[Shri H. V. Pataskar.]

Houses on the Bill to amend and codify the law relating to intestate succession among Hindus be instructed to report on or before the 9th September, 1955."

MR. DEPUTY CHAIRMAN: The question is:

"That this House concurs in the recommendation of the Lok Sabha that the Joint Committee of the Houses on the Bill to amend and codify the law relating to intestate succession among Hindus be instructed to report on or before the 9th September, 1955."

The motion was adopted.

SHRI H. V. PATASKAR: Sir, I have to make another motion with respect to this Bill, and that is this. Sir, I beg to move:

"That Dr. W. S. Barlingay be appointed to the Joint Committee of the Houses on the Bill to amend and codify the law relating to intestate succession among Hindus *vice* Shri Onkar Nath who has resigned his seat in the Rajya Sabha."

MR. DEPUTY CHAIRMAN: The question is:

"That Dr. W. S. Barlingay be appointed to the Joint Committee of the Houses on the Bill to amend and codify the law relating to intestate succession among Hindus *vice* Shri Onkar Nath who has resigned his seat in the Rajya Sabha."

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1955

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, I beg to move:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Code of Civil Procedure, 1908, and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri K. P. Madhavan Nair
2. Shri Ram Chandra Gupta
3. Shri Braja Kishore Prasad Sinha
4. Shri Bhalchandra Maheshwar Gupte
5. Shri Jagan Nath Kaushal
6. Shri P. S. Rajagopal Naidu
7. Shri Ratanlal Kishorilal Malviya
8. Shri Lavji Lakhamshi
9. Shri S. Channa Reddy
10. Shri Akhtar Husain
11. Shri Rajpat Singh Doogar
12. Shri Satyapriya Banerjee
13. Janab M. Muhammad Ismail Saheb
14. Shri Radhakrishna Biswasroy
15. Shri Narsingrao Balbhimrao Deshmukh."

Sir, this is a Bill to amend the Code of Civil Procedure, *i.e.*, a Bill to amend the law relating to the procedure of the courts of civil judicature in our country. There are in all eighteen clauses in the Bill, and they cover about twenty-four changes proposed in the Code. They are of various types and I shall briefly explain them.

Section 133 of the Code authorises a State Government by notification in the Gazette, to exempt from personal appearance in court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption. The Rajasthan High Court in the case of Sher Singh V. Ghansiram, in 1954 has held his provision *ultra vires* on the ground that it offends against article 14 of the Constitution. The amendment proposed in clause 14 of the Bill seeks to amend the section so as to make it, beyond doubt, constitutionally valid.

Article 133 of the Constitution gives power to the Supreme Court to hear appeals from any judgment, decree or final order of a High Court, if the High Court certifies as laid down in section 109 Section 109 of the Civil Procedure Code, while providing for such appeals, only refers to appeals from decrees or orders, and not to judgments, decrees or final orders That is the slight difference between the two provisions Clause 12 of the Bill is intended to bring section 109 of the Code in line with article 133 of the Constitution

Section 39 of the Civil Procedure Code relates to transfer of decrees of one court for execution to another court Courts in former Indian States were foreign courts before the commencement of the Constitution on the 26th January 1950, and the decrees passed by those courts could not be transferred as a rule for execution to courts in the then British India nor could the decrees passed by courts in the then British India could as a rule be transferred for execution to courts in the former Indian States After the commencement of the Constitution and the merger of the States, this distinction is gone and all the courts in India are Indian courts In the conditions as they prevailed before the 26th January 1950, if a person, say, in a court in the State of Hyderabad filed a suit against a person, in, say, the State of Bombay, the person in the State of Bombay might choose not to appear in the court in the Hyderabad State for any decree passed against him in his absence was not capable of being transferred to any court in the Bombay State for execution, because it was a foreign court and he had not submitted to the jurisdiction of that court The person who obtained such a decree against him would have been required to file a suit on a foreign judgment in the State of Bombay and obtain a decree and then ask for execution of the same That would have given the person in the State of Bombay an opportunity to put forth his defence. Similar would have been the case with a person who obtained an *ex parte* decree in a court in the State of Bombay against a person in the State of Hyderabad It is inequitable under the circumstances that as a result of the merger of the States and the coming into force of our Constitution, such *ex parte* decrees should be allowed to be executed in territories where they could not have been executed before the 26th January 1950. It is only for this purpose that clause 5 seeks to add another sub-section to section 39 of the present Code of Civil Procedure These are the provisions which have been necessitated by the change in our Constitution or on account of certain changes in the administration of the country as a result of that Constitution

Clauses 2 and 3 are very simple Clause 2 wants to limit the rate of interest which a court can award on the decretal amount to 6 per cent per annum and clause 3 takes away the power of the courts to award interest on costs I think this is consistent with our present ideas of social justice and the changed economic conditions

Then under section 60 of the Code, the future salary of a debtor is exempt from attachment to the extent of the first one hundred rupees and one-half of the remainder This is intended to enable him to maintain himself and his dependents But if his wife or other dependent has obtained a decree for maintenance itself against him, there is no justification for any such liberal exemption, because it has been noticed that in many cases maintenance decrees themselves could not be executed because of this large exemption for which there is no necessity This exemption was more or less only to enable him to maintain himself and his dependents In such cases, this liberal exemption causes hardship to those for whom this provision was made Clause 7 seeks to remove this anomaly.

[Shri H. V. Pataskar.]

Section 35A of the Civil Procedure Code was introduced in the present Code by Act IX of 1922 to enable the court to award compensatory costs in respect of false or vexatious claims or defence but only in cases where the objection had been taken at the earliest opportunity. It has been found by experience that this serves as a check on the court, even though the court is inclined to grant compensation because the claim was false or vexatious. Experience has shown that to achieve the object underlying this provision, *viz.*, to prevent false and vexatious litigation, the powers of the court in these matters should be so enlarged as to enable the court to award such costs whether objection had been raised by the party at the earliest opportunity or not and also in cases where the court regards it as just to do so. It has also been found necessary that such a provision should apply not only to suits but also to execution proceedings, because in execution proceedings also there may be false or vexatious claims or defence. Clause 4 of the Bill therefore seeks to amend section 35A to that extent.

Sections 68 to 72 provide that under certain circumstances execution of decrees by sale of immovable property may be transferred to the Collector, and there are connected provisions in the Third Schedule of the Code also. This might have served some useful purpose in case of decrees by money-lenders against ignorant and needy agricultural debtors in the past, in spite of the fact that such transfers to Collectors led to inordinate delays in the execution of decrees. But this was not a solution of the problem of agricultural indebtedness. The problem is already being solved in a positive manner—and must be solved in that manner—and on a definite basis by different States. Social and economic conditions have so changed that it is no longer necessary to continue these provisions even for this limited purpose. At this stage I may point out that this practice of transferring decrees for execution to the Collector in respect of immovable property is not prevalent in all the States but only in some States—some major States, like Bombay, U.P., Punjab etc. The Collectors were not so overworked with other duties before as they are now, and they can hardly find time to attend to this work. If we look to what the Collectors have to do in the present day, we will find that they have become more or less, Social Welfare Officers rather than Collectors of revenue. Under the circumstances, it is desirable that this work of execution should now be restored to the courts themselves. I feel confident that the courts will carry out this work which is primarily theirs promptly, justly and with due consciousness of their added responsibilities as judges in the new setup of things. It is, therefore, proposed by clauses 8 and 17 of the Bill that sections 68 to 72 of the Code and the Third Schedule should be altogether omitted from the Code of Civil Procedure.

Order XXXVII of the Code lays down a summary procedure for trial of suits on negotiable instruments in the High Courts of Bombay, Calcutta and Madras. These were at one time the main centres of commercial activity. As we know, at one time the courts established in the towns of Bombay, Calcutta and Madras were governed by what we know as procedure on the Original Side and it was a very complicated one. Special provision was made subsequently that so far as trial of suits on negotiable instruments was concerned there was to be summary procedure which was prescribed. This is so because it has been the common experience that in the case of suits on negotiable instruments in places like Bombay, Calcutta or some other commercial place—suppose a suit is decreed after a good deal of time—by the time the suit is decreed, the firm which obtained the decree might have become insolvent; because in commercial matters things happen far more quickly than in the case of rural areas where

matters are more stable. So the idea now is that this summary procedure may be made applicable to other places of commercial importance also. For instance, in the State of Bombay, Ahmedabad city, as you know, has a lot of commercial activity as Bombay city and there is no reason why the same procedure should not be followed in such a place as Ahmedabad. It was, therefore, proposed to adopt the same procedure in other places also and special judges specifically mentioned in the Order would exercise these powers in particular places. That is the object of clause 16 (8) of the Bill.

Section 92 relates to public charities. It is now proposed to amend it by clause 10 so as to make it clear that in the same proceedings, the court can direct restoration of the trust property to the new trustee from the former trustee who has been ordered to be removed. The difficulty was that in the case of a trustee who has been removed from trusteeship and certain other person, appointed as trustee, there was no power given to the court to order in the same proceedings that the property should be handed over to the new trustee. It leads, therefore, to another suit being filed and that means so much more time and litigation. And this, practically, defeated the purpose for which the provision was made. Therefore, it is now proposed that the same proceedings will remove one trustee from trusteeship and hand over possession of the trust property to the new trustee.

Section 47 of the Code is an important section intended to prevent multiplicity of proceedings and consequent delay in settlement of disputes. It has, however, been found to be the subject matter of widely different interpretations by different High Courts regarding the question whether a purchaser at a sale in execution is a party to the suit and if so under what circumstances, and what is the position of the decree-holder when he is himself the purchaser at the auction-sale with the permission of the court. All these doubts are proposed to be set at rest by the amendment to this section proposed in clause 6 of the Bill. It is also made further clear that the principles of *res judicata* provided in the case of suits under section 11 of the Code will apply to execution cases. I know that though section 11 concerning *res judicata* applies only to suits, many courts have held and have applied the same principle to other cases by analogy. However, as we know, it is much better to make a specific legislative provision of this sort rather than leave it to the discretion of the court. It is from that point of view that it is sought to effect this change in this Bill.

In regard to suits cognisable by the Court of Small Causes, there is provision in section 102 of the Code that there shall be no second appeal in respect of claims not exceeding Rs. 500. In view of the economic and financial changes and the prevailing price-structure, it would be appropriate to increase this limit from Rs. 500 to Rs. 1,000. That is proposed to be done by clause 11 of the Bill. In this case, it has to be remembered that we are going to make this provision only in respect of suits which are cognisable by Courts of Small Causes —mostly money claims and similar claims. Formerly, it applied to claims up to Rs. 500 and now it is proposed to raise the limit to Rs. 1,000. I do not think this is going to cause hardship to anybody. On the contrary it will reduce the number of second appeals which are unnecessarily being filed in High Courts and many such appeals are being rejected. It will also prevent unnecessary harassment.

Under the existing provision in section 115 of the Code, the High Court has no revisional powers regarding cases decided by subordinate courts wherein appeal lies to the High Court from that decision. But there are subordinate courts from whose decisions appeals do not lie to the High Court, but they do lie to other superior courts. In such cases where appeal lies to a superior court, there is no

[Shri H. V. Pataskar.]

reason why instead of resorting to that remedy the litigant should be allowed to approach the High Court direct in revision at that stage. Clause 13 restricts the revisional jurisdiction of High Courts in respect of cases where the aggrieved party has a remedy by way of appeal to any court.

For the sake of those hon. Members who may not be lawyers, I would like, at this stage, to explain to them that this is not in any way an attempt to curtail any of the powers of the High Court. Suppose there is an appeal to the High Court from, say, a court of civil judge, in the State of Bombay. In that case even now there is no revision appeal. There are, however, courts, junior civil courts and from there there is appeal to the senior civil court, and in that men are normally to be asked to go to that appellate court. There is provision for that and there is no need to run with a revision petition to the High Court. The same principle is still recognised in the case of those courts in which the appeal lies with the High Court, not the cases where the litigant concerned has already a remedy in another court. I have found by experience that there are some hon. Members who probably take the view that we are somehow or other curtailing the power of the High Court. That is not so; on the contrary, we are trying to fulfil the principle which already exists so far as this point is concerned.

Section 144 of the Code enables the court to order restitution in case of decrees. Clause 15 will enable the court to order restitution even in the case of orders. The point is this. There is provision in the Civil Procedure Code that once a decree is passed and possession is taken by the party and that decree is reversed, the possession is reversed too. But when an order is passed, for the possession to be transferred, there is no provision. It stands to reason, equity and justice that even in the case of an order, whenever the order is reversed there should be power given to the court to order restitution of the transfer. That is proposed to be done by the provision, in clause 15 of the Bill.

