the decree holders and the judgment debtors with respect to such decrees. The question is as to how that can be done. Some suggestions have been made in this House and it has been stressed by several speakers that in view of the conflict of decisions between the Bombay High Court and the other High Courts, it would be desirable to wait for the decision of the Supreme Court. I do not think that the decision of the Supreme Court will solve the difficulty. Supposing the Supreme Court comes to the conclusion that the view taken by the Bombay High Court is correct, what will happen to those who relied on the judgments of the Calcutta, Punjab and Allahabad High Courts? They will be nowhere. Similarly, supposing the Supreme Court comes to the conclusion that the view of these High Courts is correct and that the view of the Bombay High Court is wrong, then the persons who relied on the judgment of the Bombay High Court or obtained decrees in that belief but did not execute the decrees within a certain time and thought that such decrees would be executed afterwards will be in difficulty. So, the decision of the Supreme Court will not solve the question, to my mind. I think legislation on this question is very necessary and I may venture to suggest that without doing much violence to the language, without caring for very large amendments, a small clause should be enough to solve this difficulty. We may provide that all decrees passed *ex parte* by the so-called foreign courts are executable but the persons who did not object or who could not object or contest the claims at the time when the *ex parte* decrees were passed should be allowed an opportunity to raise the very same objections at the execution stage which they could raise at the stage of suit. Thus, nobody will suffer. The decree holder knows that his decree is "absolutely valueless if he goes and executes the decree in any other State" where he would not do it except by filing a suit on the basis of the foreign judgment and if he files a suit on the basis of the foreign judgement, the judgment debtors or the defendants would be entitled to raise all such questions. If he wants to execute the decree, let him execute it but let the judgment-debtor be given the fullest possible oportunity to contest the original claim in the Execution Department and let a proper order be passed. If this suggestion is accepted, I have not the slightest doubt that

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without the necessity of filing another suit the matters in controversy will be decided finally, neither the judgment-debtor will suffer nor the decree-holder will suffer and it should be a compromise between the two conflicting views. To my mind this is a very satisfactory solution. I do not know whether the hon. Minister would accept this amendment at this late stage but if he does, it will be a very great improvement and it will probably help the numerous decree holders who obtained them by the so-called foreign courts *ex parte; ex parte* in the sense that the defendants in those cases did not submit themselves to the jurisdiction of those courts and not *ex parte* in the sense that they did not contest or that they contested up to a certain stage only. Sir, this seems to be a very satisfactory solution if the Law Minister would only accept it.

Now, I come to a clause to which a reference was made by my friend, Mr. Sapru. That is clause 12 relating to exemption of certain persons from attendance in civil courts. Sir, I do not think that Mr. Sapru argues or he meant to argue that this clause in any manner infringes on the well-known principle of the Constitution—equality before the law. To my mind, it is not in conflict with it. It is permissible under the Constitution to exempt certain persons from attendance in court. This is not a new provision: it has been in existence for a very long time. And this particular clause is really a distinct advance on its predecessor. In this case the list is impersonal: no individual is exempted. It is only persons holding particular offices who are exempted from personal attendance and so this is a distinct improvement. Under the present law certain authorities had the power to exempt certain individuals from attending the court or from being compelled to attend the court. This, as I said, is an impersonal list and as such it is a distinct improvement. Now, it is said that in a democratic State or society, there should be no such exemption. I cannot understand that. It seems that the argument is based more on sentiment than on reason. The reason behind this clause is something different. Nobody is being exempted on account of a certain high office which a particular individual may be holding. The reason is that these persons who have been named in this clause, on account of their duties, may not find it possible for them to go and attend the court. It may also look very awkward that the President of India may be called to the court of a Munsiff or to a Small Causes Court for giving evidence on a very petty matter. Under the Civil Procedure Code the plaintiff or the defendant is entitled to call anybody as a witness so long as his evidence is material and relevant. This clause does not dispense with the recording of evidence of these dignitaries. Their evidence will be taken down provided it is relevant and necessary. It merely says that these persons shall not be compelled to attend the court. They can be examined on commission. When an application for commission is made, the court will always examine—and it has the power to examine—whether the evidence of a certain person is or is not relevant. If the evidence is relevant the court has no right to refuse to allow a commission; it will have to issue a commission. But if the evidence is not relevant the court has got the power to reject the application for commission. Therefore there is no prejudice so far as the litigant is concerned, whether the particular dignitary is examined in court or under a commission. If the evidence is relevant the witness will be examined but he will not be compelled to attend the court in person. It is very well-known that all these office holders who have been named in this clause are engaged in very arduous duties of a public nature and their work is in public interest. If they were to attend the court on a mere summons issued by a court, then what will happen is this. Either they will not be able to attend because of their preoccupations or their evidence will have to be recorded on commission. Commission is permissible even now

