**CALCUTTA HIGH COURT**

Amarendra Nath Roy Chowdhury

Vs.

Bikash Chandra Chose

Matter No. 29 of 1957

(Sinha, J.)

22.05.1957

**ORDER**

**Sinha, J.**

1. The petitioner in this case challenges the validity of the City Civil Court Act, being West Bengal Act XXI of 1953, which was passed by the West Bengal Legislature and has received the assent of the President, such assent being published in the Calcutta Gazette, Extraordinary, dated the 1st September 1953. It is stated to be an Act to establish an additional Civil Court for the City of Calcutta. It is to be called the City Civil Court Act, 1953, and was to come into force on such date as the State Government might by notification in the Official Gazette, appoint. For the purposes of this application the following provisions of the Act are important :-

> "3. (1). The State Government may, by notification in the Official Gazette, establish a Civil Court to be called the City Civil Court.
> (2) The City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent for the High Court and of the Code of Civil Procedure, 1908.
> 4. (1). There shall be appointed a Chief Judge of the City Civil Court and as many other Judges of that Court as the State Government thinks fit.
> (2). Each of the Judges of the City Civil Court may exercise all or any of the powers conferred on that Court by this Act or by any other law for the time being in force.
> 5. (1). The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.
> (2). Subject to the provisions of sub-sections (3) and (4), and of Section 9, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding rupees ten thousand in value.
> (3). The City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try any proceedings under -
> (i). the Guardians and Wards Act, 1890, and

(ii). Part X of the Indian Succession Act, 1925, in respect of succession certificates.

(4). The City Civil Court shall not have jurisdiction to try suit and proceedings of the description specified in the First Schedule.

(5). All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, tribunal or authority, as the case may be, as heretobefore."

2. It will be necessary to deal with the First Schedule in some detail later on. It is sufficient to mention here that under Item 5 of the First Schedule, suits and proceedings exceeding Rs. 5,000 in value relating to or arising out of, bills of exchange, hundis or other negotiable securities for money as well as letters of credit or letters of advice are excluded from the jurisdiction of the City Civil Court; but suits and proceedings relating to or arising out of, cheques, promissory notes not exceeding Rs. 10,000 in value, which would otherwise have been tried in the Ordinary Original Civil Jurisdiction of the High Court of Calcutta, will now be tried and determined by the City Civil Court. The petitioner states that he intends to file a suit under Order 37 of the Code of Civil Procedure for a sum of Rs. 3,500 based upon a promissory note, in this High Court in its Ordinary Original Civil Jurisdiction. He says that his plaint is ready but he has been prevented from filing the suit because of the provisions of the City Civil Court Act. The petitioner also challenges the appointment of the respt. Sri Bikash Chandra Ghose, Chief Judge of the City Civil Court, on the ground that his appointment is not in accordance with law. Before I proceed further, it will be convenient to refer to the several notifications whereby the City Civil Court was established and the Chief Judge appointed. As I have stated above, the Act was passed by the West Bengal Legislature in 1953, but it was to come into force on such date as the State Government may, by notification in the Official Gazette, appoint; Section 3 lays down that the State Government may, by notification in the Official Gazette, establish a Civil Court to be called the City Civil Court. Three orders were made on the 14th February 1957, which were published simultaneously in an extraordinary issue of the Calcutta Gazette published on the 20th February 1957. The first notification is No. 1057-J, by which the Governor appointed the 23rd day of February 1957, as the date on which the Act shall come into force. By notification No. 1058-J the Governor was pleased to establish with effect from 23rd day of February 1957 a Civil Court to be called a City Civil Court. By notification No. 1059-J, the Governor was pleased to establish with effect from 23rd February 1957, for the Presidency Town of Calcutta the Court of Session, to be called a City Sessions Court. By notification No. 1214-J dated the 20th February 1957, the Governor in exercise of power conferred by sub-section (1) of Section 4 of the City Civil Court Act of .1953, was pleased to appoint the respondent No. 1, who was then employed as the Additional Chief Presidency Magistrate, Calcutta, to be the Chief Judge of the City Civil Court. This notification has not been published in the Gazette yet, or at least was not at the time of the hearing of the application.

3. The points taken by Mr. Kar on behalf of the petitioner may be summarized as follows:-

(1) The City Civil Court Act of 1953 is not within the competence of the West Bengal Legislature. Therefore it is ultra vires and void.

(2) That the provisions of the said Act, in so far as they purport to take away, curtail, restrict or alter the jurisdiction of the High Court, are beyond the competence of the State

Legislature, and are therefore ultra vires and void.

(3) That the West Bengal Legislature, in constituting and organizing a City Civil Court, by passing the said Act, was In fact reorganizing and reconstituting the High Court, which is beyond its competence.

(4) That the Act deals with subjects which are in pith and substance beyond the competence of the West Bengal Legislature and as such are ultra vires.

(5) That the Act is discriminatory, and takes away beneficial advantages conferred on litigants of obtaining summary relief under Order 37 of the Code of Civil Procedure, and therefore offends against Article 14 of the Constitution.

(6) That the appointment of respondent No. 1 is bad, inasmuch as he was appointed even before the City Civil Court came into force and even before the Court was constituted under the Act.

4. I shall now deal with the main point, namely, that the Act and the constitution of the City Civil Court thereunder, are beyond the competence of the State Legislature. In order to appreciate the arguments under this heading, it will be necessary to refer to certain entries in the Seventh Schedule of the Constitution of India. The relevant entries are set out below :-

"List I - Union List.

77. Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organization of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts;

.....

95. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction."

"List II - State List.

3. Administration of justice; constitution and organization of all Courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court.

65. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List,

List III - Concurrent List.

13. Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

46. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List."

(5) There has been a substantial departure in the enumeration of the subjects in the different Lists as occurring in the .Constitution, from that which occurred in the Government of India Act, 1935. In order to appreciate the argument, it is necessary also to set out the relevant entries in the Government of India Act, 1935.

"List I - Federal Legislative List.

Entry 53. Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this List.....

List II - Provincial Legislative List.

Entry 1.....the administration of justice, constitution and organization of all Courts, except the Federal Court .....Entry 2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this List; procedure in Rent and Revenue Courts.

List III - Concurrent Legislative List

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

6. The argument of Mr. Kar appearing on behalf of the petitioner is as follows: He says that under the Government of India Act, 1935, the constitution and organization of the High Court, as also its jurisdiction and powers, were provincial subjects, whereas under the Constitution, these subjects have been expressly taken away from the competence of the State Legislature and have been made Union subjects. Mr. Kar argues that the State Legislature is not competent to enact any legislation which affects the constitution and organization, or jurisdiction or powers of the High Court. He says that by taking away a part of the jurisdiction and powers of the High Court and conferring it upon the City Civil Court, the State Legislature lias affected the constitution and organization and certainly the jurisdiction and powers of the High Court, and this it cannot do.