Avoiding service of summons or notice is a usual method adopted for delaying civil proceedings. It is a common thing that in many cases people avoid the service of summons and the matter drags on and then we complain of a great deal of pending trials. By the by, I may inform the House that the other day I came across, not a civil but a criminal case in a court in Bombay where the warrant could not be served on a person in Punjab from 1948 to 1955. That shows the efficiency with which people avoid the service of summons. And that relates to a criminal case and you can imagine what it can be in the case of a civil summons. So we want to make a provision that if ordinarily certain summons could not be served, then power should be given to the court to have the summons sent either by post in addition to or in substitution of the usual method of serving summons. This is intended to curtail the time and to counter the activities of those who want to evade the service of summons.

Then again, a good deal of time is taken up in proving documents. It may be argued that in the Civil Procedure Code there is provision in Order III, rule 2, whereby the pleader can give notice to the other side to admit documents. But usually it is found that in the courts in the mofussil this practice is not followed.

MR. DEPUTY CHAIRMAN: Are you likely to take some more time?

SHRI H. V. PATASKAR: Yes.

MR. DEPUTY CHAIRMAN: Then we shall continue after lunch.

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

The House reassembled at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI H. V. PATASKAR: Sir, the point that I was making in the morning was with reference to the amendment regarding the trial proceedings. At the present moment, a lot of time is spent in trying to prove the documents. What happens is that documents are produced by the parties and if steps are not taken to see whether they are admitted or not at the earliest opportunity by the courts concerned, at the time of the hearing a lot of difficulties arise as to whether a particular document has been accepted or not and time is taken in trying to prove them. On the contrary, it has been experienced as a result of the working of the Original Side in Bombay and Calcutta that the solicitors, practically, do this kind of work and, in that manner, some of the time is saved. I know that the Original Side has also got its evils but so far as the question of proving the documents is concerned, it is very easy. In order that there should be some definite provision, the court has been given power to call upon parties to admit or not to admit documents produced in the case and to record such admissions. We expect the courts to follow this so that there will be saving in time and expense also. Another important change is the one made to encourage parties to keep their witnesses present in court at the trial.

Very often judgments are delivered long after the hearing has been completed and arguments heard. This is highly unsatisfactory. Provision is being made that judgments shall, as far as possible, be delivered immediately after the hearing is completed. I know that the courts as they are working in the mofussils cannot possibly immediately deliver judgment in a very contested case but, at the same time, it must be borne in mind that to deliver judgment after a good deal of time practically means deciding the matter when probably the Judge has forgotten what both sides have been saying. So, there must be some sort of a time limit; you cannot expect, as in the High Courts, that judgments are delivered immediately after the hearing but, at the same time, in order that their attention may be drawn that, as far as possible, judgment should be delivered as quickly as possible, we have given some indication. It is very difficult to lay down any particular time but what we are doing is to give a sort of indication and that is done in clause 16. Therefore, provision is made that judgment should, as far as possible, be delivered after the hearing is completed. In many cases, what happens is this. Suppose the Judge feels that he cannot deliver judgment. It is necessary that he should fix a date for it, two weeks or one week hence or whatever the period may be. Often complaints are received that the client did not know when the judgment was delivered. Therefore, provision is also being made in that clause that the court shall fix some date on which it proposes to deliver judgment.

These are the main proposals and they are non-controversial in nature. However, I have tried to analyse them and they fall into the following categories. There are some, namely, clauses 5, 12 and 14 which have been necessitated by the change in the Constitution; there are others which have been found necessary by the working of the Code, namely sub-clause (10) of clause 16; there are those rendered necessary by change in ideas of social justice and economic conditions and these are contained in clauses 2, 3, sub-clause (7) of clause 16 and clause 7; there are those intended to make further and wider provision to prevent vexatious claims and defence and they are contained in clause 4; there are some amendments intended to make provision for speedier disposal of execution proceedings and they are contained in clauses 8, 17, sub-clause (5) of clause 16; there are then those relating to summary trials in regard to negotiable instruments. We have given power to the State Governments to invest special courts with powers to hear suits and follow the summary

[Shri H. V. Pataskar.]

trial procedure which are prescribed therein. This is now followed in Bombay and Calcutta. There are provisions to prevent multiplicity of proceedings and they are contained in clauses 6, 10 and 15; I have already referred to them. Then there are provisions to reduce avoidable litigation in the matter of second appeals and revision applications to High Courts. I have referred to them also. Lastly, there are those to expedite disposal of suits without affecting the efficiency of administration. Practically, these are the nine simple objectives with which all these amendments are brought forward in this Bill. It will thus be seen that the amendments, though non-controversial, are urgent and will lead to the achievement of the nine objectives for which they are intended. I have analysed almost all the provisions which are there. Though simple, I hope and trust that they will lead to speedier justice at any rate.

It may be argued as to why it is necessary, especially when we have appointed a Law Commission, to bring forward such a Bill as this. That would probably be a common argument and I want to say this. As a matter of fact, there has been dissatisfaction in the public mind about the increasing dilatoriness and complications in the administration of civil justice. I have analysed the main objectives without affecting the fundamental system of administration and I think all these objectives are likely to be served by the amendments that are proposed. It is true that delays are due not merely to defects in procedure, but also to other causes like the proper functioning of the judiciary, their earnestness to avoid delay, their efficiency in grasping the complicated problems which come before them and lastly, their correct approach and anxiety to decide the matters without undue delay; but with due regard also to the ends of justice in arriving at as correct a decision as is humanly possible. I can just say from my experience over a period of 35 years as a practitioner in the civil courts that I have seen even in the present civil courts, Judges who have been able to dispose of cases quite quickly; on the contrary, there have been instances in which there were inordinate delays. So, it is not merely a question of amending the procedure itself. The procedure is only a guidance, an indication for people to take action. Therefore, I would not claim that merely because you pass this Bill, immediately there will be speedier disposal of suits. At any rate, it will obviate certain of the complications and causes of delay which is the object of bringing this Bill forward. For, we know that justice delayed in many cases is as good as justice denied; it is equally true that mere speed will also, in many cases, end in defeating the very cause of justice itself. Therefore, the task is very difficult. I cannot say that the cases should be disposed of within a particular time because it might be said that injustice is being done for the matter of speed; at the same time, there might be injustices on account of the delays also. Therefore, it depends on many factors one of which is the procedure.

The problem of the administration of civil justice is a very delicate and complicated problem, but in its proper solution lies the well-being and contentment of the common man. He does not understand the provisions of the substantive law, this and that; but he knows that he has got to get justice quickly and he must get it cheaply. In view of the changed circumstances, the whole system of civil judicial administration should be overhauled. I mean that there is a case for overhauling the entire civil judicial administration. This is a matter which involves a detailed consideration of various problems of far-reaching consequences. It can only be undertaken after a very careful investigation and after a very thorough comparison with many other systems. Such a change must naturally be left to be enquired into by

the Law Commission which has already been announced, but the task of such a Commission is, in its very nature, not only arduous but also very wide in its scope. I know that there was also a Commission appointed in England in 1947 but up to now —so far as my information goes—not much has been done in respect of the question of overhauling the whole system of judicial administration. I do not mean to say that our Commission also will take such a long time, but in the very nature of things I find that they cannot deal with only the civil procedure. They will have to deal with the Evidence Act and so many other substantive laws and all that which, in its nature, is bound to require some time. They will naturally, I expect, take some time to make their report and even when that report is submitted it will take considerable time before the recommendations contained in that report are implemented. The process of legislation in a democracy of the Parliamentary type is inevitably a slow process. There is, therefore, no justification for withholding legislation regarding these proposed amendments till such time as we are able to overhaul the whole system of civil judicial administration after the report of the Law Commission. I think, therefore, we can proceed in these things.

There is, therefore, no reason why we should not try to improve the present procedure of administration of civil justice in matters like those which are covered by this Bill and which I have already tried to explain. Then again there is another justification for this Bill and it is this. During the last many years, various committees had been set up by the Central and State Governments from time to time to consider this problem. There was the civil justice Committee appointed by the Government of India in 1924 under the chairmanship of Justice Rankin. That Committee submitted its report, I think, in 1925. The Government of Uttar Pradesh set up a Judicial Reforms Committee in April 1950 under the chairmanship of Justice Wanchoo who is now again a Member of the present Law Commission. That Committee submitted its report in 1951. The Government of West Bengal had also set up a similar Committee. To my mind, if we go on further waiting, without carrying out any of the suggestions which are contained in the reports of these bodies, for this Law Commission, I think even the simple amendments also will not be effected, with the result that whatever relief we can give to the people will be delayed.

Then again what I wanted to say is that there is difference between the subtantive law and the law of procedure. When you have to change the substantive law, naturally it involves so many consequences and, therefore, though it may not be called permanent, it has got greater stability than the procedural law. I would just explain to the House as to how the present Civil Procedure Code itself, its very nature of being procedural law, does require changes from time to time in order that it should conform to the changing conditions of society in all its aspects. Therefore, I would give you a brief history of this legislation itself, which will show how it is necessary—leaving aside the overhauling of the whole system—that it must undergo changes from time to time to suit the changing conditions.

The first Code of Civil Procedure enacted in our country was the Code of 1859, being Act VIII of that year, and that applied only to what were then known as Mofussil Courts and did not apply to the then existing Supreme Courts and the Courts of Sudder Diwani Adalat in the Presidency Towns of Bombay, Madras and Calcutta. These courts were subsequently abolished by the High Courts Act of 1861 and the powers of these courts were vested in the Chartered High Courts. The Letters Patent of 1862 establishing these High Courts extended to them the procedure of the Code of 1859. So in order to make

[Shri H. V. Pataskar.]

it uniform this period between 1859 and 1862 was spent. Then the Charters of 1865 empowered the High Courts to make Rules and Orders regulating proceedings in civil cases, but required them to be guided, as far as possible, by the provisions of the Code of 1859. This Code was amended by some ten amending Acts between the years 1859 and 1872 and was ultimately replaced by the Code of 1877. This Code was again superseded by the Code of 1882 after being amended twice in the years 1878 and 1879. This Code of 1882 was amended some fifteen times between the years 1882 and 1895. Ultimately, after an exhaustive enquiry, the present Code of Civil Procedure was passed in 1908 replacing the former Code of 1882. And realizing all these difficulties they tried to put them into sections and Orders with the result that the Orders could be modified by the High Courts from time to time and sections could be modified only by the different legislatures. However, the result had been that it did not lead to uniformity in the first place and in the next place, even after doing that, it had to be amended so many times. For instance, the present Act of 1908 has been amended some thirty times or more and that too, as often as it was found necessary to do it, but the main form and features have been maintained. In its very nature, the law of procedure is such that it does require amendments from time to time with the conditions changing or difficulties experienced. After all, this is only amending the law of procedure. You do not thereby affect the substantive law. It is altogether a different matter.

This brief history will show how, in the matter of mere procedure, changes have to be effected often to suit the varying conditions from time to time. It would not, therefore, be in public interests to wait for the complete overhauling of the system itself and amendments are necessary to make even the present procedure more suitable. That is the object of the present Bill.

There is a general feeling among certain sections of the public in this country that 'procedure' is a 'fetish'. Whether this feeling is justified or not, it is difficult to say. It is true that procedure must not be allowed to override or obstruct legal rights, but after all procedure is, in a sense, "the machinery of law" and must be properly applied and so maintained that it can effectively, speedily, and usefully carry out the purpose of law. Therefore, this machinery must be always oiled and made clean and whatever changes are necessary must be effected. It is from this point of view that the present Bill has been brought before this House.

As already stated, some amendments have become necessary in order to bring some of the provisions of the Code in line with the provisions of the Constitution. Some have also become necessary in order to delete some rather obsolete provisions which serve no useful purpose, and the rest are intended to avoid delays, to prevent frivolous litigation and to avoid multiplicity of proceedings. The proposed provisions, though not far-reaching, have become necessary and will serve a useful purpose. They are simple and mostly non-controversial. I can assure hon. Members that I have carefully considered the question whether these amendments now proposed would in any way affect the ultimate decision we may have to take after the report of the Law Commission is received and I am convinced that they would not, because, as I said, while doing this I have taken into consideration the various reports which we got from the different High Courts and I can say that the provisions are so non-controversial, so useful that, I think, none of them has raised any objection. On the contrary, most of them have welcomed it. We have also consulted the State Governments and, as I said, we have also taken into consideration the various reports right from 1925 up to date. We have tried, as far as possible, not to make such changes which would come into conflict with what the Law Commission may recommend later on. This I hope will not come in the way of

the machinery that the Law Commission may propose. On details so far as I can think about them, I think that is likely to take very long. That has been the experience not only in our country but in England also. There also there has been a Commission appointed like this in the year 1947 and this is the year 1955 and I do not know whether it has yet reported. As I said, the process of legislation in a Parliamentary democracy is bound to be slow and there is no reason why we should wait if we can give some relief to the public till at least the problem is solved on a higher basis. It is from that point of view of giving as much relief as we can to the people that this Bill has been brought and I hope that it will meet with the acceptance of you all.

