ALLAHABAD HIGH COURT

Hakim Singh

Vs.

Shiv Sagar

Special Appeal Nos. 455 and 499 of 1972. decided by Full Bench against judgment and decree of G. C Mathur, J. in C. M. W. No. 3306 of of 1970

(D.S. Mathur, A.K. Kirti and Gopi Nath, JJ.)

08.04.1972. 13.04.1973

JUDGMENT

Mathur, J.

1. Special Appeal No. 499 of 1972 is by Hakim Singh, petitioner, against the order of the learned Single Judge of this Court dismissing, his Writ Petition No. 3306 of 1970, wherein the judgments and decrees of the Board of Revenue and the Additional Commissioner in a revenue suit under Section 229-B of the U. P. Zamindari Abolition and Land Reforms Act were challenged. This appeal was preferred even though under the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972, (U. P. Ordinance No. 12 of 1972) (hereinafter referred to as the Amending Ordinance), later replaced by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972, (hereinafter referred to as the "Amending Act") such an appeal was not maintainable. In the Special Appeal the petitioner has challenged the constitutionality of the Amending Ordinance and the Amending Act. At the time of the hearing of the Special Appeal, at the stage of admission the Bench referred the above question, i.e. maintainability of the Special Appeal to a larger Bench which has now come up for hearing before this Full Bench. The validity of the Amending Ordinance and the Amending Act is also challenged in Special Appeal No. 455 of 1972 arising out of an order passed by the authorities under the U. P. Consolidation of Holdings Act. On an application made this Special Appeal was ordered to be listed for hearing along with the other Special Appeal.

2. The constitutionality of the Amending Ordinance and the Amending Act has been challenged on two grounds : firstly, that the provisions thereof are ultra

vires and beyond the competence of the State Legislature ; and secondly, that they are violative of Article 14 of the Constitution of India. In this connection it is also contended that the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, (U. P. Act No. XIV of 1962) (hereinafter referred to as the "Principal Act") was also beyond the competence of the State Legislature and was hit by Article 14 of the Constitution and, therefore, an Act amending an invalid enactment can have no legal effect.

3. Under clause 10 of the Letters Patent dated the 17th of March, 1866, establishing the High Court of Judicature at Allahabad an appeal lay to the same High Court from the judgment of a Single Judge other than a judgment in second appeal, civil revision or in exercise of the criminal jurisdiction. An appeal from the judgment of a Single Judge passed in second appeal was maintainable only where the Judge who passed the judgment declared that the case was a fit one for appeal. On the amalgamation of the High Court at Allahabad and the Chief Court in Oudh and the Constitution of one High Court by the name of the High Court of Judicature at Allahabad (referred to in the U. P. High Courts (Amalgamation) Order, 1948 as the "new High Court"), the Letters Patent ceased to have effect except for the purpose of construing or giving effect to the provisions of the above Order, which shall, hereinafter, be referred to as the "Amalgamation Order". However, under clause 7 (1) of the Amalgamation Order the new High Court has all such original appellate and other jurisdiction as. under the law in force immediately before the appointed day was exercisable in respect of any part of that Province by either of the existing High Courts, Clause 10 of the Letters Patent thus continued to govern appeals against the judgment of a Single Judge of the High Court. Such appeals were known as Letters Patent Appeals, but they were later named as Special Appeals.

4. Special Appeals against the judgment or order of a Single Judge made in the exercise of appellate jurisdiction in respect of a decree or order made by a court subject to the superintendence of the High Court were abolished under Section 3 of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962. Under the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972, promulgated on 30-06-1972, Section 4 was inserted in the Principal Act whereby appeals against the judgment of a Single

Judge made in the exercise of jurisdiction conferred by Articles 226 and 227 of the Constitution, in respect of a judgment, decree or order, made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939 or the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of Director of Consolidation) under the U. P. Consolidation of Holdings Act, 1953, were abolished. The Amending Ordinance was replaced by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972 incorporating similar Section 4, which came into effect on 16-8-1972. The Amendment Bill was introduced in the Uttar Pradesh Legislative Assembly on July 19, 1972 and was published in the Gazette Extraordinary of July 21, 1972. Special Appeal No. 455 of 1972 was presented on July 3, 1972, the re-opening day after the High Court Vacation and Special Appeal No. 459 of 1972 on July 29,1972. In both the Single Judge judgment was pronounced in the month of April 1972 before the High Court Vacation.

5. From the above it shall appear that the Principal Act has abolished Special Appeals against the judgment of a Single Judge in second appeal, governed toy Section 100 of the Code of Civil Procedure and also in first appeals while the Amending Ordinance and the Amending Act in proceedings under Articles 226 and 227 of the Constitution arising out of the orders of the Board of Revenue and the Director of Consolidation under the enactments detailed above. The Principal Act thus applies to a matter falling in concurrent List III of the Seventh Schedule of the Constitution, while the Amending Ordinance and the Amending Act to a power exercisable under Article 226 or 227 of the Constitution. The contention of the learned Advocate General is that even though Special Appeal arises out of a proceeding under Article 226 or 227 of the Constitution, it relates to a mater falling in State List II of the Seventh Schedule. This view is naturally challenged by the appellants in both the Special Appeals.

6. Controversy as to the validity of the Principal Act. namely, the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 (U. P. Act No. XIV of 1962) passed by the State Legislature and assented to by the President can no longer exist in view of the SC decision in *Union of India v. Mohindra Supply*

Co., [1] Arbitration Act, 1940 (Act No. X of 1940) was passed by the Federal Legislature and received the assent of the Governor-General on March 11, 1940. The legislative powers were then governed by the Government of India Act, 1935, Section 39 of the Arbitration Act so enacted was as below :-

39. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorized by law to hear appeals from, original decrees of the Court passing the order-

An order –

(i) superseding an arbitration ;
(ii) on an award stated in the form of a special case ;
(iii) modifying or correcting an award ;
(iv) filing or refusing to file an arbitration agreement ;
(v) staying or refusing to stay legal proceedings where there is an arbitration agreement ;
(vi) setting aside or refusing to set aside an award :

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to His Majesty in Council."

Under the Adaptation of Laws Order, 1950 issued under the Constitution of India, the words "His Majesty in Council" were substituted by "the Supreme Court".

7. At the time of the enactment of the Arbitration Act, 1940, the subject "arbitration" was included in Concurrent Legislative List III, Part I at Item No. 11; but "administration of justice and constitution and organization of all courts, except the Federal Court" lay in the Provincial Legislative List II, and were included in Item No. 1 there of The "constitution and organization" of the High Court was then within the exclusive competence of the Provincial Legislature ; and the Federal Legislature had no power to enact a law on the subject of "constitution and organization" of the High Court. The Central Legislature could, however make a law on the subject of arbitration. A question arose whether a Letters Patent Appeal against the judgment of a Single Judge of the

High Court was maintainable or the provisions of sub-section (2) of Section 39 of the Arbitration Act were a bar to the entertainment by the High Court of an appeal against the order of a Single Judge. Whether Letters Patent Appeal fell within the expression "constitution and organization" or within "administration of justice" the matter was one within the exclusive competence of the Provincial Legislature, though by virtue of Items 11 and 15 of the Concurrent Legislative List III, the Federal Legislature could enact a law relating to arbitration.
In *Radhakrishnamurthy v. V. A. Y. Ethirajulu Chetty and Co.* [2] the Letters Patent Appeal was held not to be maintainable. This view was expressed on the basis of clause 44 of the Letters Patent of the Madras High Court. The question was, however, considered in AIR 1962 SC 256 from other angles, holding that no Letters Patent Appeal was maintainable.

8. In *State of Uttar Pradesh v. Dr. Vijay Anand Maharaj,* [3] a petition under Article 226, of the Constitution was not regarded as a proceeding under the U. P. Agricultural Income-tax Act, nor a continuation of such a proceeding. Similarly in *Ramesh v. Gendalal Motilal* [4] a petition ,to the High Court invoking the jurisdiction under Article 226 of the Constitution was treated as a proceeding quite independent of the original controversy. When a petition under Article 226 or 227 of the Constitution is not, and cannot be deemed to be, in continuation of a proceeding under the enactment and is to be treated as a distinct proceeding before the High Court, in exercise of an extraordinary or special original jurisdiction, the rule laid down for proceedings under an enactment in the cases cited above, under the Arbitration Act cannot automatically be made applicable to proceedings under Article 226 or 227. It will, therefore be proper to consider the questions involved from the fundamental principles while expressing an opinion on the validity of the Amending Ordinance and the Amending Act as passed by the State Legislature.

9. The three Lists contained in the Seventh Schedule of the Constitution differ from the corresponding Lists of the Government of India Act, 1935 in certain respects. For easy reference and comparison the material entries of both are being reproduced hereinbelow :-

CONSTITUTION OF INDIA	GOVERNMENT OF INDIA ACT 1935
List I - Union List.	List I - Federal Legislative List.

77. Constitution organization jurisdiction and powers of the SC (including contempt of such Court).....	53.....The enlargement of the appellate jurisdiction of the Federal Court and the conferring thereon of supplemental powers.
78. Constitution and organization (including vacations) of the High Courts.....	. . . .
79. Extension of the jurisdiction of a High Court to and exclusion of the jurisdiction of a High Court from any Union territory.	. . . .
	53. Jurisdiction and powers of all courts except the Federal Court with respect to any of the matters in this list and to such extent as is expressly authorised by Part IX of this Act.....
96. Jurisdiction and powers of all courts except the SC with respect to any of the matters in this List.....	
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.	. . . .
List II - State List.	List II - Provincial Legislative List.
3. Administration of justice; constitution and organization of all courts except the SC and the High Courts;.....	1.....The administration of justice ; constitution and organization of all courts except the Federal Court.....
65. Jurisdiction and powers of all courts except the SC with respect to any of the matters in this List.	2. Jurisdiction and powers of all courts except the Federal Court with respect to the matters in this List ; Procedure in Rent and Revenue Courts.
List III - Concurrent List.	List III - Concurrent Legislative List Part I.
13. Civil Procedure including all matters included in the Code of Civil Procedure at the commencement of this Constitution limitation and arbitration.	4. Civil Procedure including the law of limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act.
46. Jurisdiction and powers of all courts	11. Arbitration.

except the SC with respect to any of the matters in this List.

15. Jurisdiction and powers of all courts except the Federal Court with respect to any of the matters in this List.

10. A few important changes were introduced in the three Lists of the Constitution of India. "Constitution and Organization of the High Court" was shifted from the Provincial Legislative List to the Union List and a residuary provision, Entry 97 List I of the Seventh Schedule was incorporated in the Union List. Under Section 104 (1) of the Government of India Act, 1935. the Governor-General could with respect to such matters empower either the Federal Legislature or a Provincial Legislature to enact a law.

11. In respect of the jurisdiction and powers of Courts three expressions have been used, both in the Constitution of India and the Government of India Act, 1935. They are : "Administration of justice". "Constitution and organization" and "Jurisdiction and powers with respect to any of the matters in this List". These expressions were considered in The *State of Bombay v. Narottamdas Jethabhai,* [5] The majority view expressed therein has been summarized in *O. N. Mohindroo v. Bar Council of Delhi,* [6] case has been interpreted by the High Courts at occasions differently. We, therefore, propose to first of all reproduce herein below the view as summarized in the 1968 SC case and then to make a reference to the observations in the 1951 case which suggest that the expression "constitution and organization" includes a part of "general jurisdiction" also.

12. In AIR 1968 SC 888 their Lordships, first of all laid down the scheme of conferring jurisdiction and powers on Courts and thereafter observed with respect to AIR 1951 SC 69 as below :

> "That these entries contemplate such a scheme was brought out in 1951 SCR 51 : (AIR 1951 SC 69) where it was contended that the Bombay City Civil Court Act, 40 of 1948 constituting the said Civil Court as an additional court was ultra vires the Provincial Legislature as it conferred jurisdiction on the new court not only in respect of matters in List II of the Seventh Schedule of the Government of India Act, 1935. but also in regard to matters in List I such as promissory notes in Item 8 of List I.

Rejecting the contention it was held that the impugned Act was a law with respect to a matter enumerated in List II and was not ultra vires as the power of the Provincial Legislature to make laws with respect to "administration of justice" and "constitution and organization of all courts" under Item 1 of List II was wide enough to include the power to make laws with regard to the jurisdiction of courts established by the Provincial Legislature ; that the object of Item 53 of List I, Item 2 of List II and Item 15 of List III was to confer such powers on the Central and the Provincial Legislatures to make laws relating to the jurisdiction of courts with respect to the particular matters that are referred to in Lists I and II respectively and the Concurrent List, and that these provisions did not in any way curtail the power of the Provincial Legislature under Item 1 of List II to make laws with regard to jurisdiction of Courts and to confer jurisdiction on Courts established by it to try all causes of a civil nature subject to the power of the Central and Provincial Legislatures to make special provisions relating to particular subjects referred to in the Lists. It may be mentioned that Item 53 in List I, Items 1 and 2 in List II and Item 15 in List III in the Seventh Schedule to the 1935 ,Act more or less correspond to Entries 77, 78 and 95 in List I. Entries 3 and 65 in List II and Entry 48 in List III of the Seventh Schedule to the Constitution."

Observations in the 1968 case with respect to the scheme of conferring jurisdiction and powers on Courts are as below :-

"The scheme for conferring jurisdiction and powers on courts is (a) to avoid duplication of Courts, Federal and State Courts as in the Constitution of the United States, (b) to enable Parliament and the State Legislatures to confer jurisdiction on courts in respect of matters in their respective lists except in the case of the SC where the legislative authority to confer jurisdiction and powers is exclusively vested in Parliament. In the case of the Concurrent List both the legislatures can confer jurisdiction and powers on courts except of course the SC depending upon whether the Act is enacted by one or the other. Entry 3 in List II confers legislative powers on the States in the matter of "Administration of Justice;" constitution and organization of all courts except the SC and the High Courts; Officers and servants of the High

> Court; procedure in rent and revenue court; fees taken in all courts except the Supreme Court". It is clear that except for the constitution and the organization of the Supreme Courts and the High Courts the legislative power in the matter of administration of justice has been vested in the State Legislatures. The State Legislatures can therefore, enact laws, providing for the constitution and organization of courts except the SC and the High Courts and confer jurisdiction and powers on them in all matters civil and criminal except the admiralty jurisdiction. It would of course be open to Parliament to bar the jurisdiction of any such court by special enactment in matters provided in Lists I and III where it has made a law but so long as that is not done the courts established by the State Legislatures would have jurisdiction to try all suits and proceedings relating even to matters in Lists I and III. Thus, so far as the constitution and organization of the SC and the High Courts are concerned the power is with Parliament. As regards the other courts Entry 3 of List II confers such a power on the State Legislatures. As regard jurisdiction and powers, it is Parliament which can deal with the jurisdiction and powers of the SC and the admiralty jurisdiction. Parliament can confer jurisdiction and powers on all courts in matters set out in List I and List III where it has passed any laws. But under the power given to it under Entry 3 in List II, a State Legislature can confer jurisdiction and powers on any of the courts except the SC in respect of any Statute whether enacted by it or by Parliament except where a Central Act dealing with matters in Lists I and III otherwise provides."

13. On the basis of the observations underlined by us, the learned Advocate-General has urged that under Entry 3 the State Legislature can confer jurisdiction and powers, or restrict or withdraw the jurisdictions and powers already conferred, on any of the courts except the Supreme Court, in respect of any Statute and, therefore the State Legislature has the power to make a law in respect of Letters Patent Appeals governed by clause 10 of the Letters Patent. No observation can be read in isolation.

At an earlier stage their Lordships made it clear that except for "constitution and organization of the SC and the High Court" the State Legislature can enact laws providing for the constitution and organization of other courts and "confer jurisdiction and powers on them in all matters, civil and criminal except the

admiralty jurisdiction." It was also made clear that even though the State Legislature can confer jurisdiction enabling the Courts to try all suits and proceedings relating even to matters in Lists I and III, the Parliament had the Power to create additional Courts or to bar the jurisdiction of Courts established by the State Legislature in respect of matters falling in Lists I and III. The observations relied upon by the learned Advocate-General must be construed in this light. Therefore, the State Legislature can enact laws providing for the constitution and organization of courts except the SC and the High Courts and confer jurisdiction and powers (general) on them in all the matters (other than admiralty jurisdiction), whether falling in Lists II and III or in List I, and also confer jurisdiction and powers (special) on any of the courts except the SC with respect to any of the matters falling in List II and with the assent of the President with respect of matters in List III. Exercise of jurisdiction and powers (special) with respect to matters falling in Lists I and III shall, however, be subject to the provisions of the Constitution and in accordance with the laws enacted by the Parliament Consequently, if the Parliament creates special Courts or places restriction in the exercise of jurisdiction the Courts established by the State Legislature shall cease to exercise jurisdiction or exercise restricted jurisdiction with respect to matters enumerated in List I and List III, if necessary.

14. The learned Advocate-General also placed reliance upon the following observations made in connection with Entries 77 and 78 of List I and contended that the words "but by other entries." must have reference to the expression "administration of justice" included in Entry 3 of the List II :

> "The only difference between these two entries is that whereas the jurisdiction and powers of the SC are dealt with in Entry 77 the jurisdiction and powers of the High Courts are dealt with not by Entry 78 of List I but by other entries."

Entries 95 of List I, 65 of List II and 46 of List III pertain to jurisdiction and powers of all the courts, except the SC with respect to matters enumerated in those Lists. This is more or less special jurisdiction and powers of all courts except the Supreme Court. When these entries do not relate to the special jurisdiction and powers of the Supreme Court, it was necessary to include this

matter in List I which was done by enlarging Entry 77 of List I, and including therein jurisdiction and powers of the Supreme Court. The general jurisdiction of the High Courts can fall in two categories : "constitution and organization" or "administration of justice". To the extent "constitution and organization" must include a part of general jurisdiction and powers, it shall not be covered by "administration of justice" and, therefore, to this extent the legislative competence shall be with the Parliament though in other respects, pertaining to general jurisdiction and powers the State Legislature can enact a law under the head "administration of justice". In other words, the jurisdiction and powers of the SC will fall in Entry 77 of List I, but for the High Courts we shall have to look elsewhere, that is, for special jurisdiction under the three Entries referred to above and for general jurisdiction under Entry 3 of List II, namely, "administration of justice", except to the extent the general jurisdiction must go with "constitution and organization."

15. There should not be any controversy as to the meaning and scope of Entry 95 of List I, Entry 65 of List II and Entry 46 of List III which correspond with Entry 53 of List I, Entry 2 of List II and Entry 15 of List III of the Seventh Schedule of the Government of India Act, 1935. According to the majority decision in AIR 1951 SC 69 and the law laid down in AIR 1968 SC 888, these entries relate to special jurisdiction and powers of all the courts except the SC conferred by the Parliament or the State Legislature. They are special provisions relating to particular subjects referred to in the Lists. In pursuance of these provisions the State Legislature can enlarge, reduce or rescind the jurisdiction and powers generally conferred on the Courts of law including the High Court, or create special Courts or Tribunals, and the Parliament can, similarly create special Courts or restrict, enlarge, or rescind the general jurisdiction, of such Courts. The three entries can, therefore be said to relate "to special" jurisdiction and powers of all the Courts except the Supreme Court, including the High Courts established under the Constitution and constituted and organized by the Parliament in accordance with the Constitution. Any legislation in this respect shall be by a competent legislature, that is by the Parliament with respect to the matters enumerated in Lists I and III, and the State Legislature with respect to the matters in List II and with the assent of the President to matters in List III.

16. It is in respect of the other two entries "administration of justice" and

"constitution and organization" that there exists a conflict. Certain observations made in AIR 1951 SC 69 made it clear that "constitution and organization" carries with it the concept of some general jurisdiction considering that the Courts of law duly established cannot function unless some general jurisdiction is conferred on them. It is true that the Entries of the Seventh Schedule of the Government of India Act, 1935 were being considered in this case, but Fazl Ali, J. observed as below :-

> "The expression "administration of justice" has a wide meaning and includes administration of civil as well as criminal justice, and in my opinion Entry I in List II, which I have quoted, is a complete and self-contained entry. In this entry no reference is made to the jurisdiction and powers of Courts because the expressions "administration of justice" and "constitution and organization of Courts", which have been used therein without any qualification or limitation, are wide enough to include the power and jurisdiction of Courts, for how can justice be administered if Courts have no power and jurisdiction to administer it, and how can Courts function without any power or jurisdiction. Once this fact is clearly grasped, it follows that, by virtue of the words used in Entry 1 of List II, the Provincial Legislature can invest the Courts constituted by it with power and jurisdiction to try every cause or matter that can be dealt with by a Court of civil or criminal jurisdiction, and that the expression "administration of justice" must necessarily include the power to try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceedings or what its subject-matter may be. This power must necessarily include the power of defining, enlarging, altering amending and diminishing the jurisdiction of the Courts and defining their jurisdiction territorially and peculiarly."

17. Similarly, Patanjali Sastri, J. observed at page 78, column 1 :

> "The grading of the Courts too in their hierarchy has reference to the pecuniary and territorial limits rather than to the nature and kind of the subject-matter which they are empowered to deal with. It is reasonable to presume that this system of organization of Courts in British India was known to the framers of the Government of India Act, 1935, and it cannot

be readily supposed that they wanted to introduce a radical change by which the power of constituting Courts and providing for administration of justice is to be vested in the Provincial Legislatures, while jurisdiction has to be conferred by piecemeal legislation by the Federal and Provincial Legislatures with respect to specific matters falling within their respective legislative fields which are ' by no means capable of clear demarcation.....