7. A consideration of the legislative items set out above will show that the matter is more complicated than is stated in the argument. There can be no doubt that under the Government of India Act, 1935, the constitution and organization of the High Court was a provincial subject. The jurisdiction and powers of the High Court in respect of any matter in List II was of course a provincial subject. With regard to its jurisdiction and powers in respect of items in List I or List III, that was a matter of controversy and in fact forms the subject-matter of a decision of the Supreme Court, *State of Bombay v. Narottam Das*[1], In the Constitution of India, there has certainly been a significant departure. The 'constitution and organization' of the High Court has expressly been made a Central subject. But while, under Entry 77 in List I, the 'constitution, organization, jurisdiction and powers' of the Supreme Court has been made a Central subject,

only the 'constitution and organization' of the High Court has been made a Central subject in Entry 78, which

[1] AIR 1951 SC 69

does not speak of its 'jurisdiction and powers'. In Entry 1 of List II of the Government of India Act, 1935, 'administration of justice' was a provincial subject, and it continues to be so under the Constitution. Thus, while the 'constitution and organization' of the High Court has been allocated to the Centre, the State retains the power to legislate on 'administration of justice'. Then again, while the 'jurisdiction and powers' of the High Court has not been mentioned in Entry 78 of List I in the Seventh Schedule of the Constitution, Entry 95 gives the Parliament jurisdiction and power over all courts excepting the Supreme Court with respect to any of the matters in List I. But the jurisdiction and powers of all Courts in respect of administration of justice is still a stale subject and this would include the High Court.

8. Mr. Kar has argued that the reason for this variation in the List is that while the general administration of justice within the State has been left to the State, the High Courts have been definitely withdrawn from the ambit of the legislative power of the State Legislatures, and entrusted to Parliament. Just as under the Government of India Act, 1935, the Provincial Legislature could not affect or deal with the Federal Court, similarly, under the Constitution the State Legislature cannot deal with or affect in any way the High Court. It is only Parliament that can do so. On the other hand, Mr. Dev argues that this method of construction or interpretation is wholly incorrect. He says that the proper method of interpretation would be as follows: Firstly, we are not entitled to exclude from consideration any thing which appears in a Statute, or add to what appears in the Statute already. If there has been an omission, there must be an object behind it. Similarly if anything has been added, there must be an object in doing so. Bearing this rule of interpretation in mind, he has invited me to look at the entries in Lists I and II of the Seventh Schedule of the Constitution. He says that Entry 77 in List I clearly shows that the constitution, organization, jurisdiction and powers of the Supreme Court are central subjects. In Entry 78, the words 'jurisdiction and powers' have been dropped, and there must be a significance attached to this. The significance must be that it was intended not to include that entry in the central List. Coming, however, to Entry 95, a plain reading suggests that the jurisdiction and power of the High Court in respect of any matters in List I would be a central subject. That would leave outstanding the jurisdiction and powers of the High Court in respect of matters in Lists II and III, which might then seem to be covered by Entries 65 in List II and 46 in List III. Mr. Dev points out that the meaning of Entries 95 in List I, 65 in List II and 46 in List III of the Constitution which correspond to Entry 53 in List I, Entry 2 in List II and Entry 15 in List III of the Government of India Act of 1935, have been explained in the Supreme Court decision mentioned above. It has been held that they relate to legislation conferring power and jurisdiction in respect of a special matter to a particular court. According to Mr. Dev, the enumeration of the subjects in the Seventh Schedule do not show that it was intended to take out the High Court from the cognizance of the State Legislature altogether and. put it under the Parliament. According to him, the words 'constitution and organization' as used in Entry 78 of List I do not include, and was not meant to include, the words 'jurisdiction and powers'. He has taken me through the provisions in the body of the Constitution to show that the constitution and organization of High Courts has already been provided for in the body of the Constitution, and very little remains to be done. He has also indicated the reasons why it was necessary to vest Parliament with the power in regard to the constitution and organization of the High Court, and take it away from the purview of the State Legislature.

9. Before I proceed further, I think it would be useful to examine the provisions relating to the constitution and organization of High Courts, contained in the body of the Constitution. Chapter V in Part V of the Constitution, deals with the question of High Courts in the States. Article 214 provides that there shall be a High Court for each State. Thus the Constitution itself provides for a High Court in a State and prescribes the number of High Courts that a State can have. Article 215 lays down that every High Court shall be a court of record and shall have all the powers of such a Court Article 216 lays! down what is described in the margin as the 'constitution of High Courts'. It 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. Article 217 lays down the qualifications for appointment and the conditions of service of a High Court Judge. Article 220 puts restriction on Judges practicing in a High Court over which he has presided. Article 221 provides for the salaries of the Judges. Article 222 deals with the transfer of a Judge from one High Court to another. Article 223 deals with the appointment of an acting Chief Justice. Article 224 deals with the appointment of additional and acting Judges. Article 225 deals with the jurisdiction of existing High Courts This is a very important provision and the relevant part runs 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."

10. Article 226 deals with the power of High Courts to issue certain writs. Article 227 confers upon the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Article 229 provides that the appointment of officers and servants of a High Court shall be made by the Chief Justice or such other Judge or officer as he may direct. He can also prescribe rules for their conditions of service, but this is subject to provisions of any law made by the Legislature of the State. Article 230 granted power to Parliament to extend the jurisdiction of a High Court to, or exclude the jurisdiction from, any State specified in the first schedule other than, or any area not within, the State in which the High Court has its principal seat. Article 231 lays down restrictions upon the powers of the State Legislature to affect the jurisdiction of a High Court exercising jurisdiction outride the State where it has its principal seat. Article 232 provides for the interpretation of certain terms in the event of a High Court exercising jurisdiction in more than one State.

11. Articles 230-31-32 have now been substituted by the new Articles 230 and 231 by the Constitution (Seventh Amendment) Act 1956. There is no longer any power to extend the jurisdiction of a High Court to a State other than the State where it has its principal seat, although under Article 230 it can still extend its jurisdiction to a Union territory. A new power has however been granted by the new Article 231, namely that Parliament can now establish a common High Court for two or more States or for two or more States and a Union territory. The word 'High Court' has been defined in Article 366(14). The definition is as follows :

> '"High Court' means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes -
> (a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and
> (b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution."