With these words I commend my motion to the acceptance of this House.

MR. DEPUTY CHAIRMAN: Motion moved:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Code of Civil Procedure, 1908, and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri K. P. Madhavan Nair
2. Shri Ram Chandra Gupta
3. Shri Braja Kishore Prasad Sinha
4. Shri Bhalchandra Maheshwar Gupte
5. Shri Jagan Nath Kaushal
6. Shri P. S. Rajagopal Naidu
7. Shri Ratanlal Kishorilal Malviya
8. Shri Lavji Lakhamshi
9. Shri S. Channa Reddy
10. Shri Akhtar Husain
11. Shri Rajpat Singh Doogar
12. Shri Satyapriya Banerjee
13. Janab M. Muhammad Ismail Saheb
14. Shri Radhakrishna Biswasroy.
15. Shri Narsingrao Balbhimrao Deshmukh."

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, I rise to support this motion for reference to a Joint Committee of the Code of Civil Procedure (Amendment) Bill 1955. I am aware that it is a very short Bill consisting of only 18 clauses, unlike the Code of Criminal Procedure (Amendment) Bill which practically overhauled the whole of the procedure in regard to the administration of criminal law in the country. I wish that some similar attempt had been made with regard to the Code of Civil Procedure as well. I think it has been argued in the other House that as the Law Commission has been appointed and as it will be shortly going into all these matters, therefore, we might as well wait until we receive the report of the Law Commission.

In the first place I find that the Law Commission is divided into two branches; one is to look into the administrative side and the other into the substantive and procedural law. And the time that is allowed to the Law Commission is hardly one year. I do not think anybody can overhaul the procedural law as well as the substantive law of this country during this short period. It might take ten years It is a very difficult problem.

Now, the Code of Civil Procedure is a very big Code—one of the biggest Codes probably in the world—very well drafted in a very artistic manner. I think there have been many Committees on this. At least in my own Province of Uttar Pradesh there was a Committee that went into all these matters in great detail. I have got a copy of that Committee's report. This Committee, called the Judicial Reforms Committee, was presided over by Mr Wanchoo, who is now the Chief Justice of the Rajasthan High Court. Sir, I also find from the names of the people who have been appointed members of the Law Commission that two of the members of the Law Commission

[Shri J. S. Bisht.]

were actually members of this Committee, namely, Mr. Wanchoo himself and Mr. Gopal Swarup Pathak, *ex*-Judge of the Allahabad High Court. Besides, there were one or two other High Court Judges who were members of this Committee. In their report—it is a very good report—they have recommended many changes which I think should have been incorporated in this amending Bill. Some of those recommendations have no doubt been incorporated. For instance, I find that the recommendations contained in pages 31 to 36 of this Committee's report have been incorporated here in this amending Bill but I would like to draw the attention of the hon. Minister in the Ministry of Law that Chapter VI of this report has been completely ignored. It deals with Order XXI of the Code of Civil Procedure and certain other rules 42, 47 and 47A. These are very important recommendations and I think they should have been incorporated here. I hope that in the Joint Committee this point will be pressed. At least I would request Mr. R. C. Gupta, who is a member of the Joint Committee, to press these points so that these recommendations which have been made after having thoroughly gone into the whole matter may be incorporated in this amending Bill.

Looking at the Bill itself, I find that in clause 4 some improvement has been made with regard to compensatory costs. Compensatory costs were allowed only if at the very first instance objection had been raised that cost should be awarded in view of the vexatious nature of the suit. But actually it became a general practice to take plea under 35A with the result that hardly in one out of a thousand cases the court awarded compensatory costs. Anyhow an improvement has now been made and even if an objection had not been made at the beginning, it can be made even at a later stage, in fact even at the stage of execution proceedings. This is an improvement because it will enable the trial courts to find out how far this suit was of a frivolous or vexatious nature.

I think clause 5 is merely consequential and *ex parte* decrees passed in the Princely States will not be executed here.

Clause 6, which has also been recommended by the Wanchoo Committee, is very wholesome because the principle of *res judicata* has now been extended to execution proceedings also.

Now, with regard to maintenance, in the case of maintenance decrees it is proposed that as much as two-thirds of the income can be attached in execution of the maintenance decree.

With regard to clause 8, I heartily welcome this clause. It deals with sections 68 to 72 of the Civil Procedure Code. Previously, the Collector was usually the person to whom decrees with regard to the sale of immovable property were sent for execution. As the hon. Minister has stated, the times have changed. These Collectors are very busy now and the decrees that are sent to them take a lot of time for execution. That is quite true. That is a fact and I hope this lesson will be borne in mind by the Government and that they will relieve these Collectors of various other functions that were heaped on them in those days when they were merely carrying on the duties of a Police State. Under the new dispensation with these Five Year Plans that are being carried out, I believe the Collectors will be practically the linchpin of the whole development programme and I hope that the Government will take courage to relieve them also of their ministerial functions and Police functions so that they devote their whole time, mind and heart to the development work which is really suffering now. The Collector merely signs papers and attends some meetings. These development programmes are so important that they should put their heart and mind into this work. Then alone there is likely to be success and I hope that this principle that has been adopted in this amending Bill will be adopted in other places as well.

Then there are certain other points which are merely of a routine nature

and which do not require much time. There is, however, one point to which I wish to draw the attention of the hon. Minister. In sub-clause (3) of clause 16 it is said:

"in Order XVI, after rule 1, the following rule shall be inserted, namely:—

"(1A) 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."

This is a very wholesome change and it will be very helpful. The difficulty has been that the parties are very anxious to bring these witnesses with them. This will be useless in actual pratice unless you attach a proviso to it, as was done, for instance, in the case of the Code of Criminal Procedure in which we provided that an accused could offer himself as a witness but we also provided a proviso that if he did not do so, no presumption would be taken against him. And unless you provide a similar proviso here that no presumption will be made against such a witness by the court, there will be the same difficulty. Because what happens today is this. A witness is brought—people coming from a distance, say, 40 or 50 miles, especially in the hilly areas bring witnesses along with them—and after his arrival a sort of summons is taken. But the moment that person comes into the witness box the first question that the Defence Counsel puts him is: "Where did you receive the summons? At home?" and he has to answer "No". And then in an argument the

3 P.M.

plea is that this witness is in the pocket of the party.....

SHRI H. V. PATASKAR: It is for that purpose that this provision has been made so that hereafter, we have laid down in the section itself, the man may produce such a witness, but no such inference is to be drawn.

SHRI J. S. BISHT: It would be better if you make a definite provision that no lawyer can put in an argument to ask the court that a presumption should be drawn against that witness merely because there was no summons, that is to say, he is a sort of witness who is at the beck and call of the party. That sort of presumption should not be made. But unless you put in some such provision which is definite and positive, this will become a dead letter. Every time you bring the witness you spend all the money, you put him in the witness box, and then the argument is made that this witness is in the pocket of the party. He came here without being summoned, probably he had no work at home and he came along; so much importance should not be attached to his evidence. So, we should put down some such provision, because when a witness is put in the witness box it is open to the other party to cross-examine him and to prove that he is speaking a lie. That is quite reasonable, but merely because there was no summons or warrant for him, should not go against him with regard to his veracity. This is very important; otherwise, I am afraid that in eighty to ninety per cent. cases it will become again a dead letter. Even today they are being brought there without summons. Again and again the plea is there and many courts, especially the inexperienced courts like the Munsiff's Court immediately take the presumption: "This witness was not summoned and, therefore, we need not attach any importance to what he says."

There is another provision, Sir, which also requires a little clarification. In clause 16, sub-clause (8), it says:

"in Order XXXVII, in rule 1, after clause (a), the following clause shall be inserted, namely:—

"(b) any District Court or other Court specially empowered in this behalf by the State Gtvernment;".

[Shri J. S. Bisht.]

This refers to a summary procedure about those negotiable instruments. Today not much advantage is taken of it; but it is a very important thing. It will greatly facilitate the work, but the difficulty which I wish to point out and which was pointed out by that other Committee also is: What will happen with regard to 'limitation'? Under article 5, of the first Schedule of the Limitation Act, the limitation is only for one year; whereas under the ordinary procedure it is for three years. So, either you bring in a sort of additional clause in it that "for this purpose the limitation be extended to three years", then, of course, it becomes an improvement and everybody will take advantage of it. Otherwise, the difficulty is there; if it is 'one year', he has got no choice. Even if he wants to file a suit under the Negotiable Instruments Act, and if he wants to take advantage of it even in the Court, District Court, he is again bogged down by that difficulty, namely, after the lapse of one year he has to go to the ordinary court. And so, unless you bring the period of limitation on a par with that provided for the regular suit, people will not be able to take advantage of this summary procedure and I think it is very necessary that in these cases a summary procedure should be provided, especially in matters of negotiable instruments.

Then, with regard to sub-clause (9) (b) of this clause 16, I was not able to follow this language which says:

> "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."

Why is so much emphasis laid on the question of "shall reject the application"? A man appeals *in forma pauperis*. Once you admit the appeal it must be on a par with such appeals. Why should there be such discrimination? Either you allow the appeal *in forma pauperis* or you do not allow it Once his suit is admitted, then it should be put on the same footing as a regular suit, the suit of one who has paid the full court fee. There should be no special provision for that purpose. And then it should be governed by the ordinary law of appeals. The appellate court shall have power to accept, reject or modify after hearing the appellant. No special provision is needed in this case.

With these remarks, Sir, I wholeheartedly support this Code of Civil Procedure (Amendment) Bill and I hope that the Joint Committee will further expand it, and bring in those other recommendations that have been made by the Wanchoo Committee, especially with regard to execution proceedings which is a matter of great trouble in the courts, and in which too much delay takes place, because there is a proverb in the Civil Court that a decree holder's troubles begin after the decree. It is all very easy to get a decree; but to execute it becomes a problem. So many delaying tactics are adopted. Therefore, it is very important that this Order XXI, etc. should be very thoroughly gone into and corrected. With these remarks I support this Bill.

KAZI KARIMUDDIN (Madhya Pradesh): Mr. Deputy Chairman, I welcome this Bill because there is no doubt that it is an improvement on the old Code, but there are several matters which ought to have been included in this Bill and which have not been included. For instance, according to article 15 of the Constitution discrimination between sexes has been removed, but section 56 of the Civil Procedure Code exempts women from being arrested. Why should it not be included in the Bill? Then, adjustment of decrees is a remedy given to the

decree-holder. There have been several instances which have been brought to the notice of the courts that decree-holders have failed to apply to the court for adjustment of the decrees even if there are payments. In this Code there is no provision for a penalty for not showing the payment by the decree-holder. I think this could have been included very easily. Then, increase of the amount of five hundred rupees to one thousand rupees under the jurisdiction of the Small Causes Court without a right of second appeal, in my opinion, will be very risky, because the amount of one thousand rupees is not an ordinary sum in the case of poor people.

SHRI H. V. PATASKAR: No second appeal will lie.

KAZI KARIMUDDIN: That is what I submit, that second appeal should be allowed. Even in the case of suits of the value of one thousand rupees, it is a very big amount for poor people.

The procedure on application for admission of appeal, according to me is faulty and defective, because in this provision it is stated that, "The Appellate court...upon a perusal of the application and of the judgment and decree appealed from, shall reject the application." Now, what about the records of the case, the evidence and the pleadings? Suppose the Judge does not call for the record and there are several matters which are not referred to in the judgment and decree, then the application for filing this appeal has to be rejected because some points are not mentioned in the judgment and decree. If the Judge refuses to enter into any discussion on the basis of the evidence and the pleadings, he can reject the application, if there is no mention of that matter in the judgment itself, because the words used here are "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." Now the question whether it is erroneous or unjust will be judged from the evidence that is recorded, and there is no provision to look into that evidence. So, my submission is that this procedure, to say the least, is highly defective and is wholly erroneous and faulty.

Then, Sir, in regard to the security for costs, my submission is that sub-clause (6) (2) of clause 16 is very wide, very indefinite and very arbitrary. That sub-clause reads as follows:

> "Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1)."