I am convinced that both the language of the provisions and the antecedent legislative practice support the conclusion that the Provincial Legislatures which have the exclusive power of constituting and organizing Courts and of providing for the administration of justice in their respective provinces, have also the power of investing the Courts with general jurisdiction."

18. Mahajan, J. quoted with approval the view expressed by the Chief Justice of Bombay in *Mulchand Kundanmal v. Raman Hiralal,* [7] as below :

"..... It is difficult to imagine how a Court can be constituted without any jurisdiction and if Parliament has made the administration of justice exclusively a Provincial subject and conferred exclusively upon the Provincial Legislature the power to constitute and organize all Courts it must follow, that the power is given to the Provincial Legislature to confer the ordinary civil jurisdiction upon the Courts to carry on with their work....."

and thereafter observed as below :-

"Moreover, the words appear to be sufficient to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the Province. Legislation on the subject of administration of justice and constitution of Courts of justice would be ineffective and incomplete unless and until the Courts established under it were clothed with the jurisdiction and power to hear and decide causes. It is difficult to visualize a statute dealing with administration of justice end subject of constitution and organization of Courts without a definition of the jurisdiction and powers of those Courts

as without such definition such a statute would be like a body without a soul. To enact it would be an idle formality.... ....

The argument logically analysed, comes to this : that such a statute will contain the name of the Court, the number of its Judges, the method of their appointment the salaries to be drawn by them and it will then stop short at that stage and will not include any provision defining the powers of the tribunal or its other jurisdiction and that the Court so constituted could acquire jurisdiction only when a law was made relating to its jurisdiction and powers by the Federal Legislature under Entry 53 of List I, by the Provincial Legislature under Entry 2 of List II and by either Legislature under Entry 15 of List III.....

Such a construction of the Act would not only do violence to the plain language of Item I of List II but would be contrary to its scheme under which administration of justice was made a provincial subject. It is significant that no other Legislature has been given the power to bring into existence a Court. A Court without powers and jurisdiction would be an anomaly as it would not be able to discharge the function of administration of justice and the statute establishing such a Court could not be said to be a law on the subject of administration of justice. It is a fundamental principle of the construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. Everything necessary for the effective exclusion of power of legislation must, therefore, be taken to be conferred by the constitution with that power..... The Provincial Legislature could therefore, bring into existence a Court with general jurisdiction to administer justice on all matters coming before it within certain territorial and pecuniary limits, subject of course to the condition that such general jurisdiction may be expressly or impliedly taken away by the provisions of other laws.

I am, therefore, of the opinion that under Item 1 of List II of the Provincial Legislature has complete competence not only to establish Courts for the administration of justice but to confer on them jurisdiction to hear all causes of a civil nature, and that this power is not curtailed or limited by power of legislation conferred on the two Legislatures under Items 53, 2 and 15 of the three lists."

19. The observations of Mukherjea, J. on this point are as below :-

"..... In interpreting this provision of the Constitution it has been held in North America that words "constitution maintenance and organization of Courts" plainly include the power to define the jurisdiction of such Courts territorially as well as in other respects : Re County Courts of British Columbia, 21 SCR 446, Mr. Seervai argues that this might be the normal meaning of the words if they stood alone.....The word "Court" certainly means a place where justice is judicially administered. The appointment of Judges and officers or the mere setting apart of a place where the Judges are to meet, are not sufficient to constitute a Court. A Court cannot administer justice unless it is vested with jurisdiction to decide cases and "the constitution of a Court necessarily includes its jurisdiction" vide Clements Canadian Constitution. Edn. 3, p. 527..... Entry 1 of List II uses the expression "administration of justice and constitution of all Courts" in a perfectly general manner. No particular subject is specified to which the administration of justice might relate or for which a Court might be constituted. It can, therefore be legitimately interpreted to refer to a general jurisdiction to decide cases not limited to any particular subject The other three items on the other hand relate to particular matters appearing in the three Lists and what they contemplate is the vesting of jurisdiction in Courts with regard to such specific items only. In one case the jurisdiction is "general" as is implied in the expression "administration of justice", while in the other three the jurisdiction is "particular" as limited to particular matters and hence exclusive."

20. The minority view expressed by Das, J. need not be reproduced in this judgment.

21. It is true that Entry 1 of List II of the Government of India Act, 1935 was construed in the above case and the entry included "administration of justice" and "constitution and organization of all courts other than Federal Court" but stress was always laid upon the fact that a Court constituted without conferment of general jurisdiction would be futile and it shall not be able to discharge its juridical functions unless the legislature conferred jurisdiction by a separate enactment. Stress was also laid upon the fact that the establishment of a Court carried with it the concept of not only determining the place of sitting and the

appointment of Judges, but what jurisdiction such Court can generally exercise, in other words, the pecuniary and territorial jurisdiction of such Court was to be specified while constituting such Court. In this view of the matter, "constitution and organization" must include a part of "general jurisdiction" not covered by the three entries pertaining to "special jurisdiction and powers."

22. We may now consider this question from the fundamental principles what the scope of each entry is when considered individually. The effect of over-lapping entries existing in different Lists within the legislative powers of different legislatures shall be considered later.

23. None of the Entries in the lists is to be read in a narrow and restricted sense, and the widest possible construction, according to the ordinary meaning must be put upon the words used therein. The words of the Entry must be read in their ordinary, natural and grammatical meaning ; and most liberal construction should be put upon the words so that the same may have effect in their *widest amplitude Navinchandra Mafatlal, Bombay v. Commr. of Income-tax. Bombay City,* [8] *Hans Muller of Nurenburg v. Supdt, Presidency Jail, Calcutta,* [9] *Rustom Cavasjee Cooper v. Union of India.* [10] and *British Coal Corporation v. The King,* [11] They are not to be construed in a *narrow and pedantic manner,* [12] *United Provinces v. Mt. Atica Begum,* [13] and *Sri Ram Ram Narain Medhi v. State of Bombay,)*.[14] Each general word extends to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it (AIR 1941 FC 16). Each particular entry relates to a separate subject or group of cognate subjects, each subject or group of subjects being independent of the others subject only to incidental overlapping (AIR 1951 SC 69). However ; there can be a legislation by combining two entries in the same List or in different Lists provided that the legislature has the power to enact a law on both the subjects (*L. Jagannath v. Authorised Officer, Land Reforms, Madurai,* [15] and *Union of India v. Harbhajan Singh,)*. [16]

24. The expression "administration of justice", can be interpreted in both a narrow and wider sense. The narrow meaning flows from the dictionary meaning of the expression. Justice is administered in a case after its institution till the pronouncement of judgment and execution of the decree, judgment or order. In the wider sense the expression shall include all the aspect connected

with the administration of justice. Salmond on Jurisprudence, Twelfth Edition, pages 104 and 105, sums up this question as below :-

> "Hitherto we have confined our attention to the administration of justice in the narrowest and most proper sense of the term. In this sense it means as we have seen the application by the State of the sanction of physical force to the rules of justice. It is the forcible defence of rights and suppression of wrongs. The administration of justice properly so called therefore involves in every case two parties the plaintiff and the defendant, a right claimed or a wrong complained of by the former as against the latter a judgment in favour of the one or the other and execution of this judgment by the power of the State if need be. We have now to notice that the administration of justice in a wider sense includes all the functions of courts of justice, whether they conform to the foregoing type or not. It is to administer justice in the strict sense that the tribunals of the State are established, and it is by reference to this essential purpose that they must be defined. But when once established, they are found to be useful instruments by virtue of their constitution, procedure, authority or special knowledge, for the fulfillment of other more or less analogous functions. To these secondary and non-essential activities of the courts, no less than to their primary and essential functions, the term administration of justice has been extended. They are miscellaneous and indeterminate in character and number, and tend to increase with the advancing complexity of modern civilization."

25. The wider scope of the expression also appears from Clement's Canadian Constitution. Third Edition, page 539 :

> "..... justice should be administered throughout Canada in the main through the medium of Courts constituted, maintained and organized under provincial legislation..... No serious question has been raised as to the right of a provincial legislature to formulate a complete scheme for the administration of justice in the province..... The right of appeal, thus created, is in no sense an alteration of the right or rights concerning which litigation has arisen ; It, is an alteration of a right connected with the administration of justice."

26. *In re S. M. Nathaniel* [17] the wider scope of the expression "administration of justice" was recognized, but it was observed that the expression used in Entry 1 of List II of the Seventh Schedule of the Government of India Act should not be construed in that wide sense. In the wider sense "administration of justice" can include even establishment of Courts, provisions for institution and trial of suits, provisions for appeals and revisions, and rules of procedure and practice of Courts in civil and criminal proceedings including execution in civil and punishment in criminal matters. In AIR 1935 PC 158 system of appeals was recognized as a most essential part of the administration of justice.

27. The question of giving a restricted scope to an expression arises only when overlapping entries exist in Lists within the legislative field of two different legislatures. Such a question shall be considered by us later. For the present it can be said that if the expressions "constitution and organization" and "jurisdiction and powers" did not find place in the three Lists, "administration of justice" had to be understood in a very wide sense and would include the establishment of courts, jurisdiction thereof and the trial of suits, appeals and revisions and also the execution in civil matters and punishment in criminal cases. Broadly speaking the expression would, in such circumstances, include all matters connected with the administration of justice in accordance with the law enacted by the legislature, failing which on principles of equity, fair play and good conscience, to put it differently would include "constitution and organization" of court "jurisdiction and powers", both general and special, of such courts and the trial of suits and execution of decree, judgment or order passed by such courts.

28. Similarly, in the absence of entries of "administration of justice" and "jurisdiction and powers" in the three Lists, the expression "constitution and organization" could be given a wider scope as for "administration of justice". The legislature has the inherent power to make laws within their legislative competence. Making of laws has no connection with the administration of justice. Laws made determine the rights of the parties and such rights are enforced through the courts duly established and what the courts do is to administer justice according to the law. The establishment of Courts is for the administration of justice and if "constitution and organization" alone, and not

the other two expressions, was included in the legislative list, "constitution and organization" would easily include what can be said to be comprised in the expression "administration of justice."

29. In the same manner if the expressions "administration of justice" and "constitution and organization" had not been specifically provided for in the Lists, "jurisdiction and powers of Courts" would include the establishment of courts for the simple reason that there must be some tribunal to exercise the jurisdiction and powers prescribed by the legislature.

30. It is thus evident that the three expressions "administration of justice", "constitution and organization" and "jurisdiction and powers" are overlapping and in the absence of the other two, any of these expressions can be given a wide legislative field to include what is or can be deemed to be included in "administration of justice."

31. The scope of these expressions is now to be considered in the light of these entries existing in different legislative lists, so far as the High Courts are concerned. "Administration of justice" is included in Entry 3 of State List II. The State Legislature has the exclusive power to make laws in respect of "administration of justice." "Constitution and organization of all courts except the SC and High Courts" has also been included in Entry 3, but "constitution and organization of High Courts" finds place in Entry 78 of Union List I, which lays down the exclusive field of legislation of the Parliament. "Jurisdiction and powers of all courts except the Supreme Court" finds place in Entry 95 of Union List I, Entry 65 of State List II and Entry 45 of the Concurrent List III. These Entries restrict the scope of "jurisdiction and powers" to the matters enumerated in the Lists. The Parliament can, therefore, make laws as to the jurisdiction and powers of all the courts with respect to the matters in Lists I and III, while the State Legislature can make laws as to the jurisdiction and powers of all courts except the SC with respect to the matters in List II and with the assent of the President with respect to any of the matters in List III. When similar subjects have been included in different legislative lists, the real question arises as to how these entries have to be construed? Naturally, each Entry cannot be given the widest scope, nor can it be given effect to in its widest amplitude. The scope of some shall have to be restricted.

32. Where there exist overlapping entries in the Lists assigned to different legislature, they should be so construed as to give effect to all of them and a construction which will result in any of them being rendered futile or otiose must be avoided. (*Waverly Jute Mills Co. Ltd. v. Raymon and Co. (India) Pvt. Ltd.*).[18] Another well recognized rule of construction, as laid down in AIR 1968 SC 888, is :

> "the Court while construing entries must assume that the distribution of legislative powers in the three Lists could not have been intended to be in conflict with one another. A general power ought not to be so construed as to make a nullity of a particular power conferred by the same instrument and operating in the same field when by reading the former in a more restricted sense, effect can be given to thp latter in its ordinary and natural meaning. It is, therefore, right to consider whether a fair reconciliation cannot be effected by giving to the language of an entry in one List the meaning which, if less wide than it might in other context bear, is yet one that can properly be given to it and equally giving to the language of another entry in another List, a meaning which it, can properly bear. Where there is a seeming conflict between, one entry in one List and another entry in another List, an attempt should always be made to avoid (sic) to see whether the two entries can be harmonized to avoid such a conflict of jurisdiction."

33. The Court never ascribes to the legislature an intention to enact a sterile clause (AIR 1962 SC 256). Consequently, where there are two entries, one general in its character and the other specific, the former must be construed as excluding the latter, (AIR 1963 SC 90). The field of legislation must be carved out for the entry and this part is to be excluded from the general entry (AIR 1968 SC 888).

34. Another rule which is often applied to overlapping entries is the rule of pith and substance. "It is usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding." (The *Second Gift Tax Officer, Mangalore v. D.H. Hazareth* [19] and *Profulla Kumar v. Bank of*

Commerce Ltd., Khulna, [20]

35. Broadly speaking, it can be laid down that in the case of two competing or overlapping entries existing in different Lists, both not being within the legislative competence of the same legislature, each entry must be given its widest amplitude, consistent with the reservation of a field of legislation for another entry, and the width of such interpretation be not such as to make either of the entries a nullity, or to unreasonably cut down the amplitude thereof. In the case of such competing entries the field of legislation for an entry which can be regarded as special and not general, shall exclude the field of a general entry and in order not to make any of the entries futile or otiose, such amplitude may be given to the special entry as not to unduly reduce the scope of the general entry. The scope of the special entry can be restricted to matters which must be comprehended therein. It shall thereby be possible to maintain the scope of a general entry which must be given the widest amplitude and at the same time the special entry shall cover matters which must be included in such entry.

36. In this view of the matter "jurisdiction and powers" covered by Entry 95 of List I, Entry 65 of List II and Entry 46 of List III of the Seventh Schedule of the Constitution of India will form a special group as compared to "administration of justice" and "constitution and organization". While considering the latter two entries "administration of justice", which is or can be used in a wider sense, can be regarded as a general entry while "constitution and organization" as a special entry. Consequently, Entries 95, 65 and 46 of the three Lists shall exclude "administration of justice" in Entry 3 of List II and "constitution and organization of High Courts" in Entry 78 of List I ; and in case of High Courts, Entry 78 of List I shall exclude Entry 3 of List II.

37. There is no longer any controversy as to the nature and scope of the three Entries 95, 65 and 46 in respect of "jurisdiction and powers of courts other than Supreme Court". This is, one may say, a special provision where under in respect of the matters enumerated in the Lists the competent legislature can confer jurisdiction and powers on the existing Courts established by the competent legislature or it can create special courts or tribunals, or curtail or abol's the jurisdiction and powers of the existing Courts. Any legislation in respect of jurisdiction and powers under the three entries must relate to the

matters detailed in the corresponding List.

38. The next question for consideration, which is the main controversy between the parties, is what legislative field be reserved for the expression "constitution and organization" so that the field of "administration of justice" be not unreasonably restricted.

39. The meaning of the words "Constitute, Constituted or Constitution", "Establish" and "Organize, Organized or Organization" has been given in the dictionaries as below :

A New English Dictionary on Historical Principles (Oxford) Vol. II, p. 876.

Constitute : 2-B. To appoint to the office, function, or dignity of ; to make, create (with obj. and compl.).
4. To set up, establish, found (an institution, etc.)
b. To give legal or official form or shape to (an assembly, etc.)
5. To frame, form, make (by combination of elements) ; esp, in pass, to have a constitution or make of a specified sort. (Very frequent in reference to the bodily or mental constitution).
6. To make (a person or thing) something : to establish or set up as (With obj. and compl.) Cf. 2.
7. (with simple obj.) To make (a thing) what it is ; to give its being, to, form, determine.
8. To make up, form, compose ; to be the elements or material of which the thing spoken of consists (Correlative to Consist 7).
Constitution : 1. The action of constituting, making, establishing, etc. see the verb.
3. A decree, ordinance, law, regulation ; usually, one made by a superior authority, civil or ecclesiastical, spec, in Rom, Law, an enactment made by the Emperor. Also fig. (Now only Hist).
4. The way in which anything is constituted or made up : the arrangement or combination of its parts or elements, as determining its nature and character, make, frame, composition. Constitution of nature of the world, of the universe of things (the actual existing order) so of society, etc.
b. Composition in reference to elements.

6. The mode in which a state is constituted or organized.
7. The system or body of fundamental principles according to which a nation, State, or body politic is constituted, and governed.
A New English Dictionary on Historical Principles (Oxford) Vol. VII, Pp. 195 and 196.
Organize : 1. trans. To furnish with organs ; to render organic; to give the structure and interdependence of parts which subseries vital processes ; to form into a living being, or living tissue. Usually in pa. pple ; see also Organized I.
b. intr. for refl. To become organic, be formed into living tissue.
2. gen. To form into a whole with mutually connected and dependent parts ; to co-ordinate parts or elements so as to form a systematic whole (with either the whole or the parts as object :); to give a definite and orderly structure to ; to systematize ; to frame and put into working order (an institution, enterprise, etc.) ; to arrange or 'get up' something involving united action. Organization : 1. The action of organizing or condition of being organized, as a living being ; connexion and co-ordination of parts for vital functions or processes ; also the way in which a living being is organized; the structure of an organized body (animal or plant), or of any part of one ; bodily (rarely mental) constitution.
b. The fact or process of becoming organized or organic ; in path, conversion into living tissue.
c. Concr. An organized structure, body or being ; an organism.
2. gen. The action of organizing or putting into systematic form ; the arranging and co-ordinating of parts into a systematic whole.
b. The condition of being organized ; the mode in which something is organized ; co-ordination of parts or elements in an organic whole ; systematic arrangement for a definite purpose.
Webster's Third New International Dictionary :
Constitute : 1. a. to appoint to an office, function, or dignity (constituted authorities)
b. to make (a person-or thing) something.
3. to set-up ; establish ; as a ; to put into force (as a law) enact ; b. Found (a social club for immigrants) ; formally establish (a provisional government).
c. to give due or lawful form to (as a proceeding or document) Legally process (an agreement constituted by writing)
d. to cause (as a trait) to become fixed : Determine 4 ; to make up (the element or elements of which a thing, person or idea is made up. Form, Compose).

Constitution : 1. a (1) an authoritative ordinance or enactment. 2. the act of establishing, making or setting up (before the - of civil laws). 4. the mode or manner in which something is constituted, constructed, or organized : 5. the mode in which a State or society is organized : esp : the manner in which sovereign power is distributed. 6. a. the system or body of fundamental rules and principles of a nation. State or body politic that determines the power and duties of the government and guarantees certain rights to the people.
Webster's New Twentieth Century Dictionary, Second Edition :
Organize : 1. to provide with an organic structure ; to systematize.
2. to arrange ; establish ; institute ; bring into being.
3. (a) to enlist in or cause to form, a labor union ; (b) to enlist the employees of (an industry, store, etc.) in a labor union.
Organization : 1. An organizing or being organized.
2. Organic structure ; manner of being organized.
3. An organism.
4. Any unified, consolidated group of elements ; systemized whole ; especially, a body of persons organized for some specific purpose, as a club, union or society.
5. The administrative, personnel or executive structure of a business
6. All the functionaries, committees ; etc. of a political party.
WORDS AND PHRASES PERMANENT EDITION
Volume 15 Establish : "In General : The word "establish" has many meanings varying with the subject-matter with which it is used and when used with reference to a state a colony or other institution, it means to originate and secure the permanent existence of, to found to institute, to create and regulate. *Tempkins v. District Boundary Ed. of Yamhill Country,* [21]
Volume 8-A Constitution : "A constitution is an act of extraordinary legislation by which the people establish the structure and mechanism of their government, and in which they prescribe fundamental rules to regulate the motions of the several parts," *Fakin v. Baub, pa.*[22]A constitution is that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised, and its provisions are the rules of conduct for those branches of the Government which exercise the sovereign power, *State v. Griswold,* [23] Volume 30 Organization : Under statute providing that, until articles of incorporation should be recorded, the corporation should transact no business except its own organization. It is held that the term "organization" means simply the process of

forming and arranging into suitable disposition the parties who are to act together in, and denning the objects of the compound body. *Abbott v. Omaha Smelting and Refining Co.* [24] "Organization" is defined as an arrangement of parties the act of organizing as the organization of a Government or of a rail-road or other corporation and as used in reference to the organization of a school, signifies the bringing together the collecting the placing in, the committing of boys or other inmates to, a school, and hence, the purpose of Gen. St. 1889, par. 6516, providing for the committing of boys under the age of 16 to a reform school by courts of record, is sufficiently expressed in its title, as "an act for the organization and management of the State Reform School". *In re Sanders,* [25]

CORPUS JURIS SECUNDUM

Volume 15, Constitute : Defined generally by the Standard Dictionary as meaning to form or be the substance of, and by the courts, as meaning to be, to compose, or to make up. As sometimes used, it has been held synonymous with "establish", "make", "ordain" and "pass". Constituted has been employed as meaning forming a component part. Constitution : In its technical legal sense, something constituted, being generally used to designate the written evidence of something which can have only a legal existence ; and still more specifically, the charter, framework, or fundamental law of a nation or State, or the regular form or system of Government. Volume 30, Establish : Primary Sense. In its primary sense, it has been defined as meaning to being into being, create, or originate, to form, make, or model ; to build or erect ; to constitute ; to found ; to institute ; to locate ; to organize ; to prepare ; to set up ; but not to acquire something which has already been brought into existence. Broader Senses. In general, the term, however, is not limited to the signification of to found and set up, for it is as often employed to signify the putting or fixing on a firm basis, putting in a settled or efficient state, an existing legal organization or institution, as it is to founding or setting up such organization or institution ; and the one meaning is as little recondite, abstruse ; or obscure as the other. Connoting stability or permanence. In its broader sense the word has been defined as meaning to make firm or stable ; to make firm or sure ; to make firm or to augment ; to make stable ; to make stable and firm ; to make steadfast, firm, or stable ; to place upon a secure foundation or basis ; to place upon a firm

foundation ; and hence to strengthen that which is already in being..... to appoint or constitute for permanence, as officers, laws, regulations etc.
Volume 67, Organize : In common use the word "organize" is without doubtful or ambiguous meaning. It is defined as meaning to arrange individual elements inter-dependently each individual having a special relationship with respect to the whole ; to arrange or constitute in parts, each having a special function act, office, or relation ; to arrange in order for the normal exercise of its appropriate functions ; to systematize ; to establish or furnish with organs to form with suitable organs to put into working order. Organized : Erected established, constituted, composed and formed as to its constituent parts. Organization : An arrangement of parties, formation ; the act of organizing ; the connection of pats in and for a whole ; so that each part is at once end and means. The term implies legal organization, and a recognition of order and an obedience to duly constituted authority.