the question is whether they should be compelled to attend the court in every case and no commission issued unless of course a case is made out for the issue of a commission. My submission is, if these persons named here are not exempted, there will have to be numerous adjournments of the cases concerned and the duration of the cases will be unnecessarily extended and parties will be put to unnecessary expense, because you cannot expect the Minister of a State to be ready at everybody's call to go and give evidence in a court of law on a particular date fixed by the court. That date may not be convenient to the particular witness who happens to be a Minister or some other dignitary. Therefore, the case will have to be adjourned and sometimes it may have to be adjourned three, four, five and six times. So, far as the criticism of this clause is concerned, I feel that it is based more on sentiment than on reason. There may be cases in which litigants will apply for the personal attendance of such persons just to harass them or insult them or for some such similar reasons. So I do not agree with the criticism so far as this clause is concerned.

I have got to say something with regard to clause 14(3) which refers to production of witnesses without summons through court. I think that in the first instance this clause is unnecessary and in the second instance it may prove to be harmful. There is no use of this clause at all. It merely says that if a person's name is mentioned in the list, it is not necessary that a summons should be issued to him. The party concerned can bring such a witness to the court. This is the right given to the litigant even now. It is not compulsory for any litigant that he must summon his witnesses through the court. He can bring his own witnesses and produce them before the court; it is a matter of every day occurrence. Where is the need for such a statutory provision when a litigant has got the right already to bring his witnesses and produce them before a court of law? As a matter of fact in U.P. this has been permitted by an amendment of the rule. Under Order XVI a litigant is permitted to bring his own witnesses and produce them, and this amendment of the rule has been made only with a view to counteract the comments which are generally made in courts that such and such persons came unsummoned and therefore they are not reliable. Otherwise there is no compulsion that a party should summon a witness before he can be produced. Then this clause might be interpreted—I do not know if it will be—but there may be some very punctilious judges who might interpret this particular clause in a manner that because the name of a particular individual has not been mentioned in the list, therefore if somebody else is brought in place of the person whose name has been named in the list, the court may refuse to examine him. Therefore, the right which is given to the litigant under the present law to produce any witness he likes, whether his name appears in the list or not, would lead to a position in which he might court a refusal from the court and the evidence of a particular witness may not be recorded. Therefore, it might be in some cases very harmful, and I cannot at least understand the reason for inclusion of sub-clause (3) in clause 14.

So far as clause 2 of the Bill is concerned which relates to amendment of sections 34, I think it is quite desirable. Up to this time the interest was awardable not only on the principal amount but on the amount which was the aggregate of principal, cost, etc. This clause makes it quite clear that in future interest would only be awardable on the principal amount and not on the costs.

SHRI P. N. SAPRU: Also there is another provision which reduces the interest from 9 to 6 per cent.

SHRI R. C. GUPTA: Then I come to clause 5 which relates to amendment of section 47. The explanation given in this amendment attempts to amplify the parties to a suit. A purchaser at a sale in execution of a decree has been specifically included

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therein. Otherwise the explanation is in the same form as contained in the present section 47. It has been a very most question and there are divergent views of the various High Courts whether a purchaser at an auction sale is or is not a representative, because the effect of a decision on this question whether a particular person is or is not a representative is far-reaching because, if a person can come under section 47 of the Civil Procedure Code, he has no right to file a regular suit; he is debarred. Therefore, this clause makes the position quite clear. Now there should be no conflict in the judgments of the various High Courts. A purchaser at an auction sale shall be taken to be a party to the suit, and therefore a decision under section 47 shall be a bar to a regular suit. Otherwise what happens at the present moment is that a purchaser files an objection and if he loses in the court, then he files a regular suit. After this amendment his remedy would be only one, and that remedy would be under section 47 because his objection is treated as one falling under section 47. Now all such objections will have to be decided under section 47 and they will have a right of appeal, but they will be debarred from filing a regular suit. This seems to me to be a very desirable amendment and it will put an end to all the controversies so far as this particular matter is concerned.