12. The only other relevant provision which falls to be considered are Articles 3 and 4 of the Constitution. Article 3 provides for the formation of new States and alteration of areas, boundaries or names of existing States. Article 4 runs as follows:

> "(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislture or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

13. Mr. Dev says that the enumeration of the above provisions amply demonstrates how the Constitution has in its body provided for the constitution and organization of High Courts. It has provided for the establishment of a High Court as a Court of record in each State, and also for the continuation of existing High Courts. It has prescribed how the number of Judges should be fixed and their conditions of service. So far as the appointment of its officers and servants is concerned, that has been left to the Chief Justice. Then what remains to be done about the constitution and organization? Mr. Dev argues that very little remains to be done. In fact, he points out that the only important thing that is left to Parliament to do in respect of High Courts was to exercise rights under Articles 230-31-32, and now Articles 230-31, namely, the extension of jurisdiction of existing High Courts and/or the establishment of a common High Court for two or more States or two States and a Union territory. According to Mr. Dev this was the very reason which impelled the framers of the Constitution to shift the legislative power relating to the constitution and organization of a High Court, from the State to the Centre. If the jurisdiction of a High Court has to be extended, or if a common High Court has to be established for two or more States or two States and a union territory, it cannot be done by an individual State, but can only be properly done by the Centre. Therefore, the argument of Mr. Deb comes to this: The Constitution, while expressly providing that the question of the jurisdiction and powers of the Supreme Court should be a central subject, has omitted to mention it in entry 78. Unless, therefore, the omission is supplied by entry 95, it must be concluded that the jurisdiction and powers of a High Court is not a central subject. Only the 'constitution and organization' of a High Court has been made a central subject, and in view of the provisions of the Constitution, it is not possible to include the words 'jurisdiction and powers' within the words 'Constitution and organization'. This aspect will have to be more fully considered, because Mr. Kar on behalf of the petitioner has strongly relied on certain observations of the Supreme Court in the decision mentioned above, to the effect that 'constitution and organization' does include the concept of

'jurisdiction and powers'.

14. On the face of it, it would seem that under entry 95 in List I, the jurisdiction and powers of a High Court in respect of entries in List I are central subjects. Similarly the plain meaning of Entry 65 in List II would seem to indicate that the jurisdiction and power of the High Court in respect of matters in List II rightly belong to the State Legislature. But the matter is not so simple as it appears on the surface. The Supreme Court, in the decision above-mentioned, has explained the real meaning of these entries and how they are intended to confer power upon Parliament and the State Legislature respectively, to create special Courts, and how they should not be taken so as to confer or take away general jurisdiction under the heading of 'administration of justice'. It will, therefore, be necessary now to consider the Supreme Court decision mentioned above in some detail.

15. In AIR 1951 Supreme Court 69, the Supreme Court was considering the Bombay City Civil Court Act XL of 1948. That Act was promulgated by the Provincial Legislature of Bombay, and the provisions are analogous to the Act we are considering in this case. It purported to create an additional Civil Court for greater Bombay, having jurisdiction to try, receive and dispose of all suits and other proceedings of a civil nature not exceeding a certain value. Under Section 4 of that Act, the Provincial Government was authorized to enhance the limit of jurisdiction which was originally fixed at Rs. 10,000/-. Section 12 of the Act barred the jurisdiction of the High Court to try suits cognizable by the City Civil Court. The decision dealt with the Government of India Act, 1935 for the Constitution had not yet come into being. The petitioner presented a plaint before the High Court of Bombay for filing a summary suit for the recovery of the sum of Rs. 11,704/5/4 alleged to be due under three promissory notes. As the question of jurisdiction was important, the matter was referred to the sitting Judge in Chambers who held that Section 4 of the Act was ultra vires of the Provincial Legislature and that the High Court had jurisdiction to hear the suit. Thereafter the matter was transferred to a Division Bench of the High Court which upheld the decision of the single Judge, and there was a further appeal to the Supreme Court. Two questions were canvassed before the Supreme Court : (1) Whether the City Civil Court Act was ultra vires of the Legislature of the Province of Bombay in so far as it dealt with the jurisdiction and powers of the High Court and City Civil Court with respect to matters in List I in the Seventh Schedule of the Government of India Act, 1935 and (2) whether Section 4 of the Act was void as it purported to delegate to the Provincial Government legislative authority in the matter of investing the City Civil Court with extended jurisdiction. It was held by the Supreme Court that the City Civil Court Act of Bombay was not ultra vires, but was within the competence of the Provincial Legislature of Bombay. It also held that there was proper delegation and that Section 4 was valid, but with that aspect of the question we are not concerned with in this case. Although all the learned Judges in the Supreme Court came to the same conclusion, they differed in the reasoning and there may be said to be a majority and a minority judgment. It was contended before the Supreme Court on behalf of the respondent in that case that the Act was ultra vires the legislative powers of the province of Bom bay because it conferred jurisdiction on the new Court, not only in respect of matters which the Provincial Legislature was competent to legislate upon under List II of the Government of India Act, 1935, but also in regard to matters in respect of which only the Central or Federal Legislature could legislate under List I (such as, for instance promissory notes, which is one of the subjects mentioned in Entry 28 of List I). The argument was in substance as follows :

16. It was stated that in List I, there is Entry 53 conferring upon the Centre the power to legislate regarding the jurisdiction and power of High Courts in respect of any matters in List I. In Entry 1 of List II, the words 'constitution and organization' occurred but not 'jurisdiction and powers'. In Entry 2, jurisdiction and power of all Courts except the Federal Court was a Provincial subject but only with respect to any of the matters in List II. It was argued that promissory notes, being a Central subject, the jurisdiction and power of the High Court in respect of promissory notes, that is to say, in respect of all litigation concerning promissory notes, would be a Central subject, and therefore, the Provincial Legislature could not encroach upon that jurisdiction. It was argued on behalf of the appellant that the words 'administration of justice' in Entry 1, of List II was quite sufficient, and that the Provincial Legislature had power to make a law, not merely constituting a new Court, but investing such Court with general jurisdiction and powers to receive, try and determine all suits and other proceedings including suits based on promissory notes. I set out below a summary of the findings of the learned Judges which will show how they differed on certain points although they came to an agreement on the final conclusion:

**Fazl Ali, J.**

1. The expression 'administration of justice' has a wide meaning and includes administration of civil as well as criminal justice. Entry 1 in List II 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 justice cannot be administered if Courts have no power and jurisdiction to administer it. Courts cannot function without any power or jurisdiction.

2. 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 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 are the parties to the suit or proceeding or what its subject matter really is. This power must necessarily include the power of defining, enlarging, altering, amending and diminishing jurisdiction of Courts and defining their jurisdiction territorially and pecuniarily.

3. The word 'power' was added to the word 'jurisdiction' in Entry 53 of List I, Entry 2 of List II, and Entry 15 of List III, in order to enable the two Legislatures to grant special power to the Courts which are to deal with the subject matter of any such legislation. In other words, they relate to legislation conferring power and Jurisdiction in respect of a special matter. Thus a special Court may be constituted to deal with matters in the respective Lists or Courts may be specially granted jurisdiction to deal with such matters, in which case the general jurisdiction of other Courts would be excluded.