40. From the above it shall be evident that the words "constitute", "establish", "organize" are to a considerable extent synonymous. Constitution is the mode in which the State is constituted or organized. The word "constitute" has virtually the same meaning as "establish". However, the word "organize" or "organization" is generally used in a wider sense. Organization has a reference to the systematic form or working of an institution. Organization is the action, of putting into systematic form, or arranging or connecting parts into a systematic whole. Organization also conveys the meaning of systematic arrangement for a definite purpose. In the Words and Phrases, Permanent Edition. "Organization" has been defined on the basis of certain American decisions as an arrangement of parties and in reference to the organization of a school, signifying the bringing together the collecting, the placing in, the committing of boys and other inmates to the school. Broadly speaking, therefore, it can be said that whatever is necessary for the systematic working of an institution for the purpose it has been established, falls in the category of "organization" or "constitution", though when both the words "constitution" and "organization" have been used together, the scope of "constitution" would be less than of "organization." Further, in the case of a country "constitution" is that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised, and its provisions are the rules of conduct for those branches of the Government which exercise the sovereign power (See

Words and Phrases, (Permanent Edition). The constitution of a court is not complete with the determination of the place where it shall discharge its judicial functions and the appointment of Judges of such Court, "Constitution" must provide for rules and practice of such Court, as a result of which the decision of a Judge or Judges, not all the Judges of the Court, can be regarded as the decision of the institution (High Court). This has reference to the practice and procedure of the High Court which, in a loose term, is often said as the internal working or arrangement of the High Court.

41. In case the constitution of a Court merely implies the determination of the place of sitting and the appointment of the presiding officer of the Court, such constitution shall not be of any practical value. Each Court duly constituted must have a pre-determined territorial jurisdiction : the purpose of establishing the Court has to be made clear, whether the Court has been created for deciding civil, criminal or revenue matters, and what is the maximum pecuniary jurisdiction of the Court. For example, when the Court of a Munsif is established or constituted (they being called Subordinate Judges in certain State), its territorial jurisdiction, being a civil court, and the pecuniary jurisdiction have to be specified failing which the litigant public shall be in doubt where he can seek his legal remedy. Place of sitting is usually also specified. In case there is no legislation limiting the subject-matter jurisdiction of the Court, any dispute within its territorial and pecuniary limits can be instituted in such Court. However, under the three entries of the Lists pertaining to "jurisdiction and powers", the competent legislature can confer additional powers on such Courts or by implication or otherwise withdraw such jurisdiction which could otherwise be exercised by it. To put it differently, in the case of Courts or Tribunals consisting of one presiding officer, or if presided over by more than one. the jurisdiction has to be exercised by all of them acting together, "constitution and organization" must include not only the place of sitting and the appointment of the officers but also territorial and pecuniary jurisdiction, and the nature of jurisdiction whether civil, criminal or revenue. In the case of the High Courts "constitution and organization" must include the formation of Benches, which case shall be heard by a Single Judge or by a Bench of two or more Judges, and also the manner in which the judgment of a Single Judge can be challenged before the same High Court thereby to have the final shape of a decision of the High Court. Constitution of Benches and Letters

Patent Appeals can thus easily be included in "constitution and organization."

42. The matter can be considered from another angle also. Under the Government of India Act, 1935 "constitution and organization" of the High Court was placed in Entry 1 Provincial List II. In the Draft Constitution of India also this item was placed in the State List II, but was later transferred to Union List I. For proper interpretation of the expression "constitution and organization", one must determine why this change was introduced, and the object of transferring "constitution and organization" to List I can be utilized in laying down the meaning and scope of the expression.

43. Legislative proceedings cannot be referred to for the purpose of construing an enactment, but they are relevant for the proper" understanding of the circumstances under which it was passed and the reasons which necessitated it. The Constituent Assembly Debates can be looked into for this restricted purpose. (*Chiranjit Lai Chowdhury v. Union of India,*). [26] Two speeches printed in Volume IX of the Constituent Assembly Debates are material on this point. They are as below :

(1) The Honourable Dr. B.R. Ambedkar :

> ".....but I would like to point out that we have already passed Articles 192-A, 193, 197, 201 and 207 which deal with the constitution of the High Courts. Under those Articles except for pecuniary jurisdiction, the whole of the High Courts are placed, so far as their constitution, organization and territorial jurisdiction are concerned, in the Centre. It seems to me therefore, that this amendment is out of order."..... Well, we have deliberately brought in the High Courts because we felt that it was necessary to bring in High Courts in view of certain Articles that we have already passed..... Articles 192-A,193, 197, 201 and 207..... he will find that the only matter that is left to the Provincial Legislature is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject-matter. The rest of the High Court is placed within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make good this lacuna and to bring in the High Courts

which, as I said by virtue of these Articles excepting for two cases have been completely placed within the purview of the Parliament."

(2) Shri Alladi Krishnaswami Iyyar :

"With regard to the amendment moved by Dr. Ambedkar, I should like to say a few words. In the first place, we have already taken a particular step in regard to the High Court ; that is, the appointment of the Judges is in the hands of the President. Secondly, so far as the organization and jurisdiction is concerned, the idea is that there must be uniformity in the organization of the High Courts in the different parts of India, subject of course to the provisions of the Constitution. Therefore, in so far as the organization is concerned, with a view to emphasize the principle of uniformity and to see that there is uniformity in the different High Courts, this power is transferred to the Central Legislature. It will be realized that we have High Courts and High Courts. There are High Courts which have been functioning for several years, for a century. There are High Courts which have come into being recently and it is also proposed to bring in all the High Courts in the State under the jurisdiction of Parliament, and see that there is a certain uniformity in the organization and constitution of the different High Courts in India. The only legislature that can function in this regard is the Parliament. That is why that part of the amendment provides for it."

44. it shall be noticed that stress was laid on uniformity of the functioning of the High Courts ; and this principle can also be deduced from the object underlying the transfer of the item from the State List to the Union List. In matters within the exclusive competence of the State Legislature there can be conflicting enactments in the various States ; and consequently if "constitution and organization of High Courts", was retained in the State List, there could be one law regulating practice and procedure of the High Court in one State and a different one in another. There would not have been any uniformity. But once the Parliament alone has the power to enact a law on this subject the underlying principle will always be the same. In any case, the same spirit shall pervade the enactments applicable to different High Courts.

45. When the aim to be achieved is to bring about uniformity in the High

Courts, the uniformity shall not be in the buildings staff or in the judgments of the High Courts, nor in the law to be administered in the State. Mere uniformity in the appointment of Judges could not be a sufficient ground for transferring, "constitution and organization of the High Courts" to the Union List. Incorporation of a provision in the main provisions of the Constitution would have served the purpose. In fact, such a provision had been incorporated. The uniformity, as in the mind of the framers of the Constitution, must therefore, be in the functioning of the High Courts which is often called the internal working thereof, which would necessarily include constitution of Benches and maintainability of Letters Patent Appeals.

46. This finds support from the three entries enumerated in Lists I and II. Constitution and organization of the SC has been placed in Entry 77. List I and of the High Courts in Entry 78 thereof, while "administration of justice" is included in Entry 3 of List II.

47. It was contended on behalf of the appellants that the "semi colon" existing between "administration of justice" and "constitution and organization of all courts except the SC and the High Courts" existing in Entry 3 of List II be not given any weight and the "semi colon" be substituted by or deemed to have the same meaning as "coma". The contention is that "administration of justice" in Entry 3. List II is in respect of Courts which the State Legislature can establish and this expression cannot apply to the SC and the High Courts. The law on the use of punctuation for interpretation of an enactment can be said to be beyond controversy. Punctuation is a minor element in the construction of a statute and very little attention is paid to it by English Courts. When a statute is carefully punctuated and there is doubt about its meaning a weight should undoubtedly be given to the punctuation. Punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text (*Aswini Kumar Ghose v. Arabinda Bose,).* [27]
48. In America also a similar view is adopted. It was held in *United States of America v. Shreveport Grain and Elevator Co.* [28]

> "Punctuation marks are no part of a statute ; and to determine its intent the court in construing it will disregard punctuation or will repunctuate, if that be necessary, in order to arrive at the natural meaning of the words

employed."

49. In case "semi colon" is replaced by "coma" or is completely disregarded. Entry 3 shall be "administration of justice, constitution and organization of all courts." We speak of administration of justice in a Court and not of a Court. In this view of the matter, "semi colon" must be regarded as a part of the statute showing that one subject is "administration of justice" and another is "constitution and organization". It is a different thing that the two subjects are similar, but each has to be considered separately.

50. We are alive to the difficulty that if the punctuation mark is duly considered and "administration of justice" is regarded as a separate head, it shall be open to the State Legislature to enact a law not only in respect of the subordinate courts but in respect of High Courts and SC also. Such difficulty shall not arise if the view already expressed above is adopted, namely, that "administration of justice" does not include the field which must be reserved for "constitution and organization". Under Article 145 of the Constitution the SC has, with the approval of the President, the power to make rules for regulating generally the practice and procedure of the Court, but such rules are subject to the provisions of any law made by Parliament. In other words, the Parliament has the law making power in respect of the regulation of the practice and procedure of the Supreme Court. When this matter forms part of "constitution and organization." it shall have to be excluded from "administration of justice". Consequently, if the expression "administration of justice" is properly interpreted, it shall exclude within its legislative field "practice and procedure" of the SC and also of the High Courts ; and under Entry 3, List II the State Legislature shall not be competent to make any law on this subject. It is a settled rule of interpretation that such entry must be given a separate legislative field, and where two entries exist in different Lasts within the competence of two different legislatures, the Courts of law must harmonize them by specifying the field of each entry. Consequently, from the Lists contained in the Seventh Schedule, it can be inferred that regulation of the sittings of the High Court, constitution of Benches and other allied internal matters, which will include Letters Patent Appeals, fall within "constitution and organization" and this field shall stand excluded from the legislative field of the other subject "administration of justice".

51. The above question can be considered from another angle also, namely, that departure was made from the Government of India Act, 1935 while enacting the Constitution of India in respect of High Courts, and was it necessary to transfer "constitution and organization" from the State List to the Union List as a result of these changes or as already commented upon above, it was considered necessary that a change be introduced to bring about uniformity in the functioning of the High Courts? The provisions applicable to High Courts contained, in the Constitution of India and the Government of India Act, 1935 are summarized hereinbelow in a comparative form to know at a glance major dissimilarities in the two Constitutions. The changes introduced as a result of India becoming a Republic and differences in phraseology or drafting have been disregarded.

CONSTITUTION OF INDIA GOVT. OF INDIA ACT 1935

(major dissimilarities have been indicated)

Article	Section
214 - High Court for each State.	
219 - High Courts named any other Court constituted or re-constituted as such; or declared as such. (In U. P. Allahabad High Court and Chief Court in Oudh).	
229 (1) and (2) Power to constitute reconstitute or amalgamate High Courts on an address of the legislature;	
230 - Extension of jurisdiction of High Court to Union territories or exclusion of such Jurisdiction	230 Extra Provincial Jurisdiction of High Court.
231- Establishment of a common High Court for two or more States and a Union territory.	
231 (2) Provision where High Court exercises jurisdiction in relation to more than one Province or areas.	
215 - High Court a Court of record.	
220 (1)	
216 - High Court to consist of Chief Justice	

and other Judges.	
220 (1)	
217 - (1) Appointment of Chief Justice and Judges. Age of retirement etc. Resignation removal and vacating the office.	220 (2)
(2) Qualification for appointment.	220 (3)
(3) Decision on age.	.....
218 - Provision for removal from office.	220 (2)
219 - Oath or affirmation.	220 (4)
220 - Restriction on practice after being a Permanent Judge.	X
221 - (1) Salary.	
(2) Allowance rights and pension.	221
222 (1) Transfer from one High Court to another.	
(2) Compensatory allowance on transfer.	X
X	
223 Appointment of Acting Chief Justice.	222 (1)
224 (1) Appointment of Additional Judges.	222 (3)
(2) Appointment of Acting Judge.	222 (2)
(3) Age of retirement of Additional or Acting Judge.	X
224-A. Appointment of retired Judges.	X
225 - Jurisdiction of existing High Courts.	223
Proviso Revenue matters excluded.	226 (1)
226 - Power of High Court to issue Writs.	X
227 - (1) Power of superintendence over all Courts and tribunals by High Court.	224 (1) Over only such Courts which were subject to the appellate jurisdiction of the High Court (Administrative functions).
(2) Call for returns; regulation of practice and proceedings of such Courts; prescribe forms.	224 (1)
(3) Settle fees.	224 (1)

(4) No such-power over Courts on tribunals constituted relating to Armed Forces.	224 (2) No power over any inferior Court not otherwise subject to appeal or revision.
228 - Transfer of certain cases to High Court.	225 (1) and (2)
229 (1) Appointment of officers and servants of High Court	X
(2) Conditions of Service thereof.	X
(3) Administrative expenses of High Court.	228 (1) and (2)
X	226 (2) Provision for Bill for changing Section 226 (1).
348 (1) Proceedings - English Language.	227 - All proceedings in English language.
376 (1) Judge to continue in office.	231 (1) Judge to continue in office.

52. From the above comparative chart it shall be evident that the provisions concerning High Courts as contained in the Constitution of India are based on the corresponding provisions of Government of India Act. 1935. Most of the provisions of the Government of India Act have been incorporated in the Constitution of India. The changes introduced are :-

> (1) Under Article 214 of the Constitution there shall be a High Court for each State, but in Section 219 of the Government of India Act, 1935 the term "High Court" has been denned to mean High Courts enumerated in the section, any other Court constituted or reconstituted as such or declared as such. It shall be noticed that prior to 1948 there were two High Courts in Uttar Pradesh, namely, the High Court of Judicature at Allahabad and the Chief Court in Oudh. Under Section 229 of the Government of India Act the power to constitute or reconstitute a High Court and to amalgamate High Courts vested in His Majesty-in-Council and after Independence, in the Governor General, on the address of the Chamber or Chambers of the legislature of the Province. The only power so vested in the State Legislature was to address His Majesty-in-Council or the Governor-General to constitute or reconstitute a High Court or amalgamate the High Courts. The High Courts could be amalgamated or

a High Court constituted or re-constituted only by His Majesty-in-Council or the Governor-General that is, by an authority other than the State Legislature or the State Government. Under the Constitution of India there is no question of such constitution, re-constitution or amalgamation as there has to be one High Court for each State.

53. Under Articles 230 and 231 of the Constitution Parliament alone has the power to extend the jurisdiction of a High Court to or exclude the jurisdiction of a High Court from any Union territory and to establish a common High Court for two or more States and a Union Territory. Under Section 230 of the Government of India Act. 1935, His Majesty-in-Council, later the Governor-General could extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province. Such extra provincial jurisdiction of High Courts could be conferred only if there was an agreement between the Governments concerned. Section 231 (2) is a consequential provision. The authority to direct extra provincial jurisdiction of the High Court was even then not the Provincial Legislature, but His Majesty-in-Council or the Governor-General, though such extension was possible only when the Governments had agreed in that respect.

54. It shall thus be noticed that while enacting the Constitution of India no change was introduced in the main provisions and they substantially remain the same as in the Government of India Act, 1935. If "constitution and organization" merely included determination of the place of sitting and appointment of Judges, it was not at all necessary to put this subject in the Union List ; it could continue in the State List though under the main provisions of the Constitution these powers could be exercised by the President of India. When the subject was transferred from the State List to the Union List, it must have been to clarify that many other Items detailed in the main provisions of the Constitution or falling in the category "constitution and organization" shall no longer be within the competence of the State Legislature.

55. On the basis of Article 225 of the Constitution it is contended that the power to make rules of the Court and to regulate the sittings of the Court and the members thereof sitting alone or in Division Courts, are a part of administration of justice, and, therefore, for construing Entry 3, List II, these matters must be

included in "administration of justice." It shall be noticed that the words used in Article 225 and "in relation to the administration of justice." Entries in the Lists are given the widest amplitude. The words "in relation to" also lead to the same inference ; but where there exist two similar entries in different Lists, both not being within the competence of the same legislature, a separate field has to be carved out for each entry and where one entry is general and the other special, the legislative field of the general entry stands excluded to the extent of the field assigned to the special entry. "Administration of justice" will include "constitution and organization" if the only legislative subject is "administration of justice", but where both exist and are placed in separate lists within the competence of different legislatures, the scope of "administration of justice" shall stand reduced. For this reason the meaning which, could be assigned to "administration of justice" for purposes of Article 225 cannot be applied to the expression for purposes of Entry 3, List II. At the risk of repetition, it may be mentioned1 that if a very wide meaning is given to the expression "administration of justice" and it includes all the matters pertaining to High Courts, there shall be no legislative field for the Centre except for the appointment of Judges. There shall also be no uniformity in the functioning of the High Courts as was contemplated when "constitution and organization" was transferred to List I from List II.

56. The Debates of the Constituent Assembly also confirm the view expressed above. The Honourable Dr. B.R Ambedkar has referred to Articles 192-A, 193, 197, 201 and 207 of the Constitution as passed by the Constituent Assembly as subjects dealing with "constitution" of the High Courts. These Articles correspond to Articles 216, 217, 221, 225 and 230, respectively, of the Constitution of India as enacted by the Constituent Assembly. Draft Article 201 corresponds to Article 225 of the Constitution of India and Sections 223 and 226 (1) of the Government of India Act, 1935. Draft Article 201 was passed without any amendment. When the framers of the Constitution regarded Article 225 (Draft Article 201) to be dealing with "Constitution of the High Courts", the Courts of law can adopt this view with greater force, all the more, when on harmonizing the provisions of the Constitution and the Lists such is the only possible inference.

57. It is next contended by the learned Advocate General that the expression

"constitution and organization" in Entry 78 of Union List I applies to only new High Courts as provisions for the existing High Courts already exist in the Constitution. This contention can be repelled on two grounds; firstly, the entries in the legislative list must be given a wide amplitude. Courts of law shall not be justified in restricting their scope on the supposition that even though the words are general and unambiguous, they were meant to apply to only new High Courts, nor shall the Courts be justified to add the words "new High Courts" in the above entry. Even on merits this contention can be repelled.

58. Article 214 of the Constitution provides that there shall be a High Court for each State and under Article 215 every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. What is meant by "Court of record" has not been indicated in the Constitution, and for the meaning of this expression we shall have to look to the practice in other countries from where this expression has been borrowed. In Halsbury's Laws of England, III Edition, Volume 9, at pages 346 and 347, the meaning of "Courts of record" has been considered. The material passage is as below :-

> "..... In the case of Courts not expressly declared to be Courts of record, the answer to the question whether a Court is a Court of record seems to depend in general upon whether it has power to fine or imprison by statute or otherwise, for contempt of itself or other substantive offences ; ..... In the case of Criminal Courts this seems to be the only test. In the case of Civil Courts, it has been said that Courts of record at common law are such Courts as have power to hear and determine, according to the course of common law, actions in which the debt, damages or value of the property claimed is 40s. or above. In the case of Civil Courts, the further distinction formerly existed between Courts of record and Courts not of record that in the case of the former, where a judgment was alleged to be wrong, a writ of error lay whereas in the case of the latter the remedy was by way of a writ of false judgment."

Our Constitution speaks of appeal to the SC from the judgment of the High Court. Consequently, the distinction indicated in Halsbury's Laws of England in respect of Civil Courts is inapplicable to this country.

59. In Whartons Law-Lexicon, 10th Edition, at page 214, column 2, the meaning of the Court has been given as :

> "Courts are either of record, where their facts and judicial proceedings are enrolled for a perpetual memorial and testimony, and they have power to fine and imprison, and error may be brought upon their judgments.....".

60. Similar meaning of the expression "Court of record" has been given in Osborn Concise Law Dictionary, 1927 Edition.

61. In so far as this country, is concerned, there is no difference in the High Courts and the Subordinate Courts in the maintenance and preservation of records. The law applicable is, in substance, the same. Consequently, in so far as this country is concerned, the "Court of record" is one which has power to punish for contempt.

62. In Corpus Juris Secundum Volume 21. "Court of record" is defined in a similar way as in Halsbury's Laws of England ; but with respect to "Courts not of record" it is laid down that they include inferior Courts lacking the power to fine or imprison for contempt.

63. Article 215 of the Constitution cannot, therefore, be utilized to infer that all the High Courts possess the existing jurisdiction, civil, criminal, appellate and revisional.