Clause 6 is merely formal and I think it is necessary.

Clause 7 and clause 15 really go together. In most of the Provinces if a zamindari property was to be auctioned, the decree had to be sent down to the Collector for effecting the sale because the sale affected the revenue derived from the property which was put up for sale. Now, the zamindaris having been abolished, these clauses have become unnecessary.

SHRI J. S. BISHT: Not in all the States.

SHRI R. C. GUPTA: I think this Third Schedule refers mostly to the zamindari areas.

So far as clause 16 is concerned, I think it is a good saying clause because there are certain decrees which are being executed and will continue to be executed as the provisions exist now.

Clause 8 of the Bill is also a very definite and distinct improvement. I myself fought out a case under section 82 and the judge forgot to mention the period within which the Government should pay the money. Difficulty arose as to how the decree was to be executed because the decree against the Government could only be executed at the expiry of the period prescribed or specified in the decree. No period was specified in the decree. Therefore, the question was raised that the decree was unexecutable. Of course, there was only one reported case, and in that case it was held that the court had got the power to execute the decree after a reasonable time. But there was another case in which it was held that such a decree was not executable because no time had been specified and, therefore, so long as the time had not been specified the decree could not be executed against the Government. The Government of course can pay the amount but the decree will not be executed. This objection has been met, and I am glad that even if the time is not specified in the decree three months period is the period within which the Government ought to pay the money. If the Government does not pay, then the decree becomes executable.

Clause 9 is also a very definite improvement. Clause (cc) reads like this: "directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property". This was also a very difficult question whether under section 92 possession could be delivered or not. The view of most of the High Courts was that possession could not be delivered under section 92. Of course there was one case of the Madras High Court in 1935 in which it was held that pos-

session could be delivered because it came within the words analogous relief. This controversy has been set at rest and it is very necessary that in a suit under section 92, after holding that a certain person is in wrongful possession of property, the court should not be so powerless as not to be able to pass an order that it should not have the power to order possession of the property to persons who are being appointed trustees under section 92. I think this is really a very good amendment that has been inserted in this Bill.

Now, I have something to say with regard to clause 14(6). Up to now security for costs from the plaintiff was a very rare thing except in certain specified cases. This clause amplifies the powers of the courts. In the course of litigation it has been experienced that such a power was necessary, and this clause gives that power that in suitable cases the Court may call upon the plaintiff to give security and also provides that in certain cases the plaintiff shall be compelled to give security. The proviso says: "Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit." This amendment is necessary in view of the fact that suits of very big valuations are filed generally in the name of paupers where it would be difficult for the defendant to recover even half of the cost. If the court finds, in a certain case, that it is desirable in the interests of the defendant and also the smooth running of the case that the plaintiff should be ordered to give security, the court will be competent to demand security.

Now, under sub-clause (7) of this very clause 14, the interest of nine per cent. has been reduced to six per cent. Sub-clause (a) (ii) reads :—

"In sub-clause (iii), for the words 'at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum', the words 'at such rate not exceeding six per cent. per annum as the Court deems reasonable' shall be substituted ;".

In mortgage suits, it was held even by the Privy Council in 1927 that the interest shall run at the stipulated rate, not only on the principal amount but also on the interest and the costs till the period fixed for redemption, which was usually six months after the decree. This caused a great deal of hardship, because under ordinary law as soon as a litigant files a suit, the matter passes from the domain of the contract to the domain of the court and the court was always held competent to decide what rate of interest should be awarded to the litigant after he has filed a suit. In mortgage suits, it was held by the Privy Council in 1927 that the court was powerless to reduce the interest on this amount. Now, this amendment suggests that the court can award interest not exceeding six per cent. The court has power to grant less than six per cent., but the interest shall not be more than six per cent. Therefore, I submit that this is also a very necessary provision that has been made.