4. Entry 2 in List II cannot be read with Entry 1 because the scheme followed in the three legislative Lists is that each particular entry should relate 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). The argument that the Centre and Provinces

alone would respectively be entitled to invest Courts with jurisdiction and power to try suits and proceedings in respect of matters falling in their respective legislative lists is bad on the ground that the suggested construction would exclude from the jurisdiction of the Provincial Courts large number of matters which normally came before Courts exercising civil or criminal jurisdiction, and if it was excluded, Courts would not be able to function in the fullest sense unless both the provincial and central legislature had by piecemeal legislation exhausted their power of legislating on all the subjects enumerated in Lists I and II and even then Courts would not be able to deal with important matters, such as contracts, transfer of property, arbitration, wills and succession, criminal law, etc., which are subjects mentioned in Last III, until one of the two Legislatures had legislated in regard to those subjects.

**Mahajan, J.**

1. The legislative power conferred on the Provincial Legislature by Item 1 of List II has been conferred by use of language which is of the widest amplitude (administration of justice and constitution and organization of all Courts). The phrase employed would include within its ambit legislative power in respect to jurisdiction and power of Courts established for the purpose of administration of justice. Moreover, the words are 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 Provinces. Legislation on the subject of administration of justice and constitution of Courts of justice would be ineffective and incomplete unless and until Courts established under it were clothed with a jurisdiction and power to hear and decide causes. It was difficult to visualize a statute dealing with administration of justice and 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 idle formality. By its own force, it would not have power to clothe a Court with any power or jurisdiction whatsoever. It would have to look to an outside authority and to another statute to become effective. Such an enactment was unknown to legislative practice and history. Parliament by making administration of justice a Provincial subject could not be considered to have conferred power of legislation on the Provincial Legislature of an ineffective and useless nature.

2. By making administration of justice a Provincial subject and by conferring on the Provincial Legislature power to legislate on this subject, Parliament conferred on that Legislature an effective power which included within its ambit law-making power on the subject of jurisdiction of Courts. The Provincial Legislature could therefore bring into existence a Court of general jurisdiction to administer justice on 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.

3. Under Item 1 of List II, the Provincial Legislature had 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 this power was not curtailed or limited by power of legislation conferred on the two Legislatures under Items 52, 2 and 15 of the three Lists.

On the other hand, these three items conferred on the respective Legislatures, power to legislate, when dealing with particular subjects within their exclusive legislative fields, to make laws in respect to the jurisdiction and powers of Courts, that will be competent to hear causes relating to those subjects. In other words, this was a power ot creating special jurisdiction only.

**Mukherjea, J.**

1. Different topics in the same legislative List should not be read as exclusive of one another. As there can be no question of conflict between two Items in the same List, there is no warrant for restricting the natural meaning of one, for the simple reason that the same subject might in some aspect come within the purview of the other.

2. The right to set up Courts and to provide for the whole machinery of administration of justice has been given exclusively to the Provincial Legislature. 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.

3. Entry 1 of List II uses the expression 'administration of justice and constitution and organization of all Courts' in a perfectly general manner. It can therefore be legitimately interpreted to refer to a general jurisdiction to decide cases not limited to any particular subject. On the other hand, Entry 53 in List I, Entry 2 in List II and Entry 15 in List III relate to particular matters appearing in the three Lists and what they contemplate is a vesting of jurisdiction in Courts with regard to such specific Items only. In one case jurisdiction is 'general' as is implied in the expression 'administration of justice' while in the other, jurisdiction is 'particular' as is limited to particular matters and hence exclusive. In this country there have always been civil Courts exercising general jurisdiction. Particular jurisdictions again have been conferred on some one or the other of these Courts to try cases relating to certain specified matters, e.g., insolvency, probate or guardianship proceedings, compulsory acquisition of land or cases arising out of different Rent Acts.

4. Thus construed, the result is that the Provincial Legislature can endow Courts which it sets up, with general jurisdiction to decide all cases which, according to the law of the land, are triable in a Court of law, and all these powers can be exercised under Entry 1 of List II. If the Central Legislature or the Provincial Legislature chooses to confer certain jurisdiction on certain Courts except the matters enumerated in their appropriate legislative Lists, they can exercise such power under the three entries specified above. But the exercise of any such power by the Central Legislature would not in any way conflict with the powers exercisable by the Provincial Legislature under Entry 1 of List II. The expression 'general' must always be understood as being opposed to what is 'special' or

exclusive. If the Central Legislature vests any particular jurisdiction upon a Court in respect to a Central matter, that matter would cease to be a general matter and consequently, Courts having general jurisdiction would no longer deal with them, but the general jurisdiction of such Courts would not be affected thereby.

20. These judgments may be said to constitute the majority view, while the judgment delivered by Patanjali Sastri, J. and Das, J., (as he then was) constitute the minority view. The minority view may be summarized thus :

**Patanjali Sastri, J.**

1. If Entry 1 in List II does not by itself enable the Legislature to confer general jurisdiction, Entry 2 certainly does, when read with Entry 1. 'Administration of justice' is one of the matters mentioned in List II itself. The Provincial Legislature therefore is competent under Entry 2 to legislate about conferring jurisdiction on Courts with respect to administration of justice, that is to say, general jurisdiction to administer justice by adjudicating on all matters brought before them, except of course, matters excluded expressly or by implication either by an existing law continued in force or by statute passed by the appropriate Legislature under entries in the three Lists relating to jurisdiction and powers of Court. In other words, though 'administration of justice' in Entry 1 does not authorize legislation with respect to jurisdiction and powers of Courts, legislative power under Entry 2 in regard to the latter topic, which can be legitimately exercised 'with respect to any of the matters in this List', can be exercised with respect to 'administration of justice', one of the matters comprised in that List, with the result that the subject of general jurisdiction is brought within the authorized area of Provincial legislation.

2. When one Provincial Legislature is found competent to make a law with respect to the general jurisdiction of Courts, the apparent conflict with the Central legislative power under Entry 53 of List I can be resolved in a given case by invoking the doctrine of pith and substance and incidental encroachment. For that rule, though not of much assistance in considering Entries 1 and 2 which occur in the same List II, has its legitimate application in ascertaining the true character of an enactment and attributing it to the appropriate List where the Federal and Provincial Lists happen to overlap. Accordingly, if the Legislature of Bombay was, in conferring jurisdiction on the City Civil Court, to hear and determine all suits of a civil nature, really legislating on a subject which is within the ambit of its legislative power, if in doing so, it encroached on the forbidden field marked off by Entry 53 of List I, the encroachment should be taken to be only incidental.