64. Article 216 of the Constitution bears the marginal note "Constitution of High Courts" and lays down that, every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. A similar provision in the Government of India Act, 1935 had the marginal note "Constitution". It was therefore, contended that Article 216 clearly indicated what was contemplated by "Constitution". It is further contended that when the words "constitution" and "organization", which are susceptible of analogous meaning are coupled together, on the application of the maxim noscuntur a sociis they should be understood to be used in their cognate

sense ; they take, as it were, their color from each other, that is, the more general is restricted to a sense analogous to the less general. (Maxwell on Interpretation of Statutes, Eleventh Edition, page 321).

65. It is a settled law that the marginal note cannot restrict or otherwise control the provisions of an enactment which otherwise appear to be clear and unambiguous. In fact, they cannot be referred to for the purpose of construing the statute (*Comrer. of Income- tax, Bombay v. Ahmedbhai Umarbhai and Co. Bombay,* [29] and *Nalinakhya Bysack v. Shyam Sunder Haldar,)*. [30]

66. As already indicated above, the words "constitution" and "organization" are in one way synonymous, though "organization" can comparatively be given a wider meaning. The expression "constitution and organization" necessarily includes an element of general jurisdiction. There is not much difference between the words "jurisdiction" and "power". In other words, the expressions "Constitution and organization" and "jurisdiction and power" are more or less analogous, and if the above rule is applied to the expression "constitution and organization", it shall have to be applied to the expression "constitution, organization, jurisdiction and powers" used in Entry 77 of Union List I in respect of the Supreme Court. It cannot be said that "jurisdiction and powers" as used in Entry 77 must be given a restricted meaning taking colour from the earlier words, namely "constitution, organization".

67. Articles 217 to 224 and 224-A govern the appointment, conditions of service, oath, restriction on practice and salaries of Judges, and appointment of acting Chief Justice, additional and acting Judges and appointment of retired Judges.

68. Article 225 of the Constitution enumerates the jurisdiction of existing High Courts and provides for the continuance of such jurisdiction. The jurisdiction of, and the law administered, in, any existing High Courts, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make fules of Court and to regulate the sittings of the Court and of' members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of the Constitution. This is subject to two restrictions: (1) subject to the provisions of the Constitution and

(2) to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by the Constitution. It is true that the existing High Courts can exercise the same jurisdiction and power as before the commencement of the Constitution, but such jurisdiction and powers can be curtailed or modified by the appropriate Legislature, in pursuance of the powers conferred on that Legislature by the Constitution. The exercise of the existing jurisdiction and power is also subject to the provisions of the Constitution. Who is the appropriate authority for making changes in the existing jurisdiction and power remains a material question, which will have to be determined on the basis of the provisions of the Constitution and the Lists contained in the Seventh Schedule? It cannot, therefore, be said that the subject "constitution and organization" enumerated in list I shall have no effect on the existing High Courts. Article 225 of the Constitution applies to the existing High Courts and not the new High Courts but the appropriate Legislature has the right to curtail, enlarge or modify the existing jurisdiction and power.

69. Article 226 contains a new jurisdiction conferred on the High Courts.

70. Article 227 details the power of superintendence of the High Court over the Subordinate Courts, while Article 228 makes it obligatory for the High Court to withdraw a case if any substantial question of law as to the interpretation of the Constitution is involved.

71. Article 229 relates to officers and servants of the High Court. It is under Article 230 that the jurisdiction of a High Court can be extended to, or the jurisdiction of a High Court excluded from any Union territory. Under Article 231 there can be one High Court for two or more States.

72. On the commencement of the Constitution new High Courts were established where there was previously no High Court for that State. For such new High Courts the Parliament shall be the competent authority to make a law for "constitution and organization" ; but similar questions can arise when any Legislature wishes to make changes in the existing jurisdiction and powers of the High Court. When the expression "constitution and organization" has been used generally, there appears no reason to hold that it does not apply to the existing High Courts and the existing High Courts would be governed by the

other expression "administration of justice". We are thus of opinion that the expression "constitution arid organization" applies to both new and existing High Courts.

73. In respect of High Courts established on the formation of new States, the Parliament can make a law under Articles 3 and 4 of the Constitution.

74. The above disposes of another contention of the learned Advocate General, namely, that the common fabric of all the High Courts has already been provided for in the body of the Constitution, and very little remains to be done under the head "constitution and organization of High Courts" and therefore the entry "constitution and organization" in Entry 78 of Union List I be not deemed to include any part of general jurisdiction. As already indicated above. Article 225 permits modification by the appropriate Legislature of the exercise of jurisdiction by the High Courts, a part of such jurisdiction can be included in "constitution and organization". Consequently, this expression will apply equally to all the High Courts, whether new or existing. In this connection it may also be observed that there exist entries in the Lists even though provision has been specifically made in the main Constitution. For example, Article 230 permits the extension of jurisdiction of a High Court to or the exclusion of the jurisdiction of a High Court from any Union territory, but still this has been incorporated in Entry 79 of List I. In respect of the SC there are exhaustive provisions as to its jurisdiction in the body of the Constitution. Under Article 138 (1) the Parliament can by law confer further jurisdiction and powers on the Supreme Court. Even then "jurisdiction and powers" of the SC was included in Entry 77 of List I. A perusal of the Constitution shall make it clear that even when a clear provision was made in the main provisions, the subject was repeated in one Entry or the other of the corresponding List of the Seventh Schedule.

75. The other point contended is that where there appears a doubt whether a particular kind of jurisdiction falls in "constitution and organization" it should be included in "administration and justice" which has a wider scope and in respect of which there can be no doubt. The question is not whether jurisdiction can be included in "constitution and organization" but what part of the general jurisdiction should be included in "constitution and organization" so that both the entries may have a separate legislative field and the scope of "administration of justice" may not be unduly restricted.

76. Basing their contention on the object of uniformity of High Courts it was contended on behalf of the appellants that if the State Legislature had the power to curtail Letters Patent Appeals (Special Appeals) in some or all the cases, there shall be conflicting rules of procedure in the same High Court if it exercises jurisdiction over two States. In respect of one State no Letters Patent Appeal shall be maintainable, though in the same High Court Letters Patent Appeal can be entertained in respect of the other State. In the Federal form of Government where the Federal Legislature and the State Legislature exercise exclusive control over certain matters, such conflicts will always arise. Laws, substantive or procedural, enacted in one State can be different from those in the other. The same High Court will have to apply conflicting laws dependent upon from which State the case arises. When the same High Court can apply conflicting laws to cases coming before it depending upon whether the cause of action had arisen there can be no objection to the High Court entertaining Letters Patent Appeal in one case, and not in the other. This will, of course depend upon whether in a particular case the State Legislature has or has not the power to disallow Special Appeal.

77. During the course of the hearing indication was given of an apprehension that if an unlimited power to restrict the jurisdiction of the High Court vested in the State Legislature, they may gradually or otherwise take away the powers of the High Court. Courts of law have always recognized the wisdom of the Legislature and assume that they will not act arbitrarily. The apprehension in the mind of the appellants is more imaginary than real. In any case, if the State Legislature makes a law which in the opinion of the Governor, would so derogate from the powers of the High Court as to endanger the position which that Court is by the constitution designed to fill, action shall be taken under the second proviso to Article 201 of the Constitution. The present enactment is not one which so restricts the powers of the High Court as to endanger the position which it is designed to fill.

78. The following decisions of the other High Courts were brought to our notice. The Advocate-General has reiterated the reasoning’s which had appealed to the Judges deciding those cases. From the side of the appellants an attempt has been made to distinguish them. Many points raised in these cases have already

been commented upon above.

1. *Indo-Mercantile Bank Ltd. v. Commissioner, Quilon Municipality,* [31] 2. *Kochupennu Kochikka v. Kochikka Kunjipennu,* [32]
3. *In re S.M. Nathaniel,* [33]
4. *Ahmad Moideen Khan v. Inspector of 'D' Division,* [34]
5. *Chairman Budge Budge Municipality v. Mongru Mia,*[35]
6. *Amarendra Nath v. Bikash Chandra,* [36]
7. *Pramatha Nath Mitter v. Chief Justice of the High Court at Calcutta,* [37]
8. *Siddamma v. Nanje Gowda,* [38] and
9. *Shivarudrappa v. Kapurohand,* [39]

79. In AIR 1961 Kerala 96 (SB), the question raised was whether the State Legislature had the competence to make a provision for appeal to a Division Bench of the High Court from the decision of a Single Judge of the same Court. The earlier decision in the Kerala case noted above was followed and on the basis of Article 225 of the Constitution it was observed that "administration of justice" was included in Entry 3 of List II of the Seventh Schedule and therefore the State Legislature had the exclusive power to make a law for regulating the practice and procedure of the High Court in relation to the administration of justice. This point has already been considered by us.

80. In AIR 1961 Kerala 226 (FB) the validity of the Kerala High Court. Act 5 of 1959 passed by the State Legislature to which the assent of the President had been obtained was challenged. Under Section 3 (13) (e) a Single Judge of the High Court was empowered to hear any appeal against the appellate decree or order. Under the Travencore-Cochin High Court (Act V of 1125) as amended by Act 1 of 1952, the Single Judge could hear appeals of a valuation not exceeding Rs. 1,000/-. While commenting upon the scope of the expression "administration of justice" occurring in Entry 3 of List II, it was observed :

> "The existence of a Court with the necessary jurisdiction and powers is an essential pre-requisite for giving effect to the concept of administration of justice."

After quoting the observations of Fazl Ali, J. and Mahajan, J. in AIR 1951 SC 69, it was observed :

> "..... such a wide construction was put upon Entry 1 of List 2 of the Government of India Act, 1935, not because the entry took in constitution and organization of Courts, but mainly because Administration of Justice was included in that entry." Reliance also appears to have been placed upon the observations in the minority judgment of S.R. Das, J. We have already indicated above that, in our opinion, many observations made in AIR 1951 SC 69 relate to the expression "constitution and organization" of Courts, and it will not be correct to deprive the expression "constitution and organization" of its ordinary meaning.

81. It was assumed that the "constitution and organization" of a High Court will be in accordance with the provisions contained in the Constitution itself ; and it was held that any law made by the Parliament regarding the constitution and organization of the High Court shall be subject to the provisions contained in the body of the Constitution regarding the same matter. We have already indicated above that many aspects of "constitution and organization" are not contained in the main provisions of the Constitution.

82. Section 411-A was incorporated in the Code of Criminal Procedure under Act XXVI of 1943 and the point contended *in re S. M. Nathaniel,* [40] was that this Amending Act was ultra vires of the Central Legislature which enacted it. Prior to the incorporation of Section 411-A, there was no appeal to the High Court from any sentence or order passed or made by a Single Judge in a criminal trial while exercising original criminal jurisdiction. Section 411-A made a provision for appeal both on matters of law and fact with the leave of the appellate Court. The challenge was made on the ground that by making a provision for appeal there was constitution and organization of a new Court which lay within exclusive jurisdiction of the State Legislature under Entry 1 of List II of the Government of India Act, 1935. The contention was repelled on the ground that when further jurisdiction was superadded to the jurisdiction already possessed by the High Court it did not amount to constitution of a new Court and it would be "an undue straining of the language to construe "organization" as comprising, "providing a right of appeal". For reasons which we shall indicate later, though Letters Patent Appeal falls in the expression "constitution and organization", the competent Legislature can, under the entry

"jurisdiction and powers" in the three Lists, make such an enactment on subject-matters within its competence" so that in every case decided by a Single Judge, the convicted person may not have to appeal to the Privy Council and thus be put to unnecessary expenses and inconvenience. In this case it was also recognized :-

> "If, for any reason, it should be held that, there is a certain amount of overlapping, and such overlapping is bound to occur (Vide 1947 Mad WN 346 : AIR 1947 PC 60), then under Section 100 (2), the Concurrent List would prevail, in so far as a particular subject can be said to fall within entries both in List II and List III."

83. In AIR 1959 Madras 261 the constitution and establishment of the Sessions Court in the city of Madras under the Madras Act 34 of 1955 was challenged being ultra vires of the powers of the State Legislature under the Constitution. This contention was repelled. There can be no doubt that under Entry 3 of List II of the Seventh Schedule of the Constitution, the State Legislature has the power to constitute courts other than the SC and High Courts. It could, therefore, establish a new Court for the city of Madras, namely, the Sessions Court. Once that power existed in the State Legislature, it also had the power to lay down that the Sessions trial shall be entertained by the lowest Court, that is, by the Sessions Court, and not by the High Court. Further, there was no question of taking away the criminal jurisdiction of the High Court : the only change introduced was that the High Court of Madras could exercise extraordinary original criminal jurisdiction, and not ordinary criminal jurisdiction. Such a legislation was rightly not regarded to be in any way derogatory to the powers of the High Court.

84. In AIR 1953 Calcutta 453 (SB), the question raised was whether a Letters Patent Appeal was maintainable against the decision of a Single Judge given on an application under Article 226 of the Constitution. It was observed that there was nothing to require that the power under Article 226 must be exercised by a Judge or a Bench of a High Court once and for all ; and that whether under the rules, taken along with the Letters Patent, a High Court exercised the power in each case once for all or whether it exercised it by stages. as it were, first exercising it through a Judge sitting singly and then examining the correctness

of such exercise through an Appellate Bench, was a question of the manner of exercising the power within the Court and not a question of the power itself. It was further indicated that when, in the second case, an appeal was entertained, the High Court was only continuing and completing the exercise of the power and not exercising it a second time. This observation appears to be in conflict with the SC view to which we shall make a reference later at a proper stage.

85. *Amarendra Nath Roy Chowdhury v. Bikash Chandra,* [41] is a case wherein the validity of the City Civil Court Act being West Bengal Act XXI of 1953 passed by the West Bengal Legislature, was challenged. The point involved is, in substance, the same as in AIR 1959 Madras 261, Sinha, J. was of opinion :

> "Under the Constitution, Parliament can constitute and organize, that is to say set up a High Court but it cannot vest it with general jurisdiction. It can only vest it with a limited jurisdiction confined to subjects appearing in List I. On the other hand, a State cannot set up a High Court or interfere with its "constitution and organization", and yet it is the only body which can vest it with general jurisdiction to administer justice."..... "..... the existence of a Court without jurisdiction, or the setting up of a Court which would be dependent on a statute passed by another legislature for being clothed with jurisdiction."

Sinha, J. agreed that the position was somewhat curious and such "state of things is contrary to what is known as legislative practice". Still that view was adopted. We may say with respect that such state of things had not found favor in the majority judgment in AIR 1951 SC 69.

86. In AIR 1961 Calcutta 545, the President's order determining the vacation of the Calcutta High Court was challenged, Mukharji, J. observed :

> "How the Court is to be constituted and organized, their constitution and organization in different branches, divisions and jurisdictions do not seem to relate to questions of vacations of this High Court in the context and background of the other expression used "administration of justice." This observation would suggest that part of jurisdiction is included in "constitution and organisation".

86-A. Bose. J., however, observed :

> "The matter of organisation of the High Court includes primarily things like the appointment of the Judges, the division into department making provision and arrangements for the housing of the Courts or in other words matters connected with the giving of final shape to the Court so that it may start functioning. But the matter of its running and management and its actual functioning is entrusted to the State Legislature under the power to legislate with respect to administration of justice."

87. If this view is adopted, there can be no uniformity in the various High Courts (except on the mode of appointment of Judges), which shall be contrary to the object of transferring "constitution and organisation of High Courts" from the State List to the Union List.

88. Sinha, J. restricted the scope of "constitution and organisation" in the same manner. According to him :

> "Both the words "constitution" and "organisation" mean the fixation of the form in which a High Court should come into existence. Giving it a liberal meaning, it could consist of a determination of its territorial jurisdiction, of the number of learned Judges which it should consist of and the financial resources upon which it should draw, and other such matters".

Income from court-fee and other heads goes to State finances and similarly, the State makes a provision in the State Budget for the High Court expenses. Such items cannot be the subject of legislation by the Parliament and hence cannot be included in "constitution and organization".

89. In AIR 1952 Mysore 75, the validity of Section 15 of the Mysore High Court Act, as amended by Act XXXV of 1951 passed by the State Legislature, where under second appeals of valuation not exceeding Rs. 3,000/-, which could earlier be heard by a Bench of two Judges, were to be heard by a Single

Judge, was challenged. There is no detailed consideration of the question. The decision proceeded with the assumption that legislation in respect of the hearing of cases by one Judge or more would appropriately come under "administration of justice".

90. In AIR 1965 Mysore 76, the provisions of the Mysore Civil Courts Act, 1964,were challenged. This Act, as appears from its preamble, was enacted to provide for a uniform law relating to the constitution, powers and jurisdiction of the Civil Courts in the State of Mysore, subordinate to the High Court of Mysore. There under three cadres of the Subordinate Judicial Officers were created known as Munsifs, Civil Judges and District Judges. Under Section 19 appeals from decrees or orders of a civil nature of valuation less than Rs, 20,000/-lay to the District Judge and under Section 29 (2) (c) all such appeals pending before the High Court were to stand transferred to the Court of the District Judge. It was urged that the jurisdiction of the High Court, which would fall in the category of "constitution and organization", had been affected : hence the enactment was ultra vires of the State Legislature. It shall be noticed that what was done was to create certain subordinate courts with prescribed jurisdiction and it was thereby that certain cases, which could be heard by the High Court, were to be transferred for hearing to the District Judge. Such a legislation was within Entry 3 of List II read with Entry 46 of List III.

91. The reasons given for not adopting the meaning of "constitution and organization" as expressed in (AIR 1951 SC 69) were :

> "If, therefore, a part of the topic of the first entry of the provincial list stands removed to the 78th entry of the Union List and the remaining part of it is to be found in the 3rd Entry of the State List the meaning given by the SC in 1951 SCR 51 : (AIR 1951 SC 69) to the words "constitution and organization of the High Courts" occurring in the 1st Entry of the Provincial List cannot continue to be the meaning to be given to those words occurring in the 78th Entry of the Union List. The reason why we should not accede to the argument that the words "constitution end organization" in that entry bear the same meaning as that given to them by the SC is that "administration of justice" is a subject with respect to which the State Legislature under the 3rd Entry of the State List retains

> competence to make legislation. If, as already observed, "administration of justice" with which that entry concerns itself includes administration of justice in the High Court, and, as pointed out by their Lordships of the SC the primary content of administration of justice is the exercise of jurisdiction and judicial power, it would not in my opinion, be permissible for us to ignore that meaning given by the SC to the expression "administration of justice" and to found our interpretation of the 78th Entry of the Union List on only those parts of the judgments of the SC which define the legislative field with respect to the "constitution and organization of the High Court."

..... If the meaning given to the 1st Entry of the Provincial List..... cannot be of assistance after the entry became divided into two portions, one part of it staying in the 3rd Entry of the State List and the other getting into 78th Entry of the Union List, it should follow that the subject relating to "constitution and organization of the High Courts" is not a subject relating to jurisdiction and powers of the High Courts but a subject which has reference only to the establishment of the constitution of the High Courts while the 3rd Entry of the State List is what authorizes legislation on such jurisdiction and powers".

92. The meaning of an expression does not, in our opinion, depend upon the List in which it is placed. The expression retains its original meaning, though to provide legislative field for another Entry its scope may be reduced. We have already made comments on the scope which must be reserved for "constitution and organization" and the reasons why such a field be carved out, which otherwise could be included in "administration of justice."

93. To sum up, Entry 95 of Union List I, Entry 65 of State List II and Entry 46 of Concurrent List III of the Seventh Schedule of the Constitution of India, read with Article 246 of the Constitution, empowers the competent legislature. Parliament for List I and State Legislature for List II and with the assent of the President List III also, to make laws regarding jurisdiction and powers of all courts including High Courts but excluding SC with respect to the matters enumerated in the list. The competent legislature can create special Courts or Tribunals, and can also confer further jurisdiction or restrict, limit or abridge the jurisdiction and powers of the existing (general) Courts established by the State

Legislature under Entry 3 of List II and of the High Courts constituted and organized under the provisions of the Constitution read with Entry 78 of List I. This power of the legislature is wide and is restricted only by the provisions of the Constitution. The jurisdiction and powers conferred under these entries is often called "special jurisdiction and powers" which must be excluded from the other entries "administration of justice" and "constitution and organization". It shall be noticed that these three entries speak of "courts" and not "Judges". However, the courts so created cannot function unless they are presided over by Judges and, if necessary, rules of practice and procedure are prescribed to regulate their working. Such special courts are not governed by the legislation under Entry 3 of List II, Entry 78, List I can be kept out of consideration as under Article 214 of the Constitution, there is only one High Court for the State and there can be no Special High Court. Consequently in respect of Special Courts or Tribunals Entries 95, 65 and 46 shall include the legislative field reserved for "administration of justice" and "constitution and organization", in other words, the combined field of "administration of justice", "constitution and organization" and "jurisdiction and powers" ; but in respect of the existing (general) Courts there can be no legislation on matters Covered by Entry 3 of List II and Entry 78 of List I.

94. In respect of High Courts, "constitution and organization" has been placed in Union List I (Entry 78), while "administration of justice" in List II (Entry 3). On the application of the principles already enunciated above a legislative field must be carved out for the subject "constitution and organization", keeping in mind that it is not reduced to a nullity, nor it is rendered sterile or otiose. A too restricted scope is not called for. Mere giving a name to the Court without specifying its territorial and pecuniary jurisdiction and also the nature of its jurisdiction or powers, shall be futile. For example, if the Court of a Subordinate Judge is established, it must be specified what are its territorial limits of jurisdiction ; will it entertain civil, criminal or revenue matters and the maximum limit of its pecuniary jurisdiction? For High Courts consisting of the Chief Justice and Judges something more has to be laid down before the High Court can be said to have been constituted and organized.