Under sub-clause (8), so far as Order XXXVII of the Civil Procedure Code is concerned, it is also a very necessary change. By this amendment any District Court or other Court specially empowered in this behalf by the State Government can try suits on negotiable instruments in a summary manner. At this time every court cannot hear it; only the courts which have been specially empowered could do it. In this case all District Courts or any other court which has been specially empowered shall be competent to try the suit summarily, if the suit has been filed on the basis of the Negotiable Instruments in a summary manner. At this

In the end I submit that the Bill is really a distinct improvement on the present position, but it does not go far enough. If the hon. Minister

agrees, the old sub-clause (5) should be re-enacted in the manner I have suggested.

श्री राम सहाय (मध्य प्रदेश) : उप सभापति महोदय, इस सिविल प्रोसीजर कोड अमेंडिंग बिल के ऊपर बहुत काफी चर्चा हो चुकी है । इसमें कोई संदेह नहीं है कि ये थोड़े-थोड़े से एमेंडमेंट करने से जो असली मकसद है वह पूरा होने वाला नहीं है । आज कल मुकदमेबाजी में जितना खर्चा पड़ता है और उसमें जितना समय लगता है, इससे उसमें ज्यादा मदद नहीं मिलती है । एक छोटी-मोटी तरमीम करने से वह सारा प्रोसीजर, वह सारे कायदे कानून जो इस वक्त अपने देश में चल रहे हैं उनके सुधार में कोई खास मदद नही मिलती है और मैं तो यह समझता हूं कि मेरा जो अनुभव सन् १९४२ से पहले, करीब ३० साल वकालत करने का रहा, उसमें मैंने यह अनुभव किया कि सिवाय अमीर लोगों के दीवानी मुकदमों में गरीब लोगों को कोई मदद नहीं मिलती है । गरीब लोग सिविल कोर्ट्स से कोई ज्यादा फायदा हासिल नहीं कर सकते हैं, खर्चा भी उनका ज्यादा होता है । इस सम्बन्ध में अभी हमारे मेम्बर साहबान ने बतलाया कि वह २० फीसदी तक है । मेरा भी यही अनुभव है कि किसी एक ही दर्जे का खर्च लगाया जाय तो वह १५ से २५ फीसदी तक के बराबर पहुंचता है यानी करीब करीब एक चौथाई का इंतजाम तो फरीक को पहले कर लेना चाहिये तब जाकर वह मुकदमा दायर करने की बात सोचे । जो रकम उसको हासिल करनी है उसके लिये जब वह एक चौथाई खर्च करता है, तब यह विचारने की बात है कि उसे दादरसी क्या मिलती है ।

पहिला जाब्ता दीवानी सबसे पहिले १८५९ में नाफिज हुआ जिसे करीब १०० साल होते आते हैं । उसके बाद १८७७ और फिर १८८२ में बदला गया । इसके बाद यह फिर १९०८ में बदला गया । सन् १८८२ का जो जाब्ता दीवानी बनाया गया था उसमें ६३५ धाराएं थीं और अब १९०८ का जाब्ता दीवानी है । अगर हम देखें तो उसमें भी किसी प्रकार की कमी नहीं है बल्कि कुछ थोड़ा बहुत ज्यादा ही होगा । एक मामूली से दीवानी मुकदमा लड़ने के लिए इतनी धाराओं का उपयोग करने से कैसे इन्साफ मिल सकता है, यह गौर करने की बात है । फिर इन मुख्तलिफ धाराओं पर, मुख्तलिफ आर्डर्स और रूल्स के तहत, मुख्तलिफ हाई कोर्ट के मुख्तलिफ फैसले और भी उसमें दखलन्दाजी करते हैं और उसकी वजह से सही इंसाफ नहीं मिल पाता है । इसके लिये जैसा कि अभी कई साहबान ने कहा है, मेरे ख्याल से तो यह बहुत जरूरी है कि हम कोई ऐसा जाब्ता तैयार करें कि जिससे जल्द से जल्द और सही इंसाफ मिल सके ।