**Das, J.**

1. Where there was no separate provision authorizing the making of laws with respect to jurisdiction and powers of Courts and therefore the authority to make laws with respect to the jurisdiction and powers of Courts had of necessity to be found in the words 'administration of justice (As was the case under the British North America Act 1867), it might be argued that jurisdiction and powers of Court has to be spelt out of the words 'administration of justice'. In the

Bombay City Civil Court Act, there was no compelling reason to follow this rule of interpretation. Regard being had to the use of the various phrases, it is clear that the intention of Parliament was not under Entry I in List II by itself to authorize the provincial legislature to make any law with respect to jurisdiction and powers of Courts.

> 2. It is not correct that Entry 1 in List II gave general powers to the Provincial Legislature to make laws conferring general jurisdiction and powers on Courts constituted by it while Entry 53 in List I, Entry 2 in List II and Entry 15 in List III conferred special powers on the Federal and Provincial Legislatures to make laws conferring special jurisdiction and powers with respect to matters specified in their respective Lists. If Entry 1 in List II gave general powers, Entry 2 in List II would then be wholly redundant, for the wider power itself would include the lesser power. Special power to confer special jurisdiction would be meaningless if it were included in the general power also.
>
> 3. Entry 1 in List II should be construed and read as conferring on the Provincial Legislature all powers with respect to administration of justice and constitution and organization of Courts minus the power to make laws with respect to jurisdiction and powers of Courts. But this shortcoming in Entry 1 is supplied by Entry 2 in List II. Under Entry 2 of List II, the Provincial Legislature had power to make laws with respect to jurisdiction and powers of Courts with respect to any of the matters enumerated in List II and 'administration of justice' in Entry 1 is one of the matters in List II. Therefore, the Provincial Legislature had power to confer the widest general jurisdiction on any Court or take away the entire jurisdiction from any existing Court. The impugned Bombay Act may therefore be well supported as a law made by the Provincial Legislature under Entry 2 read with Entry 1 in List II.

23. The application of these principles to the facts of this case is by no means a simple task. It will be observed that the Supreme Court decision was based on the Government of India Act, 1935, while the present case is based on the Constitution. As I have shown above, there has been a substantial change in the relevant entries relating to legislative! competency. Under the Government of India Act, 1935, Entry 1 in List II was comprehensive. 'Administration of justice' was included as well as 'constitution 'and organization' of the High Court. The only thing that was wanting in Entry 1 was that 'jurisdiction and powers' of the High Court was not specifically included. According to the majority judgment, Entry 1 as it stood was quite sufficient to confer upon the State Legislature the power to legislate in respect of the jurisdiction and powers of all Courts including the High Court. It was pointed out (Fazl Ali, J., Mahajan, J., Mukherjea, J.) that the words 'administration of justice' and 'constitution and organization' of Courts are wide enough to include their jurisdiction and powers, because there cannot be a Court without power and jurisdiction to administer justice. According to Mahajan, J., a Court could not be constituted so that it will have to look to an outside authority, and to another statute passed by such authority, to become effective. 'Such an encroachment' says the learned Judge, 'was unknown to legislative practice and history'. But, this rare phenomenon has now occurred, because under the Constitution, Entry 78 in List I gives parliament power in respect of the 'constitution and organization' of High Courts, whereas 'administration of justice' which includes general jurisdiction and the 'jurisdiction and powers' of the High Court with regard to 'administration of

justice', that is to say, with regard to general jurisdiction, has been made a state subject. (Entries 3 and 65). The position, therefore, is as follows : The 'constitution and organization' of the High Court is a central subject. Parliament can constitute and organize a High Court, and invest it with jurisdiction and powers in respect of matters which are contained in List I; but it can do no more. Mr. Deb has been constrained to admit that this is the position. Mr. Kar, on the other hand, has strongly argued that the consensus of opinion expressed in the Supreme Court decision cited above was that 'constitution and organization' includes, and must include 'jurisdiction and powers'. This however is not strictly accurate. What the learned Judges have held is that the words 'administration of justice' and 'constitution and organization' of Courts, include the concept of jurisdiction and powers. It has not been clearly held that if the word 'constitution and organization' stood alone, the result would have been the same. After all, one must construe the Entries as they stand. There can be no doubt that the word 'administration of justice' includes the concept of general jurisdiction. If the word 'constitution and organization' in Entry 78 of the Union List includes general jurisdiction, then it is plain that both the Union and the State have the power of legislating with regard to general jurisdiction of the High Court, a construction which clearly cannot be accepted. Mr. Kar is therefore constrained to argue that 'administration of justice' in Entry 3 List II excludes 'administration of justice', so far as the High Court is concerned. This again is a construction that is impossible to accept. In Entry 3 List II the words 'administration of justice' stands by itself and, therefore, the 'administration of justice' in all Courts within the State, which must necessarily include general jurisdiction, must be held to be a State subject. That being so, the word 'constitution and organization' in Entry 78 List I must be given a restricted meaning and cannot include 'administration of justice', that is to say, the exercise of general jurisdiction by High Courts within the States. I must confess that the position is somewhat curious. 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 n 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. Mr. Kar points out that this may give rise to the most extra-ordinary situations. Parliament may set up a High Court but the State may refuse to vest it with jurisdiction and the very same situation would arise which is being condemned as an impossibility in the Supreme Court decision mentioned above, namely, 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. There can be no doubt that this state of things is contrary to what is known as 'legislative practice'. Mr. Kar has pointed out that Parliament itself has not construed it in that fashion. He points out to at least two recent legislations wherein Parliament has not only constituted or reconstituted a High Court, but has also invested it with jurisdiction and powers. The first statute is the Andhra State Act of 1953. This was an Act which constituted the State of Andhra and there is no doubt that the Act provided for a High Court to be established in Andhra and invested it with jurisdiction and powers. The next statute referred to is the States Reorganization Act, 1956, being Act No. 37 of 1956. This was an Act to provide tor the reorganization of the States of India, and for matters connected therewith. As is well known, a high powered commission was appointed to make recommendations about the reorganization of States. The Commission made its recommendations, which necessitated the passing of the said Act. Under the Act, the various. States in the Indian Union were reorganized. Under Part V of the said Act, High Courts were constituted, reconstituted, and/or abolished, in respect of the component States of the Union. It thus appears that Parliament not only constituted or organized High Courts but also vested them