95. Articles 233, 234 and 235 of the Constitution make a reference to the High Court which would mean the Full Court unless by rules the power of the High

Court can be exercised by only some of the Judges such that their decision shall be deemed to be the decision of the High Court. Such a liberal meaning must be given to the words "High Court", otherwise under Article 235 it shall become necessary for the Full Court to grant leave to Judicial Officers. How the High Court shall function, i.e., the internal working, practice and procedure of the High Court, becomes material to ensure that the working of the High Court is systematic as one unit? On the judicial side some cases can be heard by a Single Judge, others by a larger Bench. This shall be in accordance with the rules of the Court. The judgment of a Single Judge is also the judgment of the High Court, but as the hearing is governed by the rules of the Court, the provision for Letters Patent Appeal (Special Appeal) can also be treated in the same manner as constitution of Benches, and hence a part of "constitution and organization".

96. When "constitution and organization of the High Courts" has been placed in Entry 78 of the Union List I, while "administration of justice" without any restrictions as to courts in Entry 3 of State List II, what may be included in "constitution and organization" must be excluded from the legislative field of "administration of justice". If such a view is not adopted it can be said that under the head "administration of justice", the State Legislature can make laws for the SC also. Further, the underlying object of uniformity in the functioning of the High Courts cannot be achieved unless there are common or similar rules of practice and procedure governing them. As in the case of laws, there can be variations, within permissible limits, with respect to subject-matters enumerated in the respective lists and of course, subject to the provisions of the Constitution. Broadly speaking it can therefore be said that among other things 'practice and procedure of High Courts' comes within the exclusive field of "constitution and organization", and is excluded from the legislative field of "administration of justice".

97. The next question which arises is, should in each and every case there be complete demarcation between the legislative fields of two different legislatures, or incidental overlapping for effective legislation is permissible ? In the Federal structure there are separate legislative fields for the Parliament and the State Legislature; but occasions can arise when to achieve the aim and object of the enactment it is absolutely necessary to make a provision which, if

construed narrowly and too technically, may fall within the legislative field of another legislature. For example, the legislature may desire that important matters be heard by the High Court by a larger Bench, and not by a Single Judge. Question will arise whether the Legislature can make a provision for the hearing of certain class of cases by a larger Bench when the constitution of Benches of the High Court falls within the exclusive competence of the other legislature. We are, holding that matters like regulation of sittings of the High Court and of members thereof sitting alone or in Division Courts, is comprised within "constitution and organization." If a too technical view is taken, it can be said that the State Legislature cannot enact a law that a certain class of cases shall be heard by a Division Bench and for such a provision. Parliament be approached to make a law even though the subject-matter of legislation falls within the exclusive competence of the State Legislature. The reverse would be the situation if regulation of the sittings of the Court is deemed to be included in "administration of justice" and hence within the exclusive competence of the State Legislature. Narrow construction will lead to confused state of affairs. The Courts of law must give a liberal construction to statutes and there is no reason why incidental overlapping in the legislative field of another legislature may not be viewed from that angle. It is evidently for this reason that the rule of pith and substance of the enactment has become an universal rule to determine whether an enactment is intra vires or beyond the competence of the legislature. Reference to cases applying the rule of pith and substance and incidental overlapping has already been made. At this place we shall make a reference to only a few to clarify the permissible limits of such incidental overlapping.

98. The observations of Lord Tomlin in *Attorney-General for Canada v. Attorney-General for British Columbia,* [42] were quoted with approval in AIR 1972 SC 1061. These observations are as below :-

> "Questions of conflict between the jurisdiction of the Parliament of the dominion and provincial jurisdiction have frequently come before their Lordships' Board, and as the result of the decisions of the Board the following propositions may be stated :
> (1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in Section 91, is of paramount authority, even though it trenches upon matters

assigned to the provincial legislatures by Section 92, see *Tenant v. Union Bank of Canada,* [43]

(2).....

(3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in Section 91 : See *Attorney-General of Ontario v. Attorney-General for the Dominion,* [44] and *Attorney-General for Ontario v. Attorney-General for the Dominion,* [45]

(4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations must meet the dominion legislation must prevail; see *Grand Trunk Rly. of Canada v. Attorney-General of Canada,* [46]

99. The material observations in *A. S. Krishna v. State of Madras,* [47] are :-

"It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable..... It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colorable, that is, whether in the guise of making a law on a matter within its competence, the legislature is. in truth making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment.....The position, then, might thus be summed up : When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its

objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not."

100. A similar rule was laid down in *State of Bombay v. F. N. Balsara,* [48]

101. When the matter is considered in this light, the Principal Act, namely, the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, cannot be said to be ultra vires of the State Legislature which had received the assent of the President. It abolished Letters Patent Appeals from the judgment or order of a Single Judge of the High Court made in the exercise of the appellate jurisdiction in respect of a decree or order made by a court subject to the Superintendence of the High Court. The question is whether this enactment can be placed under Civil Procedure Code. That is the only subject-matter under which such a law could be made in view of the fact that Letters Patent Appeals fall within "constitution and organization," a subject which is within the exclusive competence of the Parliament.

102. The Statement of Objects and Reasons as given in the Principal Act is as below :-

> "The present law makes for multiplicity of appeals due to the provisions for appeals under the Letters Patent of the High Court, resulting in the inconvenience and expense to the litigants besides causing delay in the final disposal of a suit. This Bill is, therefore, intended to provide for the abolition of Letters Patent Appeals against appellate jurisdiction of Single Judges in the High Court of Judicature at Allahabad."

103. Multiplicity of appeals has generally not been favored. To create a right of one appeal is reasonable; to allow three courts in an ascending hierarchy to

decide a matter seems an excess of caution; but to have a hierarchy of four or more courts seems to be based only on a desire to aid the legal profession (Paton's Text Book of Jurisprudence, Third Edition, page 551). In many enactments only one appeal is provided. Generally the number does not exceed two. The legislature could therefore, abolish Second Appeals, and in the alternative, lay down that the High Court shall hear Second Appeals only once. Even though Letters Patent Appeal is to the same Court, not from an inferior to a superior Court, from the view point of the litigant, it is another appeal causing inconvenience and expense to him besides causing delay in the final disposal of the suit. The provision for giving finality to the judgment of the High Court in appeal is more beneficial to the litigant than to abolish Second Appeals completely. The same can be said in respect of First Appeals coming up before the High Court. If the order of the High Court in First Appeal is made final without any provision for Letters Patent Appeal, the object enunciated above would be fulfilled. Abolition of Letters Patent Appeal in such cases is clearly connected with the subject-matter of "Civil Procedure Code" and is in furtherance of the underlying object of making the litigation cheap, expeditious and less inconvenient to the litigant. The Principal Act was thus meant for effective legislation and not merely to abolish the Letters Patent Appeals. The pith and substance of the Principal Act was to legislate on the subject of "Civil Procedure Code" : it cannot be regarded as a colorable piece of legislation to encroach upon the subject "constitution and organization". The Principal Act incidentally trenches on topics not within the legislative competence of the State Legislature. It cannot, therefore, be said to be ultra virus of the State Legislature.

104. Comments may now be made on points raised on behalf of the appellants which apply equally to Letters Patent Appeals governed by the Principal Act. and to such appeals governed by the Amending Ordinance and the Amending Act. It is contended that Letters Patent Appeal is not in reality an appeal; it is only rehearing by way of review or otherwise by a larger number of Judges of a matter which had originally come up before a Single Judge. It is further contended that the Letters Patent Appeal is a continuation of the proceeding before the High Court, as the reliefs sought for are the same. Reliance was placed upon the following observations in AIR 1953 Calcutta 453 :

> "..... examining the correctness of such exercise through an Appellate Bench, is a question of the manner of exercising the power within the Court and not a question of the power itself. When, in the second case, an appeal is entertained, the High Court is only continuing and completing the exercise of the power and not exercising it a second time."

Such a contention was repelled in *South Asia Industries (P.) Ltd. v. S. B. Sarup Singh,* [49] The argument put forward in that case was that the appeal was to the High Court, and not to a Single Judge; that the appeal was finally disposed of only by the final judgment of the High Court; and that whatever may be the internal arrangement in disposing of that appeal, there was only one appeal which was not finally disposed of till the matter had been considered by a larger Bench in Letters Patent Appeal. This contention, though plausible, was repelled on the basis of the earlier decision in *Union of India v. Mohindra Supply Co.,* [50] The fact that the relief's sought for in the Letters Patent Appeal are the same as in the proceeding before the Single Judge is immaterial. The Letters Patent Appeal may not be by the same party. Letters Patent Appeals cannot, therefore, be placed in the same category as the original proceeding.

105. The next point contended is that as a result of the abolition of the Letters Patent Appeal and the decision of the Single Judge becoming final in so far as the High Court is concerned, the aggrieved party is divested of his right to appeal to the SC under Article 133 of the Constitution. It is a settled law that no party has a vested right to have his appeal heard by more than one Judge of the High Court (*P. Mohammad Meera Lebbai v. Thirumalaya Gounder*[51] and *Ittyavira Mathai v. Varkey Varkey,)*.[52] Nor can the right of appeal to the SC under Article 133 be regarded as a vested right (AIR 1966 SC 430). Incidentally it may be mentioned that Article 133 of the Constitution has been amended and the appeal against the order of the High Court (of two or more Judges) shall be on substantial question of law only. The Judgment or order of a Single Judge can be subject of appeal to the SC under Article 136 of the Constitution, on the grant of special leave which invariably is on a substantial question of law being involved. Where the substantial question of law is as to the interpretation of the Constitution, the decree or final order of the High Court, whether by a Single Judge or by a Bench, can be appealed under Article 132 (1) of the Constitution. This right of appeal is independent of Article 133 of the Constitution (*Election Commission, India v. Venkata Rao,)*. [53]

106. Letters Patent Appeals (Special Appeals) abolished under the Amending Ordinance and the Amending Act differ from such appeals abolished under the Principal Act in that they do not arise directly from the proceedings under the Tenancy Laws or the U.P. Consolidation of Holdings Act. but from a proceeding under Article 226 or 227 of the Constitution, challenging the orders of the Board of Revenue and the consolidation authorities. It is the settled law that the special jurisdiction of the High Court under Article 226 cannot be taken away, nor can it be whittled down by the legislature. Nor can restrictions be imposed which will make the exercise of such jurisdiction a mockery. (*Raj Krushna Bose v. Binod Kanungo,* [54] *and*The jurisdiction once exercised by the High Court under Article 226 cannot be exercised all over again unless, of course the order of a Single Judge can be challenged in appeal before a Division Bench of the same High Court. This is permissible under clause 10 of the Letters Patent. An order passed by a Single Judge, whether under Article 226 or under any enactment, is as much an order of the High Court as an order passed by a larger Bench. In absence of a Letters Patent Appeal, such order is final and cannot be reagitated before the High Court, though it can be challenged before the SC in an appeal under Article 132, 133 or 136 of the Constitution. It is for this reason that the practice prevalent in England in respect of habeas corpus has not been made applicable in India. In England a party can move other Judges once the relief has been refused by a Judge. The English practice is based upon the rule that the power is exercised not on behalf of the Court but the Judge himself in his personal capacity. In India the power is exercised under Article 226 of the Constitution, or Section 491 of the Code of Criminal Procedure. Under both the provisions the power is exercised by the High Court, and not by a Judge (In re Prahlad Krishna, AIR 1951 Bombay 25).

107. It is contended by the learned Advocate-General that a petition under Article 226 of the Constitution to challenge an order passed under some enactment is, in substance, an appeal to the High Court under that enactment, the power exercised being akin to the powers of the High Court in Second Appeal under Section 100 of the Code of Civil Procedure . The power under Article 226 cannot be placed at par with either a Second Appeal or revision. Even though Article 226 does not place any restriction on the jurisdiction of the High Court, the High Courts themselves have imposed upon them a restriction

not to act as a Court of Appeal. They do not ordinarily enter into questions of fact. The remedy under Article 226 is an extraordinary one and it is discretionary with the High Court to exercise its powers or not. Consequently even though there exists an error apparent on the face of the record, that is, the decision of the subordinate authorities is against the law, it may, at occasions refuse to exercise its extraordinary powers under Article 226. However, in Second Appeal the High Court must entertain the appeal and pass a suitable order in case the decision is against the law or local usage. Like revisions under Section 115 of the Code of Civil Procedure , the High Court may or may not interfere if there has been some error in the exercise of jurisdiction. Petitions under Article 226, therefore, do not stand in the same category as a Second Appeal of a revision.

108. It is now the settled law that the power exercised under Article 226 is in the exercise of special or extraordinary original jurisdiction, civil or criminal in nature, and not an appellate or revisional jurisdiction (AIR 1963 SC 946; AIR 1966 SC 1445 and *Narayan Row v. Ishwarlal Bhagwandas,*). [55]In the first two cases it was also held that a petition under Article 226 of the Constitution is not a continuation of the proceeding under the Act. It is true that the observation was made while considering whether an appeal under Article 133 of the Constitution was maintainable, but being general in scope there is no reason why it be not applied in other circumstances also. The Act invariably makes no provision for a petition under Article 226 : such a petition is made not under the Act. but under the constitutional right conferred in the High Courts under Article 226. A petition under Article 226 is thus a separate proceeding not in continuation of the proceeding under the Act. though a layman may regard a petition under Article 226 as an appeal to the High Court to challenge the orders of the subordinate authorities which otherwise are final. In the eye of law, therefore, a proceeding under Article 226 of the Constitution cannot be placed at par with an appeal or revision and the rules ordinarily applicable to appeals before the High Court cannot apply to a proceeding under Article 226, nor to a Letters Patent Appeal arising out of such a proceeding.

109. It is contended on behalf of the appellants that if the State Legislature is permitted to legislate in respect of Letters Patent Appeals arising out of a proceeding under Article 226, there can be a conflict between the High Court and the Legislature because in spite of the enactment the High Court may

decide that the Writ Petition shall be heard by a Bench of two Judges. It was thus suggested that the enactment disallowing Letters Patent Appeals may become in fructuous. Why should it be presumed that there shall be a conflict between the High Court and the State Legislature? The High Court will always act on judicial principles and only cases of importance shall go before a Division Bench and unimportant ones before a Single Judge. For reasons given above, the State Legislature does not have the power to regulate the constitution of Benches, which matters shall go before a Single Judge and which matters before a larger Bench. The State Legislature can enact a law on a subject-matter within its jurisdiction and in exercise of this power it can lay down, that the decision of the High Court, whether of a Single Judge or a Division. Bench, shall be final, and in such a case no. Letters Patent Appeal shall be maintainable against the decision of a Single Judge. As for the constitution of Benches it is for the Chief Justice to decide which cases shall go before a Single Judge and if heard by a Single Judge, that being an order of the High Court shall be final, and no Letters Patent Appeal shall be maintainable. We, therefore, do not apprehend any conflict as suggested by the learned Advocate.

110. We may now, briefly, comment upon a few other points raised on behalf of the appellants. It is contended that the right to move the High Court under Article 226 of the Constitution carries with it the right of appeal against the order of a Single Judge. Article 226 merely speaks of the special power and is silent on the question of appeal. How can it be presumed that the right of appeal flows from the constitutional provision contained in Article 226 ? Appeals in proceedings under Article 226 would be governed by the provisions of the Letters Patent which are, by virtue of the Amalgamation Order, still in force. Consequently, if no Letters Patent Appeal is maintainable, an order passed by a Single Judge in a proceeding under Article 226 shall not be appealable. Further, if the order of the Single Judge under Article 226 is not appealable, it is not a restriction on the exercise of the power, under Article 226. The power has already been exercised by a Single Judge on behalf of the Court, and any order passed by him is a decision of the High Court.

111. It is next, contended that all the proceedings under Article 226 belong to the same group and no subdivision is permissible, and therefore the Legislature cannot disallow Letters Patent Appeals in any proceeding under Article 226.

Article 226 details the special power of the High Court which is quite distinct from subject-matter. Classification of cases does not depend upon the exercise of power, but upon the subject-matter of the proceeding. We see no reason why there cannot be classification of proceedings under Article 226 of the Constitution. Similarly, the contention that Article 226 is not included in any of the Lists and therefore can fall in the residual clause. Entry 97 of Union List I, within the exclusive competence of the Parliament, has no relevance in this connection as the Lists lay down the legislative field, i.e., subject-matters on which legislation can be made and not the power, general or special, which can be exercised. In fact, the exercise of power commences after a legislation on the subject. Classification of matters in the three Lists is in respect of the topic, and not the power which may be exercised. It was, therefore not necessary to include Article 226 of the Constitution in any of the Lists. The Legislature having competence over the subject-matter can legislate taking the precaution that the legislation does not, in any way. restrict the special power of the High Court under Article 226. Any restriction which the State Legislature can impose shall be in respect of the Letters Patent Appeals, and not the main proceeding under Article 226.

112. This takes us to the consideration of the question whether the State Government can, in respect of the matters enumerated in List II and with tile assent of the President in matters in List III, bar Letters Patent Appeals against the decision of a Single Judge in a proceeding under Article 226 of the Constitution. A similar question was considered in AIR 1972 SC 1061 whether it was held that the function of the Lists is not to confer powers : they merely demarcate the legislative field.
Similarly, it was held in *Mst. Govindi v. The State of Uttar Pradesh.* [56]that Lists are not powers of legislation, but field of legislation. Consequently, for legislation on Letters Patent Appeals arising out of proceedings under Article 226, one shall have to look to the field of legislation, i.e., subject-matters enumerated in the Lists, and not to the exercise of power under Article 226.

113. As already pointed out by us earlier, if the legislation partially extends to a field reserved exclusively for another legislature, we shall have to consider what was the pith and substance of the legislation, was it a matter within the competence of that legislature or the legislation is a colorable piece of

legislation in respect of a matter over which it had no competence. Putting in different words, for effective legislation it is permissible for the legislature to make a provision which may otherwise be within the exclusive competence of the other legislature.

114. Coming to the instant case both the Amending Ordinance and the Amending Act relate to proceedings which had been initiated under the Tenancy Laws and the U. P. Consolidation of Holdings Act. Consolidation of holdings is for the benefit of all the tenure-holders. As a result of consolidation, the tenure-holder shall have a compact holding. He can utilize it to a greater extent for his own benefit and advantage. The other tenure-holders also gain as a result of the consolidation of holdings; and when the production goes up, the citizens as a whole are placed in a more solid and independent economic situation. It is therefore, necessary that the consolidation proceedings should come to an end quickly. The provisions of the U. P. Consolidation of Holdings Act were enacted with this underlying object. Will not the object of the enactment be frustrated if there is undue delay in the final decision of the proceeding under Article 226 ? For effective legislation it is necessary that the proceedings before the High Court should also come to a close early. This purpose can be achieved if there is only one hearing before the High Court and in case of decision by a Single Judge there is no Letters Patent Appeal.

115. Such an urgency does not, in normal circumstances, exist for revenue litigation in respect of agricultural land; but we cannot fail to take notice of the conditions at present prevalent in the country. Lawlessness in the rural areas can, to some extent be attributed to disputes relating to agricultural land. Consequently, if revenue cases are decided expeditiously, it shall be for the benefit and advantage of All. In the circumstances, if the State Legislature legislates to ensure early adjudication of revenue disputes, such a step shall be proper. It is thus evident that the restriction placed on Letters Patent Appeals is with the intention to secure early adjudication of disputes pertaining to agricultural land, and with this aim in view the State Legislature can enact law to bar Letters Patent Appeals on subject-matters within its legislative field, even though such appeals fall within "constitution and organization" a subject within the exclusive competence of the Parliament. Nominal encroachment in the field of the Parliament will be within permissible limits.

116. At this place it may also be observed that for determination of the object of the enactment and the subject-matter to which it relates we are not to be unduly guided by the heading of the enactment, nor by the Statement of Objects and Reasons. The Statement of Objects and Reasons is not admissible as an aid to the construction of a statute; it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy *(M. K. Ranganathan v. Govt. of Madras,[57])*. The preamble gives the purpose and the underlying object of the enactment in brief and, therefore, cannot be the sole guide for determining the policy and object of the Enactment. The heading thereof can have no practical value as the heading given to the enactment varies from individual to individual; one may give more importance to the effect of the enactment and others may draft the heading on the basis of the subject-matter. Similarly, it is immaterial whether the amendments are incorporated in an enactment directly concerning the subject-matter, or in some other statute. What is necessary is that we should, first of All. determine the object of the enactment and the subject-matter to which it relates from the provisions thereof and then under which entry of the three Lists that enactment can be placed. *(Tej Bahadur Singh v. State,)*.[58] Once it is known under which entry the enactment can be placed, other rules of interpretation come into operation.

117. Once no undue importance is attached to the heading of the Principal Act, the Amending Ordinance and the Amending Act, the underlying object of the legislation and the legislative field can be determined on consideration of the provisions thereof, keeping in mind that the field of legislation is one thing and the exercise of power another. The field of legislation shall depend on the subject-matter of the legislation, and not how and in what circumstances power can be exercised. Stress on the subject-matter of legislation was laid even under the Government of India Act, 1935, at a time when the Letters Patent were or could be granted only by His Majesty in Council. It was laid down in *Kavasji Pestonji v. Rustomji Sorabji,* [59]that the State Legislature could amend the Letters Patent if the subject of legislation was in its field.

118. Similarly, in AIR 1962 SC 256 and AIR 1965 SC 1442 the clause for

finality of the decision of the High Court was regarded to bar a Letters Patent Appeal against the decision of a Single Judge of the High Court on the ground that the competent legislature had taken away the right in respect of a topic which lay within its legislative field, and to that extent the Letters Patent was inapplicable. There is no amendment of the Letters Patent, but the legislation has the effect of rendering ineffective the provision for Letters Patent Appeal.