What is the legal basis for this? What are the factors stated in the law which should lead to the conclusion that he is not in India? This is going to be a very arbitrary provision of law in which anybody can make an application saying that a particular man is going and will never return. So, in every case security will be taken. I make an earnest appeal to the Minister in charge of this Bill to find out a legal basis and to put down factors in law which should lead to a conclusion that a particular man is not returning to India.

Then, I bring to your notice the provision regarding production of witnesses without summons through court. I really do not see what is the new principle involved in this provision. Witnesses named in the list could be produced even before this amending Bill. As it has been stated, there may not be an adverse inference against the parties that they are the tools or hirelings of the parties producing them. Unless there is a proviso attached to this, it is meaningless, because witnesses could be produced at any time even today. But you want to curtail the delay that is caused in the proceedings.

SHRI H. V. PATASKAR: When we have this provision that a party is

[Shri H V. Pataskar.

entitled to bring a witness without a summons, I think no such adverse inference can be drawn, and that is the only object with which this provision is being made.

KAZI KARIMUDDIN: Making of laws is one thing, and interpretation of law is another thng. If a witness is produced without summons the adverse inference will be that he is a tool in the hands of the litigant. That is my contention. So, unless there is some proviso attached to this, my submission is that nobody can prevent the law courts from coming to an adverse finding that this witness was produced as a tool in the hands of the litigant.

Then there is one provision in this Bill, which according to me is a great hardship to the Government servants. And that is clause 7 of this Bill. It is stated that in the case of maintenance proceedings two-thirds of the salary of a Government servant can be attached. Let us take for instance that a Government servant is getting Rs. 300 as salary. And if two-thirds of that salary is attached—we may have very great sympathy for ladies and children—he gets only Rs. 100. (*Interruption.*) Can he maintain his position with that Rs. 100? And, can he be efficient? Can he be prevented from being a corrupt Government servant, if two-thirds of his salary is attached in this way? In my humble opinion, the old provision about the attachment of one-third of his salary was very wholesome. But this has been done because of the unjustifiable sympathies for women and children, which has become a fashion.

With these remarks I conclude my speech, and I hope that the suggestions that I have made will be considered by the hon. Minister.

SHRI H. C. MATHUR (Rajasthan): Mr. Deputy Chairman, in fairness to the hon. Minister for Law it must be conceded that it was not possible for him to bring forward any comprehensive amending Bill in the existing circumstances. And it is only correct that only after a report is submitted by the Law Commission that has been appointed we can expect a comprehensive Bill. But, Sir, I have no hesitation in saying that our expectations and hopes have definitely been belied by the Law Ministry. They have given a very poor account of themselves in bringing forth this amending Bill as they have done. The Circular Letter which was issued by the hon. Minister for Home Affairs for the amendment of the Criminal Procedure Code as well as the Civil Procedure Code—the Circular which was sent round to all the Judges and Advocates—definitely envisaged that an amending Bill would come forth, which would be much more comprehensive than what we have before us today.

SHRI H. V. PATASKAR: That was before the question of the appointment of a Law Commission was decided upon.

SHRI H. C. MATHUR: Sir, I think that the question regarding the appointment of the Law Commission has been before the country for a very long time, and I might point out that the Home Ministry has made absolutely no secret of the fact that there has been utter dissatisfaction in the country regarding our substantive laws, about the delays of the procedure which are responsible for such a state of affairs in the judicial administration. And, if anything, we have a complaint against the Ministry as to why they should not have appointed a Law Commission much earlier than this. Even apart from this, as I submitted, Sir, though we expected a comprehensive Bill only after the submission of the report by the Law Commission, we welcome any attempt on the part of the Government to bring forward any amending Bills which will introduce immediate reforms, of which we can take notice. And as such, we are welcoming this Bill. But when I say that we welcome this Bill, we do expect from the Government that whatever material is there in their hands already will be used by them. No proper account has been taken of the material already in their hands. That

is exactly the complaint not only by me, but also by the two preceding Members who have spoken on this Bill This is the complaint which has been voiced in the other House also, and it is exactly my complaint that we have not taken into account all the material before us My further complaint is that I do not see why the hon the Law Minister should have been more conservative than even the hon the Home Minister While dealing with the other Bill, he said that he did not want to limit the scope of the Joint Committee, when it was forcefully put to him by the Members that the scope of the Joint Committee should be enlarged and that the Joint Committee should be permitted to go into the other provisions of the Code and make suggestions if any urgent reforms could be made There is absolutely no reason why the Law Minister should be so conservative regarding this Bill. We know and we have it from the Law Minister also that it would be a very long time before we have the report of the Law Commission That is all the more reason why we should take into account all the material before us and the scope of the Joint Committee should under no circumstances be limited Members speaking in the other House cited sections after sections and suggested where we could make certain definite changes. I do not see why the Law Minister should not agree to the Joint Committee going into all these matters taking into account all the material before us and also taking into account the suggestions that the Members of both Houses are making Why should we insist on this report being made before the 9th September? I think this is unfair Let the Joint Committee be allowed a much longer time No useful purpose is going to be served by the report being submitted before the 9th September, because we cannot put through this legislation during this session If you allow the Joint Committee another two months' time, nothing will be lost If we give another two months to the Joint Committee, we will be giving that Committee an opportunity to incorporate in this Bill further amendments which will not otherwise be before the House for a much longer time I, therefore, strongly urge that the scope of the Joint Committee should not be limited and that it should be permitted to touch upon the other provisions of this Code.

SHRI H V PATASKAR It is not 9th September but 15th November The target of 9th September was in connection with the other Bill, the Hindu Succession Bill

SHRI H C MATHUR I am sorry. I stand corrected If the report is to be submitted by the 15th November, it is all the more reason why the Joint Committee should be allowed to go into the other provisions also, because it has a much longer time before it If we ask for the report to be submitted only on or before the 15th November, why should we circumscribe the scope of the Committee? By saying that the report is to be submitted only on or before the 15th November, you are only strengthening my hands, and you should accept the suggestion which has been voiced in both the Houses not to limit the scope of the Committee

Sir, the speech of the hon. Minister is really very depressing When it was put to him that it was not by merely amending the Civil Procedure Code that we would be able to import speed in the disposal of civil cases, the hon. Minister said that he was quite alive to the situation, and I am sure that with his thirtyfive years' experience of the law courts, he must know what the state of affairs is But I am sorry that he is out of touch with the position for some time now He should know that the situation is deteriorating every day. The only argument which he advanced was that so many States had got to be consulted and their concurrence obtained, but I ask him one question Have you started doing it? It is already seven years since our independence It is our judicial courts of which we were very proud We have first class traditions and we do not want that our judicial administration should suffer any set

[Shri H. C. Mathur.]

back. But unfortunately, that is exactly what is happening now. I am not going to touch on the various other aspects which have contributed to the deterioration in our judicial administration. I would only say in passing that the selection of the judges is one of the most important factors which will contribute to a really sound judiciary. The Chief Justice of India, while speaking somewhere in the south of India, made a very strong plea that in selecting the High Court Judges or even the District and Sessions Judges we must be careful and see that we do not recruit politicians to these jobs, but the present trend is that active politicians are being selected for the highest of these jobs in the judiciary. But as I said, Sir, I will confine myself only to the provisions of this Bill. All the same, we will have to take note of these circumstances.

Now, coming to the provisions of this Bill, I will first refer to the section to which my hon. friend just made a passing reference He made a passing reference to the amendment to section 133 as if nothing important was involved in it. Section 133 of the Civil Procedure Code deals with the persons who are to be exempted. The question has arisen because the High Court of Rajasthan had ruled in one case that these exemptions to be notified by the State Governments under the provisions of section 133 were *ultra vires* of the Constitution. I do not know how this amendment suits the socialistic pattern of society which this Government envisages. It may be that you will say that you are now classifying certain people and any objection raised against them will not be very valid, but I think that there should be no distinction between man and man in this free India, particularly when my friend talks of a socialistic pattern of society. In spite of all this, I can understand the exemption of the heads of the States, but I really do not know what criterion has been followed when fixing the list of persons to be exempted. If we look to the wording of section 133, we will find that certain persons are exempted from personal attendance in courts simply because of their position in life. If this is the criterion on which my hon. friend is going, I ask why he is not following the Warrant of Precedence, which has been drawn up by the Government only according to the status and position of certain persons in life. If he were to look at the Warrant of Precedence, he would find that his list does not coincide with that. If there is any other criterion I would like to know. I have only referred to the provisions of the Civil Procedure Code to know what the criterion in drawing up this list is and the criterion as I could just gather from the wording of the Code is that it is only a position of importance in life. If that is the criterion, I certainly wish to express that this list which is before us is not justified. It is through the experience of ages that the Warrant of Precedence has been drawn up and I think if we were to go according to that list we will be much safer.

I would like to ask my hon. friend why he has not taken into consideration the ex-President of the State. In the Warrant of Precedence you will find that the ex-Governor-General or the ex-President of India takes precedence over the Ministers. But I would like to know why they are to put in a personal appearance. These persons, I think, have got a place in life, and I think they have got a position to enjoy. Why do we find that the ex-President who has been the Head of the State is to be asked to attend a court of law in person? Why don't you exempt him? Why don't you exempt the Deputy Speaker of Parliament? Why don't you exempt the Deputy Chairman of the Rajya Sabha while you don't hesitate to exempt even a Parliamentary Secretary? I do not know how a Parliamentary Secretary enjoys a status better than that of the ex-President of India, how a Parliamentary Secretary enjoys a status higher than that of the Deputy Chairman of this House or the Deputy Speaker of the other House

SHRI H. V. PATASKAR: They are not exempted.

SHRI H. C. MATHUR: What is the definition of a Minister? Does that definition include a Deputy Minister? I would like to know whether it includes also a Parliamentary Secretary or not. May I have that clarification?

SHRI H. V. PATASKAR: My hon. friend will find that Parliamentary Secretaries are different altogether.

SHRI H. C. MATHUR: May I know if the Deputy Ministers are included? May I know if his contention is that the Deputy Ministers of a State Government enjoy a better status in life? Will the Deputy Ministers of the States be exempted according to this list? You have said "Ministers" and I understand that the term Ministers includes Deputy Ministers also. So you have included also in the list of exemptions the Deputy Ministers of the State Governments. That means that the Deputy Ministers of every State Government are exempted.

SHRI H. V. PATASKAR: In my opinion, they are not exempted. How it will be interpreted, I do not know, but that is my view.

SHRI H. C. MATHUR: That is why I wish to stress this point, that this list has got to be very carefully examined. I do not support any exemptions except the exemption of the Head of the State. Really, why this question of exemption comes in so much, I do not know. If you are thinking of a socialistic pattern of society, about which you talk in the latter part of your speech when discussing the question of interest, if you are earnest about the socialistic pattern of society, if you are earnest about giving that trend, if you are really earnest in bringing about a healthy atmosphere, then something else will have to be done. Why do you want your witnesses who go to the court, to keep on standing all the time? Why don't you change the entire complexion in the court? Why don't you change the entire atmosphere in the court? Why should a seat not be offered to a witness? After all the witness comes to the court only to assist the court. He comes to the court only to help the court, to help in the administration of justice. But anybody who had occasion to go to a court can find that he has got to go through a lot of humiliation. There is no sitting accommodation provided anywhere and the witness has got to be there from morning till evening, and nobody will know when he will be called in as a witness to give his evidence. Why should he be treated like a scum? Why? Let us understand it. If you have really got the spirit of the socialistic pattern, you must understand that when a citizen of India goes to court to give evidence, he goes there only to help in the administration of justice, that he must be treated with all due courtesy, and with all due dignity.

SHRI H. V. PATASKAR: I entirely agree with my hon. friend about the desirability of treating people with courtesy; but how is it to be done in the Civil Procedure Code?

KAZI KARIMUDDIN: Does he want exemption from personal attendance of all witnesses?

SHRI H. V. PATASKAR: That is the administrative part.

SHRI H. C. MATHUR: That is exactly what I say. This is a thing which my hon. friend can do simply by the issue of a circular; but he will not do so. That is the most crying need. There is only talk of socialistic pattern, but nothing in practice. Even something which is easy to do they will not do. That is exactly my complaint against the present administration, all tall talk, but very little of action.

SHRI H. P. SAKSENA (Uttar Pradesh): The High Court is independent of the Government.

SHRI H. C. MATHUR: I know, Sir, that the High Court is not independent of the Government though the High Court certainly is an independent body

[Shri H. C. Mathur.]

in a way. That is right, but the Government has its duty in these matters. Nobody can deny that.