with jurisdiction and powers. This, however, is explained by having recourse to Articles 3 and 4 of the Constitution. As stated above, Article 3 provides for the formation of new States and the alteration of existing States, and Article 4 lays down that any law for effecting this alteration may contain all the provisions necessary to give effect to it, and no such law shall be deemed to be an amendment of the Constitution. In other words, normally Parliament would have no power to set up a High Court and vest it with general jurisdiction, but it can do so in the case of the formation of new States or alteration of areas, boundaries and names of existing states as contemplated under Article 3 of the Constitution. Mr. Deb argues that one of the reasons which impelled the framers of the Constitution to frame Entry 78 in the way it has been done, is the knowledge that so far as constitution and organization of existing High Courts are concerned, very little remains to be done, and in the case of the formation and reorganization of the States, Parliament would have all necessary powers under Article 4 of the Constitution. Thus, it was thought sufficient to invest Parliament under Entry 78 with the power of the 'constitution and organization' of a High Court without including in it the power to vest it with general jurisdiction. The learned Advocate General referred me to the draft constitution and the Constituent Assembly Debates on the subject. In the draft constitution, Entry 52 in List I dealt with the Constitution, organization, jurisdiction and powers of the Supreme Court. Entry 53 dealt with the extension of jurisdiction of a High Court outside the State in which it has its princip'al seat or exclusion of such jurisdiction and Entry 54 dealt with the powers of all Courts except the Supreme Court in respect of any matters in List I. In List II, Entry 2 dealt with the administration of all Courts except the Supreme Court and Entry 3 dealt with the jurisdiction and powers of all Courts in List II. Thus, the draft constitution followed the Government of India Act 1935 and even the Constitution and organization of the High Court was a State subject. During the debates in Parliament, Entry 52 in List I of the draft constitution was amended and the amendment moved by Dr. Ambedkar which was adopted was as follows :

> "52 : Constitution and organization of the Supreme Court and the High Court; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practise before the Supreme Court or any High Court."

This forms the basis of Entries 77 and 78 in List I, as they finally emerged. During the debate, strong exception was taken to the removal of the High Courts from the provincial list to the Union list. Dr. Ambedkar, the sponsor of the Bill, pointed out that Articles 182-A, 193, 197, 201 and 207 of the draft Constitution already dealt with the High Courts. "The only matter that is left to the Provincial Legislatures" said the doctor "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." Sir Alladi Krishna Swami Ayyar explained why constitution and organization of the High Courts was made a Central subject. He said :

> "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 there are 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 proposed to bring all the High Courts in the States 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 which can function in this regard is the Parliament. That is why that part of the amendment provides for it."

Mr. Kar however objects to my referring to the Constituent Assembly debates and cites the Supreme Court decision, *State of Travencore-Cochin v. Bombay Co. Ltd*[2]*.,* Reference is also made to *Gopalan v. State of Madras*[4]*,* and *Administrator-General of Bengal v. Premlal Mullick*[3]*,* It has been held that a Statute cannot be interpreted with reference to the speeches made by members of the Legislature. In the Travencore-Cochin case (supra), it was pointed out that there are American authorities which support the view that such material can be used to ascertain the purpose of a Statute but not for ascertaining its meaning. The learned Judges did not condemn this view-point though they did not follow it. In *Charanjilal Chaudhury v. The Union of India*[5]*,* Fazl Ali, J., referred to proceedings in Parliament and said as follows :

> "I am aware that legislative proceedings cannot be referred to for the purpose of construing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it."

We can therefore only look into the materials stated above to find out the circusmtances under which the constitution and organization of High Courts was taken out of the State list and vested in Parliament. No further aid in its construction can be received. Coming now to the minority judgment in *State oil Bombay v. Narottamdas Jethabhai* (supra), we find that the learned Judges were not inclined to accept the proposition that Entry 1 in List II of the Government of India Act, 1935, attracted the jurisdiction and powers of the High Court, without recourse being had to Entry 2. The learned Judges also repelled the contention that Entry 2 only conferred special powers to constitute special Courts or conferred merely special jurisdiction. According to Das, J., (as he then was), since the phrase 'administration of justice' was used in juxtaposition to the phrases 'constitution and organization' and 'jurisdiction and powers', it was not permissible to include within one phrase the concept of the others. His final decision was based on the reasoning that the word 'administration of justice' in Entry 1, read with Entry 2, conferred upon the State Legislature the power to invest the High Court with jurisdiction and powers in respect thereof.

24. In my opinion, the present position may be summarized as follows :-

(1) The 'constitution and organization, jurisdiction and powers' of the Supreme Court, are Union subjects.

[2] AIR 1952 SC 366 at p. 368
[3] 22 Ind App 107 (118) (PC)
[4] 1950 SCR 88
[5] AIR 1951 SC 41

(2) While 'jurisdiction and powers' of the Supreme Court have been expressly included in Entry 77 of List I, these words have been deliberately left out in Entry 78 of the same

List, in respect of the High Courts. This omission is not supplied by Entry 95 because that Entry only enables jurisdiction and powers to be given in respect of the matters enumerated in List I. To speak of 'jurisdiction and powers' of the High Courts in respect of 'constitution and organization' of the High Courts would be meaningless.

(3) If nothing else was to be found relating to the subject, in any other part of the Constitution, then it might have been necessary to imply that it was the intention of the framers of the Constitution to include the concept of' 'jurisdiction and powers' within the phrase 'constitution and organization' of the High Courts in Entry 78. In that event, the result would be that if a High Court was constituted or organized by a Parliamentary Statute, it would automatically be vested with general jurisdiction to administer justice.

(4) This construction, however, is not permissible because it is in conflict with Entry 3 in List II or Entry 3 read with Entry 65. It is only the State Legislature that can vest a High Court with general jurisdiction to administer justice.

(5) While it is controversial as to whether Entry 78 in List I includes 'jurisdiction and powers' of the High Court, it is clear that under Entry 3 of List II or Entry 3 read with Entry 65, 'administration of justice' is a State subject and the 'jurisdiction and powers' of all Courts in the State including the High Court in respect of administration of justice, which must include general jurisdiction, is a State subject.

(6) This construction does give rise to a curious result, namely, that Parliament is given under Entry 78 a power to set up a High Court but not to vest it with jurisdiction excepting in a limited way under Entry 95. Ordinarily, and in so far as legislative practice is concerned, this state of things should not happen, but it has in fact happened under our Constitution.

(7) But the evil effects inherent in such an "unusual provision in the Constitution is mitigated by the fact that : (a) for the most part, the 'constitution and organization' of the High Courts have already been provided for in the body of the Constitution, and (b) in the case of the formation of new States or reorganization of existing States, there is ample power under Article 4 of tile Constitution to clothe Parliament with the power to invest High Courts with the necessary 'jurisdiction and powers of every description.

(8) The State Legislature being the appropriate body to legislate in respect of 'administration of justice', and to invest all Courts within the State including the High Court, with general jurisdiction and powers in all matters civil and criminal, it must follow that it can invest a High Court with general jurisdiction and powers (including territorial and pecuniary jurisdiction), and also take away such jurisdiction and powers from the High Court.

(9) So far as the Calcutta City Civil Court is concerned, there can be no question that the State Legislature is competent to constitute such a Court and vest it with general jurisdiction, since that comes specifically and plainly within the scope of Entry No. 3 or Entry No. 3 read with Entry 65 in List II. The question is as to whether it can at the same time take away any part of the jurisdiction and powers of the High Court.