119. By abolishing the Letters Patent Appeal the above enactments facilitate the expeditious disposal of cases coming up before the High Court under the Acts detailed therein. The underlying object of all the three, namely, the Principal Act, the Amending Ordinance and the Amending Act, is speedy final decision of those category of cases by the High Court; and such object was to be achieved by prescribing that there shall be only one hearing by the High Court, and hence no second hearing by way of Letters Patent Appeal. Encroachment on the matter of Letters Patent Appeal, falling within the exclusive competence of the Parliament, was necessary for achieving the object, i.e., for effective legislation, and hence is within permissible limits.

120. The three entries pertaining to "jurisdiction and powers" (special) make a pointed reference to the matters enumerated in the Lists. Subject-matters of legislation are thus the earlier entries, though under, the three entries legislation on "jurisdiction and powers" in respect of those subject-matters is contemplated. The three legislations, namely, the Principal Act, and the Amending Ordinance and the Amending Act, were, strictly speaking under Entry 48 Concurrent List III and Entry 65 State List II, respectively; but the subject-matter is in the case of the Principal Act "Civil Procedure Code, Entry 13 of List III, and in the case of the Amending Ordinance and the Amending Act "Land" Entry No. 18 of List II. Considering that the President had given his assent to the Principal Act, both the subject-matters were within the competence of the State Legislature and it could regulate or restrict the jurisdiction and powers of the High Court in respect of "Civil Procedure Code" and "Land" and for effective legislation to abolish Letters Patent Appeals in these category of cases. The source of power of the State Legislature is the subject-matter falling within its competence, and not the matter of "Letters Patent Appeal" which falls under "Constitution and organization" within the exclusive competence of the Parliament. All the three legislations, the Principal Act, the Amending Ordinance and the Amending Act

are thus intra vires of the State Legislature.

121. The Principal Act and also the Amending Ordinance and the Amending Act have been challenged on the ground of discrimination being in violation of Article 14 of the Constitution. The various grounds taken in support of this contention shall be taken up one by one. At this place it may be mentioned that the meaning and the scope of Article 14 of the Constitution are now well settled and beyond controversy. It is in the application of these principles that there is scope for argument. These principles were summarized and enunciated in *Ram Krishna Dalmia v. Justice S. R. Tendolkar,* [60] and the principles so laid down are as below :-

> "..... The decisions of the Court further establish –
>
> (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
> (b) that there is always a presumption in favor of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
> (c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made, manifest by experience and that its discriminations are based on adequate grounds;
> (d) that the Legislature is free to recognize decrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
> (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
> (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based,

> the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

122. Classification due to historical reasons has been recognized as a proper basis of classification under Article 14 of the Constitution (*Lachhman Dass v. State of Punjab,)*. [61]

123. Classification under Article 14 of the Constitution need not be scientifically perfect or logically complete, and a phased application of the laws on the basis of zonal, territorial or geographical classification does not exhibit any vice of discrimination (*Palley Singh v. State of Uttar Pradesh,)*. [62]

124. As observed in *Sakhawat Ali v. State of Orissa,* [63]

> "..... legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution".

125. A similar view was expressed in *Kangshari Haldar v. State of West Bengal,* [63]

> "The result of those decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having

thus ascertained the policy and object of the Act the Court should apply the dual test in examining its validity : Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object ? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry."

126. The Statement of Objects and Reasons of the Principal Act has already been reported above. The Statement of Objects and Reasons while introducing The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Bill, 1972 is as below :-

"With a view to reducing in convenience and expense to litigants and delay in the final disposal of cases caused by multiplicity of appeals the U. P. High Court (Abolition of Letters Patent Appeals) Act, 1962, was passed abolishing appeals to the High Court from decisions of a single Judge of that Court in the exercise of appellate jurisdiction in respect of decrees and orders made by subordinate Civil Courts.

It has been felt that cases decided by the Board of Revenue under the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939, or the U. P. Zamindari Abolition and Land Reforms Act, 1950, or by the Director of Consolidation under the U. P. Consolidation of Holdings Act, 1953, should be treated similarly, inasmuch as the parties concerned have had the benefit of going through a hierarchy of Revenue Courts or consolidation authorities. It is, therefore, proper to abolish appeals to the High Court from decisions of a single Judge of that Court in the exercise of jurisdiction conferred by Articles 226, and 227 of the Constitution in respect of such cases. With this view it is proposed to amend the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962."

127. Considering that the object and reasons have been given in sufficient detail, no importance need be attached to the fact that the heading of the enactment refers to 'Abolition of Letters Patent Appeals' which is not within the competence of the State Legislature. Where an appeal lies to the High Court, the appeal being a continuation of the proceeding under

the Act, hierarchy of Courts is a material factor for classification; but not where the orders of the revenue Courts or of the consolidation authorities are challenged on a petition under Article 226. The proceeding under Article 226 is a new one not in continuation of the proceeding taken under the Act. Consequently, the matter of hierarchy of revenue Courts or of consolidation authorities loses importance. The underlying object of the enactment, however, remains "reducing inconvenience and expense to litigants and delay in the final disposal of cases."

Expeditious disposal of a class of cases or speedier trial of offences has been recognized as a basis of classification not amounting to discrimination. *(Asgarali Nazarali v. State of Bombay,[64])*. Classification based on speedier trial of offences can be struck down only when the action is mala fide or it is a colorable piece of legislation ; AIR 1960 SC 457. It is usually struck down only when the enactment does not lay down any guiding principles, or unrestricted and unguided discretion amounting to an arbitrary power, is conferred on the executive, to act or not to act under the enactment, that is, to seek remedy under the general law or under the special law at his sweet will (*State of West Bengal v. Anwar Ali Sarkar, [65] Lachmandas Kewalram v. State of Bombay, [66] Inder Singh v. State of Rajasthan, [67]* and *Northern India Caterers (Pvt.) Ltd. v. State of Punjab,).* [68]

128. In the instant case the law applies equally to all the persons placed in the same group, in the case of the principal Act, to all the Second Appeals preferred before the High Court, and in the case of the Amending Ordinance and the Amending Act, to all proceedings under Article 226 of the Constitution taken in cases arising out of the Tenancy Laws and the U. P. Consolidation of Holdings Act.

129. The validity of the U. P. Consolidation of Holdings Act was upheld in *Attar Singh v. State of U. P., [69]* and on similar grounds placing Writ Petitions arising out of the proceedings under the U. P. Consolidation of Holdings Act cannot be deemed to be violative of the provisions of Article 14 of the Constitution.

130. On the basis of the past history, laws of tenancy being placed in a distinct

group, separate from other litigation, the present classification treating revenue litigation and proceedings under the U. P. Consolidation of Holdings Act can be regarded as a good basis of classification. Further for reasons already indicated above, expeditious close of consolidation operations and early adjudication of revenue disputes is, in the existing conditions, for the benefits of agriculturists as a whole and for maintenance of law and order in the rural areas. We are, therefore, of opinion that placing the cases, though initiated before the High Court under Article 226 of the Constitution, under the U. P. Consolidation of Holdings Act and the Tenancy Laws, cannot be said to be unreasonable (sic). It is also connected with the nexus, namely, the speedier trial of cases to cause the minimum inconvenience to the litigants. Both the tests which the classification must fulfil before it can be considered reasonable, not in violation of Article 14, are thus fulfilled.

131. The contention that there can be no classification of petitions under Article 226 of the Constitution and they must all be placed in the same group has already been commented upon above. Classification of cases is dependent upon the subject-matter, and not necessarily on the exercise of power. It is, therefore, open to classify Writ Petitions in groups depending upon the subject-matter, i. e. the enactments under which the order challenged in the proceeding under Article 226 was passed.

132. The second point raised is that the Judge deciding a Writ Petition is the same irrespective of whether the petition under Article 226 relates to a proceeding arising out of Tenancy Laws, U. P. Consolidation of Holdings Act, or the civil laws, or under some special enactment; and if he is not likely to commit an error in Writ Petitions covered by the first category of enactments, he would not commit an error in respect of others. The suggestion made is that in respect of proceedings under Article 226, there can be no classification. If the classification can be justified on the basis of subject-matter, and on the ground that certain classes of cases need an early final adjudication, such class of cases can be placed in a separate group even though in all the cases, whether falling in this group or otherwise, the mode of exercise of power is the same.

133. The next point contended is that the enactments in question were not meant to reduce the inconvenience of the litigants, but to reduce the work

coming up before the High Court, and that professing consideration and love for the litigants was for show and can be regarded as mala fide. In this connection our attention was drawn to the fact that court-fee, all the more, on a petition under Article 226 has been raised not once, but many times, and with the abolition of civil revisions more writ petitions under Articles 226 and 227 of the Constitution shall be preferred and the litigant public shall be put to inconvenience and expenses in the form of court-fee and other expenses. The suggestion made is that laws are being enacted to draw more revenue by compelling the litigant public to resort to litigation where more court-fee is payable. The object of an enactment like the Court-Fees Act is not to be confused with the object of another enactment. In case there is no Letters Patent Appeal against the order of a Single Judge, the litigation in so far as the High Court is concerned, is curtailed considering that if an aggrieved party wishes to challenge the order of the Single Judge, the only remedy open to him is to seek remedy under Article 132, 133 or 136 of the Constitution; but if the Letters Patent Appeal is maintainable, it shall ordinarily be necessary for him first of all to prefer a Letters Patent Appeal before moving the Supreme Court. There can, therefore, be no dispute in that by abolition of Letters Patent Appeals the litigation shall be shortened and the public would be saved the inconvenience and expenses of an additional proceeding before the High Court.

134. It is next contended that in the case of the Board of Revenue, one can say that there is a decision of an experienced Revenue Court and, therefore, one proceeding before the High Court is sufficient ; but the same view cannot be adopted in respect of consolidation authorities who are not so experienced. It was also brought to our notice that the order of the District Judge passed under special enactments can be challenged before the High Court the second time under a Letters Patent Appeal, but that shall not be possible in respect of the consolidation authorities. This contention can be repelled on the simple ground that in the interest of agriculturists as a whole the grouping of proceedings under the U. P. Consolidation of Holdings Act and the special remedy provided there under have not been regarded to be in violation of Article 14.

135. Our attention was drawn to certain omissions in the Amending Ordinance and the Amending Act; firstly, that these enactments do not cover proceedings arising from The Kumaun Nayabad and Waste Lands Act, 1948; and secondly,

that there shall be no Letters Patent Appeal where the matter has reached the Board of Revenue or the Director of Consolidation, and not where the orders of the Courts or authorities subordinate to the above are challenged in a proceeding under Article 226. These omissions are Casual and do not appear to be intentional. In our opinion, they cannot amount to hostile discrimination. The orders of Assistant Collector and Additional Commissioner, in revenue litigation, and of Settlement Officer (Consolidation) and the Consolidation Officer in the other category, are invariably not challenged before the High Court without the party having moved the Board of Revenue and the Director of Consolidation, as the case may be. Cases in which a petition under Article 226 is moved without seeking remedy before the Board of Revenue or the Director of Consolidation are very few and even if there is Letters Patent Appeal in such cases, the object of the enactment shall not be frustrated. However, this is a matter which deserves consideration of the Legislature so that the provision may apply to all similar cases.

136. The validity of the Amending Ordinance is also challenged on the ground that no reasonable ground existed for the Governor to be satisfied that circumstances did exist which rendered necessary for him to take immediate action and to promulgate the Ordinance, when the Vidhan Sabha was to meet after a few weeks. Our attention was drawn to the fact that the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Bill, 1972 was published in the U. P. Gazette Extraordinary after introduction in the Vidhan Sabha on 21-7-1972, and the Amending Act was passed in August 1972. The satisfaction of the Governor is not ordinarily justiciable. It is possible that the Governor considered it necessary to promulgate the Ordinance in the interest of the litigant public as the High Court was re-opening after the Vacations on 3-7-1972, and if immediate action was not taken, the litigant public may unnecessarily take steps for preferring Letters Patent Appeal. The present is not a case where the action of the Governor can rightly be challenged before the High Court.

137. In the end, it may be mentioned that because the Amending Ordinance and the Amending Act fall in Entry 18 read with Entry 65 of State List II, the matter was within the exclusive competence of the State Legislature and the assent of the President was not necessary. The assent of the President would have been necessary only if the subject-matter fell in the Concurrent List III as was

necessary in the case of the Principal Act.

138. To sum up, the subject-matter of Special Appeals (Letters Patent Appeals) to the same High Court against the decision of a Single Judge of the High Court is covered by the expression "constitution and organization" "and falls in Entry 78 of Union List I. This matter does not fall within the competence of the State Legislature. The State Legislature has, however, the power to effectively legislate on matters enumerated in the State List II and with the assent of the President, in Concurrent List III of the Seventh Schedule of the Constitution of India; and for effective legislation, where the pith and substance of the enactment falls within the competence of the State Legislature, it can incidentally trench upon a matter which may otherwise be within the exclusive competence of another legislature. The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972 and the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment). Act, 1972 are, technically speaking on a matter which is within the exclusive competence of the Parliament in that they touch a question of "constitution and organization" of the High Court; but since such a provision was necessary for effective legislation on "Land", it does not amount to colourable piece of legislation. Considering that the pith and substance of the legislation is within the competence of the State Legislature, both the Amending Ordinance and the Amending Act are not ultra vires of the State Legislature. The provisions thereof are not discriminatory and do not violate Article 14 of the Constitution. The Amending Ordinance cannot, even otherwise, be successfully challenged Both Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment), Ordinance, 1972 and Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972 are valid enactments, duly enacted by the State Legislature. Therefore, no Special Appeal is maintainable against the order of the Single Judge passed in a proceeding under Article 226 of the Constitution of India, to the extent it is prohibited under these enactments.

139. Our answer to the reference, therefore, is that the present Special. Appeals are not maintainable.

A.K. Kirty, J.

140. The Question which this Bench has to decide is : Whether Section 4 inserted in the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 (U. P. Act XIV of 1962) by U. P. Ordinance 12 of 1972 in the first instance and subsequently, by U. P. Act 32 of 1972 is a valid piece of legislation ?

141. The maintainability of the instant appeals under Chapter VIII, Rule 5 of Rules of this Court and all other like appeals which have been filed on or after 3-7-1972 or which may hereafter be sought to be filed depends on the answer to the above question. The validity and constitutionality of the impugned Ordinance No. 12 of 1972, the follow-up Act No. 33 of 1972, and the newly inserted Section 4 referred to above have been challenged on grounds which fall under two heads, - (1) infringement of Article 14 of the Constitution; and (2) legislative incompetence of the State Legislature, Uttar Pradesh.

142. In support of the above-noted contentions many and varied submissions have been made by the learned counsel for the appellants, and several other learned Advocates as well who appeared in response to notices issued to the High Court Bar Association, Allahabad and the Oudh Bar Association, Lucknow. In the first instance, arguments were advanced in support of the first contention and thereafter, very elaborate and searching submissions were made in regard to the second contention. It may be mentioned here that Sri Hargun Saran Lal Srivastava, representing the Oudh Bar Association, appeared when hearing was going on under the first head and also made some submissions in support of the contention. He further stated categorically before us that he fully supported the second contention as well. Thus, the stand taken by the Bar Association is identical. The learned Advocate-General has urged in reply that the impugned provisions of law do not suffer from any infirmity and are valid.

143. In the opinion of my learned brother D. S. Mathur, J. whose judgment I have had the privilege and advantage of reading, the impugned provisions are valid and neither of the two grounds of attack is legally tenable. As far as the first ground of attack is concerned, I agree that it is not well sustained ; but I am unable to agree with his opinion that the State Legislature was legally competent to make the impugned provision's of law. In my view, the provision

in question, viz. Section 4 as inserted in U. P. Act XIV of 1962 by U. P. Ordinance No. 12 of 1972 and U. P. Act No. 33 of 1972, is void, being ultra vires the legislative competence of the State Legislature. I would, therefore, disagreeing with my brother Mathur, J. answer the question in the negative.

144. Since I agree with the opinion of Mathur, J. that Section 4 is not violative of Article 14 of the Constitution. I do not consider it necessary to deal with the point separately or any further. I will deal with the second head of attack noted above, as, indeed, I must.

145. For a better appreciation and understanding of the controversy, a bare and minimal historical outline of the evolution of the present system of judicial administration in India needs to be given. The outline which I proceed to give is based on Herbert Cowell's "The History and Constitution of the Courts and Legislative Authorities in India" (1872) and E. J. Trevelyan's "Constitution and Jurisdiction of Civil Courts in British India". (1923 Edn.) The Englishmen came to this country as traders but ultimately became its rulers. Under a Charter granted by Queen Elizabeth in 1600, their first trading company (London East India Company) was incorporated. In 1698 under the authority of an Act of the British Parliament another company (English East India Company) was incorporated by a separate Charter. Ten years later these companies were united forming, under another Charter, a single company called the United Company, which subsequently came to be known as the East India Company. Between 1600 and 1698, the British Crown granted to the Companies certain legislative and judicial authority primarily intended to be exercised over their English servants. The Charter of Charles II granted in 1683 declared that a Court of Judicature should be established at such places as the Company might appoint. In 1726, on the representation made by the Company. George I by Letters Patent established Mayor's Courts at Madras, Bombay and Calcutta. They were declared to be Courts of Record and were empowered to try, hear, and determine all civil suits, actions, and pleas between party and party. All the existing courts, whatever they may have been were superseded.
By virtue of the same Letters Patent each local Government consisting of a Governor and Council was constituted a Government Court of Record to which appeals from the decisions of the Mayor's Court lay in all causes; and in causes involving 1000 pagodas (a Madras coin equivalent to eight shillings of English

money) and above an appeal lay to the King in Council from the decision of the Government Court. The Mayor's Courts were empowered to grant probates of wills and administration to the effects of intestates. The Government Courts were further constituted Courts of Oyer and Terminer, and were authorised and required to hold quarter Sessions for the trial of all offences except high treason. This Charter was superseded by the Charter granted in 1753 which re-established the Mayor's Courts at Madras, Bombay, and Calcutta with some amendments and also established Courts of Requests at those places for the determination of suits "where the debt, duty or matter in dispute should not exceed five pagodas". Both the Courts were made subject to a control on the part of Court of Directors, who were authorised by the Letters Patent to make "bye-laws, rules, and Ordinances for the good Government and regulation of the several Courts of Judicature established in India." The jurisdiction exercisable by these Courts in civil matters were confined, for all practical purposes, to non-Indians.

These Courts continued to function for several decades. By 1773 the Company assumed and exercised over large territories in India the position of practical and independent sovereignty, primarily, however, with the object of deriving maximum benefit and advantage for themselves in utter disregard of the norms of a civilised Government and its duties to the subject. This led to gross maladministration, chaos and tyranny. Reports about the happenings in India reached England, arousing strong public feelings and resentment. A committee of Secrecy of the House of Commons was appointed in 1772 which submitted its report in 1773. Accordingly the British Parliament passed in 1773 an Act, known as the Regulating Act (13 George III, Chapter 63) for establishing certain Regulations "for the better management of the affairs of the East India Company". It inter alia dealt with the constitution of the Governor-Generals' Council and, with reference to the Charter which established the Mayor's Courts, recited : "which said Charter does not sufficiently provide for the administration of justice in such manner as the state and condition of the Company's Presidency of Fort William in Bengal do and must require". The Act also established the SC which was made a King's Court, the Judges being appointed by the Crown. In pursuance of this Act, the SC of Calcutta was established by a Royal Charter dated March 26, 1774. Prior to the establishment of the Supreme Court, under a plan proposed by Warren Hastings in 1772, Mofussil Dewani Adalats or Provincial Courts of Civil Justice were established

in each district. These courts took cognizance of all disputes, real or personal, all causes of inheritance, marriage and caste and all claims of debt, disputed accounts, contracts and demands of rent. Questions of succession to Zamindari and taluqdari property were reserved for the decision of the Governor in Council. Similarly a Foujdari Adalat was established in each district. The Faujdari Adalats were placed under the control of a Sadar Nizamat Adalat whose duty was "to revise all the proceedings of the Faujdari Adalats; and in capital cases, by signifying their approbation and disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the Nazim." A Sadar Dewani Adalat was also established, exercising appellate civil jurisdiction over Mofussil courts in cases where the disputed amount exceeded Rs. 500/-. The SC of Calcutta during the first seven years or so of its existence functioned and exercised its very wide and largely undefined powers and authority in such capricious and. not unoften, despotic manner as to bring about disorder and chaotic conditions in the administration of the territories under the Company. To remedy the evils the British Parliament passed an Act in 1781 by which the powers" of the SC were diminished and the civil and criminal Provincial Courts (Sadar Adalats) were recognized and were deemed to be Courts of Record whose judgments were to be final and conclusive subject to appeal to the Crown in civil suits only, of the value of - 5,000 or more. The Governor-General in Council was vested with authority and power to frame Regulations for Provincial Courts and Provincial Councils, subject to Crown's control. After this and until their abolition in 1862, the Supreme Courts at Calcutta, Madras and Bombay earned reputation and respect as great judicial institutions. Under the Act of 1781 a large body of Regulations continued to be passed for about half a century. The various existing Courts also continued to function. Ultimately in 1858, the British Crown took over and assumed the exclusive power and responsibility of governance and administration of the entire territories acquired by and in possession of the East India Company and an Act in that behalf called the 'Government of India Act, 1858' (21 and 20 Victoria Chapter 106) was passed by the British Parliament. This Act did not, however, contain any provision in regard to judicial administration. In 1861 the British Parliament passed the Indian High Courts or the Charter Act, 1861 (24 and 25 Victoria Chapter 104) for establishing High Courts of Judicature in India. The existing courts of Justice in British India then consisted of the Supreme Courts at Calcutta, Madras and Bombay, the Sadar Dewani Adalats

and the Sadar Nizamat Adalats in Bengal, Madras, Bombay and the North-Western Provinces; the Provincial (District) Civil and Criminal Courts; the Courts of Small Causes in the Presidency Towns and in the Provinces; the Courts of Magistrates in the Presidency towns. The Courts of Small Causes in the Presidency Town were established in 1850 and the Courts of Requests, whose pecuniary jurisdiction had meanwhile been raised to Rs. 400/-were abolished. Within a few years thereafter Provincial Small Cause Courts were established.