Now I come to clauses 2 and 3 where we talk about the rate of interest. I very much welcome the putting of a limit, the fixing of a limit. There are certain courts which would consider 15 per cent reasonable and there are other courts which will consider 12 per cent as reasonable. By putting a limit at 6 per cent we have at least brought about a certain uniformity. But quite apart from that uniformity, we will certainly be helping to see that a reasonable rate of interest is enforced. But I do not know where the consistency in this provision is, so far as the interest during the pendency of the suit is concerned. For that I do not think there is any provision. I think this provision of 6 per cent applies only after a decree is given. So the court could allow any rate of interest for the period for which the suit remains pending with it. There can be different rates of interest. No provision is made in that regard.

Then again, you make a provision that the rate of interest should be 6 per cent on the amount that is decreed. But the court has no right to allow any interest on the costs and the hon. Minister in justifying this denial of interest on the costs has talked about the socialistic pattern of society. I do not know how the socialistic pattern of society comes in here.

SHRI H. V. PATASKAR: I have not talked of the socialistic pattern.

SHRI H. C. MATHUR: The hon. Minister has spoken in the other House and if he likes I can read out the portion from his speech.

SHRI H. V. PATASKAR: That may be about change in social ideas.

SHRI H. C. MATHUR: I do not know what this change in social ideas is.

SHRI H. V. PATASKAR: I shall explain.

SHRI H. C. MATHUR: When a decree is given against a particular person that definitely means that the decree is given against the person who has done a wrong, who is in the wrong.

KAZI KARIMUDDIN: Not necessarily. Against him the claim is decreed. That is all.

SHRI H. C. MATHUR He is not in the wrong?

KAZI KARIMUDDIN: He is not in the wrong always.

SHRI H. C. MATHUR: If a decree is passed against him?

KAZI KARIMUDDIN: That means that amount is due from him.

SHRI H. C. MATHUR: That means that the fellow has been obstructing, that he has not paid it to the person to whom the amount was due, that he is a man who has forced another person to go to a court of law and ask for a decree. The man has forced somebody to go to a court of law, he has forced him to spend so much as cost of the suit; he has given him all that harassment. What is your change in social ideas which sends you in all sympathy with that man? I would like to know what is the change in social ideas that makes you go in sympathy with a person who, though the amount is due from him does not pay up the amount but forces the man to go to a court of law, who forces that man to take certain loans and engage a counsel and pay the court fees. And you do not want any interest to be paid on that account. What is this change in social law which asks you to do that? I should certainly like to know as to why you do that.

KAZI KARIMUDDIN: You do not want any sympathy for the debtors?

SHRI H. C. MATHUR: We have all the sympathy for the debtors who are honest debtors, who will come and say, "I am sorry I have not been able to pay. The amount is due from me". I can

understand that but a man who goes and takes all sorts of pleas and drags the other person to the courts and forces him to incur all the expenditure and tells all sorts of lies certainly does not deserve any sympathy whatsoever. As my hon. friend must know from experience, anybody who would straightaway go and make a clean statement of admission has always the sympathy of the court. That discretion is allowed to the courts. I do not say that it should be made incumbent on the courts always to allow interest. It had so far been left to the discretion of the courts and those debtors who deserved the sympathy of the courts always got that. But in the case of others, what sympathy do you want me to give them? What change in the social law has made you change your attitude towards them? By making mandatory provisions in the law you are compelling the Judges to give sympathies to persons who dragged the other party to courts, who would not pay even though they had the money. You want these people out absolutely on the same footing as the others who are genuinely unable to pay.

Mr. Deputy Chairman, the third point I want to touch upon is about the process servers. It was really most distressing to hear what my hon. friend said not about the civil side but about the criminal side.

SHRI H. V. PATASKAR: On the civil side also, there are such instances.

SHRI H. C. MATHUR: I know but even on the criminal side, he mentioned that it was not possible for such a number of years to serve the summons. What does it mean? It reflects nothing but discredit on the present judicial administration. To cover that inefficiency you want to devise certain methods. Why don't you look to the cause of this inefficiency? Why don't you see as to why the service is not being effected and take steps immediately to see that there are no such cases? Instead of doing that, just taking all this inefficiency in a very complacent manner, you want to devise certain methods of indirect service. You say that service by postal agency will be legalised now. We know that even in the present process serving, there is a lot of *gol-mal* about it and you are going to introduce much abuse by adopting this procedure. It is a common experience with most of us; we know how a man can be kept absolutely in the dark. A registered cover is sent, received through the postman, the man concerned is kept absolutely in the dark and the decree is passed. I have very recently brought to the notice of the Minister for Communications the fact of our postal services deteriorating. When my hon. friend spoke very vehemently against the postal service I was simply surprised; I could not believe that really the affairs had gone so bad but when I made a little enquiry about it, things came to light and I have brought a few concrete cases to the notice of the Communications Minister and to the postal authorities as to what is happening under their very noses. Are you going to introduce this simply because you have not got the agency to serve the process? I would like the hon. Minister to tell me as to why this step is being introduced. What are the reasons? What steps have been taken to improve the present system? Does he mean that this agency cannot be improved?

SHRI H. V. PATASKAR: Does not the hon. Member know that the administration of the courts and their subordinate organisations are under the supervision of the High Courts and not under the Government?

SHRI H. C. MATHUR: Have the High Courts failed? Is it the opinion of the High Courts? Before you brought forward this clause, was it discussed with the High Courts? May I know whether the High Courts think that this process service cannot be improved? This Legislature should never permit passing of such procedures if the High Courts fail in their duty. You say that

[Shri H. C. Mathur.]

you have got no authority over the High Courts but are you satisfied and what are your grounds of satisfaction against this most abnormal state of affairs regarding process service? Process service is not working properly because there is no proper arrangement. The High Courts are being blamed for it but.....

SHRI H. V. PATASKAR: I did not blame the High Courts. I only brought to the notice of the hon. Member that the administration of these people is done by the High Courts. I did not agree with him in the other part.

SHRI H. C. MATHUR: But then, what is the exposition of the hon. Minister for this most disgraceful state of affairs regarding process service? I would like him to dole out those facts before this House. My submission is that this disgraceful state of affairs in regard to process serving is mostly because the State Governments would not listen to the High Courts; they would not sanction money for that and they would not make arrangements for the service. What happens at present is this.

SHRI H. V. PATASKAR: I have never heard the High Courts complaining that the State Governments did not give them money for the serving of processes. I have never heard of any such complaint against any State Government.

SHRI H. C. MATHUR: May I then know your reasons? Am I to understand that it is the contention of the hon. Minister that process serving is beyond improvement? Are there no ways and means of improving it? The money is available, the High Courts are anxious, Government is not at fault—all these circumstances are there—but still nothing can be done to improve the process serving. Am I to understand that? Somebody must be wrong somewhere. I am speaking from experience about process service. I know how this is being carried on at the moment. What is the process serving agency, let the hon. Minister explain to me. The agency for the process service is mostly the executive officers. It is done through the executive, the Collector, the Tehsildar or the S.D.O.

MR. DEPUTY CHAIRMAN: I do not think you are correct. The courts have got their own process servers.

SHRI H. V. PATASKAR: The courts have got their own establishment which has nothing to do with the State Governments.

MR. DEPUTY CHAIRMAN: Government has nothing to do with process serving.

SHRI H. C. MATHUR: I can say with personal experience that it is not a correct statement of fact. At least I know about Rajasthan. The process service is not entirely through the agency of the judicial administration.

KAZI KARIMUDDIN: It is so.

SHRI H. V. PATASKAR: If it is so in Rajasthan, I shall make enquiries.

SHRI H. C. MATHUR: It is not entirely through the judicial administration.

KAZI KARIMUDDIN: It is entirely through the High Courts.

SHRI H. V. PATASKAR: As regards Rajasthan, I shall make enquiries but I am aware that in all the other States process service is through the judicial administration and not through the State Governments. I shall make enquiries about Rajasthan.

KAZI KARIMUDDIN: There is provision in the Civil Procedure Code.

SHRI H. C. DASAPPA (Mysore): Is it during the pre-freedom days?

SHRI H. C. MATHUR: I am not talking of the pre-freedom days. I am talking of 1955 and I am quite aware of it.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Is it a fact or an interpretation of a fact?

SHRI H. C. MATHUR: I think my hon. friend is unduly indulging in interpretations of what I say. I am making a clean statement of fact.

I would rather like him to explain. He has himself said about the process service business, that in all other States it is entirely with the High Courts, that they have got their own agency. Then may we know why is it that direct process service is not possible? Are we to suppose that this is something beyond the ability of the administration, whether it is the High Court or anything? Have the High Courts made a report that it is not possible for them to evolve a machinery which will be able to effect the process service?

MR. DEPUTY CHAIRMAN: Service by registered post is there even now.

SHRI H. C. MATHUR: It is the service, Sir,.....

SHRI H. V. PATASKAR: What is proposed to be done in this measure is that if by the ordinary process summons cannot be served then it is left to the court to decide in particular cases whether in substitution or in addition there should be service by registered post. It is not as if the whole thing is left to the party. If the court comes to the conclusion that in some cases, after looking into all the facts of the matter that are placed before it, there should be service by post, the court will do it. I do not know why there is a lot of misunderstanding. Probably the conditions in Rajasthan differ, I think.

SHRI T. BODRA (Bihar): The truth is that it is actually the plaintiff who has filed the case, who has to bribe the process-server of the court to have the summons served on the defendant.

SHRI H. C. MATHUR: I will next pass on the delays which are there. The hon. Minister, while speaking in the other House, mentioned that no hard and fast rules could be made regarding the disposal of the cases. I cannot agree with him. It is not enough to say that a particular case or a particular class or type of cases should be completed within a particular time. While discussing this the hon. Minister said that it was very necessary—one of the Members there suggested it—that judgments should be delivered within 15 days of the completion of the proceedings.

SHRI H. V. PATASKAR: Sometimes within some reasonable time it should be done.

SHRI H. C. MATHUR: What happens at present? I think the hon. Minister is quite aware that for months on end and for years sometimes the cases keep pending even after the entire proceedings have been completed, the arguments have been heard. Sometimes the Judges are transferred. The hon. Minister expressed the hope that even a criticism in this House about these delays in delivering the judgements will have a very salutary effect on our judiciary and that we can hope that no such delays will occur. I do not know, Sir, if the hon. Minister is aware that there are definite and clear circulars from some of the High Courts that after the completion of the proceedings and hearing of the arguments judgments should be delivered within 15 days. There are such administrative circulars from the High Courts. Even those circulars are having absolutely no effect. I do not know why in consultation with the High Courts some steps should not be taken about it, and if no steps are possible on the administrative side, some provision should be made.

SHRI H. V. PATASKAR: This has been approved by the High Courts.

SHRI H. C. MATHUR: What I submit, Sir, is that in spite of these circulars nothing is being done. There is a clear circular that within 15 days the judgment must be delivered. May I ask the hon. Minister to collect information on this subject as to what is the present state of affairs and how to hope that it will be remedied and how simple administrative machinery can check this state of affairs?

MR. DEPUTY CHAIRMAN: Now it becomes a statutory obligation. The court is bound to pronounce judgment within a particular period.

SHRI H. C. MATHUR: And what happens if he does not do so? How is it

[Shri H. C. Mathur.]

brought to High Court's notice? I was just going to explain to the hon. Minister that this sort of statutory provision will not help very much in actual practice. I will give him a typical illustration. I know of a particular case which was completed two years back. The Judge has not yet pronounced his judgment. Now to get out of the difficulty because of the circular of the High Court what he wants is that one or the other party should put in some plea for this reason or that reason so that the case can be adjourned and he may accede to the wishes of those parties. He says: You ask for an adjournment on this ground; you ask for an adjournment on that ground.

SHRI H. V. PATASKAR: Which is the case?

SHRI H. C. MATHUR: I would rather not like to say it openly here. I can only tell you in confidence if you want.

SHRI H. V. PATASKAR: If you can send this information I may as well see what I can do.

SHRI H. C. MATHUR: I will send the information to you, but I will not give the information here on the floor of this House because it involves an individual Judge.

SHRI H. V. PATASKAR: Not here.