आज हमने अपने देश में जिस समाजवादी ढांचे यानी सोशलिस्ट पैटर्न आफ सोसाइटी का लक्ष्य या ध्येय रखा है उसमें तो इस प्रकार की जाब्ताबाजी और मुकदमेबाजी का सिलसिला, अपील दर्ज कराना और सुप्रीमकोर्ट तक जाना वगैरा, ये सब किसी प्रकार फिट नहीं होता । अब देखिये सुप्रीम कोर्ट तक जाने, में मैं तो समझता हूं जितने का वह मुकदमा होता है उससे भी ज्यादा पैसे खर्च हो जाते हैं तो फिर दादरसी कैसे मिल सकती है ? इस जाब्ते से और ऐसे कायदे कानूनों से जो आज कल देश में रायज हैं, जिनका हम उपयोग करते हैं, उनमें इस तरह की थोड़ी सी तरमीम से हमारे देश का भला होने वाला नहीं है ।

यह जो बिल तैयार किया गया है, इसमें कोई शुबहा नहीं कि इसमें सूद के बारे में जो बात रखी गई है वह निहायत मौजूं है । अभी हमारे एक मेम्बर साहब ने यह फरमाया था कि खर्च के ऊपर सूद न दिलाना, यह कोई इंसाफ की बात नहीं है । मैं भी समझता हूं कि यह बिल्कुल माकूल बात है । एक तरफ यह बात सही है और दूसरी तरफ यह बात भी मानने के काबिल है कि मुकदमेबाजी पर आम तौर पर मुद्दालेह तभी आता है जब उसकी नादेहन्दगी होती है । मुद्दई को जो कुछ मिलना है वह तो मिलेगा, लेकिन ऐसे भी मुद्दालेह होते हैं जिनको मुकदमा तब लड़ना पड़ता है जब कि उनके पास में पैसे नहीं होते हैं । तो मुद्दालेह के ऊपर कितना तक बोझा डाला जाय, यह बात सोचने की है ।

अगर उस दृष्टि से हम सोचें तो यकीनन इस नतीजे पर पहुंचने में कोई एतराज नहीं होना चाहिये कि खर्च इत्यादि पर सूद न दिलाया जाय । इस तरह पर मैं यह समझता हूं कि इसमें जो ६ परसेंट का प्राविजन रखा गया है और जो ९ परसेंट से ६ परसेंट कर दिया गया है वह दोनों ही बहुत मौजू चीजें हैं और इस बारे में किसी प्रकार का यह खयाल नहीं होना चाहिये कि इसमें कोई नाइंसाफी होगी क्योंकि जो धनाढ्य लोग हैं जो कि मुकदमे लड़ सकते हैं या जो कि

[श्री राम सहाय]

मुकदमे के लिये जाते है उन पर अगर थोड़ी सी हार्डशिप भी हो तो भी ज्यादा तवज्जह नहीं करनी है । असल में हमें उन गरीब लोगों की हालत को देखना है जिनसे कि पैसा वसूल किया जा रहा है । मामूली तरीके पर जब किसी आदमी की अपने पास से पैसा खर्च करने की कैपसिटी खत्म हो जाती है तभी वह कर्ज लेता है । ऐसी सूरत में अगर उसके ऊपर ज्यादा से ज्यादा बोझ लादते चले जायं तो यह उसके नादेहंद होने का एक कारण बन जाता है । अगर हम शुरू में ही इन सब बातों की ओर ध्यान दें तो सम्भव है कि ऐसी सूरत ही न आये कि लोगों को अपने आप को नादेहंद कहने का मौका मिले ।

हमारे यहां जो सूद का तरीका रहा है वह यह रहा है कि अगर एक साहूकार है, जिसकी पेइंग कैपेसिटी अच्छी होती है, तो वह कम सूद देता है और अगर एक मजदूर है या एक किसान है, जिसकी पेइंग कैपेसिटी बिल्कुल कतई नही होती है उसके ऊपर चौगुने, पंचगुने, अठगुने या दसगुने सूद का बोझ डाला जाता है । तो जब उसके ऊपर इस तरह से बोझ डाला जाता है तब उसके नादेहंद बनने की बहुत कुछ गुंजाइश होती है और बदर्जे मजबूरी इस तरह से उसमें थोड़ी सी बेईमानी भी आती है । इसलिये मेरा खयाल है कि इंटरेस्ट के बारे में जो प्राविजन रखा गया है वह बहुत ही मौजूं है और उसमें किसी तरह की सख्ती नहीं मालूम पड़ती है ।