146. From the historical outline of the establishment of Courts in the territories of India from 1600 to 1861 given above, it will be seen that the superior Courts at any rate were created or sanctioned by or under the authority of laws made by the British Parliament or under charters granted by the Crown. The Regulating Act of 1773 defined the extent of the legislative authority of the Governor-General in Council, and placed it under the supervision and subject to the veto of the Supreme Court. In 1781 the British Parliament by another Act empowered the Governor-General in Council to frame Regulations for the Provincial Courts without reference to the Supreme Court. Under the Act of 1781 the Governor-General in Council or some committee appointed thereby was empowered as a Court of Record to determine on appeals or references from the country or Provincial Courts in civil causes. Power to disallow or amend the Regulations was reserved to the Sovereign in Council. Subsequently by Acts of 1800 and 1807 similar legislative powers were given to the Governor in Council of the Presidencies of Madras and Bombay to frame Regulations for the Provincial Courts in the said Presidencies. By an Act of 1813 further legislative powers were granted to the Councils; and in pursuance of the powers referable to the Acts of 1772, 1781, 1800, 1807 and 1813, the Councils enacted Laws and Regulations till 1834. In 1833 an Act (3 and 4 Will, C. 85) was passed "for the better government of Her Majesty's Indian territories till April 30th, 1854," which inter alia provided that the Governor-General in Council shall have power to make Laws and Regulations for all Courts of Justice, whether established by Her Majesty's Charters or otherwise, and the jurisdiction thereof. But these powers were not in any sense plenary and were subject to approval and control of the British Parliament. Under this Act no power was given to the Governor in Council of the different Presidencies to make laws, but they were empowered to propose to the Governor-General in Council drafts and

projects of any Laws or Regulations which they respectively might think expedient. This Act thus established one central legislative authority in place of the three Councils which existed. In 1882 (24 and 25 Victoria C. 67) local legislatures were re-established, not to supersede, but to work in harmony with and to a certain extent, in subordination to the legislative Council of the Viceroy, which had the power of making Laws and Regulations for the whole of India The High Courts Act, 1861, by Section 9, provided that the High Courts shall have and exercise the various jurisdictions and powers (mentioned in the section) "subject and without prejudice to the legislative powers in relation to the said matters of the Governor-General of India in Council". This section and clauses 37 and 44 of the Letters Patent of the Calcutta. Madras and Bombay High Courts and corresponding clauses (28 and 35) of the Allahabad High Court clearly showed that the Governors, in Council or the local legislatures had no power to control or affect the jurisdiction or procedure of the High Courts.

147. The Indian High Courts Act, 1861 provided for the constitution of High Courts and the abolition of the Supreme Courts and the Sadar Courts. Under and in pursuance of the provisions of this Act, three High Courts were established at Calcutta, Bombay and Madras for the Presidencies of Bengal, Bombay and Madras by Letters Patent. The High Court of Judicature for Bengal was established in the first instance by Letters Patent, dated May 14, 1862, transmitted by the Secretary of State for India to the Governor-General of India in Council with his despatch of the same date. In paragraph 7 of the 'despatch' it was mentioned with reference to Section 17 of the High Courts Act, 1861 that "this provision was inserted in the Act, mainly with the view of enabling Her Majesty's Government to avail themselves of the advice and assistance of the Judges of the Court in "framing the more perfect Charter by which the jurisdiction and the authority of the Court is to be permanently fixed." In paragraph 22 of the 'despatch' it was mentioned :

> "Clauses 14 and 15 (of the Letters Patent) give effect to the recommendation of the Law Commissioners that the High Court shall have all the appellate jurisdiction which is now exercised by the Sudder Dewani Adawlut, and a new appellate jurisdiction in civil cases, from the Courts of original jurisdiction, constituted by one, or more of its own Judges, except that in the case of a decision which has been passed by a

majority of the full number of the Judges of the Court, the appeal shall to Her Majesty in Council."

In paragraph 39 of the document the Secretary of State inter alia observed : "I trust that the Letters Patent taken in connection with the Act for establishing the Court, will be found to contain everything requisite for enabling the Court to proceed at once to the discharge of its important duties. It is possible that omissions may be discovered by the legal authorities in India, which may impede the proper action of the Courts, and should the Judges represent to you that such is the case you will take immediate steps for supplying what is wanting by such legislative measures as you may consider most expedient for remedying the defects brought under your consideration."

148. The Letters Patent of 1862 was revoked and replaced by Letters Patent dated 28th December 1866 for the High Court of Calcutta. The Letters Patent for the High Courts of Madras and Bombay were mutatis mutandis in almost the same terms. In the circumstances mentioned above it may be reasonably inferred that by the time the Letters Patent dated 28th December, 1865 were framed and granted a firm decision was taken as to the jurisdiction and authority of the High Courts to be permanently fixed. Clause 15 of the 1865 Letters Patent inter alia provided that an appeal shall lie to the High Court from the judgment of one Judge of the High Court or one Judge of a Division Court not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exericse of the power of superintendence or in the exercise of criminal jurisdiction. The Letters Patent dated March 17, 1866 by which the High Court for North-Western Provinces, i.e., the Allahabad High Court, was established contained an identical clause, being clause 10.

149. The High Courts in the three Presidencies and the High Courts in the North-Western Provinces were erected and established under and in pursuance of the provisions of Sections 1 and 16 respectively of the High Courts Act, 1861 by separate Letters Patent, as already mentioned. These sections empowered the Crown "to erect and establish" High Courts of Judicature which were to have and exercise, by virtue of Section 9 all such Civil, Criminal. Admiralty, and Vice-Admiralty, Testamentary. Intestate and Matrimonial Jurisdiction original and appellate and all such powers and authority for, and in relation to, the

administration of justice in the territory for which they were established as might be granted and directed in the Letters Patent; but the High Courts were to have and exercise jurisdiction, powers and authority save as otherwise provided by the Letters Patent and subject and without prejudice to the legislative powers in relation to the matters (earlier mentioned in the section), of the Governor-General of India in Council.

150. Of the several meanings of the expression "to erect" in the Shorter Oxford English Dictionary (3rd Edition), the following can reasonably be accepted, in the context and the historical background in which it occurs in Sections 1 and 16 of the, High Courts Act, 1861, to be the sense in which it was used :-

> 3. "To set up or found (an office, institution etc.")
> And the expression "to establish" in the sense :-
> 2. "To institute or ordain permanently".

These two expressions read together were comprehensive enough to include everything needed to create and found permanent judicial institutions - Courts of justice and law to be called High Courts of Judicature charged with all and the various duties, functions and assignments and invested with all the jurisdictions, powers and authority needed for the due and efficient discharge of the judicial duties, functions and assignments. The manifest intention behind and the definite purpose of the Act was to establish High Courts by Charters containing (to quote and words of the Secretary of State in the Despatch dated May 14, 1853) "everything requisite for enabling the Courts to proceed at once to the discharge of its important duties" and permanently fixing the jurisdiction and authority of the said Courts.

151. The High Courts Act, 1861 and the Letters Patent erecting and establishing the four High Courts, between them evolved, sanctioned and implemented a definite scheme in regard to the basic pattern and organic structure of the judicial institution designated as High Courts of Judicature. An essential part of this scheme was that judgments, other than those which were excepted. passed by one Judge of the High Court would be amenable to appeal to the High Court, and Clause 15 of the Letters Patent of the Calcutta, Bombay and Madras High Courts and Clause 10 of the Allahabad High Court formed integral part of the

very structure of the High Courts as so erected and established Courts of law are not and cannot be of spontaneous origin. They must be and are erected and established by or under legislative measures or by or under the orders of a Sovereign possessing all the powers of the State. But Courts whenever erected and constituted must necessarily be vested with and possess all such jurisdiction and powers as are essentially needed to enable them to carry out the very purpose or purposes for which they are created and constituted. There may be Courts invested with general original jurisdiction to try all suits of a civil nature, e. g. Munsif's Courts, Civil Judges' Courts, District Courts. It will be for the legislature to decide whether , the judgments, decree or orders passed by such courts will be appellate or revisable or not and to make provisions accordingly. It will be again for the legislature to lay down what will be the territorial and pecuniary limits of the exercise of such jurisdiction by these Courts, whether original, appellate or revisional. There may be Courts of special and exclusive jurisdiction e.g. Small Cause Courts. The same Court may be invested with original, appellate and revisional jurisdiction to be exercised under and in accordance with the provisions of law conferring such jurisdiction and regulating the exercise and the manner of exercise of such jurisdiction. I may here appropriately and usefully refer to the provisions of the Bengal, Agra and Assam Civil Courts Act (XII of 1887), the Code of Civil Procedure (V of 1908) and the Provincial Small Cause Courts Act (IX of 1887). But these Acts do not lay down or specify what laws are to be administered by any of such Courts, except that by Section 37 (1) of Act XII of 1887 it is provided that questions regarding succession inheritance etc. shall be decided according to the rules of the Mohammedan Law or the Hindu Law as the case may be and by Section 37 (2) that in cases not provided for by sub-section (1) or by any other law for the time being in force, according to justice, equity and good conscience. I am not aware of any Statute which does so. One may, therefore, legitimately ask wherefrom do these courts get jurisdiction to apply and administer various laws embodied in numerous statutes dealing with civil rights, duties and obligations. Some statutes no doubt contain some provisions regarding powers exercisable by courts in respects of particular matter or matters, e.g. Section 23 of the Contract Act; but generally speaking jurisdiction and powers are not conferred on Courts by individual statutes in respect of the matters forming the subject-matter or subject-matters of the statutes. This is not necessary either because every duly constituted Court possess such basic jurisdiction and powers, either

by virtue of the existing provisions of law or by virtue of its being so constituted, as are necessary to enable it to function and to discharge its ordained judicial duties. That this is so is also the opinion of my learned brother. He has given his reasons and also referred to and relied on several judicial pronouncements and rulings. No useful purpose can be served, to my mind, by recapitulating the same or adding to the number of rulings. 152. Subsequent to the coming into force of the Government of India Act, 1915 and prior to the enforcement of the Government of India Act, 1935, the Patna High Court was established by Letters Patent dated Feb. 9, 1916, the Lahore High Court by Letters Patent dated March 21, 1919 and the Nagpur High Court by Letters Patent dated January 2, 1936. Incidentally, it may be mentioned that the Rangoon High Court was also established by Letters Patent dated November 11, 1922. The Letters Patent of these High Courts also contained a clause corresponding to clause 10 of the Allahabad High Court. Clause 15 of the Calcutta, Bombay and Madras High Courts Letters Patent and the corresponding clauses of the Letters Patent of the other then existing High Courts, as already noted, were amended in 1928 by Letters Patent which also amended clause 36 of the Charter of the first named High Courts and the corresponding clause of the Charter of other High Courts. The Letters Patent of the Nagpur High Court contained the amended clause. The effect of the amendment was to exclude the right of appeal from a judgment passed by a Single Judge in a second appeal unless the Judge concerned granted a certificate that the case was a fit one for appeal; and to exclude the right of appeal when the Judges of a Division Bench were equally divided in opinion but provision was made for reference of the point of difference to one or more of the other Judges for decision. There could be no legally valid objection to the amendments and none, to my knowledge, was raised.

153. A careful reading of clause 10 of the Letters Patent of the Allahabad High Court in its original form will show that by that clause a comprehensive right of appeal from the judgment passed by a Single Judge (except the excluded judgments) was provided for irrespective of the question whether the judgment was passed in exercise of appellate jurisdiction or in exercise of extraordinary original jurisdiction. Mention may be made here that unlike the Calcutta High Court and certain other High Courts, the Allahabad High Court was not invested with any ordinary original jurisdiction. By the amendment made in 1928 the

comprehensive provision in regard to appeals from the judgments of Single Judges was split up into two categories. Under one category fell judgments passed by Single Judges in second appeals. In respect of the appeals falling under this category a bar was imposed to the effect that an appeal would lie only if the case was certified to be a fit one for appeal by the Single Judge concerned. This aspect of the matter, to my mind, is of importance and will be dealt with more fully later on.

154. Besides Section 9, several other Sections of the High Courts Act, 1861 (e.g. Sections 11, 13 and 15) referred only to the Governor-General in Council. The Letters Patent also did the same. Therefore, there is no room for doubt that the Governors in Council, in any event, had no power to interfere with the jurisdiction and powers of and exercise of the same by the High Courts under the said Act or the Indian Councils Act, 1861. Both these Acts, besides the Government of India Act, 1858 and many other Acts were repealed by the Government of India Act, 1915. The later Act was amended by (Amendment) Acts of 1916 and 1919. The Act of 1915, even as amended, did not confer any power on the local legislatures to make laws affecting the High Courts or the jurisdiction and powers of the said Courts. The High Courts Act, 1861 was repealed but practically all the material provisions of that Act were embodied in Part IX (Sections 101 to 114) of the Government of India Act 1915 under the heading "The Indian High Courts." An examination of Sections 101 to 114 even with cross reference to the provisions concerning legislative powers of "the Indian Legislature" will show that the legislative powers of that legislature were exercisable within very narrow limits and were not unrestricted. Although sub-section (3) of Section 131 provided that "nothing in this Act shall affect the power of the Indian Legislature to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act (Sections 106, 108 (1), 109, 110, 111 and 112 of Part IX and some other sections)" yet sub-section (3) itself appeared to be subject to and controlled by sub-sections (1) and (2). This matter need not be considered because whatever may have been the powers, the local Legislatures had no power to make any law respecting a High Court. Even so, one thing which deserves notice and which may be considered a special feature of the 1915 Act is that howsoever qualified or restricted the legislative powers of the Indian Legislature under this Act might have been the said legislature had under Section 131 (3) express power to alter or repeal certain provisions of the

Act itself, viz., those mentioned in the Fifth Schedule itself. Another thing which may be noted is that sub-section (1) of Section 65 by which legislative powers were conferred on the Indian Legislature did not qualify the same by any opening words, such as "subject to the provisions of this Act" occurring in Section 99 (1) of the Government of India Act, 1935 or "subject to the provisions of this Constitution" in Article 245 (1) of the Constitution of India.

155. The Letters Patent of the Calcutta, Madras, Bombay and Allahabad High Courts were amended by Amending Letters Patent - clause 44 (Allahabad 35) in 1919 and clause 15 (Allahabad 10) in 1928-and not under any Act made in exercise of the legislative powers exercisable under the Government of India Act, 1915.

156. In the Government of India Act, 1935 also there was a separate Chapter - Chapter II, Part IX - in respect of High Courts in India. This Chapter contained Sections 219 to 231. Section 223 provided inter alia that "subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that legislature by this Act, the jurisdiction of and the law administered in, any existing High Court..... shall be the same as immediately before the commencement of Part III of this Act."
"Part III of the Act (Chapters I to VI) related to the Governors' Provinces, the Provincial Executives, the Provincial Legislature. Legislative Powers of Governor etc. Part III came into force on 1-4-1937 which was appointed date under the provisions of Section 320 (2). Part II containing provisions regarding "the Federation of India" and "the Federal Legislature" etc. actually never came into force. Part V (Sections 99 to 121) related to and contained provisions in respect of "Legislative Powers". Sub-section (1) of Section 99 provided :-

> "Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India....., and a Provincial Legislature may make laws for the Province or any part thereof."
> Under sub-section (1) of Section 100 legislative powers were exercisable

> exclusively by the Federal Legislature to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule; under sub-section (2) legislative powers to make laws with respect to matters enumerated in List II were exercisable concurrently by both legislatures; and under sub-section (3) legislative powers were exercisable exclusively by the Provincial Legislatures with respect to matters enumerated in List III. Under sub-section (4) the Federal Legislature had power to make laws with respect to entries in List III except for a province or any part thereof. The use of the words subject to the provisions of any Act of the appropriate Legislature and reference to Part III in Section 223 no doubt postulate that the Provincial Legislatures were included in the expression "appropriate Legislature"; but those words had necessarily to be construed and given effect to 'subject to the provisions of Part IX of the Act itself.'

Therefore, no Legislature, whether Federal or Provincial, could enact a law by virtue of powers granted under Sections 99 and 100 so as to alter or repeal any of the provisions contained in Chapter II, Part IX of the Act. That this was the position is also clear from the opening words, 'subject to the provisions of this Act', of sub-section (1) of Section 99 which provided for legislative competence, whereas Section 100 provided for the fields ever which a Legislature, if otherwise competent, could exercise its legislative powers. Yet, it cannot be said that the words 'subject to the provisions of any Act of the appropriate Legislature' in Section 223 were made idle words. They were effective and operative, to the extent permissible as indicated above but only in regard to the jurisdiction of and the law administered in any existing High Court. Section 223, however, did not warrant the making of any law which altered or affected the very structure of a High Court as erected and established.

157. The Chief Court in Oudh which was amalgamated with the Allahabad High Court was constituted under the provisions of the Oudh Courts Act, 1925 (U. P. Act IV of 1925). This Act received the assent of the Governor on 3rd April, 1925 and of the Governor-General on 4th May, 1925 and was published under Section 81 of the Government of India Act, 1915 on 16th May, 1925. Section 3 of the Oudh Courtis Act provided that on and from the commencement of the Act there shall be a Chief Court in Oudh. By Section 12

of the Act, it was provided as follows :-

> "(1) (Notwithstanding any provisions to the contrary contained in any enactment for the time being in force) an appeal from any original decree or from any order against which an appeal is permitted by law for the time being in force made by a Single Judge of the Chief Court, shall lie to a Bench consisting of two other Judges of the Chief Court.
> (2) (Notwithstanding any provision to the contrary contained in any enactment for the time being in force) an appeal from any appellate decree made by a Single Judge of the Chief Court shall lie to a Bench consisting of two other Judges of the Chief Court, if the Judge, who made the decree declares that the case is a fit one for appeal."

The words within brackets in the above quotation were added by U. P. Act XIV of 1934. A comparison of the provisions of the Oudh Courts Act with the provisions of the High Courts Act, 1861 and those of Chapter IX of the Government of India Act, 1915 and the clause of the Letters Patent by which the Allahabad High Court was constituted, will clearly show that the Chief Court in Oudh, although it was vested with some original civil jurisdiction, was not a Court which in all respects could be equated with the various High Courts in India.

158. The instant appeals purport to have been filed under Rule 5, Chapter VIII of the Rules of Court, 1952. The said rule, however, did not create any right of appeal but merely preserved as a matter of form the right of appeal which already existed by virtue of clause 10 of the Letters Patent of the Allahabad High Court and Section 12 of the Oudh Courts Act and paragraph 7 of the Amalgamation Order, 1948. Such right of appeal has been preserved and continued under the provisions of the Constitution of India, 1950. In other High Courts, as far as I am aware, such appeals still are known as Letters Patent Appeals. The origin of these appeals was undoubtedly statutory. In the case of High Courts established by Letters Patent, provision was made in the Letters Patent themselves which were issued and granted by the Crown in England by virtue of the powers conferred on the Crown by an Act of the Parliament, namely, the High Courts Act, 1861. As far as the Chief Court in Oudh was concerned, such appeal was specifically provided for by Section 12 of Oudh

Courts Act, 1925. The purpose of mentioning this is to show that the argument which was advanced on behalf of the appellants that the appeals were internal or domestic appeals is without foundation.

159. My approach to the question directly arising for consideration and decision is in certain respects materially different from that of my learned brother Mathur. I have already expressed my opinion that the hierarchy of Courts implicit in the Letters Patent appeals was and is a constituent part of the judicial structure of the High Court itself as constituted under the provisions of the High Courts Act, 1861 and the Letters Patent issued and granted there under. Such appeals formed, in my opinion, an integral part of the appellate jurisdiction exercisable by the High Court. Although for all other purposes, the judgment passed by a Single Judge whether in an appeal or passed in a proceeding in exercise of extraordinary original jurisdiction is a judgment of the High Court, yet vis-a-vis the appellate jurisdiction exercisable by the High Court such judgment must be deemed to be a judgment not of the High Court but of one Judge of the Court.

160. The power of making laws under the 1935 Act in respect of the matters enumerated in the three Lists by the two Legislative bodies could be exercised provided the Legislature or Legislatures possessed legislative competence under Section 99 (1). Therefore, in my opinion, the Provincial Legislature could make laws in respect of the matters mentioned in Entry No. 1 of List II (Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice : constitution and organization of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention) and Entry No. 2 (Jurisdiction and powers of all courts except the Federal Court, with respect of the matters in this List; procedure in Rent and Revenue Courts); yet the power of making laws in respect of such matters was subject to the provisions contained in Chapter II of Part IX of the Act. As far as and to the extent the provisions of the said Chapter curtailed or restricted the exercise of legislative powers by the Provincial Legislature, it must, to my mind, be held that the said legislature did not possess legislative competence.
I am, therefore, of the opinion that despite Entry No. 1 of List II of the Seventh

Schedule to the Government of India Act, 1935, virtually the Provincial Legislature could not make any law contrary to the provisions contained in Chapter II, Part IX in regard to the establishment, constitution and organisation of any High Court, nor, in my opinion, was it legally competent for such Legislature to make laws altering or affecting the basic fabric or structure of a duly constituted, organized and established High Court. It is true that the words "Administration of Justice Constitution and Organization of all Courts, except the Federal Court" in Entry No. 1 of List II and the words "Jurisdiction and Powers of all Courts except the Federal Court, with respect of the matters in this List" of Entry No. 2 of the said List were words of such wide amplitude as, but for the special provisions contained in Chapter II of Part IX, could have brought every matter in regard to constitution, organization, jurisdiction and powers of the High Court, including the power of administering justice, within the power of Provincial Legislature to make laws in that behalf. The question, after the coming into force of the Constitution, has, however, become more or less academic and I do not think it necessary to examine the matter further with reference to the provisions of the 1935 Act.