SHRI H. C. MATHUR: But my point in making a mention of this is not to spotlight the attention of the hon. Minister on this particular case. What I wish to impress upon him is that this sort of thing is always possible and this will happen and this provision is not going to help. Again on the administrative side something concrete could be done. If you can put even one District and Sessions Judge who is entrusted with nothing else but is an inspecting Sessions Judge, who will go and inspect every court very thoroughly once in six months, this thing is likely to stop. It is not likely to be stopped merely by this provision. But this provision will be helpful. This provision will be helpful only if we can see that it is implemented through certain agencies. Otherwise, this will remain as good a dead letter as the circular of the High Court is today. My hon. friend will concede that the High Courts will agree that this is the state of affairs today. It is what is exactly happening. They will not deny it. Why is this state of affairs continuing in spite of the circulars from the High Courts?

SHRI H. V. PATASKAR: The hon. Member is under a misapprehension. I said the High Courts had agreed to this provision. They did not agree with all this kind of thing and the manner in which the hon. Member just described.

SHRI H. C. MATHUR: I quite understand. I don't dispute this proposition. I know that the High Courts have agreed to this provision, but what I am just wanting to impress upon the hon. Minister is this that in spite of the fact that the circular of the High Court is there, that it is binding on the judges and the Judges should know that they are defaulters, that circular is having no effect on them. And, similarly, this provision which you are making now, will not be very effective until and unless you devise certain administrative machinery to see that this is implemented. That is my point. You should, in consultation with the High Courts, devise certain administrative machinery to see that this provision is implemented. Otherwise my contention is that this provision will also remain as good a dead letter as the circular of the High Court is at present. Therefore, if we want that something really tangible should be done, we must devise certain administrative machinery to see that the healthy and salutary provisions which we are making are implemented.

4 P. M.

These are some of the points which I have mentioned. I must in fairness to the hon. Minister say that there are many other provisions which are almost non-controversial. They are

very healthy and they are certainly an improvement. They will certainly help the judicial administration. But, as I said, the Government have given a very poor account of themselves. Of course, these are a few good innocent provisions which we do appreciate but we feel that the Government has certainly failed in fulfilling the expectations and hopes which they themselves had aroused in our minds and which we legitimately claim from them.

Sir, with these few words I will expect that the hon. Minister will widen the scope of the Joint Committee and enable us to make some real contribution to improve this absolutely hopeless state of affairs.

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I rise to support the Bill to amend the Code of Civil Procedure and I must join with my friends in congratulating the hon. Minister for having brought forward at least these few amendments over which, as I see, there is not very much of difference of opinion among the hon. Members.

Sir, the entire Civil Procedure Code may need a thorough re-examination and further simplification in the light of the experience that we have gathered all these years and also to make the procedure somewhat compatible with the conditions prevailing in the land. The hon. Minister referred to the fact that a Law Commission has been constituted which will go into the whole question but still the Government thought that something could be done in the meantime until we could have a more comprehensive Code of Civil Procedure. From that point of view, I think this measure does deserve a very hearty welcome and support of this House.

I do not think I should traverse the ground which has already been covered but I do feel constrained to answer one or two points which have been referred to by some of the speakers, particularly about the provision relating to admission of appeals by applicants *in forma pauperis*. I am afraid one point was overlooked by hon. Members who criticised the provision and urged that the court should not have the discretion to reject the application merely because of the non-appearance of the pauper applicant or his pleader. If they had read the existing provision correctly, they would have found that today there is no provision for the appearance of the applicant himself or his pleader at the time of admission and the court can consider the question of summary rejection unless it sees reason to think that the decree is contrary to law or some usage. I think I had better read the Order to make it quite clear. This is Order XLIV, rule 1 and it says:

> "Any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal, may present an application, accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:"

And there is this important proviso:

> "Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, 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."

It is as much as to say that the applicant has no inherent right to be heard by the appellate court, as the law stands at present. This amendment now seeks to confer upon him a new right, namely, that he has a right to be heard before the application is rejected. Now, I ask whether it is not a conferment of an additional right or whether it is an abridgement or curtailment of his existing right. So I think the provision is a very wholesome one and let us note that the law provides him with a special aid in order

[Shri H. C. Dasappa.]

to secure remedy so that his poverty does not come in the way of his securing justice. When such a person is seeking relief from the appellate court after getting an adverse decision in the lower court, he should be a little more serious in the prosecution of his pauper application; and if he does not choose to appear himself or if his pleader does not choose to appear when an opportunity is given to him, and thus treats the court with scant courtesy, he cannot complain if the court uses its discretion. The law as it is, provides no right to him to have his application heard.

SHRI J. S. BISHT: May I be permitted to point out to my hon. friend that he is confusing two situations in his mind. The provision that he has read out relates to the stage where a man applies for permission to appeal *in forma pauperis*. That is a different stage because at that stage the court has to decide whether or not to allow him to appeal *in forma pauperis* and it only says that even in that stage the court shall not reject it if certain conditions are found to be there, that is, if there is patent injustice or something like that. But what we are saying now under this is this. Once the court admits the appeal *in forma pauperis* then he should be put on a par with other suitors. There should be no distinction made.

SHRI H. C. DASAPPA: This is about the procedure on application, to appeal *in forma pauperis*.

SHRI J. S. BISHT: Even there if the court finds that there is patent injustice, it shall not reject the application. It says that it will not allow that person to appeal *in forma pauperis* and that is the end of it. But once he has been allowed, once he has been given the right, the court recognises that he is a pauper and that he can appeal *in forma pauperis*. After that he should be on the same footing as any other suitor.

SHRI H. C. DASAPPA: I am afraid the confusion is on the other side. This refers to pauper applications for leave to appeal; not the hearing of pauper appeals which is quite a different thing and which follows subsequently. My good friend, Mr. Bisht, who is a very experienced lawyer should try to find out the exact nature of the amendment and see to what it is made applicable. It is made applicable to the consideration of pauper applications. You find here the heading 'Procedure on application for admission of appeal'. If the appeal is admitted and there is later posting for the hearing of the appeal on merits, then this amendment does not come in the way at all. So I am afraid.....

SHRI J. S. BISHT: Is it redundant then?

SHRI H. C. DASAPPA: Not at all. This is for the admission of the pauper application. Now, a date is given and the person is entitled to appear himself or through his pleader and make out a case in favour of his pauper application. Such a provision does not exist now. If he files a pauper application, without giving him a hearing either by himself or through his advocate, it was open to the High Court to reject it summarily. But now the only crime that the hon. Minister, Mr. Pataskar, is committing is that he gives him the right to appear by himself or through his advocate and have the pauper application heard before it is admitted. So, my friend may just go through it over again more closely and I am sure he will have a word of congratulations to the hon. Minister. Therefore, Sir, I think it is a very wholesome provision that has been introduced.

KAZI KARIMUDDIN: For arriving at a conclusion that the judgment is erroneous, whether the evidence can be looked into? According to this provision.....

SHRI H. C. DASAPPA: May I submit that this is an extraordinary concession shown to the pauper appellant? Therefore, he cannot claim all the remedies which by law and right he can claim

in case he pays the necessary stamps and files a regular appeal. He wants some special concession and, therefore, unless he makes out a *prima facie* case that there is something which the court has got to consider.....

KAZI KARIMUDDIN: *Prima facie* case from the judgment and not from the evidence, evidence is not to be looked into?

SHRI H. C. DASAPPA: My friend forgets that today the court won't have to hear the party in considering the judgment and decree. My friend is trying to bring in a new idea altogether. If my friend Mr. Karimuddin's idea is that even at the stage of admission of a pauper application, the court should get the whole records—not merely depend upon the judgment and decree, but also use the evidence on record—then that is a different amendment. It has nothing to do with the opportunity to be given to a pauper applicant in the case of an appeal.

KAZI KARIMUDDIN: That is what I have suggested.

SHRI H. C. DASAPPA: That is a different matter. I should think that that has got to be considered on its own merits. But what I say is that today the pauper applicant, in the case of his appeal, is getting an additional right and that had better be recognized and let us be thankful for at least that much of relief.

Then, Sir, I refer to another matter.....

SHRI J. S. BISHT: Mr. Deputy Chairman, I accept what he has said. I have just seen it; I thank him for it.

SHRI H. C. DASAPPA: Then, Sir, there is one amendment which makes me rather nervous that is in clause 16, which relates to service of summons by post. Now, Sir, there is such a thing as "personal service" and what is known as "substituted service". You find that in Order V, Order XXI and in many other provisions relating to the service of summons to the defendant, to witnesses and so on. Now, service of summons by post is what is known as a substituted service. It is not a regular service, it is not what is known as 'personal service'.....

KAZI KARIMUDDIN: This is not described here as 'substituted service'.

SHRI H. C. DASAPPA: Please wait a minute. It can be personal service, if the party who is summoned—maybe a witness, maybe a defendant, maybe anybody—accepts the registered letter, acknowledges it either by himself or through his accredited agent. If he accepts the registered notice, then it is tantamount to personal service. But the trouble starts where he does not choose to accept it. Now what do we find in clause 16? Proposed rule 20A (2) says:—

> "An acknowledgment purporting to be signed by the defendant or the agent or an endrosement 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."

Now, the trouble only starts where the postman or whoever is there on behalf of the postal department, makes an endorsement that the defendant or his agent refused to take delivery. What happens when in the normal course the process server goes to the defendant and chooses to serve him with such a notice or summons? If he accepts it, it becomes personal service. If he does not, he resorts to what is known as substituted service. And what is substituted service? The process server affixes a copy of the summons on the outer door or on any conspicuous part of the house and possibly a *Mahazar* is drawn up to the effect that the person refused to accept the summons and witnesses attest that document. Now, I would ask the hon. Minister to tell me whether there is any possibility of treating this rejection by the defendant or any other party as 'substituted service' when the postman does not choose

[Shri H. C Dasappa.]

to follow a similar procedure by way of affixing it to the outer door or on a conspicuous part of the house. I am afraid, Sir, there is room for considerable mischief in merely leaving this provision as it is. After all, most of the parties remain in the villages and the postal authorities are also people round about in the villages Very often I have seen these postmen not even going to these remote villages, but sending those letters through somebody and getting acknowledgments. Now, in such cases I do not know whether there will not be room for infinite mischief if this provision is left to stand for itself without further safeguards. I would ask the Law Minister to kindly take note of this fact and give me an answer before he can expect our support I hope, Sir, I have made this point sufficiently clear because according to clause 16 (1), rule 20A (2), a note by the postman that the defendant or the agent refused to take delivery by itself may be deemed by the court issuing the summons to be *prima facie* proof of service. I am afraid that will land us in a lot of difficulties and I would like the Joint Committee to consider that and provide sufficient safeguards in this respect.

Sir, I do not think I should refer to many of the controversial matters to which my hon. friend Mr. Mathur referred All that I can say is that I think he is mistaken, rather grievously mistaken, in trying to make out that the service of processes is done through revenue officers. There is something radically wrong either in the particular State of which he has experience or with the source of information that he has gathered. I am pretty sure even in the State of Rajasthan the service of processes is a matter left entirely to the staff of the different courts—the High Courts and the District Courts. But if for any extraordinary reason there is a different system prevailing there, I entirely agree with him that the sooner this is remedied the better it is for us.

Sir, almost all these are very salutary provisions. I particularly appreciate the provision with regard to the pronouncement of judgments. That is a matter which will minimise the delays of law. But more than that what I appreciate is that when a judgment is to be put off to a future date, the date will be intimated to the parties concerned. I have had certain cases. Sir, where judgments were delivered on the last day before the vacation, and the parties had no chance to know anything about them. In such a case the parties are all the while under the impression that the judgment is to be delivered after the vacation, and they just overlook the matter. And very often it happens that one person may be very vigilant; he obtains a copy of that judgment and all that, whereas the other person has no chance of obtaining a copy, and after the vacation if he chooses to apply for a copy of the judgment, the time factor begins to operate, and he loses the chance of an appeal. It is therefore, one of the most salutary provisions that have been introduced in the Bill.

Then, Sir, there is just one other point to which I would like to refer before I close. And that is this. The amending Bill takes away the provision for awarding interest on costs. There I agree with my friend, Shri Mathur, that sufficient justification has not been made out to support a provision like that. Is it not, I ask, within the experience of most of us, including the hon. Minister, Mr. Pataskar, that many a party with a very legitimate cause of action has got to borrow money at a high rate of interest in order to find money for the stamps and to pay the lawyer's fees? I am pretty sure, Sir, that it is well within your experience also. I might say that more than 25 per cent. of the people run into debts in order to prosecute a case which is a righteous case in which, I think, they are compelled to seek a remedy in a court of law because of the mulishness and perversity of the defendant. Now in such a case what kind of social purpose is served by denying this person the interest which he has got to

pay to his creditors for the prosecution of his case? And what great social ends are going to be served by taking away that healthy provision contained in the existing Civil Procedure Code? I, for my part, have not been able to appreciate that part of the argument of my friend.