इंडियन स्टेट्स की डिक्री जो फारेन कोर्टस की परिभाषा में आती थी उनके इजरा के मामले पर विचार कीजिये । मेरा तो यह अनुभव है कि जब कभी वकीलों से मशविरा किया गया कि ऐसे मामले में हमें पैरवी करनी चाहिये या नहीं तो वकीलों ने इस खयाल से कि इसकी इजरा जहां वह रहते हैं वहां नही हो सकती है या जहां उनकी जायदाद है वहां नहीं हो सकती है तो मुकदमा लड़ने से मना कर दिया और वह मुकदमा नहीं लड़ा गया । मेरे खयाल से अक्सर स्टेट में एक नहीं सैकड़ों ऐसी डिक्रियां मौजूद होंगी जिनमें कि इजरा हो कर अभी पैसा वसूल होना होगा और जिनमें मुद्दहलुम को जवाबदेही का मौका नही मिला । तो यह कोई मुनासिब नहीं है कि बिना उनके उजरत सुने रुपया वसूल किया जाये । असल बिल में इस प्रकार की धारा रखी गई थी लेकिन लोक सभा से पास होकर जिस तरह से यह बिल हमारे सामने आया है उसमें वह धारा निकाल दी गई है । उस धारा को निकालने से मैं समझता हूं कि कुछ हार्डशिप जरूर होती है । कहा यह जाता है कि चूंकि सन् १९५० से १९५६ तक में बहुत अर्सा हो गया है और अब तक बहुत से मुकदमों की डिक्रियों का मतालबा वसूल हो गया होगा इसलिये अब उनको कोई दादरसी या रेमेडी देने की आवश्यकता नहीं है । मेरा तो यह अनुभव है कि अगर हम ऐसे मामलात को देखें तो पायेंगे कि बहुत कम मामलात में फैसला हुआ है और ज्यादातर तादाद ऐसे मुकदमात की होगी जिनमें कि इस प्रकार की दादरसी की आवश्यकता है । जब इस प्रकार की दादरसी की आवश्यकता है तो जरूरी इस बात की थी कि ओरिजनल बिल में जो धारा थी उसको बदस्तूर कायम रखा जाता, उसको निकाला नहीं जाता । मेरा अभी भी यही खयाल है कि हमारे सिंहा साहब ने जो एक अमेंडमेंट पेश किया है उसको अगर ला मिनिस्टर साहब पसन्द फर्माते हों तो जरूर कबूल फर्मा लें, उससे उन लोगों की थोड़ी बहुत दिक्कत कम हो जायगी और उनको सहूलियत मिल जायगी । काश, अगर वह चीज न हो सके तो जैसा कि अभी मिस्टर गुप्ता ने बताया था उसमें इतना ही कर दिया जाय कि वह इजरा डिक्री के सिलसिले में अपने उज्रों को पेश कर सकें । इसमें सिर्फ कोर्ट फीस का सवाल पैदा हो सकता है लेकिन कोर्ट फीस भी वसूली के वक्त रियलाइज की जा सकती है या पार्टी से अगर कहा जाय तो वह दाखिल भी कर सकता है । अगर इस तरह से कोई साल्यूशन निकाला जाय तो मैं समझता हूं कि जिन लोगों ने जवाबदेही नहीं की है और एक्स पार्टी डिक्री होने की वजह से जिनको काफी नुकसान उठाना पड़ा है वे इस चीज से बच जायंगे । मैं समझता हूं कि इसमें कोई उन लोगों की गलती हो, ऐसी बात नहीं है । मुकदमा दायर हुआ और वकला ने उनको कानूनी आधार पर जो मशविरा दिया, उसकी पाबन्दी उन लोगों ने की और उस पर अमल किया, तो फिर कोई सख्ती उनके साथ होना मुनासिब नहीं है । मेरा यह निवेदन है कि इस बारे में ला मिनिस्टर साहब गौर करके उस धारा को अगर हो सके तो इसमें लाने का प्रयत्न करें या फिर जो अमेंडमेंट पेश किया गया है उसको ही स्वीकार कर लें । मैंने तो यह देखा है कि मुकदमात एक जेनरेशन तक ही नहीं बल्कि दो दो जेनरेशन तक चलते हैं । मैंने वकालत में खुद देखा है कि दो दो जेनरेशन