161. The Constitution of India contains provisions analogous to Chapter II of Part IX of the Government of India Act, 1935 and Sections 99 and 100 of the said Act. Likewise the Constitution also contains three Legislative Lists in the Seventh Schedule. Chapter V of Part VI (Articles 214 to 231) exclusively deals with High Courts, Article 214 provides that "there shall be a High Court for each State". By Article 215, it is declared that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 225 provides as follows –

> "Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :Provided that any restriction to which the exercise of

> original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

Chapter VI of Part VI contains provisions in regard to subordinate courts, I do not consider it necessary, however, to refer to these provisions. Clause 1 of Article 372 provides as under –

> "(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered, repealed or amended by a competent Legislature or other authority." Article 367 (1) provides :-
> "Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372. apply for the interpretation of this Constitution as it applies for the interpretation of any Act of the Legislature of the Dominion of India."

Section 3 (25) of the General Clauses Act, 1897 defines High Court as under :-

> "High Court used with reference to civil proceedings shall mean the highest civil court of appeal (not including the Supreme Court) in the Part of India in which the Act or Regulation containing the expression operates."

Thus apart from the specific provisions contained in Chapter V, the expression "High Court" as used in the Constitution, by virtue of Article 367 (1), must be a High Court also as defined in Section 3 (25) of the said Act. Besides by Article 215 every High Court has been declared to be a court of Record. Such declaration occurred in all the Letters Patent and in the Government of India Acts of 1915 and 1935. The expression "Court of record" however, has not been defined in or by the Constitution nor was it defined in the Acts of 1915 and

1935 or in the Letters Patent. It is, therefore, not clear in what sense the said expression was used. It may be mentioned here that Article 816, Vol. IX pages 346 to 348 of III Edition of Halsbury's Laws of England deals with "Court of record." It is, inter alia, stated in the said Article that in the case of civil courts, the further distinction formerly existed between courts of record and courts not of record that in the case of the former, where a judgment was alleged to be wrong, a writ of error lay whereas in the case of the latter the remedy was by way of a writ of false judgment. It is further stated that proceedings of a court of record preserved in its archieves are called records and are conclusive evidence of that which is recorded therein. In Article 828 at page 355 of the Book it is mentioned, inter, alia, that as regards civil proceedings in the High Court proceedings in error were expressly abolished by the Rules of the Court set out in the SC of Judicature Act, 1875. The position thus being uncertain, no firmly tenable argument, in my opinion, can be built upon or accepted, based on the use of the expression "Court of Record" in Article 215 of the Constitution, although the said expression used in the Letters Patent of the Calcutta, Madras. Bombay and Allahabad High Courts in all probability might have been used as connoting a Court where a judgment alleged to be wrong was amenable to a writ of error, and since no such writ obtained in India provision analogous to such writ was made by clause 15 of the Letters Patent of first three High Courts and clause 10 of the Letters Patent of the last mentioned High Court. All the same it may be pointed out that in so far as the Constitution itself contains specific provisions in regard to High Courts and the jurisdiction and powers of such Court, neither Parliament nor any State Legislature can make laws in exercise of their respective legislative powers, the field of exercise of which is provided for is three Lists of the Seventh Schedule. Take for instance Articles 226, 227 and 228 which confer by their own force and expressly a variety of jurisdictions and powers on High Courts. No law can be made by any State Legislature or even by Parliament in exercise of the powers given to these bodies under Articles 245 and 246 to make laws, so as to amend, alter or repeal the aforesaid articles. No doubt Parliament can make such a law by virtue of the special provisions contained in Article 368, but it is not given to the State Legislature to amend the Constitution. But then it has been argued that the impugned law could be validly passed by the State Legislature because it is possessed of necessary powers in that behalf under Articles 225 and 372 (1) or either of them read with the provisions of Article 246 and the Entries in Lists II

and III, and, in particular. Entries Nos. 3 and 65 of List II, of the Seventh Schedule. This is the crux of the whole controversy.

162. Articles 225 and 372 (1) have already been referred to and quoted. Article 225 is virtually a reproduction of Section 223 of the Government of India Act, 1935, also quoted above, except that it contains a new proviso which enlarges the original jurisdiction of the High Courts by extending the exercise of that jurisdiction to matters concerning the revenue or concerning any act ordered or done in the collection thereof.

I have already made certain observations with reference to the powers exercisable by the Provincial Legislatures under that section. Those observations are apposite to Article 226 to a very large extent. I may, however, at once point out that the powers of the State Legislature (assuming it to be the appropriate legislature for the present purposes) under Article 225 are more restricted than the powers which were exercisable by the Provincial Legislatures under Section 223. This will be apparent from the proviso to Article 225 referred to above and a comparison of Entry No. 3 of List II of the Seventh Schedule of the Constitution with the corresponding Entry No. 1 of List II of the Seventh Schedule of the Act. Under the said Entry No. 1 'Constitution and Organization' of a High Court was a matter with respect to which the Provincial Legislature, subject to the provisions of the Act, could make laws; whereas under the present Entry No. 3 the State Legislature has no such power. Constitution and Organization of High Courts has been expressly excluded from the State List and specifically included in the Union List (Entry 78 of List I). I have already mentioned that the judicial structure of High Courts is essentially a matter of Constitution and Organization of such Courts. Under the Constitution it is not given to the State Legislatures to alter such structure. The Constitution makers in their wisdom definitely appear to have decided that the Judicial Institutions, viz., High Courts, must not only remain and continue to function as heretofore but must be invested with certain further, extraordinary jurisdiction and powers so as to ensure governance of the Country by rule of law, which is the quintessence of democracy. This decision is manifestly discernible in Articles 214 to 231 forming a separate Chapter of Part VI of the Constitution. The laws administered in and enforced by the High Courts are not laws made by State Legislature only but all laws in the country which are legally enforceable. This requires that the basic judicial structures of all High Courts

must, as far as possible, be uniform; and, probably, for this reason constitution and organization of High Courts was made the subject-matter of Entry 78 of the Union List and excluded from the State List. In view of the express provisions contained in Articles 214 to 231, it is clear to my mind that the expression 'Constitution and Organization' has been used in a comprehensive sense. If that were not so it would have presented serious difficulties if and when it became necessary for Parliament to act under Articles 230 and 231 or to constitute and organize a new High Court.

163. I have earlier said that in my opinion the provision in regard to Letters Patent Appeals is a part of the Constitution and Organization of the High Court. I will now deal with this matter further, with reference to the provisions of Chapter V, Part VI, the Legislative Lists and other provisions of the Constitution. One question which at once poses itself in this connection is. If a new High Court were to be established would it be competent for the State Legislature, which cannot constitute and organize it, to make any law providing that an appeal would lie to the High Court against the judgments, generally or in specified cases passed by one Judge of the Court, and that for purposes of such appeal the Single Judge concerned in each of such case would be the Court below in relation to the High Court sitting in appeal ? I am clearly of opinion that the answer to such a question must necessarily be in the negative. Such a power cannot be spelt out either from Entry No. 3 or Entry No. 65 of List II, nor from any other provision of the Constitution. If the State Legislature is incompetent to make such a law it would be equally incompetent, in the absence of any specific power conferred on it in that behalf, to alter, amend or repeal any such existing law. The provision in regard to Letters Patent Appeals being a 'law in force' continued to remain in force by virtue of Article 372 (1) and will continue to remain in force until amended, altered or repealed by the Legislature competent to do so. To determine which Legislature is competent to exercise such legislative powers, it would be necessary to find out whether the law in force could have been made by the particular Legislature if at the relevant time the Constitution itself was in force. In my opinion, the State Legislature could not have made such a law nor can it make such a law. It cannot, therefore, amend or alter it, at any rate, under Article 372 (1) of the Constitution.

164. Article 225 of the Constitution occurs in Chapter V, Part VI itself. I have already considered and held that this article does not empower any State Legislature to make any law affecting the Constitution, and Organization of a High Court, and the provision in regard to Letters Patent Appeals being a constituent provision of the High Court as constituted and organized, the impugned law is liable to attack as affecting constitution and organization of the High Court. One may however, very pertinently ask; would it not then mean that the words "subject to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in any existing High Court ..... shall be the same as immediately before the commencement of this Constitution" are meaningless ? One may again point out in this connection that by virtue of Entry No. 65 of List II, and Entry No. 56 of List III, it is given to the State Legislature to make laws with respect to jurisdiction and powers of High Courts with respect to any of the matters enumerated in List II and List III, and that surely, in the face of such specific powers expressly conferred on State Legislatures it is not possible to say that a State Legislature cannot make a law affecting the jurisdiction of and the law administered in an existing High Court.
Lest I be misunderstood, I want to make it clear here that I do not, and, indeed, I cannot in view of the wordings of Article 225 itself question the power of the State Legislature to make by virtue of powers conferred on such Legislature under Entry No. 65 List II and Entry No. 56, List III, laws affecting the jurisdiction of and the law administered in an existing High Court, provided such laws are not invalid otherwise. The opening words of Article 225 and Article 245 (1) both are "subject to the provisions of this Constitution". Necessarily, therefore, the exercise of legislative powers by "the appropriate Legislature" is controlled and regulated by the provisions of the Constitution. As in my opinion the jurisdiction which a High Court exercises in Letters Patent Appeals is an intrinsic part of its constitution and organization the said jurisdiction cannot as such be brought within the mischief of either of the two entries, viz., Entry No. 65, List II and Entry No. 46, List III. But, even though the said jurisdiction as such cannot be altered, emended or repealed by a State Legislature, yet such legislature can validly make laws regulating, restricting or even preventing the exercise of the jurisdiction with respect to matters enumerated in Lists II and III, if thereby no provision of the Constitution is

trenched upon.

165. Undeniably by virtue of Entry No. 65, List II and Entry No. 46, List III a State Legislature can enact a law with respect to any of the matters enumerated in these lists, providing therein whether any dispute or question or matter arising under such enactment will be triable by existing Courts of law or by special Courts or tribunals created or established under the Act or whether there will be any appeal or not. If such an enactment provides that there shall be no appeal in the High Court or that there shall be only one appeal in the High Court, the validity of such provision cannot be challenged on the ground that it alters the judicial structure of the High Court or curtails or takes away the appellate jurisdiction under clause 10 of the Letters Patent. In such a case, if I may use the expression, there is no actual anatomical amputation or dismemberment; the limb remains intact but cannot function to the extent and with respect to matters prohibited by the particular enactment. If a question arises as to the validity of any such enactment, the test to be applied will be whether the Legislature concerned could enact the law in exercise of the powers conferred on it by the Constitution. If the enactment does not hit any provision of the Constitution and falls within the law-making powers of the particular Legislature under the provisions of the Constitution its validity must be upheld. The impugned law in the instant cases not being a law made by Parliament it is not necessary to refer to the provisions in the Constitution by virtue of which Parliament can make laws, except in so far as may be incidentally necessary. The power of the State Legislature is to be ascertained with reference to and in the light of the Entries in Lists II and III, construing the entries to be wide in amplitute. If the enactment is legitimately covered by any or more of the entries apropos the law, its validity must be upheld, if not it must be struck down.

166. Instances are not lacking where a Legislature has controlled or regulated the exercise of jurisdiction and powers of Courts by enacting laws by virtue of legislative powers conferred on it although it did not possess powers to abolish such jurisdiction and powers. Take the law of Limitation or Court-Fees Act. Such laws in reality impose bars which restrict the exercise of jurisdiction and powers by Court. The State Legislature cannot certainly amend, alter or repeal Article 226 which confers jurisdiction and powers on the High Court, yet in exercise of its legislative powers it can and actually has prescribed the amount

of court-fee payable on a petition under that Article. If the prescribed fee is not paid on a petition, the High Court cannot entertain or act upon such petition because of the prohibition contained in Section 4 of the Court-fees Act. Similarly, by virtue of Section 3 of the Limitation Act Courts cannot entertain suits appeals or applications filed after the expiry of the periods of limitation prescribed by the Act, except as permitted by the Act.

167. Instances again are not lacking where the State legislature acting within its legislative competence and powers has validly made laws whereby existing jurisdiction and powers of Court, including High Court, have been curtailed or even abolished. Reference in this connection may be made to the Provincial Small Cause Courts (U. P. Amendment) Act, 1957 (U. P. Act No. XVII of 1957) by which High Courts jurisdiction and powers under Section 25 of the Provincial Small Cause Court's Act were abolished and conferred on District Judges; U. P. Civil Laws (Reforms and Amendment) Act, 1954 (U. P. Act XXIV of 1954) by which appeals against original decrees below the prescribed pecuniary limit were made cognizable by District Courts in place of High Courts; U. P. Act 37 of 1972 by which the jurisdiction and powers of the High Court under Section 115 of the Code of Civil Procedure were drastically cut down and partially abolished. It may at the same time be pointed out that all such jurisdiction and powers curtailed or abolished by these Acts were derived by the High Court under statutes in respect of which the State Legislature is under the provisions of the Constitution competent and empowered to make laws. Such jurisdiction and powers not having emanated from the constitution and organization of the High Court, the laws in question could be validly made in exercise of the powers under the various Entries in Lists II and III and in particular Entries Nos. 3 and 65 of List II and Entries Nos. 13 and 46 of List III. Yet again there are instances of Acts, Central or State, by which special jurisdiction has been conferred on High Courts e.g. The Income-tax Act and Sales Tax Acts. If the Legislatures concerned abolish such jurisdiction no objection can be raised as to the validity of the laws made in that behalf.

168. Section 96 of the Civil Procedure Code provides for appeals from original decree, but it does prescribe the forum. Provisions in respect of forum are contained in the Bengal, Agra and Assam Civil Courts Act Section 100 of the Code provides for appeals from appellate decree (second appeals) and also

prescribes the exclusive forum, viz., the High Court. Similarly revisional jurisdiction and powers are conferred by Section 115 of the Code and, prior to the amendments made in this section such jurisdiction and powers were exclusively exercisable by the High Court. All these provisions could be lawfully amended by the State Legislature so as to limit, curtail or even abolish the jurisdiction and powers of the High Court in regard to first appeals, second appeals and revisions and, therefore, the enactments referred to above are valid and enforceable.

169. Clause 10 of the Letters Patent was, as already noted, amended in 1928. But that was done by amending the Letters Patent itself. The judgments amenable to appeal under the clause were divided, so to say, into two categories as indicated earlier. By Section 3 of the U. P. High Court (Abolition of Letters Patent Appeals) Act, 1962 (Act XIV of 1962) it was provided :

> "No appeal ..... shall lie to the High Court from a judgment or order of one Judge of the High Court, made in exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the superintendence of the High Court, anything to the contrary contained in clause ten of the Letters Patent..... notwithstanding."

This Act curtailed the exercise of jurisdiction under clause 10, but it did so with reference to the initial appellate jurisdiction exercisable and exercised by the High Court under provisions like Sections 96, 100 and 104 of the Civil Procedure Code, which provisions could be validly amended by the State Legislature. Therefore, it was competent for the State Legislature to enact the law under Entries Nos. 13 and 46 of List III read with Article 225 and clauses 35 and 18 of the Letters Patent and the U. P. High Courts (Amalgamation) Order, 1943 respectively. That such laws can be validly made is supported by the decisions of the SC in AIR 1962 SC 256 and AIR 1965 SC 1442. In the former case it was held that in view of the provision of Section 39 (2) of the Arbitration Act, 1940 no Letters Patent Appeal lay against the judgment of a Single Judge of the High Court given in an appeal under sub-section (1) thereof. It was inter alia observed :-

> "If by the express provision contained in Section 39 (1) a right of appeal

from a judgment which may otherwise be available under Letters Patent is restricted, there is no ground for holding that clause (2) does not similarly restrict the exercise of appellate power granted by the Letters Patent."

The case furnishes a clear example where the appropriate Legislature can indirectly even by necessary implication, restrict or curtail the exercise of appellate power under the Letters Patent. In the latter case it was held that no Letters Patent Appeal lay against the judgment of a Single Judge passed in an appeal under Section 39 of the Delhi Rent Control Act, 1958 because the appropriate Legislature had imposed a bar against any further appeal by making the judgment under Section 39 (1) 'final' under Section 43 of the Act. In my opinion, in respect of judgments passed by a Single Judge of the High Court in exercise of jurisdiction and powers conferred by or under a particular statute, the Legislature which enacted it or which is competent and empowered under the Constitution to amend, alter or repeal the Act in question is the appropriate legislature under Article 225 and can validly pass a law restricting, curtailing or even abolishing the right to file a further appeal to the High Court under clause 10 of the Letters Patent. The point for consideration in each case will be how the matter initially reached the High Court. If it reached under the provisions made by a State Legislature, that Legislature can notwithstanding the provisions of clause 10 provide that the right of appeal under that clause shall not attach to judgments given by Single Judges in exercise of jurisdiction and powers conferred by a law which it made or which it is competent to make. A petition under Article 225 of the Constitution reaches the High Court by virtue of jurisdiction and power conferred by that Article, that is to say the jurisdiction and powers exercisable by the High Court on such a petition being filed are not exercisable under or by virtue of any enactment passed or made by a State Legislature, but by virtue of the provisions of that Article itself. No State Legislature can, therefore, in my opinion, make any law prohibiting the exercise of jurisdiction and powers of the High Court to entertain, hear and decide a Letters Patent Appeal against a judgment of a Single Judge given in a petition under Article 226 of the Constitution. The impugned provisions, therefore, are liable to be struck down.

170. In the judgment of my brother there is elaborate and exhaustive reference

to and discussion of a large number of rulings as also several text books and commentaries. I do not propose to do same thing myself as I consider it unnecessary. The points of difference between us are indeed not many, but on such points there does not appear to exist, at least I am not aware of any ruling or authority having a direct or substantial bearing. The rulings and authorities cited and discussed by my learned brother do not, in my view run counter to or basically affect the viability of the conclusion at which I have arrived.

171. In the result, the question referred to this Bench must, in my opinion, be answered in the negative, and the instant appeals must be held to be legally maintainable.

Gopi Nath, J.

172. I am in agreement with the view expressed by Mathur, J. and am of opinion that the reference be answered accordingly.
BY THE COURT

173. In accordance with the majority decision, our answer to the reference is that both the Special Appeals are barred by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972 (U. P. Ordinance No. 12 of 1972) and the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1972, and are not maintainable.

Cases Referred.

1. AIR 1962 SC 256.
2. ILR (1945) Mad 564: AIR 1945 Madras 184
3. AIR 1963 SC 946
4. AIR 1966 SC 1445
5. AIR 1951 SC 69
6. AIR 1968 SC 888. The 1951
7. AIR 1949 Bom 197
8. AIR 1955 SC 58
9. AIR 1955 SC 367
10. AIR 1970 SC 564

11. AIR 1935 PC 158
12. (AIR 1955 SC 58
13. AIR 1941 FC 16
14. AIR 1959 SC 459
15. AIR 1972 SC 425
16. AIR 1972 SC 1061
17. AIR 1949 Mad481
18. AIR 1963 SC 90 and AIR 1962 SC 256
19. AIR 1970 SC 999
20. AIR 1951 SC 69
21. 177 P. 2d 416, 421, 180, Order 339
22. 12 serg. and 330, 347.
23. 34 A 1046, 1047, 67 Conn 290, 33 LRA 227
24. 4 Neb 415, 421
25. 36 P. 348, 349, 53 Kan, 191, 23 LRA 603
26. AIR 1951 SC 41
27. AIR 1952 SC 369
28. (1932) 77 Law Ed 175
29. AIR 1950 SC 134
30. AIR 1953 SC 148
31. AIR 1961 Ker 96 (FB)
32. AIR 1961 Ker 226
33. AIR 1949 Mad 481 (FB)
34. AIR 1959 Mad 261
35. AIR 1953 Cal 453 (SB)
36. AIR 1957 Cal 534
37. AIR 1961 Cal545 (SB)
38. AIR 1952 Mys 75
39. AIR 1965 76
40. AIR 1949 Mad 481 (FB)
41. AIR 1957 Cal 534
42. 1930 AC 111 at p. 118
43. (1894 AC 31)
44. 1894 AC 189
45. 1896 AC 348
46. 1907 AC 65

47. AIR 1957 SC 297
48. AIR 1951 SC 318 and AIR 1947 PC 60
49. AIR 1965 SC 1442
50. AIR 1962 SC 256
51. AIR 1966 SC 430
52. AIR 1964 SC 907
53. AIR 1953 SC 210
54. AIR 1954 SC 202 AIR 1963 SC 946
55. AIR 1965 SC 1818
56. AIR 1952 All 88
57. AIR 1955 SC 604
58. AIR 1954 All 655
59. AIR 1949 Bom 42
60. AIR 1958 SC 538
61. AIR 1963 SC 222
62. AIR 1967 All 341
63. AIR 1960 SC 457
64. AIR 1957 SC 503
65. AIR 1952 SC 75
66. AIR 1952 SC 235
67. 1957 SCR 605: (AIR 1957 SC 510)
68. AIR 1957 SC 1581
69. AIR 1959 SC 564