SHRI J. N. KAUSHAL (PEPSU): Have you seen if ever it is put into practice?

SHRI H. C. DASAPPA: Sir, I may say that this awarding of interest on costs is more an exception than a rule. It is only where the courts get to know that the poor parties—plaintiffs more often—have had to suffer a lot because of the defendants' ways that they sometimes award interest on costs. I entirely agree with my friend that it is not a usual thing, and when it is an exceptional thing, for which there must be ample justification, why do we take away the discretion of the court to award interest on costs? And what is the remedy in a case like the one I have referred to? I, therefore, think, Sir, that it is very wrong for us to remove that particular healthy provision which obtains in the existing Civil Procedure Code. I may say that I welcome the other provision, the alternative provision namely, that there is always relief given to the defendant in the form of compensation where a person resorts to a false or frivolous or vexatious proceeding. Therefore, I say that when there is that alternative provision, to be newly introduced, there is no need to take away the existing safeguard for the poor plaintiff who has got to borrow money in order to launch his case.

With these few words, Sir, I have great pleasure in commending the amending Bill for the kind acceptance of this House.

श्री कन्हैयालाल वाँ० वैद्य (मध्य भारत) : उपसभाध्यक्ष महोदय, मैं इस बिल का स्वागत करता हूं। वास्तव में इस देश में अंग्रेजी साम्राज्यवाद के जमाने में जिस स्थिति में सिविल और क्रिमिनल लाज है उसमें बड़े सुधार की आवश्यकता है। यह आवश्यक है कि जनता में यह विश्वास करने लायक भावना निश्चित रूप से पैदा की जाय कि उनको न्याय मिलेगा। इस सदन का मैं अधिक समय नहीं लेना चाहता हूं परन्तु मैं कई ऐसे मामले बता सकता हूं कि लोगों ने कानून की सीमा में रह कर के न्याय प्राप्त करने के लिये साधन जुटाये, न्याय प्राप्त करने के लिये अदालतों में गये, जीवन भर अदालतों से न्याय लेने की चेष्टा की किन्तु उनको सिविल साइड और क्रिमिनल साइड दोनों में न्याय नहीं मिला। यदि उनके उदाहरण रखे जायं तो इस सदन को उन्हें सुन कर आश्चर्य होगा कि आज देश में न्याय के विषय में किस प्रकार की स्थिति बरती जा रही है और आज साधारण आदमियों को, कामन मैन को, न्याय मिलने में कितनी कठिनाइयों का सामना करना पड़ता है। कानून की व्यवस्था को लें, वकीलों की व्यवस्था को लें, किसी भी व्यवस्था को लें, सब में यही स्थिति है। अभी माननीय श्री दासप्पा ने कहा कि लोग पैसा कर्ज ले कर के मुकदमे करते हैं इसलिये उनको सूद दिलाना चाहिये। ठीक, लोग सूद पर कर्ज ले कर के मुकदमे लड़ने की व्यवस्थायें करते होंगे लेकिन इस देश के अन्दर करोड़ों आदमी ऐसे हैं जिनके पास यह साधन भी नहीं है कि उनके विरुद्ध अदालतों में जो कार्यवाहियां होती हैं उनकी पैरवी कर सकें और उसके लिये सूद पर कर्ज ले सकें। तो जहां आप ये संशोधन करने जा रहे हैं वहां इस बात का भी पूरा ध्यान रखें कि न्याय की पद्धति सुलभ और आसान हो। हाई कोर्ट के या किसी भी कोर्ट के जो जज हैं उनके अधिकार इस प्रकार के होने चाहियें कि जिससे वे न्याय करने के अन्दर किसी भी पक्ष के लिये अधिक सहायक हो सकें। मैं आपके सामने कई ऐसे मामले रख सकता हूं जिनमें हाई कोर्ट के जज स्वयं फैसला करने वाले थे और उनके सामने सुप्रीम कोर्ट में जाने के लिये पक्षों ने दरख्वास्तें रखीं परन्तु खुद उन जजों ने सुप्रीम कोर्ट तक जाने की इजाजत नहीं दी और उससे उन मामलों में उन व्यक्तियों के जीवन नष्ट हो गये। जायदादों और जमीनों

[श्री कन्हैयालाल दा० वैद्य]

के झगड़ में वे लोग जीवन भर बर्बाद हुये और आज वे न्याय के लिये अपने प्राण तक देने को तैयार हैं और सम्भवतः राष्ट्रपति या कानून मंत्री के दरवाजे पर आ कर उनसे पूछना चाहेंगे कि आखिर आजकी राज्य-व्यवस्था में, आपकी समाज-व्यवस्था में हम न्याय लेने के लिये कहां जायं। क्या वे न्याय प्राप्त करने के लिये न्याय, शान्ति और कानून के जो साधन हैं उनको छोड़कर किसी दूसरे कदम को उठायें जिससे कि उनको जीवन में न्याय प्राप्त हो सके? आज जो कोर्टों की व्यवस्था है, आज जो न्याय की व्यवस्था है उसमें उनको न्याय नहीं मिलता है। मैं आपको ऐसा ही एक उदाहरण देता हूं।

एक मनुष्य था, उसकी स्त्री को भगाया गया। उसने नालिश की। यहां जो समन्स के बारे में इस प्रोसीजर की व्यवस्था है उसी की बात मैं बताना चाहता हूं। तो उस केस में भी समन्स सर्व नहीं होते। वह समन्स के बाद वारंट ले कर के पुलिस के साथ जाता है लेकिन पुलिस पर आक्रमण होता है। वह आदमी सात वर्ष तक उस व्यक्ति के ऊपर वारंट सर्व करने के लिये पुलिस की मदद से कोशिश करता है परन्तु फिर भी सफल नहीं होता। वह वारंट सर्व नहीं हुआ बल्कि एक बार जब उसको एरेस्ट किया गया तो ५०० रु० की जमानत पर उसको छुड़वाया गया। बाद में जमानतदार ने यह आपत्ति उठाई कि गिरफ्तार किया हुआ व्यक्ति वह व्यक्ति नहीं था बल्कि कोई दूसरा ही था और इस तरह उसमें भी वे कामयाब हो गए। यह अनैतिकता की चरम सीमा है जो कि आंखों से देखा हुआ एक सत्य है। अगर कोई अदालत के सामने उसके निर्णय को एकपक्षीय कह देता है तो उस विचार को कंटेम्प्ट आफ कोर्ट में धर दिया जाता है।

कुछ लोग ऐसे हैं जिनको सिविल ला के अंदर न्याय नहीं मिलता। यदि आपके सामने उसके कुछ उदाहरण रखे जायं तो आप हैरान हो जायेंगे। स्वयं कानून मंत्री महोदय एक अनुभवी वकील हैं और मैं समझता हूं कि इस नाते से उनकी जानकारी में बहुत सी ऐसी बातें होंगी। तो उस ला के अंदर सुधार लाने के लिए आपने जो यह बिल रखा है उसकी धाराओं को मैंने बहुत कुछ देखा, और मैं समझता हूं कि अभी भी यह बिल बहुत अपर्याप्त है और इसमें बहुत कुछ सुधार की गुंजायश है। जो सेलेक्ट कमेटी इसके ऊपर विचार करने के लिए बनाई जा रही है, मैं समझता हूं कि उस कमेटी को केवल उन धाराओं तक ही अपने विचार सीमित नहीं रखने चाहिएं जो कि बिल में वर्तमान हैं बल्कि उससे भी अधिक दूर जाने की कोशिश करनी चाहिए जिससे कि सिविल ला में जहां जहां भी गुंजायश हो सुधार करने की या उसमें आमूल परिवर्तन करने की, वे सब किये जा सकें और जनता को न्याय सुलभ हो सके। ऐसे मामलों में मैं स्वयं नहीं समझ पाता कि ऐसे लोगों को क्या सलाह दी जाय जहां न्याय पाने के लिए वे बिलकुल फक्कड़ बन जाते हैं, बीस बीस साल तक मुकदमा लड़ने के लिए अदालतों की फीस, वकीलों की फीस भरने के लिए मजदूरी करते हैं, अपना सब कुछ खो बैठते हैं किन्तु हाईकोर्ट तक मामला जाने पर भी उनको न्याय नहीं मिलता। तो ऐसे व्यक्ति आपके शासन के लिए और न्याय विभाग के लिए एक समस्या हैं। आखिर उनको न्याय दिलाने के लिए कोई व्यवस्था करने की कोई गुंजायश यदि आपके कानूनों में नहीं हुई तो फिर जनता अपना रास्ता ले सकती है। जो व्यक्ति या जो समाज उसको न्याय नहीं दिलाता है उसके प्रति अगर वह विद्रोह करे तो उसका यह विद्रोह उचित माना जाना चाहिए। इसलिए मेरा यह निवेदन है कि सिविल ला के अंदर सम्पत्ति से संबन्धित या लेन देन के मामले के कानून में न्याय दिलाने की समुचित व्यवस्था होनी चाहिए।

किसानों के कर्ज की व्यवस्था के बारे में आपने बताया। आप अगर पिछड़े वर्गों की ओर देखें जहां पर ऐसे लोग हैं, जिनको कोई शिक्षण नहीं मिला हुआ है उनके यहां लेन देन के मामले में सिविल साइड को देखें तो आपको मालूम होगा कि वहां कोई हिसाब किताब की

व्यवस्था नहीं होती हैं, तीन गुना, चार गुना झूठा हिसाब लिखने की पद्धति वहां चलती हैं । कानून के अंदर जो ३ प्रतिशत, ६ प्रतिशत इंटरेस्ट का उल्लेख हैं उसका कहां पालन होता हैं ? ३०० प्रतिशत तक ब्याज उनसे वसूल करने के लिए अदालतों में मुकदमेबाजियां होती हैं और उनकी सारी सम्पत्ति नीलाम कराई जाती हैं जिससे उनको अपने बहुत से रहने के, खाने पीने के साधनों से वंचित कर दिया जाता हैं । वास्तव में न्याय की व्यवस्था में सिविल साइड में ऐसे लोगों को बहुत कुछ रक्षण दिये जाने की गुंजायश हैं, उनको रक्षण अवश्य मिलना चाहिए । अगर सिविल ला ऐसे लोगों को प्रोटेक्ट नहीं कर सकता, उनका रक्षण नहीं कर सकता तो फिर मैं नहीं समझ सकता कि एक शोषणकारी समाज व्यवस्था के अंदर हम कैसे एक वेलफेयर राज्य की कल्पना कर सकते हैं और समाज के अंदर समानता ला सकते हैं । वकीलों के समाज में भी आज यह प्रश्न देश में चर्चा का विषय बन रहा हैं कि ऐसे गरीब व्यक्तियों को अदालतों में कानूनी सहायता उसी प्रकार मुफ्त मिल सके जिस प्रकार कि गॉपर के लिए अपील में व्यवस्था हैं कि उसकी अपील मुफ्त हो सकती हैं । लेकिन इस सदन को मालूम होगा और हमारे बीच यहां जो अनुभवी वकील बैठे हैं वे जानते हैं कि आज तो ज्ञान इस देश के अन्दर बिकता हैं, वह तो रुपयों के ऊपर तुलता हैं, और जितना बड़ा वकील किसी मामले में लगाया जाता हैं उतना ही अधिक न्याय मिलेगा यह भावना या तो काम करती हैं या सत्य हो कर के रहती हैं । तो बड़े वकील के बिना न्याय भी प्राप्त नहीं हो सकता । वकालत के पेशे के लिए यह एक सोचने की बात हैं कि इस देश की आम जनता को इस प्रकार की न्याय व्यवस्था सुलभ कराने में मदद करने की व्यवस्था सिविल ला के अंदर लाई जाय जिससे वह वास्तविक न्याय प्राप्त कर सके । जो लोग न्याय के लिए अदालतों के दरवाजों पर ठोकर खाते हैं, जो कानून की शरण में इसलिए जाते हैं कि कानून उनका रक्षण करेगा तो उनको न्याय अवश्य मिलना चाहिए। यदि समाज में रहने वाला बिलकुल अनाश्रित व्यक्ति न्याय नहीं पाता तो फिर समझ लीजिए कि यह जो आप वेलफेयर राज्य की कल्पना विधान के अंदर करते हैं वह केवल कागज के पन्नों पर रह जाने वाली हैं, और न तो वेलफेयर राज्य की स्थापना का वह सपना पूरा होने वाला हैं न उस सोशलिस्ट स्टेट का जिसकी हम चर्चा करते हैं । सोशलिस्ट पैटर्न की न्याय व्यवस्था लाने के लिए हमारा यह सिविल ला इस प्रकार का होना चाहिए कि हम साधारण से साधारण जनता को भी पूर्ण न्याय दिला सकें । इसलिए इस कानून को अधिक व्यापक रूप में जनता की जानकारी के लिए प्रकाशित कर दिया जाना चाहिए और उस पर जनता की राय और सुझाव मांगे जायं । जिस प्रकार क्रिमिनल प्रोसीजर कोड पर देश से सुझाव मांगे गये थे, हाई कोर्टों से भी मांगे गये थे उसी प्रकार इस पर भी सुझाव मांगे जायं और उसके बाद सारे सिविल ला को सुधारने की चेष्टा की जाय तो मैं समझता हूं कि इसका प्रभाव बहुत व्यापक रूप में होगा, अन्यथा जो खामियां इसके अंदर हैं वे इस प्रकार के थोड़े से सुझावों से पूरी नहीं होती हैं । मैं समझता हूं कि सेलेक्ट कमेटी में इन सुझावों पर विचार करते हुए इसमें इस प्रकार के सुधार करेंगी जिससे इसकी सारी व्यवस्थाएं ठीक हो सकें ।