[श्री राम सहाय]

तक मुकदमे चले हैं । ऐसा नहीं कि मुकदमा पांच या दस साल चला हो बल्कि एक फरीक ने अपनी सारी जिंदगी मुकदमेबाजी में खर्च की और उसके बाद उसके बेटे को भी उसी तरह की मुकदमेबाजी विरासत में मिली । ऐसा भी देखा गया है कि इसमें इतना ज्यादा खर्च हुआ कि उनके पास सिर्फ डिक्रियों के कागज ही रहे और किसी से पैसा वसूल करने का कोई साधन उनके पास नहीं रहा । ऐसी हालतें भी देखी गई है जिसमें देने वाले और लेने वाले दोनों ही इस प्रकार के मुफलिस हो गये कि आगे कोई कार्यवाही नहीं हो सकी । इसलिये मेरा निवेदन है कि इस बारे में जैसा कि मैंने अर्ज़ किया जरूर विचार होना चाहिये । अभी यह बताया गया कि कोई कमीशन इस सिलसिले में बैठा है और अभी एक मेम्बर साहब नें सजेस्ट किया था कि उसमें लोगों को फुर्सत कम मिलती है और ज्यादा अच्छा यह हो कि कोई परमानेंट बाडी इस प्रकार की बने, जो कि सिर्फ इसी काम को करे और कोई दूसरा काम अपने हाथ में न ले, वह सिर्फ सिविल प्रोसीजर कोड को ही नहीं बल्कि अपने यहां जितने कानून हैं उन सबको इस तरह से रिवाईज करे कि हमारी सोसाइटी की जो मौजूदा हालत है, हमारे नागरिकों की जो मौजूदा हालत है, उन सबके साथ एडजस्टमेंट हो सके, क्योंकि इसके बिना देश का सुधार भी पूरा नहीं हो सकता है और मुकदमेबाजी भी कम नहीं हो सकती है । कई कई केसेज तो ऐसे देखे गये हैं जिनमें कि सुप्रीम कोर्ट में जाते वक्त जितने का मुकदमा होता है उससे ज्यादा वकील को फीस देनी होती है । अब आप इस बात पर गौर फर्मा सकते हैं कि जब इतना सख्त प्रोसीजर हो और इस प्रकार से अपील करने की नौबत आये तो फिर किस तरह से किसी को दादरसी मिल सकती है । तो मेरा यह निवेदन है कि ला मिनिस्टर साहब इस बारे में भी जरूर गौर फरमायें ।

पहले मवाजियात के नीलाम से दादरसी के सिलसिले में जहां सवाल होता था, वहां कलेक्टर को बहुत पावर दी गई थी लेकिन इसमें वह पावर कम कर दी गई । यह चीज भी मुकदमेबाजी को कम करने की गर्ज से और जल्दी इंसाफ मिलने के लिये बहुत मुनासिब है क्योंकि मैंने यह देखा है कि पहले कलेक्टर्स बजाय इसके कि इस बात की जरूरत महसूस करें कि डिक्री की दादरसी जल्दी से जल्दी ठीक तरीके पर हो सके, वे इस प्रकार का तरीका अख्तियार करते थे, जिससे कि और ज्यादा देरी होती थी क्योंकि जमीदारान से या उन लोगों से जिनकी कि जमीनों को नीलाम कराने की आवश्यकता होती थी, उनका रात दिन का सम्पर्क रहता था । तो इस प्रकार के प्रोसीजर को इसमें से निकाल देने से मैं समझता हूं कि बहुत ही अच्छा हुआ है । इससे आसानी हो जायगी और जल्दी दादरसी मिल सकेगी । बिल में इस प्रकार का जो प्राविजन रखा गया है वह भी मैं समझता हूं कि बहुत मुनासिब है ।