(10) It has been argued that the setting up of the City Civil Court, with a specified

jurisdiction, and the taking away of the same jurisdiction from the High Court, was nothing more or less than doing something which affected the 'constitution and organization' of the High Court. This again depends on the answer to the question as to whether the words 'constitution and organization' necessarily include the concept of 'jurisdiction and powers' meaning thereby, general jurisdiction and powers relating to the administration of justice. So far as these words are used in Entry 78 of List I, the answer must clearly be in the negative. The constitution and organization of High Courts has been made a Central subject in this limited sense because :

(a) It was necessary to have uniformity in the organization of all High Courts and this could only be effected by Parliament.

(b) The Constitution provides for extension of the jurisdiction of a High Court beyond the State where it has its principal seat and also for a common High Court in two States or two States and a Union territory. This can only be effected by Parliament. But beyond this, no necessity was felt of granting to Parliament the power to invest High Courts with general jurisdiction for the administration of justice, which was a provincial subject before and continues to be a State subject.

(11) It follows that the taking away of some of the general jurisdiction and powers of the High Court and vesting the same in the City Civil Court would not necessarily mean that the State Legislature was doing anything which could be said to be an infringement of Entry 78 in List I. It was doing what it had power to do under Entry 3, or under Entry 3 read with Entry 65, of List II.

25. In view of the reasons given above, the points Nos. 1, 2 and 3 advanced by Mr. Kar must be rejected.

26. I now come to point No. 4. This argument of Mr. Kar is more or less on the lines of the argument advanced in *State of Bombay v. Narottamdas Jethabhai* (supra). He argues that under Section 5 of the Act read with the First Schedule, jurisdiction has been conferred upon the High Court in respect of certain matters which are specifically to be found in List I, that is to say, the Union List. It is argued that in so far as jurisdiction has been conferred or taken away in respect of such items, there has been a clear breach of the law. Mr. Kar has drawn my attention to the following entries in the First Schedule and the corresponding entries in List I.

| Entry in List I : | Impugned Act : | |
|---|---|---|
| No. 48 | Stock Exchange and future market | ... 4 (ii) of 1st Schedule. |
| No. 41 | Import and Export | ... 4 (i) of 1st Schedule. |
| No. 46 | Bill of Exchange, Hundis and other negotiable securities | ... 5 of 1st Schedule. |
| Nos. 36 and 46 | Cheques, Currency and notes and Promissory Notes | ... 5 of 1st Schedule. |

Let us consider the question of a suit on promissory notes. Promissory notes would come under Entry No. 46 in List I. We find in item 5 of the 1st Schedule in the Act, that suits and proceedings exceeding Rs. 5,000 in value, relating to or arising out of bill of exchange or hundis or other

negotiable securities are excluded, but not suits and proceedings relating to or arising out of promissory notes. The result is that Section 5 of the Act applies in full force and all suits on promissory notes not exceeding Rs. 10,000 in value are to be filed in the City Civil Court. The question is whether this is an encroachment by the State Legislature into the domain reserved for Parliament. The precise point has been dealt with in the Supreme Court decision cited above. In this connection, Fazl Ali, J., referred to the Federal Court decision, *Prafulla Kumar v. Bank of Commerce Ltd., Khulna*[6]. In the Federal Court case, the impugned Act was the Bengal Money-lenders' Act, 1940, which limited the amount recovered by the money-lender on his loans and interest on them, and prohibited payments of sums larger than what was permitted by the Act. While money-lending was a provincial subject, the subject of promissory notes was a Central one. It was held that the legislation dealing in money-lending, in so far as it dealt with promissory notes, was only incidental or ancillary to the effective use or the admitted use of legislative powers of the provincial Legislature to deal with money-lending. Patanjali Sastri, J., said as follows (para 27) :-

> "When once the provincial Legislature is found competent to make a law with respect to the general jurisdiction of Courts, the apparent conflict with the Central legislative power under Entry 53 of List I can be resolved in a given case by invoking the doctrine of pith and substance and incidental encroachment. For that rule, though not of much assistance in construing Entries I and 2 which occur in the same List II, has its legitimate application in ascertaining the true character of an enactment and attributing it to the appropriate list where the Federal and the Provincial lists happen to overlap. Accordingly, if the Legislature of Bombay was, in conferring jurisdiction on the City Civil Court to hear and determine all suits of a civil nature, really legislating on a subject which was within the ambit of its legislative power, and if in doing so, it encroached on the forbidden field marked off by Entry 53 of List I, the encroachment should be taken to be only incidental. It may be that such encroachment extends to the whole of that field, but that is immaterial, as pointed out by the Judicial Committee in 1947 FCR 28 : AIR 1947 PC 60):

There can be little doubt that the impugned Act must, in its pith and substance, be attributed to List II, as the legislators of Bombay were certainly not conferring on the new Court, which they were constituting under the Act, jurisdiction with respect to any of the matters in List 1. They were, as Section 3 clearly indicates, constituting a new Court, the Bombay City Civil Court, and investing it with the general jurisdiction to try all suits of a civil nature within certain pecuniary and territorial limits, and if they were acting, as I have endeavoured to show, within the scope of the legislative power conferred on them under Entry 2 read with Entry 1 of List II, it seems immaterial that the enactment, so far as one aspect of jurisdiction, namely, its conferment, is concerned, encroaches practically on the whole of the federal field marked out by Entry 53 of List I."

27. Applying the same test in this case, it follows that if a State Legislature can confer

[6]1947 FCR 28

general jurisdiction upon the City Civil Court or take away similar jurisdiction from the High Court, then the mere fact that there is an incidental encroachment upon any Central subject will not make the law invalid. Thus, because promissory note is a Central subject, it does not prevent

the State Legislature from investing the City Civil Court with the jurisdiction and powers to try suits based on promissory notes within pecuniary limits which have been fixed. As stated above, it is only an incidental encroachment and it does not prevent the Centre from exercising its jurisdiction under the appropriate entries in List I. It would still be open to the Centre to create special Courts, or vest Courts with special jurisdiction, relating to Central subjects, which will then take away the jurisdiction of other Courts in such fields. The same reasoning applies to all the other items mentioned. There is therefore no substance in the fourth point advanced by Mr. Kar.

28. I now come to point No. 5, namely, that of discrimination. Mr. Kar argues that Order 37 of the Code of Civil Procedure enables litigants to obtain summary relief in specified cases. In fact, as his client's case is based on a promissory note, he would, if he files a suit on the Original Side of this High Court, be able to avail himself of the provisions of Order 37 of the Code of Civil Procedure. This provision has not yet been made applicable to the City Civil Court. Mr. Kar argues that here is a discrimination between litigants, namely, that the procedure to be adopted in the City Civil Court is less beneficial than that of the Original Side of the High Court. Similarly, taking it from the point of view of the defendant, the law administered in the Original Side would be made onerous than that in the City Civil Court. Firstly, my attention has been drawn to the fact that Order 37 has now been amended, and under Section 14 (8) of the 'Code of Civil Procedure (Amendment) Act, 1956,' (Act LXVI of 1956), Order 37 may be applied now to any district Court or any other Court especially empowered in this behalf by the State Government. It can therefore be made applicable to the City Civil Court.