इन शब्दों के साथ मैं इस कानून का स्वागत करता हूं ।

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, while generally supporting the motion of the hon. Minister for sending this Bill to a Joint Committee, I wish to make just one or two observations which seem to me very relevant. I am referring in the first place to clause 16, sub-clause (9) of this amending Bill. It seems to me that with regard to this particular provision, the entire point has been missed by the various speakers in this House. It will be observed that the only real change that this clause seeks to make in the original Code of Civil Procedure is this that, while in the

[Dr. W. S. Barlingay.]

original Code there is no provision that with regard to an application of this sort the applicant or his counsel should be heard by the court concerned, the provision that is sought to be made in this amending Bill is that a day shall be fixed by the court concerned and the applicant or his pleader shall be heard. That is the only difference between the original provision and this provision. Now, what I am suggesting is that that entirely misses the point. Why should a pauper be under a handicap? Under the original Code of Civil Procedure, a pauper did have a certain handicap. What was the handicap? The handicap was not that his application for the admission of an appeal could be summarily rejected. That was not the real handicap. The real handicap was that under certain circumstances his appeal would not be heard on merits at all. If there was any point of law involved then the appeal would be heard, but on points of fact his appeal would not be heard. I would refer you, Sir, to the relevant provisions in the Civil Procedure Code with regard to pauper appeals as it was originally in the Code. This is the provision:

> "Any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:"

And then there is a very important proviso:

> "Provided that the Court shall reject" etc.

And that is the distinction which the court makes between an ordinary person who is able to pay the fees and the pauper, and that distinction is still being maintained in this amending Bill. The original proviso says:

> "Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, 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."

It will be observed that these last phrases—"decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust"—these very same phrases have been retained in this amending Bill. The distinction which the original Code makes between the pauper and a person who is able to pay the court fee is still maintained What is the justification for making this sort of distinction between a pauper and a person who is able to pay the fee? Before a court of law all people should be treated alike. Once it is proved that a man is a *bona fide* pauper, then should he be denied the right which an ordinary person has before a court of law? I see no justification for this sort of distinction at all. In this respect I think it is just possible.....

SHRI J. S. BISHT: But one who is declared pauper.

DR. W. S. BARLINGAY: No, Mr. Bisht is entirely mistaken. Even when he is proved to be a pauper....

SHRI J. S. BISHT: Then he is on a par.

DR. W. S. BARLINGAY: No, he is not on a par.

SHRI J. S. BISHT: That is in the application stage.

DR. W. S. BARLINGAY: Quite so. At that time all that the law provides is that he shall be heard.

SHRI J. S. BISHT: Yes, whether he is a pauper or not.

DR. W. S. BARLINGAY: No, not on that point alone but with regard to the merits of the appeal also, not on the mere question whether he is a pauper or not. The point is, at the time of the hearing of the application, the merits of the appeal can be considered.

That is a distinction which my hon. friend Mr Bisht is ignoring. What I submit with all respect is that there is no justification for putting the pauper under a handicap like that. In this respect this amending Bill is really missing the entire point.

Then, Sir, there is another point in this Bill which, I humbly submit, does really go against the provisions and the spirit of our Constitution. The Constitution provides that the dignity of every citizen of this country shall be the same. It is untrue to say that the dignity of a Minister or a Rajpramukh or any high dignitary of the State is greater in any respect than the dignity of the ordinary citizen in this country. The particular provision that I am referring to is in clause 14 of this amending Bill. This sort of a provision is really, to my mind, an anachronism, it is a vestige of the old feudalism in some other form. What is the distinction?

SHRI J. S. BISHT: It is the exemption of an office, not of a person.

DR. W. S BARLINGAY: Well, that is really a distinction without difference, a distinction between tweedledum and tweedledee. Suppose a Rajpramukh comes before a court because his evidence is material. He gives his evidence, not as Rajpramukh but as an individual who is in the know of the facts. That is all that is material. So what I say is that there is no justification for supporting that a distinction in this respect should be made between citizens of the State and even a Rajpramukh or anybody else—it does not matter who the person is. Why should a distinction be made in this particular respect between the Rajpramukh or Minister and an ordinary citizen of the State? All citizens of the State should be treated alike by the courts of law

SHRI J. S. BISHT: But you must honour the State.

DR. W. S. BARLINGAY: But where is the dishonour to the State? I don't understand.

SHRI J. S. BISHT: When the President is dragged to the Munsif's Court, it is not a dishonour?

DR. W. S. BARLINGAY: If his evidence is relevant to a particular case, why should it be a dishonour to him to appear in the court of law? He may be given a chair and treated with the utmost courtesy.

KAZI KARIMUDDIN: Why should he be given a chair?

SHRI H. C. MATHUR: Everybody should be given a chair.

DR. W. S. BARLINGAY That is what Mr. Mathur has suggested. Why not, if he has to appear before a court of law he should appear as an ordinary citizen. Surely this is a vestige of old feudalism. In matters of dignity why should people begin to imagine that an ordinary citizen is less dignified in any way than a Minister or a Rajpramukh or for the matter of that, even the President of India? Why that distinction should be made I do not see.

SHRI AKBAR ALI KHAN (Hyderabad): How does it affect justice if he is examined on commission?

DR. W. S. BARLINGAY: It does not make any difference. I entirely agree with my hon. friend there. It does not make any difference.

KAZI KARIMUDDIN: He can travel in first-class.

DR W. S. BARLINGAY: Because a person is exempted it is not going to make any difference to the judgment of the particular court. I am not suggesting that. What I am saying is that all the people, all the citizens of the State must be treated alike. That is the spirit of the law and of the Constitution. No distinction should be made in that respect between man and man and between any office which he may hold or a person who does not hold any office at all. These are the observations which I wanted to make.

There is just one other thing which I should like to say at this stage so

[Dr. W. S. Barlingay.]

far as the Bill is concerned. In the Statement of Objects and Reasons it is stated that the main reason why this amending Bill has been brought forward is that by amending the various provisions, it is hoped that the time taken in litigation may be cut short. With all respect to the hon. Minister, I must say that I have got some experience of law courts and, although I say that these provisions are good and that they ought to be made, none-the-less I do not think that these amendments are going to cut short the time required for litigation in civil cases.

With these words, Sir, I commend the motion to the House.

MR. DEPUTY CHAIRMAN: Hon. Minister.

(*Shri Akbar Ali Khan stood up.*)

Do you want to speak?

SHRI AKBAR ALI KHAN: Now that he has got up, I do not mind, Sir.

SHRI H. V. PATASKAR: I will be happy to sit down if the hon. Member wants to speak.

SHRI AKBAR ALI KHAN: I have nothing very much to add but as I felt that this matter was being discussed in a very easy manner, I might, with your permission, take two minutes. With your permission, I would say what I have been feeling. Certain amendments have been brought forward and we are grateful to the Government and to the Minister in charge for these little mercies but to tackle this delay in civil litigation, a very drastic change is required. Very recently, in the Supreme Court, on a very technical basis,a case that had been pending for twenty years was sent back for fresh enquiry in which the Chairman of the Law Commission was a party. There are many cases like that. They say that if a person wins in a civil case, he loses and if he loses, he is finished. That we see in actual life and it applies to most of the civil cases. So, it is very very necessary that something drastic is done in order to give that feeling to the people that justice is done and justice is done at the right time. That is the position. At the present time, in cases of ancestral property, generations come and go but the cases go on. I asked one of my clients who was about sixty years old to enter into compromise but he said, "I do not want to have you as my Counsel. My grand-father started this, my father continued it and you want me to give it away". Even in clients that mentality grows up that they should continue the fight. In that particular case, they had practically finished the whole of the property. So, it is something which has to be taken very seriously and looked into in the changed circumstances and with the changed ideologies. I am really expecting a very very illuminating lecture from you, Sir, who led the deputation to Soviet Republic and from those Lawyer friends who have been to Russia, to know something really as to how they have met this problem and how far (*interruption*) this can be tackled. Even the highest court in India, the Supreme Court and the High Courts have said, "Well, what can we do? We are following the law". At present, there is something wrong with the law itself and it has got to be remedied. I hope that the Law Commission will tackle this matter as it comprises the best legal brains of India.

So far as this present Bill is concerned, these are some amendments which are very helpful and I commend them for the approval of the House and I am sure Order XXI which has been left out on account of too many complications, will not be left out by the Law Minister because lot of delay occurs because of the delay in execution proceedings.

Then a date must be fixed about the judgment. I know even in High Courts the judgment is delivered after six months or more, after the termination of the argument, leave aside Ministers, who are saddled with quasi-judicial authority. Humanly it is difficult to

remember things notwithstanding short notes. So, some salutary provision must be there. After the termination of the arguments, judgment must be delivered within two months. There must be some such salutary provision. There are several things which, in the new set-up do require careful thought for quick disposal of the case as it is sought to be done through this amendment by our experienced Law Minister, but in order to effectively control delay a very radical dealing with the whole affair of litigation in relation to procedural laws is peremptorily required.

SHRI KISHEN CHAND (Hyderabad): Mr. Deputy Chairman, I agree with most of the speakers who have pointed out that in civil cases there is extreme delay. As the speaker who has just sat down pointed out, generations after generations have been continuing the fight. It is really a paradise for the lawyers and, therefore efforts must be made to radically change the law. We are very glad, Sir, that a Law Commission has been appointed but—apart from these general complaints—when this matter is being referred to a Joint Committee, I want to draw attention to one or two points and in particular, to the points which refer to Hyderabad.

As was pointed out by the hon. Minister while dealing with this Bill, *ex parte* decrees of Bombay High Court against persons residing in Hyderabad State cannot be executed and *vice versa*, the decrees passed *exparte* by the High Court in Hyderabad against persons in Bombay cannot be executed. I am sure there are hundreds of such cases both against the merchants of Hyderabad and against the merchants of Bombay and if, by revision of this law, decrees prior to 26th January 1950 become affected, it will cause a great havoc to the business community of Hyderabad. A large number of cases have been undefended and if they are executed now, they will be only one-sided decrees and great hardship will follow. When this provision was already in existence in the old law, why has pointed attention been drawn to it? I would like the Joint Select Committee to carefully draft this provision in the clause so that the decrees which are prior to 1950 will not be executed now without a fresh trial of the case. There are several other items in this Bill where temporary and partial relief has been given.

I now come to cases, where on small points petty cases are posted for three months and then on that date, the party pays a nominal amount as compensation and the case is postponed for another three months. I want definite provision to be enacted so that no postponement of a case shall be allowed without payment of adequate costs and even if a postponement is allowed, the second appearance shall be within a period of one month. At least I know about Hyderabad and the practice there is that cases are posted within one month. There is a general understanding that the lower courts cannot give a date beyond three weeks. Some such provision should be made as part of the Civil Procedure Code so that in all parts of India, a case may be postponed only up to a period of three weeks. Similarly, Sir, in the matter of evidence, though it is really not part of the Civil Procedure Code, there is scope for great delay. Therefore, I would suggest to the hon. Minister, especially when the Bill is being referred to a Joint Committee, that greater care should be taken at least to provide for speedy disposal of cases.

With these words, Sir, I welcome the Bill

MR. DEPUTY CHAIRMAN: The hon. Minister will reply tomorrow

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

The House then adjourned at five of the clock till eleven of the clock on Wednesday, the 17th August 1955