मेरा निवेदन यह है कि करीब सौ साल का जमाना गुजरा है जब से हम इस जाब्ता दीवानी की जाब्तेबाजी के चक्कर में पड़े थे और आज भी हम उसी जाब्ते की पुनरावृत्ति करते जा रहे हैं और यही सोचते जा रहे हैं कि इस प्रकार से हम जाब्ते को दुरुस्त करते जायं और उससे कुछ अपने लोगों की हम भलाई कर सकेंगे । यह सही नहीं है ।

मेरा यह निवेदन है कि जब तक हम सिद्धान्ततः कोई तब्दीली न करें या जबतक हम इस बात को ही सोचें कि दरअसल वे कौन से ऐसे सिद्धान्त हो सकते हैं कि जिनके आधार पर हमें मुकदमेबाजी के लिए कानून बनाने चाहिये, तब तक यह जो मौजूदा जाब्ता है, इसे सिविल प्रोसीजर कोड कहिये या और जो मौजूदा कानून हैं । वे हमको कोई विशेष सुविधा नहीं दे सकते । हमको सिद्धान्ततः इस बात को सोचना पड़ेगा कि दरअसल हमको क्या करना चाहिये या क्या नहीं करना चाहिये । जब तक हम इस प्रकार से नहीं सोचेंगे और जब तक हम मौजूदा जाब्ते को इस प्रकार तबदील नहीं करते, तब तक इनसे हमारी भलाई नहीं हो सकती है । इसलिए मैं समझता हूं कि इस बारे में हमें बहुत जल्द ही सोचना चाहिये क्योंकि हमारी इंडिपेंडेंस को भी आठ, नौ साल का जमाना बीत चुका है और इस बीच हम इस बारे में कुछ ज्यादा विचार नहीं कर सके । लेकिन मैं यह समझता हूं कि जैसे हर एक डिपार्टमेंट के अपने बहुत से काम रहते हैं और जिस डिपार्टमेंट के सुपुर्द जो खास काम रहता है वह उसी काम को ज्यादा अच्छी तरह से देखता है, इसी तरह ला डिपार्टमेंट अपने दिन प्रतिदिन के कार्य को ज्यादा अच्छी तरह से देखने की कोशिश करता है । सिद्धान्ततः तबदीली होना या करना यह बिल्कुल ही भिन्न है । जैसा कि मैंने अर्ज किया, मौजूदा जाब्ते

में साढ़े ६०० के करीब धाराएं हैं, और मौजूदा सिविल प्रोसीजर कोड में भी उससे कम नही हैं, उसमें डेढ़ सौ सें ऊपर धाराएं हैं और फिर उसमें आर्डर्स और रूल्स की तादाद और ज्यादा है केवल आर्डर २१ में ही १०३ रूल्स हैं अब आप गौर फर्मायें कि इतनी धाराओं के रहने सें हर एक पार्टी कोई न कोई बहाना लेकर किसी न किसी कायदे का सहारा लेकर, मुकदमे में देर करने का प्रयत्न करती है । इसलिये जब तक हम इस बात के लिये कानून में कोई रोक न रखें कि जिससे किसी शख्स को या किसी पार्टी को देर करने का मौका न मिले, तब तक हम इस कानून से भी ज्यादा फायदा नहीं उठा सकते । मेरा यह निवेदन है कि इन सब बातों पर हमें गौर करना चाहिये ।

इस कानून में अभी जो सुधार इस प्रकार के किये गये हैं कि प्रेजीडेंट या राज्यों के गवर्नर या मिनिस्टर आदि को अदालतहाजा से एग्जेम्ट किया गया है, तो मैं समझता हूं.....

MR. DEPUTY CHAIRMAN: It is time, Mr. Ram Sahai. Do you want more time?

SHRI H. V. PATASKAR: I think some points have been discussed, and if I could get half an hour... .....

SHRI RAM SAHAI: I want five or ten minutes more.

MR. DEPUTY CHAIRMAN: Then you may continue tomorrow.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at four minutes past five of the clock till eleven of the clock on Wednesday the 21st November 1956.

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