29. The principle of discrimination with regard to procedural law has been explained in two decisions of the Supreme Court - *Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri*[7], and *Shree Minakshi Mills Ltd. v. Visvanatha Sastri*[8], In Suraj Mall Mohta's case (supra), it was held that in its application to legal proceedings, Article 14 of the Constitution assures to every one the same rules of evidence and modes of procedure. In other words, the same rules must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same division. The State can by classification determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some rule and substantial distinction, bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.

30. The object of providing for an additional Court like the City Civil Court, is to ensure that there should be an additional Court to try cases up to a particular pecuniary limit, which should be tried more summarily and more quickly than they can be done at present, considering the pre-occupations of the High Court. Thus, litigants having cases up to a particular pecuniary limit are relegated to the City Civil Court, while cases with a higher

[7] AIR 1954 SC 545

[8] AIR 1955 SC 13

pecuniary limit are referred to the High Court. Litigants with cases within the lower pecuniary limits, who are to file their suits in the City Civil Court can be taken to constitute a class. All persons in that class, namely, the litigants who will pursue their remedies in the City Civil Court are treated alike. As I have stated above, it is open to the State Government to make

Order 37 applicable to the City Civil Court. But quite apart from this, one cannot say that the procedure followed in the City Civil Court is more onerous or less onerous than that prevailing in the High Court. In the Original Side of the High Court there is not only Order 37 but also Ch. XIII-A of the High Court Rules. In the same way, the procedure prevailing in the City Civil Court is not going to be the same as prevailing in the High Court. In fact, under Section 19 of the City Civil Court Act, the High Court may from time to time, subject to the approval of the Governor, make rules for the purpose of giving effect to the provisions of the Act. No doubt, rules will be made to carry out the object of the Act. The rules that will then prevail in the City Civil Court, would not be identical with those prevailing in the Original Side of the High Court, but that cannot detract from the legality of such rules. All persons have equality before the law, but the law applicable to all persons need not be the same. In my opinion there is no substance in this point.

31. The last point taken relates to appointment of respondent No. 1 as the Chief Judge of the City Civil Court. Mr. Kar argues as follows: He points out that the City Civil Court Act was to come into force on such date as the State Government may by notification in the Official Gazette appoint. By Section 3 of the Act tile State Government may by notification in the Official Gazette establish a Civil Court to be called a City Civil Court. Section 4 states :

> "There shall be appointed a Chief Judge of the City Civil Court and as many other Judges of that Court as the State Government thinks fit."

As I have pointed out above, 3 notifications were published on February 14, 1957. By notification No. 1057-J, the Act came into force on the 23rd day of February 1957. By notification No. 1058-J, the City Civil Court was established as a civil Court and also as a Court of Sessions called the City Sessions Court. On February 20, 1957, the Governor of West Bengal was pleased to appoint respondent No. 1, then employed as the Additional Chief Presidency Magistrate, Calcutta, to be the Chief Judge of the City Civil Court. The said respondent was asked to join his new office from February 23, 1957 forenoon, which he appears to have done. The three notifications dated February 14, 1957, were all published in an extraordinary issue of the Calcutta Gazette, dated February 20, 1957. Mr. Kar argues that the Act came into force on the 23rd day of February, 1957, and the Court came to be established from 23rd day of February 1957. He argues that the appointment of the Chief Judge could only be under Section 4 of the Act which Act itself did not come into operation on February 20, being the date of appointment, nor had the Court come into existence upon that date. He says that the power of appointment could not be exercised under Section 4 (1) of the Act on February 20, 1957, since the Act itself did not come into force on that day, and an appointment could not be made of a Judge of a Court which did not exist. The complete answer to this argument is furnished by Section 23 of the Bengal General Clauses Act, 1899, which runs as follows :-

> "23. Making of rules or bye-laws and issuing of orders between publication and commencement of Bengal Act :-
> Where, by any Bengal Act which has not come into operation immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or office thereunder, or with respect to the person by whom,

> or the time when, or the place where, or the manner in which, or the fees for which, anything has to be done under the Act, then that power may be exercised at any time, (after the passing of the Act), but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act."

Here, the Act was passed but it was not to come into operation immediately. An order was passed whereby a Judge was appointed before the Act came into operation. Under Section 23 of the Bengal General Clauses Act, the power of appointment could be exercised after the passing of the Act but it would not take effect till the commencement of the Act. Here the Chief Judge was appointed by an order after the Act was passed but before it came into operation, and it is quite valid. The only thing to be noted is that he could only consider his appointment to be effective after the Act came into operation. As stated above, the Act came into operation and the Court was established and the respondent No. 1 took charge, all on February 23, 1957, and I cannot see anything illegal in this.

32. The result is that all the points taken have failed and the petitioner has not been able to establish that the City Civil Court Act is ultra vires of the powers of the State Legislature and I must hold it to be intra vires.

33. In this matter, Mr. Kar on behalf of the petitioner has made an inspired argument, referring me to the glorious record of this High Court in its Original Side, and the increasing efforts that are being made to deplete it of its glory and power.

34. This High Court, in both its Original and Appellate Side, has served the nation, nigh on to a century, with sturdy independence, unimpeachable integrity and quiet efficiency. It has created a tradition that is something to be proud of. During the bureaucratic Regime it stood as a bastion against executive oppression and fearlessly protected the life and liberty of the subject. Students of History will recall with pride how at one time, the jurisdiction of this High Court spread over the best part of Hindusthan. But, Courts, like individuals, must submit themselves to the inexorable law of change. The state of human society, its needs and its institutions are not static but are dynamic and subject to constant change. While the High Court in its original side was found sufficient so long for dealing with cases that arose within the prescribed territorial limits, it is now found necessary to ease its burden by founding additional Courts. It is said that cases within the lower pecuniary limits should be heard in a more summary manner, inexpensively and with greater expedition. These are enviable dreams and no one knows whether they will come true. But this is no reason why a brave new experiment should not be made. The local Legislature as the accredited representatives of the nation must know what is good for its people. If it thinks that an additional Court will ease the burden of the litigant, the experiment should be warmly welcomed, and given a fair trial. It is not always good to approach a question in a narrow legalistic way. The Courts exist for litgants, and any attempt to benefit litigants, in whatever manner it is achieved, is deserving of our highest encomium. Whether this particular experiment will succeed is quite another matter; for History alone can answer that question.

35. The application is dismissed. The rule is discharged. There will be no order as to costs.
Application dismissed.